Centre for Human Rights from Moldova

REPORT

on the observance of human rights in the Republic of Moldova in 2012

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CONTENTS

CHAPTER V

Other Aspects of the Activity of the Centre for Human Rights in 2012

CHAPTER I

OBSERVANCE OF HUMAN RIGHTS IN THE REPUBLIC OF MOLDOVA

1. Ensuring equality of opportunities and non-discrimination

On May 25, 2012, the Parliament of the Republic of Moldova approved the Law on Equality. According to the appreciations of the ombudsmen, the mentioned law is not perfect, but represents an important step towards the adoption of a legal framework that would meet the international requirements in the field. Another important document is the National Programme for Gender Equality in the Republic of Moldova for the years 2010-2015 (PNAEG), adopted by Government Decision No. 933 of 31/12/2009, which provides a comprehensive approach on the issues related to the implementation of the principle of equality between women and men. The document contains provisions meant to ensure the implementation of the commitments of the Republic of Moldova in connection with the ratification of several international instruments in the field of equal opportunities, including the Convention on the Elimination of All Forms of Discrimination against Women (in force for the Republic of Moldova since 31/07/1994).

The existence of regulations on equality, implicitly gender, does not solve, at this stage, the existing problems. So, the ombudsmen are concerned about the increasing appearance of video commercials and billboards containing denigrations towards women and consider that, when disseminating the advertisements, the advertisers do not comply with the basic principles and requirements of the advertising business in reference to loyalty, honesty, and decency of advertising as required by the legislation on publicity[1].

[1]Article 11 of the Law on Advertising No. 1227 of 27/06/1997 prohibits advertising that violates generally accepted standards of humanity and morality through defamatory offenses, comparisons and images on race, nationality, profession, social class, age, gender, language, religious, philosophical, political and any other type of convictions of the individuals.

In this context, the National Agency for Protection of Competition, the ascertaining agent in cases of offenses for the infringements of the legislation on advertising[2], was notified about carrying out an expertise on these advertisements to establish their compliance with the legislation on advertising, and where appropriate, initiate enforcement proceedings.

The application of N.C. requesting to include (according to Article 124, paragraph 3 of the Labour Code) the childcare period in the seniority of the military service was under review by all national courts. On May 23, 2012, the Supreme Court of Justice fully granted the appeal and ordered the Ministry of Defence to include the period of stay in childcare leave in the calendar seniority of the military service of the applicant, the decision being irrevocable. In reference to the petitioner N.C.'s request, addressed to the Court of Appeals from Chisinau, as court of first instance, on obligatory maternity payment during the childcare leave, a decision was issued on 14/06/2012 upholding the action of the Ministry of Defence to pay monthly indemnity to the petitioner on leave for minor child care. The decision of the Court of Appeals was contested in the Supreme Court of Justice in an appeal from the applicant and by the decision of the Supreme Court of Justice of 29/11/2012, the case was submitted for new examination by the trial court.

The notification of the female military addressed to the Ombudsman Institution on the phenomenon of discrimination serves as proof of non-observance of the principle of gender equality in the social sphere of the state. It is based on non-counting the childcare leave period in the length of service, including the special period to receive payment from state social insurance budget in accordance with the provisions of Article 124 of the Labour Code.

Following the examination of the alleged facts and of the analysis of the national and international legislation in the field, the Ombudsman found a restriction of the fundamental rights of the military by applying some legislative provisions[3] contrary to Article 52 of the Constitution of the Republic of Moldova and Article 1 of the Protocol No.1 to the European Convention on Human Rights to which Moldova is a party. These

The applications of T.D. requesting to include the period of childcare leave in the seniority of military service and the maternity leave payment were examined by the Court of Appeals, as court of first instance, which by decision of 10/12/2012rejected both claims as being unfounded. The applicant initiated proceedings to contest the decision.

[2]Article 364 of the Administrative Code provides that the presentation, production or dissemination of dishonest and immoral advertising, or any other type of advertising that contravenes the law, by the advertisers is subject to liability offences.

[3]The Law on the status of the military No. 162 of 22/07/2005 and the Regulations on the fulfillment of military service in the Armed Forces approved by Government decision No. 941 of 17/08/2006.

circumstances have prompted the Ombudsman to intervene and make the necessary conclusions in connection with the legal proceedings filed by the military on the ground of Article 74 of CPC of the Republic of Moldova

However, in order to eliminate the regulatory gaps, the ombudsmen notified the Constitutional Court. By appealing to more arguments, exposed in the notification, the ombudsmen requested to check-up the constitutionality of the compound word "*women-soldiers*" and of the phrase *"but not included in the calendar period of the seniority of military service*" in Article 32, paragraph 4, letter d) and j) of the Law on the Status of the Military No. 162 of 22/07/2005, and declare these provisions unconstitutional. By the Decision of the Constitutional Court of November 1, 2012, the word "women" in the compound word "women-soldiers" in Article 32 paragraph 4, letters d) and j) of the Law on the Status of the Military, as well as in sections 67, letter j), 88, paragraph 4, letter b), 108, letter i), 116, letter e), and 131 of the Regulations on the fulfilment of military service in the Armed Forces was declared unconstitutional. The Court also ceased the process to review the constitutionality of the phrase *"but not included in in the calendar period of the seniority of military service*" in letter j), paragraph 4), article 32 of the Law on the Status of the Military.

A topic closed for discussion continues to be domestic violence[4]. The gravity of this phenomenon is not fully realized in the society.

With the adoption of the "Law on Preventing and Combating Domestic Violence" No. 45-XVI of 1/3/2007, the

The Centre for Human Rights was notified by petitioner N.M. who invoked violation of the constitutional right to life, physical and mental integrity in terms of domestic violence. From the petition results that the victim's ex-husband (ex-military), who for some reasons co-lives, undertook acts of psychological and economic nature, manifested both in relation to the petitioner, as well as to their two daughters. He imposed his will and personal control, by provoking tension and mental suffering and by depriving them of economic means, thus limiting the use and disposal of the common property. The appeals made to the sector operative officer remained without resolution on the ground that the petitioner was not physically abused. At the intervention of the ombudsman, the competent authorities have taken measures and an protective order was issued in this regard.

[4] According to the information for the year 2012, provided by the MIA, 6,569 calls were received reporting domestic violence. 789 criminal cases were initiated under article 2011 of the Criminal Code of the RM and 651 administrative cases under article 78 of the Civil Code of the RM. At the request of the persecution bodies, the courts issued 408 orders of protection, out of which 224 on women, 5 on children, 165 on women and children, 14 on men.

central public authorities, competent in developing and promoting policies for preventing and combating domestic violence and providing social assistance to the subjects of domestic violence, have taken some actions regarding the implementation of legal provisions.

The Law provided a new perspective of the legal concept of the notion of domestic violence and added a more effective system of preventing and combating it. Thus, the concept of domestic violence, which encompasses a range of systematic aggressive behaviour applied to the victim, was for the first time included in the document, as well as the concept of protection order being an important legal instrument by which the court applies protection measures on domestic violence victims.

In this respect, the operative intervention of law enforcement bodies in documenting, examining and determining the real circumstances is very important; who are known to often avoid undertaking actions required to document the case.

In the course of the current year, the Ombudsman Institution was notified by women –victims of domestic violence. The petitioners mentioned that they resorted to the assistance of sector operative officers with the purpose of obtaining protective orders, but their requests were either superficially examined or were not unexamined at all. The petitioners also mentioned the fact that the sector operative officers frequently avoided to undertake protection actions in their favour. Moreover, they displayed a biased attitude and favoured the aggressors, who turned out to be their acquaintances or even friends. There are attested cases when the abuser was a former employee of law enforcement bodies. Correspondingly, out of "professional solidarity", the sector operative officers pretend not to see all the circumstances of the cases of domestic violence and hesitate to apply protective measures on the victims. The petitioners invoke the fact that sector officers react operatively only in the cases when the latter not only declare but also demonstrate consequences of physical violence being applied (injuries, sprains, bruises, fractures and so on). However, domestic violence cases are not considered when declaring other nature of violence, such as psychological pressure and family discomfort.

The petitioner R.F. notified the CHR on her disagreement with the protective order issued by the Prosecutor's Office of Centre sector from Chisinau on her behalf (the given order shall be subject to examination in court). She considers the order illegal. The petitioner indicated that it was to be applied to her husband, who would be the real aggressor. The petitioner also states that due to the friendly relations between her husband and the sector operative officer, who is biased, the protective order was applied incorrectly.

The alleged facts show the biased attitude of sector operative officers, as well as favouring the abuser, as demonstrated in some cases. Therefore, the examination of domestic violence cases is not efficient, given the lack of a neutral attitude towards them, even though women report domestic violence primarily to police offices[5].

Taking into consideration the importance of objective documentation and of determining the circumstances during the examination of the cases of domestic violence by the operative officers, the ombudsman sent a request to the General Police Commissariat. The ombudsman recommended that the sector operative officers be warned, including through internal trainings, on the need to assume a neutral role and to manifest an unbiased attitude, as well as avoiding any form of favouring the actors involved in the domestic violence acts, particularly of the abusers.

However, the ombudsmen recommend improving the level of perception by the police employees of all forms of domestic violence when handling the cases of domestic violence and of becoming aware of the need to apply measures to protect the victims of domestic violence and to react promptly.

Protection of minority rights

The transformations which took place in the post-totalitarian political systems point to the fact that the ethnic factor has a deep impact on the political process. So, the German sociologist and political scientist Max Weber mentioned that "*ethnic self-identification is the mainstay essence of the political life".*

The national minorities enjoy the same human rights as other people. These rights are part of the human rights standards that protect the minorities, including Article 27 of the International Covenant on Civil and Political Rights, the International Covenant on the Elimination of All Forms of Racial Discrimination and the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The minority rights facilitate the equal participation of the minorities in the public domain in decision-making. These elements – protection of existence, non-discrimination, identity protection and participation – constitute the foundation of minority rights[6].

[5] According to the Report Violence against Women in the Republic of Moldova made by the Bureau of Statistics of the RM Issue 1, 2011, 33.3 % of women would go to police stations; the women in urban areas have greater confidence in the police and, in case of occurrence of violent actions 37.2 % of women would appeal to the police.

[6] „Marginalized Minorities in Development Programming", A UNDP resource guide and toolkit, Democratic Governance Group Bureau for Development Policy, USA, May 2010

The rights of the people belonging to national minorities is no longer the privilege of the states but of the international community because, as noted in the Comments to Recommendation 1201 on the draft of the Additional Protocol to the European Convention on Human Rights "guaranteeing the right of national minorities is a factor of peace, justice and democracy". In the same order of ideas, the comments on Recommendation 1201 state that "the rights of minorities are part of that area of supranational law which includes human rights, this implying the fact that they cannot, under any circumstances, be regarded exclusively as an internal affair of the states".

The main international act ratified by the Parliament of the Republic of Moldova in this respect is the Framework Convention for the Protection of National Minorities (Parliament Decision No. 1001-XIII of 22/10/1996). This is a multilateral legal instrument devoted to the protection of national minorities which establishes the principles of observing their rights. For a young independent state this event had special significance since the national minorities constitute 35.5 % of the country's population[7].

Given the commitments of the Republic of Moldova to ensure the exercise of human rights without discrimination, the concluding observations and recommendations made to Moldova by the international monitoring mechanisms in this regard, the ombudsmen planned to undertake a comprehensive assessment of the application of the equality and non-discrimination principle related to the minorities in 2012.

The assessment included the documentation, the identification of legal and institutional deficiencies, the creation of possibilities for remedial actions, and as a finality to carry out awareness raising campaigns on the prevention and combating non-discrimination in order to increase the degree of awareness to this phenomenon and to strengthen the role of public institutions responsible for combating it.

The international norms developed in the second half of the XX century show particular concern for the linguistic rights of the persons belonging to national minorities in the sense of eliminating the discriminatory policies pursued against them. At the same time, these norms encourage the policies of state integration and the knowledge of official languages by the people belonging to national minorities as integration element. As long as the integration policy is not transformed into "a policy of linguistic terrorism and grammatical hegemony" and is carried out by observing the human rights, the "benefits" and the advantages of knowing the official language by

[7]www. statistica.md

persons belonging to national minorities are undeniable. The study of the official language represents the premise of social unity and a "factor of cohesion and social integration".

The right of the persons belonging to national minorities to preserve their identity can only be fully realized if they acquire adequate knowledge of their mother tongue in the educational process. At the same time, the persons belonging to national minorities have the responsibility to integrate in the society they belong to by properly learning the official language of the state[8].

In this sense, the state must address the right to education of minorities in an efficient manner and to adopt special measures to actively implement the right to study in their mother tongue and in the official language of the state, as, in such a way, the fundamental principles of equality and non-discrimination shall be consistently be observed.

The research has shown that, in the ideal situation, all disciplines in the primary school should be taught in the language of the minority. The language of the minority should be taught as a subject in itself with consistency. The state official language should also be a discipline in itself and taught consistently preferably by bilingual teachers who understand the children's cultural and linguistic information[9].

Based on the review of the situation in the field, the ombudsmen consider that the degree of the realization of minority rights in the Republic of Moldova, through the prism of the Hague Recommendations, is not satisfactory. If for the purpose of ensuring the development of the cultures and of the languages of national minorities on the territory of the Republic of Moldova, the state has implemented some normative acts[10], then, what concerns the promotion of the state official language, some actions and namely programmes are necessary. The last programmes for the promotion and improvement of learning the state language were developed in 2001[11]. The issue of the spoken official language of the state, the way and the degree of its application is an extremely sensitive topic.

[8] The Hague Recommendations regarding the education rights of national minorities; October 1996

[9] The Hague Recommendations regarding the education rights of national minorities; October 1996

[10] Government Decision on ensuring the development of the Jewish national culture and meeting the needs of the Jews in the RM; Government Decision on the measures to ensure the development of Russian national culture in the Republic; Government Decision on the measures to ensure the development of Ukrainian national culture in the Republic; Government Decision on the measures to ensure the development of the national culture of the Bulgarian population in the Republic of Moldova; Government Decision on the approval of the Action Plan on supporting the Roma population in the Republic of Moldova for the years 2011-2015.

[11] Government Decision No. 1374 of 7/12/2001 on the approval of the Action Program for the promotion of the state language financed from the Fund for the promotion of the state language for the year 2001; Government Decision No. 857 of 17/08/2001 on the approval of the Regulations on the use of Fund resources for the promotion of the state language; Government Decision No. 167 of 26/02/2001 on the national Program for improving the study of the state language of the Republic of Moldova by adults (2001-2005).

In the process of monitoring the degree of implementation of the national programmes on the development of cultures and the support of minority languages on the territory of the Republic of Moldova, the Ombudsman Institution found an insufficiency of technical and material sources, of special book funds and of fiction literature published in the languages of the national minorities.

Given the special status of the ATU Gagauzia and the diversity of ethnicities that live in the region, the Ombudsman Institution identified in the course of 2012 some problems regarding the minority rights. So, the instruction in 57 schools from Gagauzia is done in the Russian language. However, the mother tongue and the History of the Gagauz are disciplines included in the school curriculum. In some schools, the pupils chose to study either in the Gagauz or in the Bulgarian language. The only gymnasium in ATU Gagauzia where the instruction is done in the Ukrainian language is in the village Feropontievca in Comrat district. Yet, there is the risk of closing down the school due to the on-going optimization process in the Republic of Moldova. This will lead to the fact that the persons of Ukrainian ethnicity will be deprived of the possibility to study in their mother tongue. Although, in recent years textbooks for studying the Gagauz and Bulgarian languages have been published, the issue of providing textbooks still persists. Another issue is the protection and the promotion of the cultural identity and of the cultural patrimony of the Gagauz people, especially through actions of studying and knowing the history, the language and the traditions of the Gagauz from the Republic of Moldova. The majority of media institutions from Gagauzia operate in the Russian language and only some programs are broadcast in the Gagauz language and partially in the state language. This is equally true for both public media institutions and private regional ones.

In these circumstances, it must be concluded that the state does not provide the necessary extent for the study of the official state language, the national minorities being in the situation to resort to the Russian language in the interethnic dialogue of the community, which hinders the process of their integration into society.

Representatives of the Roma minority are faced with certain specific issues that need to be solved for their inclusion in the community, as Roma persons are often subject to discriminatory actions. In order to optimize the process of Roma inclusion, by Decision No. 56 of 31/01/2012 the Government of the Republic of Moldova adopted an Action Plan on supporting the Roma population from the Republic of Moldova for the years 2011-2015. According to the given Decision, a community mediation service follows to be instituted. The ombudsmen welcomed the creation of the service of community mediators, who through direct involvement will allow the empowerment of mediation capacities in ensuring Roma access to services in all social spheres.

The need for such an initiative has been proved by the cases registered by the Ombudsman institution in the course of 2012, in which the petitioners claimed to have been victims of discrimination on the basis of "ethnic origin" (the persons were of Roma ethnicity) through the actions and/or inaction of some representatives of public authorities, of the authorities in the social service sphere, etc.

It is worth noting that in the process of examination of the appeals, it is difficult to prove the existence of facts of discrimination on the ground of ethnic belonging, even if the investigation is prompt and detailed. Rather often the people are affected not so much by those who cause discrimination acts on the ground of ethnic belonging but by the people's tolerant attitude or indifference towards them when present at the time of committing such acts.

Exercising his duties in the framework of the promotion of fundamental human rights and liberties, of preventing and combating tolerance towards discriminatory acts on the ground of ethnic criteria, the ombudsman, Tudor Lazar, got informed on the registered cases related to discriminatory and intolerant attitude of the teachers from some educational institutions in the country. Thus, in a notification addressed to the Ministry of Education, the ombudsman requested a control in all educational institutions mainly inhabited by Roma, in order to exclude the differentiation treatment and to remove the situations when classes were formed by exclusively Roma children, because this kind of segregation leads to discrimination.

It was also requested the contribution of local public administration regarding the inclusion of Roma persons in the educational system, the increase of Roma children's participation in the pre-school educational system, as well as the efficient cooperation between relevant institutions and organizations in the education of Roma population. For this purpose, it is necessary to organize information campaigns on the importance of including the children in education, compulsory primary and secondary education, as well as the need to continue the studies. It is also necessary that teachers, social assistants, and school inspectors provide permanent identification of the children who do not attend school.

In the context of the experiences of discriminatory acts that happened in the previous years, on several occasions in 2012 the ombudsmen urged the top dignitaries, officials, representatives of Orthodox religious groups and representatives of political parties to promote tolerance and the

respect for human rights in the society, and those who engage in a public dialogue should refrain from discriminatory content acts[12].

The ombudsmen ardently condemn such acts, committed including by public persons and request the politicians and "opinion leaders" to demonstrate balanced and reasonable behaviour, not to allow manifestations of racism, xenophobia and discrimination against the members of the community. The freedom of expression is not an absolute right and its exercise must be carried out under certain conditions established to protect the person's dignity.

The centre for Human Rights registered a telephone call from Sangerei from a person who wished to remain anonymous mentioning that was a relative of a Roma family. The person told that the children are in the 1st grade and refuse to attend school on the ground of ethnic discrimination. The classmates call them "Gypsies", while the teachers do not involve them in the studies ignoring their presence in the classroom. While examining the case, the help of the local public authorities and of the educational system was solicited in order to verify the alleged facts. However, the ombudsman informed the local public administration on the actions to be undertaken on the site of the administrative-territorial unit for the realization of the objectives set out in the Action Plan on the support of Roma population.

The LGBT persons should enjoy equal rights, a fact enshrined in numerous international instruments.

During the UN General Assembly in December 2008, 66 states from five continents supported a novel Declaration that reaffirms once more that international protection of human rights includes sexual orientation and gender identity[13]. The Declaration reaffirms the non-discrimination principle and condemns the executions, arbitrary detention or infringement of human rights on the ground of sexual orientation and gender identity.

LGBT discrimination is still a reality in many countries. According to the International Lesbian, Gay, Bisexual, Transsexual and Intersex Association, the rights of the representatives of these minorities are not fully observed in any European country.

[12] "The freedom of expression: the need for interference or the rights of others" - http://www.ombudsman.md/md/comunicate/2794/1/5480/; „Speeches instigating to xenophobic hatred – attack on democratic values and human rights for everyone" - http://www.ombudsman.md/md/newslst/1211/1/5497/; Declaration of the Ombudsman on the discriminatory initiative of the Municipal Council of the city Balti vis-à-vis sexual minorities; Declaration of the Ombudsman vis-à-vis the racist and discriminatory replicas made by an official of the Republic of Moldova - http://www.ombudsman.md/md/newslst/1211/1/5376/; Combating discrimination and intolerance by tolerance - http://www.ombudsman.md/md/newslst/1211/1/5849/; Creation workshop "Tolerance –social imperative of the time" at "M. Kogălniceanu lyceum- http://www.ombudsman.md/md/newslst/1211/1/5854

[13]http:// www.amnesty.org/es/library/asset/IOR40/024/2008/en/269de167-d107-11dd-984e-fdc7ffcd27a6/ior400242008en.pdf

At global level, there are still five countries where death penalty may be applied on the basis of sexual orientation[14]. To these, 76 other countries are added where homosexuality is considered an offence[15] .

No cultural, traditional or religious value, including the rules of the "dominant culture" can be used to justify hateful statements or other forms of discrimination, including discrimination on the grounds of sexual orientation, or gender identity[16].

During 2012, the Ombudsman Institution remarked an essential change of attitude in society towards LGBT people in Moldova, this category of people still being discriminated against and stigmatized on the ground of sexual belonging.

CHR participated as an intervener in the civil case AO "Fericita Maica Matrona" and the Orthodox Church of Moldova versus the Supervisory Board of the Company "Teleradio-Moldova" on the annulment of the Decision of the Supervisory Board of the Company "Teleradio-Moldova" No. 1/244 of 22/12/2010 regarding the broadcast of the film "Human Rights on the Screen: Sexual Minorities Rights". The CHR pointed to the violation of the right to expression of the LGBT people. Thus, on 15/08/2012 the Civil, Commercial and Administrative College of the Supreme Court of Justice dismissed the appellants' appeal and upheld the Decision of the Court of Appeals of 26/06/2012 according to which the appeal submitted by the applicants was rejected as unfounded.

In recent years, more applications requesting the modification of the sex in the civil acts are pending in the courts form the Republic of Moldova. Given that these applications represent a new type of files and the legislation that follows to be applied is vague, in order to create a uniform and fair judicial practice, the Supreme Court of Justice made some recommendations to the courts regarding the enforcement of juridical norms based on Article 8 of the European Convention on Fundamental Human Rights and Freedoms – the right to private life and family. The right to change the sex and the first name is part of the right to private life.

Thus, starting in November 2012, the transgender persons are no longer faced with difficulties of changing the civil status acts because of sex modification[17], fact that is welcomed by the Ombudsman Institution.

[14]Mauritania; Iran; Saudi Arabia; Sudan and Yemen, as well as some parts of Somalia and Nigeria

[15]http://www.avocatnet.ro/content/articles/id_25242/European Parliament advocates for sexual minorities rights

[16] CM/Rec (2010) Recommendation 5 adopted on March 31, 2010 by the Council of Ministers of the European Committee to member states on measures to combat discrimination on grounds of sexual orientation and gender identity.

[17]http://www.publika.md/the Supreme Court of Justice recommends to permit the change of sex in civil acts_1105901.html

Cases of discrimination against representatives of sexual minority groups were registered in medical institutions[18], also the unauthorized placement of a billboard in the centre sector of the capital city, which expressly warned about no parking, "including for sexual minorities"[19]. The billboard was removed and the offender was punished at the intervention of the ombudsman.

Another case concerned the refusal of the local public administration to allow a peaceful meeting (in May 2005) in the city Chisinau[20], as consequence the Republic of Moldova was obliged to pay substantial amounts of money from the state budget.

During 2012 several local authorities in the Republic of Moldova, including the Municipal Council from Balti, the Council of the town Cahul, the Council of the town Drochia, the Mayor's Office form villages Hiliuti and Chetrus, Falesti district declared, by their decisions, the municipal or village territories as areas supporting the Moldovan Orthodox Church and of non-admittance of aggressive propaganda of non-traditional sexual orientations.

Taking into consideration the discriminatory nature of these acts, and on the other hand, the provisions of the Constitution of the Republic of Moldova, it is expressly stated that the provisions on human rights shall be interpreted in conformity with the Universal Declaration of Human Rights and the international agreements, to which the country is a party, and the principle of equality of all the citizens before the law and public authorities. The Ombudsman Institution requested the State Chancellery – the body empowered directly with the right to mandatory control of the decisions of the local councils of all levels[21] through its Territorial Offices - to undertake corresponding measures in order to annul the homophobic decisions issued by the mentioned local public authorities.

Out of the six mentioned communities, only the Mayor's Office from Chetrus independently repealed the decision.

In the answer of the Town Hall from Drochia, we were informed that on March 27 2012during the sitting of the Town Council, a group of counsellors proposed to introduce on the

[18] http://voxreport.unimedia.md/2011/08/23/the gay run away from medical assistance

[19] http://adevarul.ro/moldova/actualitate/foto-chisin no parking including for sexual minorities 1_50ae26d17c42d5a6639a0fe8/index.html

[20] On June 12, 2012, the European Court of Human Rights has notified its ruling in the case Genderdoc-M vs. Moldova. The complaint invoked the ban of GenderdocM demonstration planned for May 2005 in order to support the legislation protecting sexual minorities against discrimination. The applicant organization complained that the ban was illegal and that there was no procedure to enable them to obtain the final decision before the scheduled date for the event and because the NGO was again discriminated for promoting the gay community interests in Moldova. Article 6, paragraphed 1 (the right to a fair trial), Article 11 (freedom of assembly and association), article 13 (the right to an effective appeal) and Article 14 (prohibition of discrimination) were referred to. Thus, the Republic of Moldova has been ordered to pay 11,000 euro for moral and materials offenses and for costs and expenses.

[21] Item 8, letter g) of the Government Decision No. 845 of 18/12/2009 on the Territorial Offices of the State Chancellery;

agenda the issue "on declaring the town Drochia as an area for the support of the Orthodox Church from Moldova and of non-admission of aggressive propaganda of non-traditional sexual orientations", which was accepted with 14 votes "for", 3 votes "against" and 8 "abstained".

On July 16, 2012, the Territorial Office from Soroca of the State Chancellery submitted a notification regarding the repealing of Drochia Town Council Decision No. 2/14 of 27/03.2012 "on declaring the town Drochia as an area for the support of the Orthodox Church from Moldova and of non-admission of aggressive propaganda of non-traditional sexual orientations".

On August 14, 2012 the notification addressed to Drochia Town Council was discussed, but the Decision remained in force. Currently, the legality of the Decision is being examined in court.

In the context of the aforesaid, the Ombudsmen are of the opinion that the adoption on May 25, 2012 of the Law on Equality demonstrates the commitment of the state in assuming positive obligation of improving the national legislation in accordance with the jurisprudence of the European Court of Human Rights. The ombudsmen recommend undertaking decisive measures in order to launch the activity of the Council for the Prevention and Elimination of Discrimination and Provision of Equality.

Ombudsman's recommendations

The state institutions should actively promote the fundamental principles of pluralism, diversity, tolerance and freedom of thought;

To adopt measures for the elimination of latent discrimination from employment policies of public and private institutions;

To eliminate any form of discrimination from the educational system;

To approve, at state level, an Action Plan for the promotion of the official state language, including among the minorities on the territory of the Republic of Moldova, and to identify appropriate resources for this aim.

2. Free access to justice

The efficiency of a fair trial cannot be perceived without good functioning of the institutional system of justice, such as the Supreme Court, the Superior Council of magistracy, the courts, prosecution, the advocacy institution, the bailiffs' institution who help in achieving

good governance in justice. However, an efficient judiciary cannot be seen without professional performance of the participants in the process. In recent years, strategic documents have been adopted in this field: the Strategy for the consolidation of the judiciary system and the Concept on its funding, the Developmental Strategy of the execution system, the Concept of reforming the penitentiary system, etc. Meanwhile, several laws were passed that conceptually reformed some key institutions of the justice sector: the prosecution bodies, the bar of lawyers, the notary, the penitentiary system, the enforcement system. Laws have been adopted that created new mechanisms and institutions in the justice sector: the Law on state guaranteed legal assistance, the Law on probation, the Law on mediation, the Law on bailiffs.

The analysis of the implementation of the strategic documents in the field reveals the main problems that the justice sector is constantly facing and namely, the courts are not managed effectively, the promotion of judges and of prosecutors is not transparent enough and it is not based on merit; not all the component parts of the Superior Council of Magistracy function effectively; the quality of the services offered by professions related to the justice system is inadequate; there are no effective mechanisms for the accountability of the justice sector actors; the pre-judicial phase is unnecessarily complex; there are no effective mechanisms to ensure a child-friendly justice; the perception of corruption, spread in the whole justice sector, is alarmingly high.

Thus, even in 2009 in the Declaration on the state of justice in the Republic of Moldova and the actions necessary to improve the situation in the field of justice[22], the legislative body noted with concern that the judiciary in the Republic of Moldova is severely affected by corruption. It was mentioned in the Declaration that such an involution of the Moldovan justice was also possible because of neglect or selective application by the Superior Council of Magistracy of the law governing the liability of judges, their indulgence; lack of response on behalf of the Superior Council of Magistracy and of the Prosecutor's Office to the actions, sometimes criminal, of the judges; lack of reaction and resistance of the judiciary to intimidations and political pressure coming from governors; lack of transparency in the work of justice and of the activity of the Superior Council of Magistracy, especially regarding the selection, appointment, promotion and sanctioning of judges; insufficient initial and on-going

[22] Decision of the Parliament of the Republic of Moldova, Mo. 53 of 31/10/2009

training of judges; inadequate material provision of judges, the ”syndication” of the judicial power, etc.

These statements demonstrate that the professional standards, moral and ethical, have become an important part of the professionals in the sector, fact that generated a decrease in the society’s confidence in the justice.

The low level of citizens’ trust in justice is a dangerous phenomenon because it can generate their general distrust in the efficiency and integrity of the public authorities and even of the state, in general. In this context, on November 25, 2011, in order to establish an accessible, efficient, independent, transparent, professional and accountable sector of justice, which would correspond to European standards and would ensure the rule of law and the respect of human rights, the Parliament of the Republic of Moldova approved the Reform Strategy of the justice sector for the years 2011-2016. The development of a complex reform strategy became necessary in order to create a common framework covering all reform efforts of the justice sector so as to ensure its sustainable development through realistic and concrete actions. Besides strengthening the independence, accountability, impartiality, efficiency and transparency of the judiciary system, the Strategy foresees the improvement of the institutional framework and of the processes which provide effective access to justice, legal assistance, examination of cases and execution of court rulings in reasonable timeframes, the modernization of the status of some legal professions related to the justice system, effective enforcement of human rights in legal practices and policies.

Regular assessment of the implementation process of the Reform Strategy of the justice system for the years 2011-2016 and of the degree of fulfilment of its objectives will be carried out by the National Council for the Reform of the Bodies for the Protection of Legal Norms created by Presidential Decree No. 219 of 6/08/2012.

Thus, in 2012 a set of laws were adopted through which some provisions of the Civil Procedure Code and Criminal Procedure Code, as well as other laws bearing on the reform and meant to streamline greater free access to justice and the right to a fair trial, have been amended. The Law on the selection, performance appraisal and the career of judges was adopted. However, on July 5, 2012, the Parliament adopted the Law on the Amendment and Completion of some Legislative Acts No. 153 through which a number of modifications in the normative acts that deal with judicial organization and the status of the judge were operated: the Law on judicial organization No. 514 of

6/7/1995; the Law on the status of the judge No. 544 of 20/07/1995; the Law on the Supreme Court of Justice No. 789 of 26/03/1996; the Law on the Superior Council of Magistracy No. 947 of 19/07/1996; the Law on the disciplinary college and disciplinary liability of judges No. 950 of 19/07/1006; the Law on the National Institute of Justice No. 152 of 8/06/2006.

One of the changes is related to the review of the composition of the Superior Council of Magistracy[23] by reducing the number of full-time professors from 4 to 3 and increasing the number of judges from 5 to 6. The President of the Supreme Court of Justice, the Minister of Justice and the General Prosecutor are full members.

According to the ombudsmen, the new composition of the administrative judiciary body does not ensure an important majority of the judges and this numerical structure can shift the balance of the vote towards an eventual political conjuncture in the situations when the Superior Council of Magistracy adopts decisions with the vote of the majority of its members. It should be mentioned in this context, that previously on July 13, 2011, the ombudsmen notified the Constitutional Court on the check-up of the constitutionality of the composition of the Superior Council of Magistracy (consisting at that moment of five judges, four full-time professors, the President of the Supreme Court of Justice, the Minister of Justice and the General Prosecutor) considering that the latter does not ensure full independence of the judiciary system. That is because the share of the representatives of the judiciary body in the Superior Council of Magistracy is a minority compared to other of its components, exponents of political will and thus depriving the judiciary of "defensive arms" against the legislative power. The Constitutional Court did not accept this notification for examination on the ground that its subject "exceeds the competence of the Ombudsman".

In spite of this, the ombudsmen keep to the idea that the Superior Council of Magistracy, indispensable element in the rule of law state, a warrantor of the independence of judges and of the balance between the legislative, executive and judicial powers, must represent autonomous governance of the judicial power and allow judges to exercise their functions outside the control of the executive and legislative powers.

Another amendment to the Law on the Status of the Judge is related to the procedure of waiver of inviolability of judges by depriving the Superior Council of magistracy of the power to establish the 'existence' or 'non-existence' of grounds to initiate criminal or administrative prosecution against the judge. Considering that the right of the prosecutor to initiate prosecution against the judge without the agreement of the Superior Council of Magistracy is inconsistent with

[23] The Law on the modification and completion of some legislative acts No. 153 of 5/07/2012

Article 6 of the Constitution, which enshrines the principle of separation and cooperation of powers, on September 7, 2012 the Plenum of the Supreme Court notified the Constitutional Court on the check-up of the constitutionality of the mentioned above provisions.

The ombudsmen support the position of the Plenum of the Supreme Court of Justice on this topic and reiterate that it is precisely in order to ensure the separation of powers, to remove the interference of one power in the work of another and to guarantee the independence of justice, that the Constitution contains rules which provide for a special procedure of criminal liability of the members of the parliament and of the President of the Republic of Moldova, as well as rules that establish the independence and the impartiality of justice is provided by law.

Though there have been made essential institutional changes and the legislative framework has been modified, yet, these changes have not offered a qualitatively new level in the activity of the actors from this field and have not lead to the strengthening of a fair, appropriate, and geared to individual needs justice system and to offering qualitative and accessible services.

The situation in this area continues to display concern. Therefore, the reforms in the justice sector must meet the expectations of at least 397 applicants who appealed to the Centre for Human Rights in 2012 citing numerous objections to the quality of justice, including:

- 147 appeals reported delay in the examination of cases;
- 49 – failure to execute court rulings;
- 105 – disagreement with the pronounced sentence/ruling;
- 69 – violation of the right to an effective appeal.

Failure to comply with the terms of drafting the court rulings, delay in announcing them, non-observance of the deadline to hand sentence copies, unsatisfactory behaviour and performance of some magistrates, etc. were among the raised problems. However, following the establishment of the system of private bailiffs and the adjustment of enforcement procedures to the new concept of free practice of bailiffs, there appeared other aspects related to the right to a fair trial.

Although the ombudsmen have repeatedly informed the courts, the Superior Council of Magistracy, as appropriate, on the multiple violations in this respect and addressed these issues in the previous reports, the situation has not practically changed.

To avoid violation of the reasonable time allowed for the trial of cases and the enforcement of the court rulings, some changes in the Civil Procedure Code, the Criminal Procedure Code, the Civil Code and the Enforcement Code in 2011were made. Thus, the criteria for assessment of the reasonable time set for the civil, criminal and enforcement procedures (Article 192 of the CPC,

Article 20 of CPC, Article 70 of EC) were modified and the right of the participants in the trial to submit applications to speed up the process during the examination of the case un courts, if there are prerequisites for the breach of the reasonable timeframe, were legislated. Also, the Law on the State repairing the damage caused by the violation of the right to trial in reasonable time or of the right to enforcement of the court ruling in reasonable time No. 87 of 21/04/2011 was adopted. The adoption of this Law and of the modifications of the mentioned legislative acts represents a harmonization of the national legislative framework to the European standards, as well as an enforcement of the pilot ruling *Olaru and others vs. Moldova* to remedy the systemic problem on the enforcement of court rulings strictly monitored by the Council of Europe. The state follows to undertake other general measures regarding the observance of the reasonable timeframes when examining cases in courts. On May 3, 2012 Law No. 87 was amended and the Ministry of Justice assumed the burden of proving the absence of infringement and of representing the state in court in this category of cases. Before the amendment, these were the obligations of the Ministry of Finances. The procedure of court rulings enforcement was specified in reference to contesting the infringement of the right to examine the case in court in a reasonable timeframe and of the right to enforcement of the court ruling in a reasonable timeframe and the remedy of the damage caused by such infringement.

The petitions submitted to the Centre for Human Rights attest that the citizens know about the exigency of the new mechanism and affirm their intention to contest the infringement of this right. The situation on the circulation of civil cases belonging to this category is not reflected in the state statistical reports on the activity of first instance courts related to the hearings of civil cases. In these circumstances, it is difficult to assess the impact that the domestic remedial has had on the defence of the right to a fair trial offered to individuals in 2011.

At the same time, the comparative analysis of the statistical data shows an increase in the number of cases under review for more than 12, 24, or 36 months.

Table No.

Category of cases	Year 2010			Year 2012		
	12 months	24 months	36 months	12 months	24 months	36 months
Civil cases	1023	357	296	2299	472	251
Criminal cases	302	38	17	488	97	35

The citizens' appeals to the ombudsmen confirm that the problems dealing with legal assistance guaranteed by the state are still persisting. Though the functionality of the system was

ensured by adopting rules and work procedures, the regulatory framework is continuously being improved. Problems dealing with the quality of state guaranteed legal assistance, the offering of legal assistance on non-criminal matters, insufficient information of the population regarding the types of services within the system of offering state guaranteed legal assistance and of the procedures to be followed, the inefficiency of the system of checking the payment ability of the applicants for state guaranteed legal assistance, delay in the expansion of paralegal framework nationwide are among the persisting ones.

After changing the way of professional organization of bailiffs[24], citizens began to raise new issues related to the enforcement of rulings. While the petitions on non-enforcement of court rulings considerably diminished, a large number of complaints connected with the bailiffs' actions, oversized charges levied by the bailiffs for enforcement activities, and the way of ensuring enforceable documents are attested.

The Centre for Human Rights continues to receive complaints about illegal detention of people after the expiry of remand or sentence.

Although the ombudsmen's concerns with the given issue were previously covered[25], the responsible institutions continue to admit such situations. The ombudsmen insist on strengthening the efforts of all authorities to enforce the right to the individual's personal liberty as guaranteed by Article 25 of the Constitution and by Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Paragraph 1 of Article 5 defines the presumption of liberty, the right that no one can be deprived of, but in exceptional circumstances. This presumption of liberty is

Examining the complaint received from citizen X. in connection with his not being released from preventive arrest at the expiration of the time limit, it was stated that the situation was generated by the judge's non-conformant actions. Being notified by the ombudsman, the prosecution started a check-up on the basis of Article 274 of CPC. As result of the undertaken check-up by the Judicial Inspection, the Superior Council of Magistracy warned the judge on the strict observance of the law in deciding the cases pending in procedure.

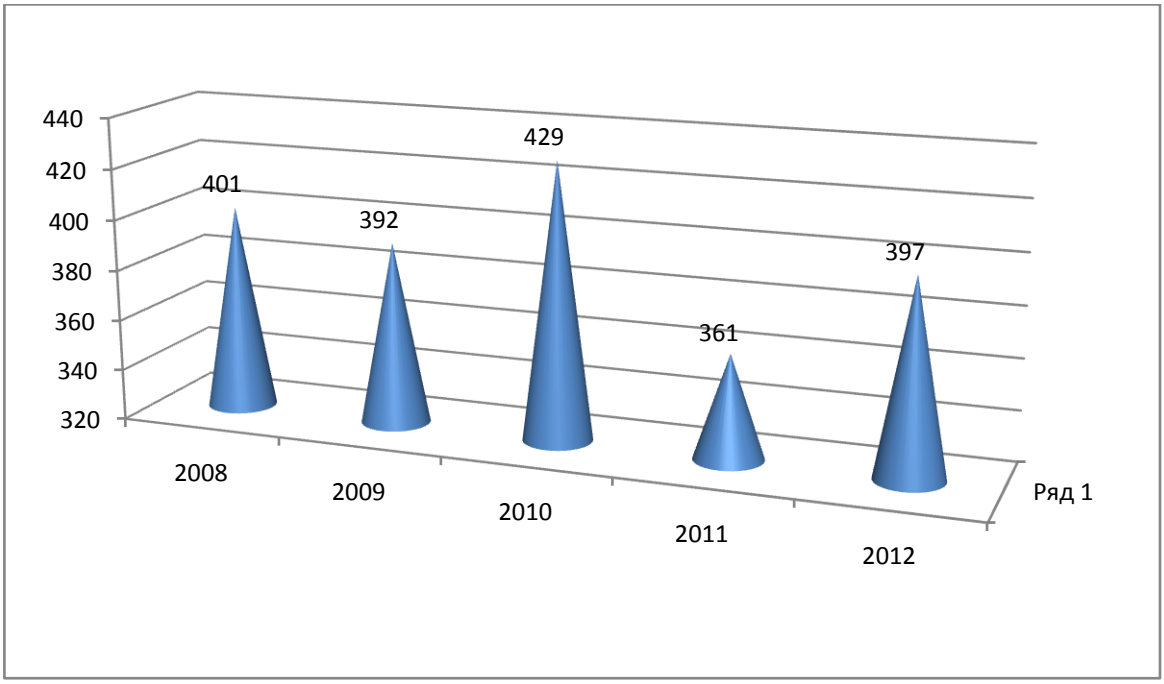
Another case was stated by citizen B. who continued to be detained in the penitentiary 9 days after the passing of the court ruling of ceasing the repressive measure – the arrest. As a follow-up of the ombudsman's intervention, the petitioner was freed and the military Prosecutor's Office opened a criminal investigation on the infringement as provided by Article 328, paragraph 1 of the Criminal Code, excess of power.

[24] The Law on Bailiffs No. 113 of 17/06/2010

[25] http://www.ombudsman.md/file/RAPOARTE%20PDF/Raport%202009%20redactat.pdf

reinforced by two demands: not to extend the term of imprisonment exceeding the strictly necessary period and to release as soon as possible the person concerned when the deprivation is found to be unjustified.

In the context of the issues raised above, the data on the petitions registered by the Centre for Human Rights in the year 2012 show that the number of petitioners who invoked the infringement of the right to free access to justice continues to remain a constant one, with few exceptions.



However, according to the survey "Barometer of Public Opinion of October- November 2012"[26] only 14.8 % of citizens trust in justice, which is 15 % less than in May[27]. According to another survey, conducted by the Centre for the Prevention of Corruption[28], 50 % of the people who dealt with the courts from Chisinau are satisfied with the way they were treated by the legal officials; 70 % of the respondents are dissatisfied with the conditions where the lawsuits take place.

In conclusion, the modernization of the judicial system presupposes to assume the role of arbiter of justice in the society, which implies the strengthening of the justice sector as a whole.

[26] http://www.ipp.md/libview.php?l=ro&idc=156&id=624
[27] http://www.ipp.md/public/files/Barometru/Brosura_BOP_05.2012.pdf
[28] http://trm.md/ro/social/sondaj-50-din-chisinauieni-sunt-multumiti-de-activitatea-instantelor-judecatoresti/

However, a viable judiciary system is the main component of a democratic society because it covers all areas of social life.

3. The right to vote and to be elected

In the category of exclusively political rights, the ones which refer to citizen participation in state governance, and namely electoral rights, are also included. By voting the citizens can influence the public decision-making process.

The affirmative obligation of the countries to protect the right to vote of their citizens is recognized by international treaties and declarations adopted by the United Nations, regional organizations such as the Council of Europe, the Organization of American States.

In order to determine the voters to express their right to vote in the favour of one or another competing candidate, the state, through its legislative instruments and mechanisms, organizes an electoral campaign that begins, for each contestant, on the date when he/she gets registered by the Central Electoral Commission or the Constituency Electoral Board, and ends on Election Day.

It is noteworthy that the right to vote is inseparable from the freedom of opinion and expression and, in ideal, is a basic principle of the democratic society; the latter is the core element of mass-media.

The freedom of opinion, freedom to receive and impart information and ideas, as components of the freedom of expression, must be exercised freely without the interference of the public authorities, except for the requirements expressly stipulated in the law in force, as the state must justify any interference with any expression.

In the period 2009 – 2012, numerous electoral campaigns for parliamentary elections, general local elections and a referendum were held in the Republic of Moldova. The mass-media played a leading role in monitoring and informing the public about their proceeding. The most important aspects in exercising the right to vote were included in the thematic report of the CHR "The right to vote and to be elected"[29].

Yet, an important aspect of the right to vote which needs to be mentioned is failure to exercise it due to conditioned restrictions.

[29] http://www.ombudsman.md/md/tematice/

Paragraph 2 of Article 13 of the Electoral Code stipulates an additional restriction to the one included in the Supreme Law which states that *"the persons who are recognized as incapacitated by a final decision of the court have no right to vote. The Ministry of Justice informs the Mayor about the existence of such cases and upon the compilation of the State Register of voters the Central Electoral Commission is also informed".*

When the control and monitoring mechanism of the process of declaring the inability of people to vote is incomplete or is missing, this restriction is used legally. However, currently there are no clear statistical data for the country or a register on the identity or the number of the people declared incapacitated.

A veiled limitation of the right to vote also occurs when speaking about people with physical disabilities.

Although the local and central public authorities and the central Electoral Commission seek to facilitate the access of the persons with disabilities to the premises of the polling stations by setting them up in accordance with the minimum standards, not all the people with loco-motion impairments reach to the ballot box. Also, the voter, who is not able to independently fill in the ballot, has the right to invite another person in the cabin, except the members of the polling station, the representatives of the competing candidates, and people authorized to assist the electoral operations.

The mentioned cases reflect a lack of confidence in the correctness of such votes, or regardless of the person's status who offers "support" to the voter with disabilities, he/she might influence the latter's decision. It is worth noting that one of the essential principles of the electoral heritage is that the vote is secret.

A similar situation refers to the blind people who are unable to participate in the administration through participation in the voting process. According to the information of the CEC the implementation of voting by ballot in Braille characters cannot be performed currently because it is difficult and costly. Moreover, there are no legislative regulations in this respect which might expressly establish the drafting of ballots in Braille characters.

A major role in the process of exercising the right to vote for people with autism has the interpretation of the electoral information in the sign language which is stipulated by the legislation in force[30].

[30] Article 13, paragraph 4 of the Code of the Audio-visual of the Republic of Moldova;

Upon request, the Ombudsman Institution was informed by the Coordinating Council of the Audio-visual (CCA) that as a result of the complaints addressed to CCA on behalf of people with impaired hearing and of the Association of the Deaf from Moldova, the public television broadcaster Moldova 1 resumed, having previously stopped, the interpretation of the news bulletin in the sign language. Presently, all TV stations in the country subtitle feature films, documentaries, news by presenting the informative flux by means of crawls (conveyors at the bottom of the screen, which is welcomed by the CHR.

The Ombudsman institution believes that the inclusion of programmes of electoral nature among the events of major importance by adjusting the provisions of paragraph 3, Article 13 of the Code of the Audio-Visual and the increase of minimum time for sign language interpretation of TV programs might enhance the achievement of the constitutional rights, including the right to vote of the people suffering from autism.

The Centre for Human Rights monitored the achievement of the right to vote in the ATU Gagauzia, where on September 9 and 23, 2012 elections to Gagauz People's Assembly (GPA) were held. It was the fifth election held for the GPA since the adoption by the Parliament of the Republic of Moldova of the Law on the Special Legal Status of Gagauzia (Găgăuz-Yeri) No. 344 of December 1994.

35 deputies were to be elected in the representative and legislative body of ATU Gagauzia and elections were held in 35 constituencies.

The unfair conditions created for the people who ran in different constituencies, insufficient financial resources during the electoral period, the lack of effective campaigning, the quality of voter lists and other aspects have exhaustively been described in the thematic report of the CHR[31].

Following the analysis of the situation on the exercise of the right to vote, the Ombudsman Institution concluded that in spite of the democratic developments in the recent years, there are still issues in the Republic of Moldova related to the exercise of the right to vote and to be elected.

The recommendations of ombudsmen

[31] http://www.ombudsman.md/md/tematice/

To inform the voters about the programmes of the political parties;

To provide free access to the electoral lists;

To review the legal framework for the creation and empowerment of a specialized body (commission, committee, etc.), which would monitor at central, as well as at local level the process of the exercise of the right to vote of the people in difficulty (vulnerable families, elderly, people with mental and loco-motion disabilities, etc.);

To provide adequate conditions for all categories of people who exercise their right to vote for the whole period of the electoral campaign, as well as on Election Day;

To distribute resources and technical equipment equally to all candidates.

4. Freedom of assembly and association

On different occasions the ombudsmen reiterated that the freedom of assembly or the right of association is a fundamental political right accessible to all. Under this right, a group of people have the opportunity to meet peacefully and without arms, lawfully and in accordance with the law in a given place.

This right is stipulated in Article 20 of the Universal Declaration of Human Rights, Article 21 of the International Covenant on Civil and Political Rights, Article 11 of the European Convention on Human Rights and also Article 40 of the Constitution of the Republic of Moldova. The constitutional rule states that rallies, demonstrations, meetings, processions or any other gatherings are free and can be organized peacefully without any weapons. The Law on Assembly No. 26-XVI of 22/02/2008 regulates in details the way and the procedure of holding assemblies, as well as includes the liability for the violation of the legal provisions.

The freedom of assembly is inextricably linked to the freedom of opinion and expression, another fundamental right protected by the Constitution and the international instruments in the field, and is essential for a full and active participation of the individual in society. The protection and realization of the mentioned rights has as effect of encouraging dialogue, preventing discriminatory acts, deeper knowledge of the issues that society confronts, the adoption, as last resort, of measures related to the protection of human rights.

On July 12, 2012, the Parliament passed Law No. 193[32] on completion of some legislative acts. According to the made amendments, the political parties are prohibited from using symbols of the totalitarian communist regime, as well as from promoting totalitarian ideologies under the risk of contravention sanction.

ECHR, which since September 12, 1997 is part of the national law system, proclaims in paragraph 1, Article 10 that the exercise of the freedom of opinion and the freedom to receive and to impart information and ideas *"may be subject to some formalities, conditions, restrictions or sanctions prescribed by law, and are necessary measures in a democratic society for the national security, territorial integrity or public safety, the prevention of disorder or crime, for the protection of the order or the prevention of crime, for the protection of the health or morals, for the protection of the reputation or of the rights of others, for preventing the disclosure of confidential information or for maintaining the authority and impartiality of the judiciary"*[33].

In the case *Vajnai vs. Hungary* (Ruling of July 8, 2008), based on an exhaustive analysis, ECHR determined to what extent the restriction in the meaning of paragraph 2, Article 10 of ECHR is necessary in a democratic society. The "*pressing social need*" was identified as determining factor, context in which the Court held that *"the Government has not shown in any way that there is real and current danger for the communist dictatorship to be set up by a political movement and did not demonstrate the existence of a threat to justify the prohibition in question".*

Taking into consideration that the Republic of Moldova, for over 20 years, is constantly improving the democratic mechanisms, demonstrating through reform processes the willingness to get rid of the 'totalitarian past', CHR is deeply concerned by the harsh nature of the prohibition, which at the time of adoption of Law No. 192 was not a pressing social need.

This fact places the Republic of Moldova in imminent danger of being condemned by the ECHR for violations of Article 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

[32] Article 4 of the Law on political parties No. 294 of 21/12/2007, Article 3 of the Law on the Freedom of Expression No. 64 of 23/04/2010, Article 67/1 of the Contravention Code.

[33] On September a group of deputies of the Communist Party of the Republic of Moldova submitted a notification to the Constitutional Court on the check-up of the constitutionality of Law No. 192 of July 2012 on completion of some legislative acts related to the interdiction of using the symbols of the totalitarian communist regime, as well as the promotion of totalitarian ideologies.

Both the freedom of assembly and the freedom of expression are not absolute rights and the authorities, in some cases, may apply restrictions which need to correspond to the constitutional norms and to those stipulated in the European Convention on Human Rights. Under the Convention, the restrictions imposed by authorities may be legal if they are prescribed by law, have a legitimate purpose and are necessary in a democratic society to meet this goal. It is namely these three requirements that the European Court of Human Rights reviews when notified of a certain case.

The exercise of the mentioned rights may arise into a conflict in some cases, as the meetings are held in public places and on public roads, which may displease another category of people who do not share the same ideas launched by the demonstrators.

According to MIA data, during 2012 on the territory of the Republic of Moldova, 10,223 meetings with diverse character were conducted with the participation of 3,126,932 people. Out of the total number, 5,667 meetings were of social-political character, including 907 protests; 327 meetings of the leadership of the country with the population; 34 official delegations; 1,347 cultural and artistic events; 447 sportive events; and 2,754 religious meetings.

The same view is supported by MIA, which, following the recommendations of the National Action Plan on Human Rights for the period 2011-2014, conducted rigorous evaluations on a number of training seminars held during 2012, where various topics on assemblies were being debated[34]. It was therefore concluded that there are many gaps in the organization and conduct of assemblies, as well as related to the maintenance of public order, fact that hinders the use in normal conditions of public roads, the operation of public transport, of public and private institutions, of schools, etc., or may lead to violation of public order and peace, security of people and corporal integrity, etc.

In connection with this, the example of holding the meetings on August 5, 2012 in the town Balti may be cited, which were monitored by the Ombudsman Institution. The ombudsmen consider that the provisions of the Law on Assemblies No. 26 of 22/02/2008 are too general and leave room for interpretations and deviations from the legal rule on peaceful conduct of meetings. Thus, the Ombudsman Institution considers necessary to review and amend Law on Assemblies No. 26 of 22/02/2008, particularly in regards to the duties of the organizers, of the

[34] MIA informative note No. 6/593 of 7/03/2013

authorized persons and of the participants in the assemblies. Amendments are also necessary for the compartments on the notification of holding meetings related to the specification of the way to declare the organization of the meeting by individuals or juridical entities, keeping in mind their form as well as compiling a template of a declaration for the holding of the meeting; on the use of symbols, phrases, etc. during the meetings. A separate issue is the liability of the organizers and the participants in meetings. In this respect, according to CHR the terms of liability for the conduct of the action is discriminatory because the participants could be subject to all forms of legal liability[35]. Also, the organizer is subject only to administrative punishment. He can also be subject to other types of punishment only if it is proven in court that the participants acted to the call of the organizer, as the 'guaranteeing' of the peaceful conduct of the meeting is assumed namely by the organizer.

According to MIA data, the employees of Sector Operative Officers Service within the police subdivisions filed 186 minutes on offenses for deviations from the law on assemblies in the reporting period.

The need to improve the legal framework related to the aspect of assemblies and of public actions is also supported by the MIA[36], who, in this aim, worked on the draft law on the manner to ensure and restore the public order during public events.

The ombudsmen reiterate that for preventing violent clashes, both the organizers and the local public administration together with the public order enforcement forces should take appropriate measures prescribed by law and this should be brought in line with European standards, as these measures imply the positive obligation of the authorities to protect the integrity of the demonstrators.

However, it should be noted that a decrease in the number of violations of the right to public assemblies and religious events was observed in 2012. This fact is due to the dialogue between the religious communities, the civil society and the public authorities in order to identify the problems that they are confronted with and to create a climate of mutual tolerance and respect.

During the reporting period, the Centre for Human Rights promoted the idea of the freedom of assembly. The importance of the pluralism of opinions, non-violence, tolerance,

[35] Article 23, paragraph 1 of the Law on assembly No. 26 of 22/02/2008
[36] MIA informative note No. 6/593 of 7/03/2013

which are supreme values in a democratic state and must be observed, were reiterated in the press releases[37] placed on the Institution's webpage.

The recommendations of the ombudsmen

To amend Article 40 of the Constitution of the Republic of Moldova and bring it in line with the provisions of the European Convention on Human Rights and Fundamental Freedoms;

To review the Law on Assemblies No. 26 of 22/02/2008 considering the above arguments and to develop a mechanism to allow effective application of the law;

To reinforce the role and the capacities of the subjects involved in the achievement of the freedom of assembly: local public authorities, law enforcement bodies, the organizers and participants in the meetings;

To develop the capacities of the representatives of local public administration to manage the meetings and to cooperate with the organizers;

To organize continuous professional development training of the police personnel on the legal qualification of the actions of the organizers and participants in the meetings;

To create specialized police units responsible for the controlling and supervising of proper conduct of the meetings, which could be deployed, as appropriate, to facilitate the meetings;

To strengthen the cooperation between the police and local public authorities in order to ensure the achievement of the right to assembly and to efficiently apply the provisions on the Law on Assemblies

5. Freedom of thought, conscience and religion

„Every citizen is guaranteed the freedom of thought, opinion as well as the freedom of expression in public through words, images or any other possible means. Freedom of expression shall not damage the honour, dignity or the right of others to express own views"[38].

Internationally, this right was for the first time enshrined in Article 19 of the Universal Declaration of Human Rights proclaimed by the UN General Assembly on December 10, 1948:

[37] http://www.ombudsman.md/md/newslst/1211/1/5876/

[38] Art. 32 of the Constitution of the Republic of Moldova

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".

The principle of the Declaration was developed in Article 19 of the International Covenant on Civil and Political Rights, adopted by the UN General Assembly on December 16, 1966, which in its three paragraphs states:

"1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order, or of public health or morals".

The freedom of opinion and expression includes several fundamental rights, it is the "mother freedom" for all rights of communication, closely related to guaranteeing human dignity, and occupies an especially important place among the constitutional freedoms.

The possibility of free declaration of concepts, perceptions, ideas, even of those unpopular or inconvenient is the basis of any society, the engine of the progress of both the community and individual.

During the visit to Chisinau in November 2012, the representatives of the European Commission against Racism and Intolerance had a meeting with the ombudsmen and other state officials. The experts made the assessment of the state of freedom of religion in the Republic of Moldova, the developments and setbacks found in this area and highlighted some challenges existing in the Republic of Moldova. Among these are manifestations of intolerance, lack of dialogue between the adepts of various religions and faiths, including the ones who identify themselves as non-believers, lack in the educational curriculum of disciplines focused on promoting tolerance, the failure of the role of the religious community on creating conditions for

a climate of tolerance and mutual respect, as well as the defective realization of negative and positive obligations of the state[39].

The religious cults are an integral part of society and therefore they should be considered established institutions by and through the involvement of citizens, who are entitled to the freedom of religion, but also, as institutions that are part of the civil society with all its potential to provide indicators of ethical and civic aspects that have an important role in the national community, whether religious or secular[40].

The Law on freedom of thought, conscience and religion defines the religious activity carried out by a cult as an activity aimed at meeting the spiritual needs of the believers (spreading the doctrine of the faith, religious education, religious services, conducting acts of blessing and preaching, training and improvement of religious clergy), as well as activities aimed at organizational and material provision of practices of worship (publication and distribution of literature with religious content, production and dissemination of religious objects, production of liturgical vestments, etc.).

Moreover, Article 15 of the above mentioned law governs the relations between the state and religious cults and stipulates that all the religious organizations are autonomous, separated from the state, with equal rights before the law and the public authorities, while the state and its institutions can maintain cooperative relations with any religious cult and can conclude, where appropriate, agreements of cooperation with any religious cult or its component parts.

In the process of updating and revising the national legal framework, the legislature took into consideration the international principles and standards, implicitly and explicitly incorporating them in the legislation.

We note that in 2012, the Centre for Human Right was not notified with petitions that would address deficiencies related to the freedom of thought, conscience or religion.

The recommendation of ombudsmen

[39] Guaranteeing the freedom of thought, conscience and religion implies primarily the negative obligation in the task of the state authorities not to take any action or not to be reproached of any omission likely to restrict the effective exercise of these freedoms. The positive obligations consist in the adoption of some measures aimed at avoiding the appearance of situations when a person is disturbed from worship through the activity of another person.

[40]Recommendation 1804 (2007) of the Parliamentary Assembly of the Council of Europe on state, religion, secularity or human rights.

To engage the representatives of religious groups in dialogue as a fundamental premise for eradicating acts of intolerance and/or incitement to religious hatred, promoting diversity and strengthening the culture of communication;

To review the existing regulations and practices of registering the religious entities in order to ensure the right of all persons to manifest their religious beliefs, alone or with others, in public or privately, regardless of registration status, in accordance with the international recommendations and standards;

To introduce in the school curriculum disciplines focused on the information about the existence of diversity of religions and faiths, in order to exclude the stereotypes and prejudices that persist in society.

6. The right to health care

Health is a value in itself and a precondition for economic prosperity. Therefore citizens' health is one of the main priorities of each state, and health policy provides for the right of everyone to have access to high quality healthcare. The policy that the Republic of Moldova promotes aims at:

- preventing illness;
- protecting and promoting public health;
- improving the quality of life.

Currently, the legislation in the field includes several laws, Government decisions and documents approved by the Ministry of Health and other public authorities, conceived in different periods of statehood, each bearing the imprint of the social status, the understanding of the perspectives of government and legal philosophy of the time. Although the Law on Healthcare No. 411 of 28/03/1995 and other regulations have undergone numerous amendments, at present there is no eloquent legal definition of the main components of the healthcare system, above all of "medical services" and of "public health". The adoption of the Law on State Supervision of Public Health No. 10 of 3/0 /2009 was a significant step forward to provide conditions for maximum realization of each individual's health potential throughout life. This however does not exactly explain how far public health concerns extend and to what extent the "adjacent" areas (the environment, food safety, veterinary, phyto-sanitary, safety at the work place, protection of certain social groups, etc.) are the object of concern of public healthcare institutions. Moreover, these are listed in the EU legislation as areas of health, since they largely

determine the status of health of the population[41]. The adjustment of the legal framework to the rigours and standards of the European Union, as well as the development of new normative acts are prerequisites for the implementation of the National Health Policy[42] established by policymakers for a period of 15 years.

In addition to providing an effective and efficient regulatory framework, it is necessary to promote standards, supreme moral values, obligatory principles and rules of conduct for all members of the medical community. Health workers have an obligation to protect physical and mental human health, to promote healthy lifestyles, to prevent illnesses and to relieve suffering by respecting the right to life and the dignity of the human being. Based on the petitions received by the CHR and on the topics mediatised in the course of the year, the ombudsmen state that rather often doctors do not honour their work duties in full. The beneficiaries of medical services express dissatisfaction with the operation of the compulsory health insurance system and the increased costs of the insurance policy, with the quality of services offered in the healthcare system and the unofficial payments, the irresponsible attitude of the employees in the system and the lack of knowledge or experience to provide appropriate assistance, indifference and lack of respect for patients, even after their death, infringement by the members of the medical community of the patient's rights. The cases of infection or suspected infection with TB in some educational institutions from the country were not left without the ombudsman's attention, also the death of a patient from Ocnita district, as consequence of inadequate intervention of the medical assistance team; the organization and quality of medical services provided in public medical-sanitary institutions, including the prenatal ones; the errors is setting the diagnosis and in offering medical care, the poor supply and low quality of the food products provided to children in some preschool institutions; the disastrous sanitary-epidemiological state of the central streets of some communities caused by the illegal placement of a food market, etc.

Compulsory health insurance

The Republic of Moldova has committed to strengthen the health system to achieve full citizen's right to health, based on the principles of equity and solidarity funding commitments from the state and the individual. Although the Law on compulsory medical insurance provides

[41]European Health Strategy, http://europa.eu/legislation_summaries/public_health/european_health_strategy
[42]Decision of the Government of the Republic of Moldova on the approval of the National Health Policy No. 866 of 6/08/2007

equal opportunities in obtaining timely and quality health care for all insured citizens, regardless of the size of the paid insurance, in reality, due to objective and subjective reasons, the access to these services remains low for some groups of people. The burden of additional financial expenses, related to health, continues to be substantial for the rural population, who are forced to travel long distances to receive medical consultations, medical investigations, to purchase drugs.

The transition to the new model of providing medical care was made without adequate public information campaign. Insufficient awareness about the need for health insurance, the conditions of access to health care and the legal effects of failure to provide health care is the reason why some potential beneficiaries remain outside the public insurance system. The citizens do not know their rights and obligations regarding the medical insurance, they do not know at all or have superficial knowledge about the mandatory health insurance system and the medical services covered by the insurance policy.

Starting from compulsory health insurance, the legislature has established a mechanism for the identification of individuals who have not the insurance premium within the period prescribed by law[43] and has foreseen contravention liability for unpaid compulsory health insurance premiums[44]. Referring the undertaken by the state measures for the accumulation of mandatory health insurance funds to the amount of mandatory health insurance premium, the household income, the accessibility and quality of offered medical services, the ombudsmen consider that the current system of mandatory medical insurance failed to meet the objectives: to provide an autonomous state guaranteed financial protection of the population in healthcare and to offer equal opportunities to get timely and quality health care to all citizens of the Republic of Moldova.

Citizens signal prolonged waiting to receive medical consultation, the reluctance of doctors to prescribe compensated drugs, difficult access to compensated drugs in rural areas, defective procedure for the registration of the population in medical-sanitary institutions that provide primary medical care within the mandatory health insurance system, reduced access to emergency medical services.

[43] The Regulation on the control of paying the mandatory health insurance premiums in the fixed amount, approved by Government Decision No. 1015 of 5/09/2005

[44] Article 266 of the Code of Administrative Offences: failure to pay the mandatory health insurance premiums within the timeframe prescribed by law is punishable with a fine from 25 to 55 conventional units.

Some unemployed petitioners disagree with the court rulings on collecting the cost of the insurance policy and of the penalties for untimely non-payment of mandatory health insurance premiums. This category of citizens invokes the impossibility to pay the mandatory medical insurance premiums in a fixed amount and absolute value due to lack of stable income and the poor financial situation. Although the government specifies as policyholders the majority of the categories of unemployed residing in the Republic of Moldova, and the state makes provisions for discounts of the mandatory medical insurance set in a fixed amount if the latter is paid within the timeframe prescribed by the law[45], there is a segment of the population that is not satisfied by the state's actions in this area, considering that namely the state is required to take actions to ensure a favourable framework, fair to all, which would allow each person to benefit of the insurance policy, and respectively, of the services covered by the mandatory medical insurance policy.

The ombudsmen kept for examination several cases when citizens were unable to go to another health care facility in connection with the change of the place of residence. It was found that this situation is generated both by the bureaucracy of the employees of the public medical-sanitary institutions included in the mandatory medical insurance system and by the imperfection of the legal framework in this domain. These cases served as grounds for proposing an amendment to the Regulation on the registration of the population in the medical-sanitary institution that provides primary health care within the mandatory health insurance system No. 627/163A of 09/09/2010, approved by the joint order of the Ministry of Health and National House of Medical Insurance.

The low living standard in the Republic of Moldova, the conditions offered by the state medical system and the rapid development of private medical services gradually lead to a polarization in terms of access to equitable, qualitative and timely medical services. This is a reality that that has long-term consequences on the state of health of the population, which comes in contradiction with the principles of equality and social justice. While a segment of the population has access to high quality services provided by private clinics and laboratories in the country and abroad, as well as expensive effective drugs, another segment of the population has problems accessing quality care and medication, and what is more serious in accessing primary medical care.

Control and prevention of tuberculosis

[45] The Law on compulsory health insurance funds

According to the data of the World Health Organization (WHO), the Republic of Moldova is in the area with the highest incidence of tuberculosis among the European countries, which continues to be one of the most prevalent diseases among the population. The reasons for this are the unfavourable socio-economic conditions, the worsening of the structure of the clinical forms of tuberculosis, emergence of clinical forms of MDR (multidrug-resistant) tuberculosis, etc.

Given that in the last two years, more cases of contamination with tuberculosis happened in educational institutions in the country (boarding school from the village CrihanaVeche, Cahul rayon, the kindergarten from Donduseni, the kindergarten from the village Congaz, Comrat rayon, Children's Pulmonologist Rehabilitation Centre from village Cornesti, Ungheni rayon), the ombudsmen carried out a study[46] in 2012 on the effectiveness of the control and prevention of tuberculosis in the context of human rights protection in the Republic of Moldova and of state institutions' capacity to provide necessary conditions in this respect.

According to the study, the contamination with tuberculosis in these institutions, alongside with social intolerance towards the persons, who contracted this serious disease, demonstrates the state's insufficient capacity to provide necessary conditions for this purpose. According to the ombudsmen, the mentioned above cases offer grounds for the law enforcement bodies to investigate the criminal negligence committed by the people responsible in the field.

These and other cases found under the scrutiny of CHR are proof of the fact that social mobilization has not reached the level at which all the resources and capabilities be involved in the fight with tuberculosis, while the patients' and health care providers' education or public information are not considered of major importance yet.

According to the recommendation of the WHO and UNAIDS, the people who are infected with TB, the members of their families, especially the children affected by this malady, should be provided with free treatment and extent the access to specific treatment under DOTS. This requirement aims to ensure the protection of the population against infection.

In the Republic of Moldova, the Ministry of Health has primary responsibility for TB control in the country. This duty is exercised through IMSP IFP "Chiril Dragoniuc" and involves the Ministry of Justice and other governmental entities in collaboration with NGOs and their international partners in activities of planning, implementing, monitoring and evaluating. TB

[46] http://www.ombudsman.md/file/RAPOARTE%20PDF/Raport%20TBC.pdf

control is performed through a network of specialized institutions and primary health care services. Patients with tuberculosis receive free treatment.

However, local public authorities have the duty to develop territorial TB control programmes tailored to the features of the tuberculosis epidemic in the territory; health information and education of the population aimed at preventing TB.

The Government of the Republic of Moldova constantly reports within the monitoring mechanisms of UN human rights treaty implementation. The aspects of human rights in healthcare are found in both the governmental reports, as well as in the conclusions and recommendations of UN committees to the Republic of Moldova. The control and prevention of tuberculosis is one of the problems included in the reports, especially in the conclusions of the monitoring bodies[47].

The conducted study shows that despite the state reports on the measures taken to combat this disease, there is an alarming dynamics. Both, at local and central levels, the responsible authorities intervene with delay in the cases and issues related to combating and prophylaxis of TB. Social hostility towards the persons infected with TB and the existence of some gaps in the system allow the leak of medical information, which has severe consequences on the affected people, such as job loss, stigmatization and discrimination. The low level of patients' responsibility to their disease and to those they might infect reduces the efficiency of healthcare. It is difficult to assess the efficiency of the treatment of the patient infected with TB and to detect the TB outbreaks on time based only on the family doctor's competence without taking into the account the contribution of other relevant actors (police, local public authority, etc.).

Given that the stated problem requires a positive state obligation to guarantee the right to healthcare and considering the need to develop an effective mechanism of cooperation between competent state structures, the ombudsmen have submitted to the Ministry of Health, the Ministry of Education and to the local public authorities a number of recommendations that could help improve the situation on the control and prevention of tuberculosis.

Patients' rights

[47] Concluding observations of the Human Rights Committee, 97th session of 12-30 October, 2009, paragraph 13; Concluding Observations of the Committee against Torture, 43th session, of 2-20November, 2009, paragraph 24.

Promotion of human rights, as a fundamental component of the reforms and failure to meet these rights to the maximum, generates the appearance of a contentious situation in the social relations. This framework is also typical of the healthcare system, where conflicts between the health providers and the patients appear.

The medical profession is a social activity and therefore the health care provider is subject to risks and can make mistakes in his work, which consequently can cause harm to the patient.

The CHR received a complaint which alleges a medical error while the doctors of the Municipal Clinic Hospital for Children "Valentin Ignatenco" offered medical care to a minor child of 4 years old. The ombudsmen requested the help of the Ministry of Health in setting up a special commission to assess the professionalism of the given doctors and to find the persons guilty of the actions that led to the infliction of physical sufferings to the child. On the basis of the given appeal, the created commission found that doctor B. made a mistake in setting the diagnosis and treatment of the minor child and he was sanctioned in the form of a disciplinary reprimand.
However, the ombudsman requested the help of the Prosecutor's Office of Buiucani sector, city Chisinau to establish the constituent elements of the offence taking into account the gravity of the injuries. On December 3, 2012 prosecution was initiated according to Article 213 of the Criminal Code – "Negligent violation of the rules and methods of medical assistance".

The materialization of this fact leads to immediate setting of moral, social and legal responsibility, as the medical act has unavoidable human, social and legal effects that rise obligations and rights for the involved parties. Medical care may be affected by inaccuracies – mistakes and/or errors that create damage to the patient. The quality of health services, the mistakes made in medical practice and medical liability are issues in the centre of attention of the society, making them the topic of the printed and electronic press, radio reports, TV programmes, etc. Medical errors almost inevitably remain to be constant in the medical practice, which in the conditions of the current healthcare system have sources for a more pronounced proliferation. In this context, at international level, there is a high level of concern for medical errors and adverse events, as well as their negative impact on the morbidity, mortality, disability and long periods of hospitalization.

Medical malpractice[48] is a real problem and the responsibility for medical errors is born by the decision makers, the health services providers, the citizens as consumers of health services

[48] Malpractice – incorrect or negligent treatment applied by a doctor to a patient which causes damage of any kind to the latter in relation to the degree of affecting his physical and mental capacity.

and by the society in general. However, no group has been willing to accept its share of responsibility and to take necessary steps for the change yet.

There is no specific legislation in the field of medical malpractice in the Republic of Moldova that would establish and regulate the liability of the provider of healthcare services. In the absence of a legal framework specifically regulated, in which a person can seek compensation as expression of a process of redress against the violation of the patient's right, medical standards or medical outcomes, the cases of medical malpractice are examined as required by the law in force[49]. The examination of such cases is done judicially and involves considerable expenses on behalf of the injured patient, who bears the burden of proving the error of the healthcare provider.

The current system of certification of doctors and pharmacists is geared towards assessing the qualifications and aims at increasing the degree of responsibility in the exercise of profession and the quality of medical/pharmaceutical services provided for the population. The assessment of the professional qualification is made by the examination of the personal folder, testing and performance interview. However, according to the Regulation on certification of doctors and pharmacists approved by the order of the Ministry of Health No. 75-p, paragraph 1 of 2/06/2011, the patients' complaints and medical errors do not serve as criteria for assessing the qualification level of the doctor.

The Republic of Moldova lacks a national system of reporting medical errors, official statistics made public is missing in reference to the number of cases examined in court, the number of doctors who have been held liable for damage caused by imprudence, negligence or lack of professionalism, the number of deaths due to medical errors, the number of people who have suffered as result of wrong treatment and drugs wrongly prescribed, as well as the infections contracted during hospitalization or after surgery. All these system weaknesses identified by the ombudsmen in the examination of complaints submitted to CHR and related to the multiple cases mediatised at least in the course of 2012, reveal the existence of some serious problems in the given field. According to the ombudsmen, the state must take resolute and operative actions in order to improve the legal framework related to medical malpractice and to set up a normative and institutional framework to work out these cases outside the court; to

[49] Civil code, Civil Procedure Code, Law on Healthcare, Law on patient rights and responsibilities, Law on medical profession, Law on judicial expertise, technical-scientific and forensic statements, Code of Administrative Offences, Criminal Code, Criminal Procedure Code

develop and implement a system of reporting medical errors; to implement mandatory civil liability for medical malpractice to medical and pharmaceutical employees, to medical-sanitary and pharmaceutical institutions, producers and providers of drugs and medical equipment.

Informing the patient, the confidentiality of the data and medical secret, the consent and informed agreement are areas of vulnerability in the medical practice.

The Law on patient rights and responsibilities No. 263 of 27/10/2005 stipulates that all data on the identity and condition of the patient, the results of the investigations, the diagnosis, the prognosis, the treatment and personal data are confidential, represent a medical secret and are to be protected. The cases mediatised in the press prove that the medical personnel do not practically comply with the mentioned legal norms. The ombudsmen have previously mentioned[50] that observance of the confidential character of information about health is an essential principle of the legal system of all Contracting Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms. Confidentiality is essential not only to protect the privacy of patients but also to maintain confidence in the medical staff and the health services in general. In the absence of such protection, the patients requiring medical care may be dissuaded from offering personal and intimate information necessary for appropriate treatment and even for consulting a doctor. The circumstances, in which information on the patient's state of health is divulged, predominantly through mass-media, may be regarded as interference in the exercise of the right to be protected as stipulated in Article 8 of ECHR.

The patient's consent is an obligatory prerequisite of the medical act established by law, which may be in oral or in written form and must be registered in the medical documentation and signed by the patient or his legal representative (close relative) and the treating doctor.

The legislation in force states that the informed consent should obligatorily contain information, presented in a form accessible to the patient about the purpose, the expected effect, the methods of medical intervention, the potential risk connected with it, the possible medical, social, psychological, economic consequences, as well as on other alternative treatment options and medical care. This is entirely the doctor's task.

According to research in the field, although the doctors are aware of the obligation to obtain informed consent, only few of them conclude it in the required form. The explanation of such behaviour lies in the subjective and unilateral assessment of the risk that the medical

[50] http://www.ombudsman.md/file/RAPOARTE%20PDF/Raport%202009%20redactat.pdf

intervention involves and ignorance of modalities of therapeutic conduct, which prompts the doctor to violate the legal regulations.

A large number of complaints referring to limited access of unvaccinated children to educational institutions received by the ombudsmen in 2012 support this finding. Among the reasons of non-vaccination, the parents cited lack of complex information on the care induced by vaccination and its advantages, on one side, and failure to request consent for such a medical intervention, on the other side.

Yet, there is another side of this issue – refusal of medical treatment for religious reasons, mentioned by the legal representative of a minor child. The legislation in force, which regulates this domain, offers various solutions with vague formulations:

- Article 4 of the Law on Children's Rights: "If parents refuse medical care for the sick child, ***it is given against their will by the decision of the Board of doctors taken in the presence of a representative of power";***
- Article 13 of the Law on patient rights and responsibilities: "In case of refusal from medical care expressed by the legal reprehensive of the patient (close relative) when such care is necessary to save the patient's life, ***the guardianship bodies have the right, at the request of health care organizations, to appeal to court for the protection of the interests of the sick person.*** If emergency medical intervention is needed in order to save the life of the person, when the latter cannot express his will and the consent of his legal representative (of a close relative) cannon to obtained on time, ***the medical staff, empowered in the way prescribed by legislation, has the right to make decisions in the interest of the patient";***
- Article 17 of the Law on medical profession: ***"The doctor is obliged to request the patient's consent for any medical provision*** under la law"; Article 18: "Any medical intervention ***shall be performed with the patient's consent, except when his physical and mental condition does not allow him to take a conscious decision, or in other cases prescribed by law".***

For example, the ombudsman was informed about a case when the parents of a minor child, who was in a serious condition, categorically refused to give their consent to emergency medical intervention for religious reasons. The medical staff was not able to make an adequate decision about medical care without the parents' consent. Only after the interference of the

ombudsman on the site, who requested the presence of a policeman, as representative of power, the child was offered the needed medical care against the parents' will. In this case, the ombudsman acted according to Article 4 of the Law on Children's Rights by convincing the medical staff that their actions are legal and that they will not be later penalized for failure to strictly comply with the provisions of the Law on medical profession.

In these circumstances, it was found that the imperfection of the law in force, on the one hand, and the doctors' un-readiness to act firmly in such situations, on the other hand, could have had serious consequences for the patient's health and even life.

The ombudsmen consider appropriate to revise the legislation in force and to complete the Law on medical profession with clear provisions on the manner the doctor should act in such cases. It is also necessary that doctors continuously improve not only their professional knowledge, but also the knowledge on human rights in providing medical care.

By the adoption of the Law on patients' rights and responsibilities No. 263 of 27/10.2005 and the Law on medical profession No. 264 of 27/10/2005, the paternal model of the relation doctor-patient was officially renounced in favour of the model based on shared decision-making. The patient is autonomous and has the right to make choices and take actions based on personal values and beliefs. The role of doctor-patient communication consists in providing exchange of information, making mutually acceptable decisions, developing understanding and building trust. Failure to observe these leads to non-fulfilment of professional obligations and the violation of the patient's rights. Therefore, given that the patient and/or his legal representative become more informed and involved in the decision making on the health, they also acquire primordial responsibility to protect the patient's own health, of his family and children.

7. Observance of the right to work and labour protection

The right to work and labour protection, enshrined in Article 43 of the Supreme Law of the Republic of Moldova, is one of the fundamental and inalienable human rights. However, for the majority of people work is the sole or most important source of income and existence, including the provision of an old age pension. The right to work is and will continue to be permanently subjected to profound changes closely related to the processes that take place in the social and

economic life of the country. Therefore, the regulation of labour relations should be among the priorities of the state policies.

In the reporting period, an insignificant increase of complaints related to the right to work and labour protection registered by the Centre for Human Rights is observed compared to the year 2011; 103 complaints in 2012 and 93 in 2011. The issues raised by the petitioners remain largely the same: wage arrears, insufficient remuneration level, termination of individual employment contract with some teachers in connection with old-age retirement, non-observance of legal working time, inadequate involvement of labour inspectors in the investigation of labour accidents, discrimination in hiring.

Unemployment and undeclared work are other issues that are related to the right to work. The unemployment rate at national level recorded in the third quarter of 2012 the value of 4.8 %, which is lower compared to the third quarter of 2011 (5.3%). As in previous years, there were significant disparities between urban unemployment rate (7.3 %) and rural (2.8 %). Unemployed registered an alarming rate among the youth: 12.7 % in the 15 – 24 age group and 10 % in the 15 – 29 age group[51]. The issue of youth employment is extremely acute.

The experts in the field allege two main causes: massive migration of the young specialists and the training of specialists, who are, in fact, not needed on the labour market currently. The problem is getting worse year by year because a national policy on vocational training and orientation is missing so far[52].

The National Agency for Employment states that the reasons and causes of unemployment in our country include: insufficient vacancies, the existence of an uncompetitive workforce on the labour market, current dismissal of a large number of people, and the mismatch of the demand and offer.

In this context, in order to redress the situation, it is necessary to take operative measures on a medium and long term period. The undertaken actions should be aimed at business growth, including through fiscal measures; professional training of the employees and young graduates; creation of new sub-branches of the national economy; further organization of retraining courses for the unemployed; setting up local partnerships.

[51] www.statistica.md
[52] http://eco.md/index.php?option=com_content&view=article&id=7523:piata-muncii-probleme-de-azi-soluii-de-maine

The petitions made by the employees of the enterprise S.A. "Archir" to the CHR revealed litigations of different nature which ended in closing down the business and consequently depriving about 290 people of a source of existence. Some of these employees have three or more children to provide for, other are disabled or care for people with disabilities. Moreover, on January 26, 2012, the management of the enterprise had wage arrears of 2,711,100 lei.

Given the state's obligation to create jobs, to improve the living conditions of its citizens, the CHR examined the involvement of the relevant authorities in providing the employees of the enterprise with jobs and in observing their right to work. The results of the investigation were presented in a report sent to the Government[53] for effective intervention in this case. Regretfully, the Government limited its interference to resending the Report to the authorities, who were criticized, without having taken measures to redress the situation.

Starting from the constitutional provisions, laid down in Article 126, paragraph 2, the state has committed to increase the number of jobs and create conditions for improved life quality.

The issue of salary arrears was reported in other complaints of the citizens. In the reporting period, 21 employees of the State Enterprise of the State Reservation *"Prutul de Jos"* from the village Slobozia Mare appealed to the branch of CHR from Cahul. They alleged salary arrears for a period of 7 months which amounts to 421,000 lei. According to the petitioners, the debts of the management of Vulcanesti Rayon Hospital amounted to 1,600,000 lei; the SRL "Valexchimp" accumulated salary arrears to 37 employees, while at „PatisonLux" SRL the salary arrears for 11 employees totalled 90,000 lei.

Non-payment of salary arrears, of holiday allowances, etc. was raised by a large number of people who notified the CHR branch in Balti. Thus, it was stated that 3 municipal enterprises[54]laid off all the employees, who were announced of the closing down of the businesses, without being provided all the payments under the law. In fact, according to the information from the State Registration Chamber these businesses were not liquidated. Many of the former employees, even if they are under executor title of the payment of salaries, cannon recover them on the ground that the enterprises do not have assets.

[53] Letter No. 03-1016-1/11 of 02/08/2012

[54] Specialized Municipal Auto Enterprise, Municipal enterprise for the exploitation of the residential fund property, and MEDSARC No. 2

Non-observance of the working time without payment for overtime is another issue raised during the receptions of complainants at CHR. The employees are forced to accept the conditions imposed by the employers in order to maintain the job, while the probability of getting another job is low. Indeed, this is one of the reasons of accepting undeclared work, which is a persistent phenomenon in the Republic of Moldova. On the other hand, insufficient information of the employees, alongside the fiscal costs and the bureaucratic administrative procedures is another factor that creates this phenomenon. The ombudsmen encourage awareness raising campaigns at national and local levels with the participation of social partners, public authorities, employment agencies, as well as control and sanctioning bodies to prevent the adverse effects of "illegal work". At the same time, in order for the authorities to prevent the illegal work, it's necessary to have a holistic approach that would include: efficient employment policies, adequate remuneration, ensuring a maximum degree of transparency and accessibility to tax and social protection systems.

Some persons addressed the Comrat Branch of CFR and told that after reaching the retirement age the employer terminated the individual employment contract, but in reality they continue to work but illegally.

The examination of a petition about non-execution of the court ruling on the petitioner's immediate rehiring in the formally occupied position revealed a legal imperfection. Namely, immediate execution of such ruling is impossible in the cases when the Labour Code in paragraph 2, Article 85[55] prohibits the dismissal of the person. Therefore, we recommend the Ministry of Labour, Social Protection and Family to examine such circumstances and to initiate procedures for amending the legislation in question.

Although the legal framework in the field of labour safety has been improved in recent years, the performance of competent institutions leaves to be desired. It also follows to change the attitude of the employers and of the employees so as to fully comply with the Law on security and labour safety No. 186 of July 10, 2008. It is therefore necessary to implement a set of complex measures to ensure compliance with basic safety and health rules.

[55]Labour Code of the Republic of Moldova No. 154 of 28/03/2003, Article 86, dismissal
(2) Dismissal of employee is not allowed during sick leave, annual leave, maternity leave, partially paid leave for child care under the age of 3, additional unpaid leave for childcare from the age of 3 to 6, in the period of caring out state or public duty, in the period of deployment, except in cases of liquidation of the unit.

According to the operative data available at the Labour Inspectorate, in 2012, the labour inspectors have investigated 93 labour accidents as result of which 74 people were injured and 28 people died. According to the results of the control of the Labour Inspectorate, the most common breaches of the law on health and safety at the workplace committed by the employers are related to failure to assess the professional risks or employment of people, who are not professionally trained, or without training in safety and health rules at the workplace. Also, there were detected irregularities related to work performed under high risk, application of outdated and dangerous equipment, failure to provide protective equipment, placement of technological processes in inadequate rooms without protective devices, which create the risk of accidents. Violation of the legislation on health and work safety at workplace, as well as, the difficulty in its application, are due to employers' insufficiency or lack of necessary knowledge to ensure its observance. Frequently, the violations of legislation are committed with the tacit consent of the employees or of their representatives[56].

The complaints submitted to the CHR by people, who suffered from accidents at the workplace, reveal the existence of some problems related to how the accidents at the workplace are examined. In order for the employers to escape punishment, the blame, in many cases, is shifted to the employee, opinion also supported by union representatives. Obviously, in such cases, we can speak about the inadequate/superficial examination on behalf of competent bodies in charge of monitoring compliance with the work safety rules.

Relevant in this context is the case of a young women of 18 years old, who suffered a serious work accident (her forearm was amputated) which happened at "Franzeluta" S.A. Bakery from Chisinau, where she was engaged.

The minutes on the investigation of the accident at the workplace done by the labour inspector, which finds only the employee guilty, raised the concern of the ombudsman. The ombudsman requested the help of the National Confederation of Trade Unions from Moldova, in the context of the unions' competence and empowerment to carry out public control over compliance with labour laws. Following the additional control conducted within this framework, some irregularities have been found. So, the State General Inspectorate was notified of further investigation of this accident at the workplace.

[56] http://eco.md/index.php?option=com_content&view=article&id=7876:indiferena-angajatorilor-provoac-anual-zeci-de-victime-ale-accidentelor-de-munc&catid=108:opinii&Itemid=479

Another situation, which is attested, is the imposition by some employers of some discriminatory conditions at employment. The ombudsmen have come to this conclusion as result of examining the announcements for job vacancies, as well as the unannounced control conducted during the Job Fair organized by the National Employment Agency and Chisinau Municipal Agency for Employment within the exhibition "Made in Moldova". It was established that the most common discriminatory conditions in job advertisements and in the discussions with the employers are the criteria of age and gender. That is why certain categories of people are deprived of competing for a vacancy from the very start. Therefore, the National Employment Agency and the Labour Inspectorate should undertake a more rigorous control to ensure equal opportunities and treatment of all people at engagement.

The ombudsmen also reiterate the need to conduct a study on whether the Republic of Moldova recognizes paragraphs 1 and 2 of Article 4 of the revised European Charter[57].

8. The right to social assistance and protection

Ensuring a decent level of living, in the conditions of upward growth of prices and tariffs on consumer goods and services, was one of the most pressing problems in the reporting year.

Following the recommendations of the UN Committee on Economic, Social and Cultural Rights of May, 2011, the Republic of Moldova committed to progressively take actions to remedy the situation in terms of ensuring decent living for each person. The committee urges the State to increase its efforts to guarantee that the national minimum wage is sufficient to ensure an adequate standard of living for workers and their families, as well as to increase the pensions to a level that allows an adequate standard of living, and, as a first step, reach the minimum subsistence level. The Committee also reiterates its recommendation that the State party should

[57]The European Social Charter (revised) of 3/05/1996. Article 4. The right to fair remuneration.
With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:
1. to recognize the right of workers to a remuneration such as will give them and their families a decent standard of living;
2. to recognize the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;

introduce a mechanism to determine and regularly adjust the minimum wage in proportion to the cost of living[58] .

In the recent years, the number of appeals to the Centre for Human Rights on issues related to the observance of the right to social assistance and protection remains relatively constant. In 2012, 150 petitions were registered on this topic, compared to 167 in 2011, which demonstrates that the situation in the field of social protection has not changed essentially.

The petitioners invoke low income, social benefits, and significant annual growth of prices and tariffs on consumer goods and services, which mainly affects the categories of citizens in situations of high social risk: families with many children, retired people, low income people, youth, people with disabilities and those who care for them, unemployed, persons released from detention.

According to the National Bureau of Statistics, in the 3rd quarter of 2012, the average monthly income of a person constituted 1,507.3 lei, increasing by 2.3 % compared to the same period of the previous year, but adjusted to the consumer price index[59] recorded a decrease by 2 %. It also results from the same source that the average monthly expenses of household consumption in the 3rd quarter of 2012 constituted 1,675.3 lei for a person, increasing by 3.2 % compared to the same period last year. The greatest part of expenditures is for covering the needs for food consumption – 42 %; the household maintenance for a person constituted an average of 19 % of the total consumption expenses[60] . The given generalization is, however, too optimistic in relation to the actual situation of families in need.

According to the ombudsmen, permanent increase of food prices and utilities tariffs is one of the decisive factors that determine the worsening of the quality of life of citizens and the deepening of poverty.

Evolution of prices and tariffs on consumer goods and services in the period 2010-2012

Goods and services	**December 2012 (%) compared to:**	**December 2011 (%) compared to:**	**December 2010 (%) compared to:**
	December 2011	**December 2010**	**December 2009**
Food products / average	**5.4**	**7.4**	**7.1**
Vegetables	22.7	4.5	9.0

[58] Geneva, May 04-05, 2011, session forty-sixth of the Committee on Economic, Social and Cultural Rights
[59] Consumer price index in the 3rd quarter of the year 2012 compared to the 3rd quarter of 2011 increased by 4.4 %.
[60] http://www.statistica.md/public/files/publicatii_electronice/Raport_trimestrial/Raport_anual_2012_rom.pdf

Fruits	11,4	14.1	7.5
Meat, cooked and preserved meat	8.4	5.4	-0.8
Milk and milk products	4.8	11.7	10.8
Sugar		26.4	9.8
Eggs	19.5	32.3	0.3
Non-food products / average	**3.6**	**5.2**	**7.7**
Ready-made clothes	4.3	2.6	3.4
Footwear	3.4	5.1	3.1
Fuels	5.1	10.9	25.1
Building materials	2.9	15.2	3.2
Services/ average	**3.0**	**11.6**	**9.7**
Housing services	3.6	22.0	18.9
Drinking water and sewerage	15.2	6.6	1.7
Electricity	7.3	10.3	20.4
Natural gas through the network		40.1	26.2
Central heating		42.7	25,.3

In this context, we welcome the adoption of the Law on the minimum subsistence level[61], being inevitable given the above mentioned. Meanwhile, the ombudsmen have great reservations in connection with its efficiency in the adopted wording. Enforcement of economic and social rights presupposes, alongside with the adoption of an appropriate regulatory framework, the development of effective actions for its implementation and the application of a suitable mechanism.

Thus, according to the ombudsmen's opinion, the Law on the minimum subsistence level will get a formal character in the conditions when it does not regulate the modality and adjustment stages of the social benefits quantum and of the minimum wage at country level with at least this minimum. Moreover, the word "reserve", included in Article 1 – "given the financial possibilities of the state" – offers a comfortable point to the Government in relation to likely claims on wage or social benefits increases.

[61] Law on minimum subsistence level No.153 of 05/07/2012

At the stage of public debate on the draft law, the Centre for Human Rights warned about the need of its improvement in connection with the regulation of the adjustment mechanism of social benefits and minimum wages to the subsistence level, so as to ensure the functionality of the law[62].

According to the data of the National Bureau of Statistics[63], in the 3rd quarter of 2012, the subsistence minimum per person averaged 1,456.9 lei. For the pensioners the subsistence minimum was of 1,259.5 lei. Meanwhile, the monthly average pension as of October 1, 2012 was of 957.9 lei, which makes possible to cover the subsistence minimum in a proportion of 76.1 %. This is to say nothing about the pension for workers in agriculture[64], which on 1/10/2012 was of 625.44 lei.

The persons with severe disabilities are in a difficult situation as well. Having additional needs, they incur expenses that exceed the established subsistence minimum per person. The average amount of an invalidity pension is of 782.05 lei per month[65].

As mentioned above, the information provided by the National Bureau of Statistics indicates a continuous growth of the monthly consumer price index, while the income of the population in 2012 (adjusted to the consumer price index[66]) decreased by 2.0 %. The social benefits are indexed annually but very insignificantly.

Pensioner I.V. appealed to the Comrat branch of CHR and mentioned that he worked for 44 years in agriculture and his pension is of 740 lei.

The small amount of pensions, which does not cover at least the subsistence minimum, is one of the most frequent issues raised by pensioners both in their written appeals and during the interviews on the site. The pensioners, retired in agriculture, mention, in particular, that compared to other categories of pensioners they are evidently disadvantaged; the amount of their pensions continues to remain very small. The pensioners mention that besides the fact that they have no possibility to pay the utilities, they also have difficulty in purchasing medicines. That is why it is observed an increase in the

[62] Letter No. 01-12/9 of 13/02/2012, the opinion of the Center for Human Rights on the Law on minimum subsistence level, www.ombudsman.md.
[63] http://www.statistica.md/newsview.php?l=ro&idc=168&id=3933;
[64] http://cnas.md/lib.php?l=ro&idc=244&nod=1&;
[65] http://cnas.md/lib.php?l=ro&idc=244&nod=1&;
[66] The Consumer Price Index is a measure tool which characterizes and provides an estimation of the evolution of the total price of the bought goods and used services by the population to meet the needs in a given period.

number of lonely pensioners hospitalized in medical institutions (especially during the cold period of the year), where they can at least benefit of decent food, heating, etc.

It should also be mentioned the fact that as consequence of socio-economic development, a change in the categories of people in difficult situations requiring social assistance from the state is being noticed. Currently, besides the pensioners and the persons with disabilities, lonely people (regardless of gender), people that have a one/three years old child in their care, prisoners with severe disabilities, victims of human trafficking or of torture come to complete this category.

A problematic area is tracking down the vulnerable people. Currently, there does not exist a well-structured computerized system in the Departments/divisions of Social Assistance and Family Protection, which creates inconveniences in the cases when statistical data on the number of beneficiaries or the category of people who enjoy the right to a social benefit is requested.

In 2008, the Government of the Republic of Moldova approved Decision No. 1356 on the institution of an Information System "Social Assistance". Its operation demonstrated that the registration system is inefficient and needs to be urgently improved.

Difficulties in obtaining statistical data on the number of a certain category of people are caused by the fact that one and the same person can be the recipient of more types of social benefits. From another point of view, the registration of social assistance beneficiaries is based on the applications submitted by them. Given that not all vulnerable people solicit the needed social assistance, the data of the registration system does not reflect the real situation.

Reforms in the system of social assistance and insurance

In 2012, the Government of the Republic of Moldova focused its attention on the issue of de-institutionalization and social inclusion of vulnerable people.

The ombudsmen encourage and support the idea of improving the regulatory framework to streamline and reform the social assistance system, advocating for more efficient use of financial resources in the social assistance system.

As consequence of annulment of the Law on special social protection for some categories of people[67] (01/07/2012), the aid for the cold period of the year is granted on the criteria provided by Law on social assistance No. 133 of 13/06/2008. This aroused the dissatisfaction of the people receiving nominal compensations, as a great part of them lost the right to special social assistance from the state. According to the information provided by the Ministry of Labour, Social Protection and Family, 110,000 families received financial support in 2012, compared to 133,133 in 2011, the amount of which was established in the sum of 200 lei starting with November 1, 2012[68].

The Centre for Human Rights conducted an assessment on ensuring decent living for the families in difficulty through provision of social assistance benefits. Working meetings on the site were organized for this aim[69], during which issues related to the implementation of the Law on social assistance were discussed. From the discussions with both the social assistants and the citizens, some imperfections of the given law were identified. Thus, in spite of the provisions of the Law, some potential beneficiaries cannot receive the benefits they deserve. For example, homeless people[70] and those who do not hold identity cards[71] (they have no money to have them done) do not qualify for social assistance benefits.

Taking into consideration the basic objective of social reforms in the social assistance system, which is to target the social aid to the most vulnerable groups of population, and the circumstances mentioned above, the mechanism of selecting the beneficiaries evidently needs to be improved.

There have been documented cases when the beneficiary family uses this aid to purchase alcoholic beverages and to entertain at the expense of the needs of the family/children.

We consider opportune to set up an efficient mechanism of cooperation between Divisions/Departments on Social Assistance and Protection of the population with the National Employment Agency and the National House of Social Insurance in order to verify the authenticity of the information provided by the applicant in the application.

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[67] Law No. 933 of 14.04.2000 on special social protection for some categories of people annulled by Law No. 160 of 05.07.2012

[68] Government Decision No. 806 of 31/10/2012 on the modification and completion of Government Decision No. 1167 of 16/10/2008

[69] Working meeting in Cahul, September 28, 2012 and in the city Balti, October 5, 2012, www.ombudsman.md

[70] Law No. 133 of 13/06/2008 on social assistance, Article 4

[71] Regulations on setting and payment of social benefits, approved by Government Decision No. 1167 of 16/10/2008, p.8 provides "the applicant annexes to the application the identity cards of all family members, and .. .".

We also consider that it is unlikely to improve the situation of the families in need when the amount of social aid is of 7 lei, 3 lei or even 1 leu.

Information on the aid offered to disadvantaged families in the 1st quarter of 2012

Rayon	**Applicants**	**Beneficiaries**	**Rejected**	**Minimum amount**	**Maximum amount**	**Contested decisions**
AneniiNoi	669	409	260	2 lei/1 family	2747 lei/ 1 family	0
Basarabeasca	386	268	118	< 25 lei /3 families	< 25 lei/7 families	0
Briceni	1147	798	349			0
Cahul	1743	1022	721			0
Călăraşi	1299	981	318	1 leu/1 family	3493/1 family	0
Căuşeni	490	241	249	< 25 lei /1 family	3200 lei/family	0
Cantemir	1078	623	455	7 lei/1 family	2997 lei/1 family	0
Cimişlia						
Criuleni	715	504	211	1 leu/1 family	2895 lei/1 family	
Donduşeni	4290	3921	369			0
Drochia	1080	688	412			0
Edineț	15321	14684	673	3 lei/1 family	3100 lei/ 1 family	
Floreşti	1545	1240	294	< 25 lei /21famuly	< 25 lei/ 67 family	0
Glodeni	16912	14262	2650	1 leu/1 family	4077 lei/family	0
Hînceşti	2180	1663	517			0
Ialoveni	1028	533	173	3 lei/3families	2506 lei/1 family	0
Leova	684	477	207			0
Nisporeni	1612	1148	463	<25 lei/13 families	3222lei/1family	0
Ocnița	1816	1265	549	2 lei/1 family	2939 lei/1 family	0
Orhei	3496	2811	685	< 25 lei/11 family	3704 lei/1 family	0
Rezina	1039	736	303	9 lei/1 family	2868 lei/1 family	0
Sîngerei	2581	955				0
Şoldăneşti	1440	1191	249	1-10 lei/ 3 families	2000-3000/30families	0
Soroca	1768	1184	584	2 lei/1 family	2589lei/1family	0
Ştefan-Vodă	1640	906	734	1-25 lei/ 6 families	2768 lei/1person	0
Taraclia	238	161	77	11 lei/1 family	3416lei/1fam	0
Ungheni	2990	2497	340	<25/ 9 families	2872 lei/2 family	0
Dubăsari	339	221	118			0
Bălți	371	242	242	2 lei/1family	2947/1fam	0
Comrat	591	342	248	1 leu/2 families	3518 lei/1 family	0
Chişinău	2751	1729	1022	3 lei/2 families	2966 lei/1 family	1
Teleneşti	2287	1235	638			0
Total	**75 526**	**58 937**	**14 228**			

Source: rayon departments/divisions on social assistance and family protection, except the region on the left bank of the Dniester.

Note: Cimişlia rayon did not submit the requested information.

A special case is the issue on determining the score based on which the family's income is estimated. The Regulations on setting and payment of the social benefits[72] provides the List of characteristics and related scoring for assessment of the family welfare, which contains the essentials. Many families in need cannot benefit of state support because they possess certain goods, regardless of their value and wear, which, according to the Regulations are evidence of prosperous material situation. Thus, the category of objects that demonstrate the welfare of the individual and serve as ground to deny social aid are: bicycle, black and white TV, fridge, washing machine, mobile phone. These are vital essentials for any person. In this context, the ombudsmen support the proposal of the Ministry of Labour, Social Protection and Family to improve the given Regulations, especially the List of characteristics and related scoring for assessment of the family welfare.

The right to social security[73] is an integral part of the social protection system, consisting of grating social security benefits in the occurrence of insured risks to people who contributed to the State Social Insurance Budget (SSIB).

This right is, however, restricted to the persons serving their sentences in prisons. Despite the fact that the incomes of the employed prisoners are subject to taxes, these are not transferred to SSIB, but to the penitentiary where such persons are held. Consequently, based on the laws in force, the period of employment of convicts cannot be included in the contribution period, a condition necessary to establish old-age or disability pension, etc.

The ombudsman considers that this violates the convicts' right to social security, a right enshrined in the Constitution guaranteed to all citizens of the Republic of Moldova.

According to the information of 1.01.2012 provided by the Department of Penitentiary Institutions, out of the total number of prisoners (6,476 people), 378 were employed for remuneration, which constitutes about 3.83 %. If in 2011, 378 people were employed, then in the 1st quarter of 2012 – 473 people, which shows that the number of people employed for a pay

[72] Annex No. 5 of the Regulations on setting and payment of social benefits, approved by Government decision No. 1167 of 16/10/2008.

[73] Constitution of the Republic of Moldova, Article 47, paragraph 2;

is increasing. The average monthly salary for 2011 was of 1,291.53 lei, and in the 1st quarter of 2012 of 1,228.27 lei.

According to the same source, the share of social security contributions and compulsory medical insurance transferred by natural and legal persons, who use the labour of the convicts constitutes 0.6 % of the total budget of the penitentiary.

Therefore, the ombudsmen are of the opinion that in the case when the state social insurance contributions will be paid into the State Social Insurance Budget, the budget of the penitentiary institutions will not have to significantly suffer.

In defence of human rights and fundamental freedoms, the ombudsman proposed to the Parliament to examine the opportunity to amend the legislation for the revision of the existing situation in this respect.

Some appeals to the Centre for Human Rights raise the issues of providing pensions to people who have settled abroad.

The basic conditions for being entitled to pension, under Law No. 156 of 14/10/1998 are: reaching the pension age (57 for women, 62 for men), the contribution period of 30 years or a minimum of 15 years, and residence on the territory of the Republic of Moldova. Accordingly, the citizen's entitlement to pension is in direct dependence on the character of the socially useful work performed[74].

G.R. contributed to the social insurance budget in Moldova. Having settled down in Slovenia, the payment of the pension in the Republic of Moldova was ceased on the ground of article 36 of Law No. 156 of 14.10.1998. In Slovenia, he is not granted a pension because he did not contribute to the budget.

Due to massive emigration of the population, there are situations when, though having contributed to the State Social Insurance Budget of the Republic of Moldova, people remain outside the social protection system. This is due to the fact that there are no signed agreements of cooperation on social security with the states where the Moldovans work and then settle down.

The ombudsman recommends to relevant institutions to initiate negotiations with the states, where the citizens of the Republic of Moldova work, in order to sign new agreements of cooperation on social protection of Moldovans.

[74] Decision of the Constitutional Court No. 4 of 27/01/2000 on the check-up of the constitutionality of some provisions of the laws on entitlement to pension of judges, prosecutors, investigators and civil servants, section.3.

9. Protection of persons with disabilities

In recent years, the Republic of Moldova has made some progress in promoting policies and developing programs tailored to European and international standards related to the persons with disabilities.

In 2012, the Republic of Moldova celebrated the second anniversary from the ratification of the UN Convention on the Rights of Persons with Disabilities (signed in New-York on March 30, 2007),[75] demonstrating by this political will to adjust the national legislation and practices to the Convention. With the ratification of the Convention, the Republic of Moldova has committed to observe and implement the principles of the document, ensuring that the new draft laws and regulations comply with its provisions.

The UN Convention on the Rights of Persons with Disabilities serves as a reference framework for the successful implementation of the social security system reform on-going in the Republic of Moldova.

In this context, we mention the adoption of the Law on Social Inclusion of Persons with Disabilities[76], which sets a general framework of guarantees and social services in accordance with the international standards on the social inclusion of such persons. In general lines, the mentioned law ensures equal rights of the persons with disabilities, along with those of other citizens, to social security, medical assistance, rehabilitation, education, employment, public life, physical environment, transport, technology and information and communication systems, and other utilities and services accessible to the public at large. The approval of this Law is the first step of the implementation of the Strategy on Social Inclusion of persons with disabilities[77]. The following steps involve adjusting the regulatory framework in this field to the standards of the new law to ensure its implementation. We also consider extremely important that the competent authorities pool their efforts to set up viable mechanisms that would allow full realization of the commitments of the Republic of Moldova related to ensuring compliance with international standards on the rights of persons with disabilities.

Also, given the status of the Centre for Human Rights as national institution for the promotion and protection of human rights in accordance with the Paris Principles, the

[75] Law No. 166 of 09/07/2010 on the ratification of UN Convention on the rights of persons with disabilities
[76] Law No. 60 of 30/03/2012 on Social Inclusion of Persons with Disabilities, in force since 27/07/2012
[77] Law on the approval of the Strategy on Social Inclusion of Persons with Disabilities (2010–2013) No. 169 of 09/07/2010

ombudsmen consider appropriate to assign as an independent mechanism to promote, protect and monitor the implementation of UN Convention on Human Rights of Persons with Disabilities[78] namely this Institution. By virtue of its powers the CHR has experience in working with different NGOs, which promote the rights of persons with disabilities and which, by the way, should be involved and fully participate in the monitoring process.

Meanwhile, the persons with disabilities have to overcome many difficulties so as to participate as equal members of society in the public, political, social, economic and cultural life. In the reporting period, solutions for the issues raised by the persons with disabilities have not been found: social benefits under the subsistence level; low level of employment; limited access of persons with disabilities to social infrastructure; limited access to information; tolerance of the society towards the problems of the persons with disabilities.

According to the provisions of Article 31 of UN Convention on the Rights of the Persons with Disabilities[79], the State undertook to collect appropriate information, including statistical and research data, in order to be to enable to formulate and implement policies meant to give effect to the mentioned Convention.

It is important to realize that adequate and realistic statistical evidence may facilitate the examination of the various problems that the persons with disabilities are confronted with and respectively, the development and implementation of social programmes for their rehabilitation and social inclusion. On this basis, the ombudsmen recommend to the competent authorities to combine forces and create an information system and adjust it to international standards of the methodology of collecting and disaggregating statistical data on persons with disabilities.

Currently, many public institutions are responsible for the recording, collecting and processing of data on persons with disabilities. The National Social Insurance House and its territorial structures keep track of the people with disabilities, recipients of social security benefits. The local public administration authorities, through their territorial structures of social assistance, keep track of the persons with disabilities – beneficiaries of social services. In the process of development and adjustment of the policies for persons with disabilities, the Ministry

[78] UN Convention on the Rights of Persons with Disabilities, Article 33, paragraph 2.
States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor the implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.
[79] UN Convention on the Rights of Persons with Disabilities, Article 31, Statistics and data collection

of Labour, Social Protection and Family use the data provided by the National Social Insurance House, of the local public administration authorities and of the National Bureau of Statistics, as appropriate, and other central public administration bodies and service providers.

According to the information published by the Ministry of Labour, Social Protection and Family, the total number of persons with disabilities was of 179,815[80], among whom 14,034 were children, as of January 1, 2012.

The data provided by the rayon Departments/ Divisions of Social Assistance and Family Protection at the request of the ombudsman, reveals the fact that out of the total number of registered persons with disabilities 62 % are adults with multiple types of disabilities and 15 % are adults with psychic and mental deficiencies.

Regretfully, there is no real statistical data on the number of persons with disabilities in the Republic of Moldova. Thus, the ombudsman institution identified several circumstances that influence the accumulation of real statistics, and namely:

- The public authority keeps track only of the persons with disabilities that appeal to the institution, depending on the jurisdiction conferred to it by law;
- Poor collaboration between the public medical institutions and social security institutions;
- The existence of persons, who because of the specifics of their disability, do not appeal to a public authority, such as those with severe mental disabilities.

Access to social infrastructure

The issue of access to social infrastructure for the persons with disabilities continues to persist. In this context, it is imperative that the responsible authorities identify and remove the barriers that prevent people with special needs to have access to the social infrastructure, as provided in Article 9 of the Convention on the Rights of Persons with Disabilities, a fact that will directly contribute to ensure independent and participative life to persons with disabilities.

[80] http://www.mmpsf.gov.md/file/rapoarte/raport_dizabilitati.pdf;

Although the central public authorities report on the measures taken to adapt the environment to the needs of people with disabilities, essential improvement in this respect was not attested in 2012.

A wheelchair depended person, inhabitant of Calarasi rayon complained in a verbal address that he cannon benefit of the services of the Calarasi Department on Social Assistance and Family protection because it is located on the 2nd floor of the building, which is not adapted to the needs of the persons with locomotion disabilities.

The Ministry of Health[81] issued on 22.12.2010 Disposition No. 611-d "On the organization of medical assistance access", which provides for the assessment, creation and completion of all informative boards within the public medical-sanitary institutions, as well as the adaption of the institutions to the needs of persons with disabilities so to ensure unrestricted access of all persons to the medical institutions.

In the process of applying capital investments for the construction and reconstruction of medical institutions, it is obligatorily required their adaption, including of the access ways specified in the design documentation. Currently, 35 medical centres in rural areas are under construction in which access ways for the people with disabilities are designed and are being built. The project is financed by the World Bank.

It is welcomed the fact that one of the mandatory criteria, included in the Standards for the evaluation and accreditation of the public and private medical-sanitary institutions, is the access of persons with disabilities to the medical institution, which requires the institutions to adapt to the needs of people with disabilities.

The Ministry of Labour, Social Protection and Family[82] communicated that the majority of its subordinated institutions (21) are adapted to the needs of people with locomotion disabilities. Limited access for the people with locomotion disabilities exists in institutions operating in leased premises, because, under the terms of the leased contract, it is impossible to directly influence on the solution of the given problem.

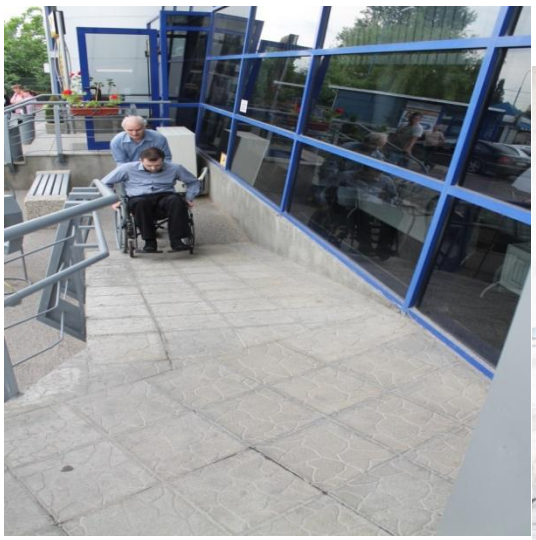
From the information submitted to the ombudsman by the Ministry of Transport and Road Infrastructure[83] results that all the branches of the State enterprise "Auto Stations and Stops" are provided with sidewalks and climbing and descending inclinations. Opportunities for

[81]Letter No. 01-9/733 of 30.03.2012
[82]Letter No. 01-550 of 27.02.20.12
[83]Letter No. 02/2-526 of 07.03.2012

unimpeded movement on the territory of the auto stations, with free access to the administrative buildings, booking offices, left-luggage rooms, WCs, arrival-departure platforms, were created.

Meanwhile, within the investigations on the site with the involvement of a person with disabilities, the employees of the Centre for Human Rights found the contrary. In reality, the access of persons, depended on the wheelchair, is difficult at bus stations, and in some places even impossible (such as access to the public WC). At several bus stations, like the one in Vulcanesti, the adjustment is formal because it can hardly be used even with the help of a third person.

Chisinau city: entrance to the North bus station

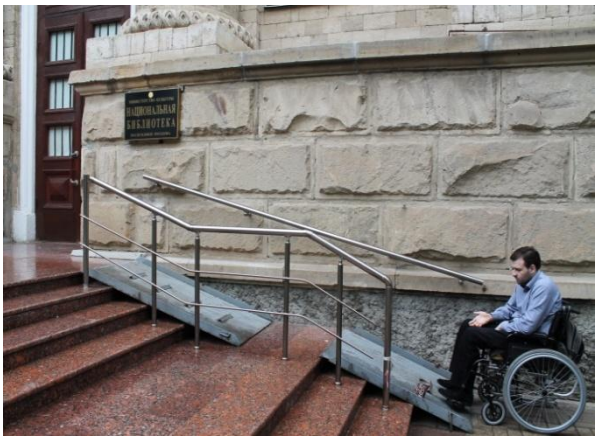


public WC at the South bus station

From the information[84] submitted by the Ministry of Culture, it results that the institutions under its subordination are adjusted to the needs of people with disabilities. From this point of view, the National Library and the National Library for Children "Ion Creanga", which are provided with access ways for people with disabilities, can be mentioned. Remote access is also possible through the Library Web page: to the electronic catalogue, the local data bases, the publications of the Library, and various information about encyclopaedias, dictionaries, etc. The digitization of the patrimonial documents from the collections of the National Library and the creation of the National Digital Library Moldavica (www.moldavica.md), which at present contains 2,700 digital objects, is continuing.

[84] Letter No. 07-09/443 of 28.02.2012

Five museums, all being supplied with access ways for people with disabilities operate under the subordination of the Ministry of Culture. For the exhibitions placed on the 1st floor, the installation of elevators is problematic both from the financial point of view, and because of the interior architecture of the buildings. Theatres and concert halls are provided with access ways for people with disabilities.



National Museum of Archaeology and History of Moldova

In reality, the people with disabilities are confronted with difficulties of access that is because the installed ramps are actually impracticable. The ramp at the National Library, for example, cannot be used because a person with disabilities is not able to move on it even with the help of another person. The same situation is observed at the National Museum of Archaeology and History. Moreover, the people with disabilities, who visit the National

Museum of Archaeology and History, have no chance to see the exhibitions opened on the 2nd floor because there are no access ways to this category of citizens.

The Centre for Human Rights from Moldova carried out an analysis on the access of people with disabilities to the social infrastructure, presented in the thematic report *"Access of persons with special needs to the social infrastructure: reality and necessity"*[85]. In 2012, the Ombudsman Institution made another report on the topic "*Access to education of youth and children with locomotion disabilities*"[86]. Regrettably, the situation has not essentially changed.

Access to labour market

In 2012, there has been some progress in terms of integrating persons with disabilities into the labour market, but still there are many problems in this field. Thus, according to the National Agency for Employment[87], 494 persons with disabilities were registered as unemployed, of whom 102 were employed in 2012. 29 people with disabilities participated in training courses, 20 of whom were employed. The ombudsmen support the measures taken by the Agency, in particular in hiring 43 professionals, who will focus on employment services for people from vulnerable social groups, including those with disabilities.

The ombudsmen urge the competent authorities to pursue their efforts to promote the professional integration of persons with disabilities. Their full integration into society will be possible, including by opening la labour market for this target group, providing professionals to guide them and by creating jobs tailored to their needs.

Increasing employability for the persons with disabilities should be a priority in state policies. Reasonable adaption must be made by taking into account the needs of the persons with disabilities and those of the employers, so as to create equal opportunities on the labour market.

Bearing in mind, the Convention on the Rights of Persons with Disabilities with regard to the consultation and involvement of persons with disabilities in the development and implementation of national legislation and policies related to individuals with disabilities, we consider relevant the suggestions received from disabled persons, from the organizations working in the field of protecting disabled persons, which are directly confronted with such problems.

[85] http://www.ombudsman.md/md/tematice/;
[86] http://www.ombudsman.md/md/tematice/;
[87] Letter No.1-45 of 25.01.2013

In this context, the leaders of NGOs, concerned with the rights of people with disabilities, criticised the amendments[88] to the Regulation setting VAT exemptions on the import of raw material, supplementary items and accessories necessary for own production by organizations and enterprises belonging to the Association of the Blind, Association of the Deaf, and the Association of the Disabled. Although based on good intention, according to the leaders of the mentioned organizations, the amendments[89] made to the mentioned Regulations will lead to the worsening of the situation for the persons with disabilities. Tightening the requirements[90] in order to benefit of VAT exemptions will lead to the bankruptcy of these businesses. The suggestions and proposals in this respect made by the leaders of NGOs, dealing with the protection of rights of disabled people, and those of the ombudsmen were submitted to the Government in the Resolution of the Round Table "*The Right to Employment of Persons with Disabilities in the Republic of Moldova"*[91].

The ombudsman was informed by the administration of the specialized enterprise "Sadacus" S.A. (the *Association of the Deaf from Moldova*) on refusal to include it in the list of organizations eligible for exemption from VAT under the Government Decision No. 929 of 08.10.2010 on the grounds of failure to observe the criteria set out in Section 4, paragraph 5 of the given Regulations.

In this connection, the ombudsmen recommend that authorities include and consult persons with disabilities when developing and implementing legislations and policies on the application of the Convention and in other decision-making processes on issues related to persons with disabilities.

Offering benefits[92] to specialized businesses, in the ombudsmen's opinion, is an effective measure for the placement of disabled persons on the labour market. However, the ombudsmen

[88] Government decision No. 28 of 13/01/2012 on the modification and completion of the Regulations on VAT exemptions on the import of raw materials , supplementary items, accessories necessary in own production by the organizations and enterprises of the Association of the Blind, Association of Deaf and Association of Disabled.
[89] Government decision N0. 28 of 13/01/2012 on the modification and completion of the Regulations on VAT exemptions on the import of raw materials , supplementary items, accessories necessary in own production by the organizations and enterprises of the Association of the Blind, Association of Deaf and Association of Disabled.

[90] According to section 4, paragraph 5) the average monthly salary paid to employees with disabilities is 2/3 of the average wage.
[91] www.ombudsman.md
[92] Article 36 of the Law on social inclusion of persons with disabilities No. 60 of 30.03.2012

think that that inclusion of persons with disabilities in employment will not be effective without expanding the government benefits to ordinary businesses employing persons with special needs.

The ombudsmen were informed both by persons, who are confronted with issues of being provided with technical aids, and by specialists working in this area about some imperfections of the Regulations on providing some categories of citizens with technical aids, approved by Government decision No. 567 of 26.07.2011.

The major issues raised, with the approval of the mentioned Regulations, are related to the integral payment of the cost of technical aids, including orthopaedic footwear for children not included in the disability programme, as well as the manner of payment of the expenses for the transportation of the beneficiaries to the Republican Experimental Centre for Prosthetics, Orthopaedics and Rehabilitation (CREPOR).

The Regulations sets out the categories of persons who receive free insurance, partial discount in the procurement of technical aids, including complex orthopaedic, special and on prostheses footwear. According to the provisions of section 4 of the Regulations, besides the specified categories, "disabled children under the age of 18[93]" can benefit of technical aids, including orthopaedic footwear free of charge. Respectively, the children who need complex orthopaedic footwear, but are not assigned a disability degree, cannot enjoy benefits in purchasing them.

Thus, because of limited financial possibilities, many parents refuse to buy special orthopaedic footwear to rehabilitate and stop the disease, in the case of children who are not assigned a disability degree. The specialists in the field of orthopaedics are concerned about the fact that these children might be assigned a disability degree in the nearest future, because of lack of appropriate orthopaedic footwear. According to the specialists *"untimely provision of children suffering of musculoskeletal diseases and disorders with*

According to the information provided by CREPOR, the actual average price of orthopaedic footwear for adults is of 1575 lei, and for children - from 1561 lei to 1639 lei. In the period September 2011 - June 2012, 611 applicants were denied the purchase of specific footwear (children).

[93]Regulations on the manner of providing some categories of citizens with additional technical aids, approved by Government Decision No. 567 of 26.07.2011

technical aids, including orthopaedic footwear will lead, in a period of several years, to worsening their locomotion disability and increase the number of disabled children".

Thus, these regulations, in the opinion of the ombudsmen and of the doctors, does not prevent the appearance of disability, but on the contrary, favours some types of disability. Moreover, these reforms do not meet the requirements of the Convention on the Rights of Persons with Disabilities in reference to "early diagnosis and intervention in case of need and offering services in order to minimize and prevent the appearance of disability, including children and elderly people".

Based on the complaints received by the Centre for Human Rights, CREPOR beneficiaries encounter serious difficulties when it is necessary for them to go to be taken the measures and later to get the requested technical aids. This is due to the fact that there is no set mechanism of co-working of the medical-technical teams, of departments/divisions on social assistance and family protection, as well as, of the manner of payment of expenses on the transportation of the beneficiaries to CREPOR.

In the appeal to CHR, citizen E.M mentions: „*I am disabled of 1st degree since childhood and twice a year I have to travel to Chisinau to the Prosthetics Centre to order footwear and then to be taken the measures. As I cannot get on public transport, I need a vehicle to get to Chisinau. At the end of May I received an invitation from the Prosthetics Centre. I went to the Town Hall, and then I appealed to the social worker, who told that they cannot do anything for me…"*

Although the described case was solved at the intervention of the ombudsman, the situation remains uncertain in many other similar cases. It is necessary to take into account the fact that the beneficiaries of CREPOR services are persons with disabilities, and the amount of benefits granted to these categories of people is too small and does not cover the subsistence minimum. In addition, it should be stressed that in some cases the beneficiaries need to be accompanied by a third person. For these reasons, we recommend an assessment to determine the possibility of paying for the travel expenses of the CREPOR beneficiaries. The regulation of the manner of the co-work of the medical-technical team within CREPOR and of the intervention on behalf of Departments/Divisions on Social Assistance and Family Protection is also required.

The social benefits granted to persons assigned a degree of disability continues to be extremely small in relation with the vital needs.

Categories of beneficiaries	Number of beneficiaries (persons)	Average amount of benefit (lei)
Disability pensions	133 645	779-91
State social allocations		
for elderly	4027	102-95
for disabled	5732	105-63
for disabled since childhood	26 743	290-48
for disabled children under the age of 18	14753	297-35
for loss of breadwinner	3961	134-08
The amount of minimum pension:		
- disability of 1st degree	-	499-80
- disability of 2nd degree	-	482-64
- disability of 3rd degree	-	339-85

Source: National Social Insurance House as of January 1, 2013

Although the Republic of Moldova acknowledges the international standards, which have become component part of the national legal framework, and has carried out national reforms and programmes on mental health, people with mental disabilities continue to face humiliation, isolation and discrimination based on their disability, which are often exacerbated by stereotypes and prejudices. According to ombudsmen, the state has not done enough to improve the lives of these people, but also to adjust the laws, the policies and practices to the requirements of international standards. These conclusions are based on the information gathered by the Centre for Human Rights during the monitoring visits in psychiatric hospitals and psycho-neurological homes from the country.

The results of the monitoring show that there are many problems related to the full achievement of human rights by these groups of people: insignificant progress in applying the Convention of the Rights of Persons with Disabilities at national level, underdevelopment of community support programmes for persons with mental disability. The analysis of the observance of human rights in mental health institutions is contained in the "Study on the

observance of human rights in mental health institutions in the Republic of Moldova"[94]. Given the complexity of the study and the many issues that need to be addressed, its completion, including the ombudsmen's recommendations will be done next year.

The ombudsmen reiterate the need to adjust the national legislation to the international regulations, to ensure de-institutionalization, and to urge the public authorities to make significant efforts to build an inclusive society that will create prerequisites for the rehabilitation, integration and participation of disabled people in community life.

10. The right to a healthy environment

Recognition and constitutional guarantee[95] of the right to a healthy environment enhances the obligation of public authorities to protect the environment, offers to courts new means for ecological compensation and punishments for the environmental damages, allows for a better harmonization between different levels of recognition and guarantee of the fundamental right to environment in order to achieve a necessary correlation between the national legislation, on the one side, and international regulations, on the other side.

Environmental protection has become a necessity for the contemporary society, an opportunity of world character. Concerns about maintaining a healthy environment aimed at improving human living conditions, maintaining the ecological balance of ecosystems, of which the human being is an integral part. The existence of a healthy environment is a prerequisite for achieving basic human rights: the right to physical and moral health and the right to life. This involves maintenance of the quality of the main components of environment – air, water, soil, flora and fauna in terms of sustainable development.

Environment protection can be fully realized only through the combination of legal, administrative and educational measures. Changing people's mentality is not easy, but without education in this sense, any action for the protection of environment is doomed to failure. It

[94] www.ombudsman.md / reports/thematic reports
[95] Article 37 of the Constitution of the Republic of Moldova, the right to a healthy environment

should be noted that environmental education is central in the policies of European states that Moldova aspires to.

The existing global ecological imbalance raises concerns and motivates the increased demands on ecological education. The health of the planet depends on every citizen's attitude to the ecosystem he interacts with. Therefore, ecological education should become a permanent concern of all teachers.

Regretfully, the population of the Republic of Moldova displays a simplistic approach of the environment pollution issue. The situation is ultimately due to the fact that Moldova lacks educational strategies in the field of ecology, the prevailing of a consumer's attitude, and these sad realities can have serious consequences for the environment. Therefore, a radical change of mentality is required in our society, a general mobilization of all citizens to ensure a healthy environment, starting from an early age.

A first and very important step in this direction is correct ecological education of the young generations. Along with various major social campaigns, besides personal and social resonance examples of involvement and attitude, systematic education of the youth is necessary through programmes developed by specialists for a school subject - ecology.

In this context, the ombudsman proposed to the Ministry of Education to introduce in the school curriculum the discipline "Ecology".

We support the idea that the child's attitude towards nature is formed on the basis of the theoretical knowledge he possesses and his practical activity in relation to the environment. Thus, there is need for the establishment and development of the ecological culture of the contemporary man, understood as a set of information capable of identifying beliefs and constructive and responsible attitudes for the protection, preservation and improvement of the environment.

This absolute opportunity, of particular social resonance, should certainly be found in the Sector Strategy on Education Development for the years 2012 - 2020, drafted by the Ministry of Education, which will be the main policy document on education. In this context, it is necessary to establish the ecological modernization of education as an overall objective of this strategy. The ombudsmen support the proposals of the Ecological Movement from Moldova, which are resumed to the ecologization at all levels of the education system and state institutions. Certainly,

these proposals are dictated by time and are part of the fundamental right to a healthy environment.

The ombudsmen also consider important the development and putting into action of a mechanism for public information under the provisions of Aarhus Convention[96], which stipulates that the way in which public authorities make environmental information available to the public should be transparent and that environmental information is effectively accessible.

The right to water

Water is an important factor in the ecological balance and its pollution is an ongoing problem with serious consequences for the health of the population. In this context, we argue that providing the population with quality water is vital and should be a national priority. The issue of the quality of water, consumed by the population, was mentioned in the speeches of the experts, participants in the international conference „*Challenges in the water and sewerage sector in the Republic of Moldova"*[97] and highlighted by international forums.

In particular, the Committee on the Economic, Social and Cultural Rights[98] expressed concern that only half of the population has access to drinking water and sewage systems, with levels in rural areas at only 26.7 per cent, and that the water quality of local sources is very low and deteriorating, as mentioned in the periodic report (art.11). The Committee recommends that the State party urgently adopt the draft Water Law, and take all necessary urgent measures to ensure sufficient, safe, acceptable and physically accessible and affordable water for personal and domestic uses, paying particular attention to the most disadvantaged and marginalized individuals and groups, including Roma. The Committee requests the State party to include disaggregated data, by region, on progress made in this regard in its next periodic report.

The Water Law[99] was adopted on December 23, 2011 and will be in force on October 10, 2012. It is therefore necessary to adopt normative acts that would implement this law.

[96]Convention of 25/06/1998 on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Article 5. Collection and Dissemination of Environmental Information
[97] Chisinau, November 6, 2012, the Conference was organized within the project "Technical Assistance for the Implementation of Water Public Sector Policies and funded by the European Union
[98] Geneva, May 4-5, 2011, session 46th of the Committee on Economic, Social, and Cultural Rights, section21
[99] Law No. 272 of 23/12/1011, Official Monitor No.81/264 of 26/04/2012

Meanwhile, water shortages in rural areas, not to mention its quality, especially in 2012, which was a dry year, significantly affected the water sources[100].

On the other hand, the limited access to drinking water supply systems and sewerage, as a consequence, lead to groundwater pollution. Relevant to the environment situation are the mediatized cases[101] regarding water delivery with warms to the population of the town Nisporeni, as well the environmental pollution in the village Calfa, Anenii-Noi district, as consequence of the operation of some poultry farms and of the location of an unauthorized waste dump. At the request of the ombudsman, the Ministry of Environment and the Public Health Centre from Nisporeni conducted appropriate investigations and ordered the environmental audit of the operation of the economic agent, which could be the source of pollution. Respectively, measures were taken to improve the environmental situation in the given communities, including the sanctioning of the economic agent. However, the issues remain unresolved per ensemble. The ombudsman urges the authorities responsible for the environment and public health to strengthen their efforts and accomplish reasonable and appropriate measures able of protecting human life and health.

Another serious issue, in our opinion, would be the discrepancy between the established tariffs for water supply and sewerage services in different communities, which are currently approved by the local authorities.

Community	**Approved tariff for drinking water supply, lei/m3**		**Approved tariff for sewerage services, lei/m3**		**Decision**
	Household consumers	**Economic agents**	**Household consumers**	**Economic agents**	
Chişinău	8.98	12.70	3.31	10.26	No. 8/11 of 15.09.2009
Vulcăneşti	14.00	37.00	14.00	35.00	No.8 of 27.09.2011
Cahul	6.00-12.00	27.97	3.00-4.00	6.00	No.5/3(41/3) of 31.03.2010
Anenii Noi, v. Maximovca	14.65	37.00	3.00	7.00	No.06/9-2 of 06.12.2012
Orhei	14.85	25.20	5.20	31.50	No.4.2.2 of 08.04.2011
Comrat	12.50	37.00	12.50	37.00	No.18/2 of 29.12.2011
Bălți	11.08	23.64	3.90	17.01	No.6/48 of 27.10.2011

[100] http://www.expresul.com/2012/10/29/drumul-apei-potabile-spre-comuna-manoilesti-lung-si-anevoios/

[101] Prime.tv, Publika.md, 27.08.2012, www.ombudsman.md

The overall picture shows higher rates in the regions than in big cities, while the statistics show that the available income (salary) is smaller in the regions. For example, the average salary in Chisinau was of 4,172.8 lei compared to 2,775.4 lei in Anenii-Noi rayon. So, access to such services is reduced in the regions.

Based on a petition submitted to the CHR, the Territorial Office of the State Chancellery from Causeni was notified on the legality of a decision made by the local authorities on the approval of water supply and sewerage charges. Following the inspection, the Territorial Office notified the local authority to repeal those decisions and approve new tariffs corresponding to the methodology of the National Agency for Energy Regulation (ANRE).

The ombudsmen recommend the Government to assess the situation in order to find solutions so as to ensure social justice to citizens. Eventually, it would be appropriate to examine setting tariffs for water supply by a central authority. It is imperative that authorities take into account the UN recommendations with regard to the human right to water: *"the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses"*[102].

„Affordable" means that the price for water and sewerage services must be of the level that does not compromise the ability of payment for other guaranteed basic needs such as food, housing and health care.

However, in the current conditions of setting tariffs by local authorities, the ombudsmen recommend to territorial offices of the State Chancellery to conduct a more rigorous control on the respective local decisions, meaning compliance to the "Methodology of setting, approving and of applying tariffs for public services on water supply, sewerage, and purification" approved by the Decision of ANRE Administration Council No. 164 of 29.11.2004.

Waste management

A significant source of environment pollution is the waste. Improper waste management still remains an acute problem. A major risk for the environment of the Republic of Moldova is

[102] General Comment No. 15 of ICESCR , 2002

waste disposal on the ground (the wide spread method for waste disposal). As result of its decomposition, the waste becomes dangerous, causing the infiltration of toxins into the soils and gas emissions in the atmosphere. The waste amount is increased year by year[103], which requires fast measures to remedy the situation by developing and implementing policies and strategies in solid waste management and by making the institutional system in waste management accountable and based on the cooperation between central and local authorities. Regretfully, waste storage is done in the absence of procedural rules for the selection, construction and authorization of places designed for waste disposal, thus unauthorized dumps appear.

Currently, according to the State Ecological Inspectorate, 1867 solid waste landfills exist, out of which only 15 are built and set according to projects positively reviewed by the State Ecological Inspectorate; 1009 are conformed landfills constructed in the absence of a project, and 843 are nonconforming and do not correspond to the sanitary-ecological conditions.

Being concerned about the imminent danger to the environment, and, respectively, on health in relation with the operating and storing of waste in the landfill in the suburbs of the town Cimislia, the ombudsman got informed and requested the Ministry of Health and Environment and the head of Cimislia rayon to order an investigation on this case.
Following the inspection carried out by the Ministry of Health, the sanitary-ecological state of the landfill and of the adjacent territory was assessed as unsatisfactory. The results were submitted to the Mayor's Office to develop an action plan.

The ombudsmen reiterate the need to assess the environmental situation in the vicinity of the landfill sites and to determine the risk they present for the population. We recommend extensive and effective cooperation between the local and central authorities, NGOs and development partners. We also consider absolutely necessary to develop waste management services, especially in the rural areas; to eliminate the unauthorized landfills and to transfer the authorized wastes from the protection zones of water bodies.

In this context, during a press conference of stakeholders from the Republic of Moldova and Ukraine, as well as in an address to the President of the Republic of Moldova, the ombudsman raised the issue of the environmental safety of the Dniester River, a situation that directly threatens the health and the life of the people, due to the overload of the potassium mine

[103] The total amount of solid waste accumulate din 2012 was of 4 641, 95 thousand m^3

from the town Kalush, Ivano-Frankovsk, Ukraine[104]. The ombudsmen are of the opinion that the protection and sustainable development of the Dniester River basin must be one of the priority areas of cooperation between the Republic of Moldova and Ukraine.

11. The right to private property and its protection

Property served as basis for the social development of humanity. Although, it has numerous meanings, property entitles the right to property.

Being a right in permanent evolution, it constantly enriches its content through the appearance and regulation of the right to intellectual property, through the development of movable and immovable property, etc.

In legal literature, the right to property is defined in different ways, but the basic attributes remain possession, use and disposal.

The Constitution of the Republic of Moldova guarantees the right to private property by the state and directly stipulates that nobody can be expropriated, except in the public interest established by law, with fair and prior compensation[105].

According to Article 1 of the Protocol Number 1 of European Convention of Human Rights, to which the Republic of Moldova is a party, the observance of the possessions of every natural or legal person is guaranteed and "*no one shall be deprived of his possessions except in public interest and subject to the conditions provided for by law and by general principles of international law".*

According to Government Decision No. 186 of 9.03.2009 „On some measures to ensure the activity of the Giurgiuleşti International Free Port", the Cadastre Agency in accordance with the law in force, was empowered to ensure through subordinate enterprises, the implementation of the provisions concerned, and to perform the work, the given documents and the transactions related to the expropriation of private immovable property (land and buildings) situated on the site of public works of the unincorporated territory of the village Giurgiuleşti, Cahul rayon.

To apply the mentioned Decision, the state subjected to expropriation for public use of national interest 41 lands in private property from the village Giurgiuleşti, Cahul rayon for the

[104] www.ombudsman.md
[105] Article 46 of the Constitution of the Republic of Moldova

construction of Giurgiuleşti International Free Port and submitted proposals for expropriation under the law[106].

Out of the 41 owners of plots proposed for expropriation, only one accepted the terms of expropriation, the other 40 owners have not reached an agreement on expropriation for public use, for which civil action was filed in court[107].

The petitioners informed the Ombudsman Institution about the inequitable terms of expropriation and of setting the compensation, thus considering that their constitutional rights were violated.

Following the examination of the alleged circumstances, the ombudsman, under article 74 of CPC of RM, submitted an application to the court to conclude on the cases under consideration. The civil cases are under examination at present, the Cadastre Agency requested time to review the evaluation report of the land in dispute.

Having examined the laws on expropriation terms, the ombudsman concluded that the amount of compensations for expropriation must be determined simultaneously with the actual expropriation.

Regardless of who establishes the amount of compensation, it should be done at a time very close to that of actual expropriation, preferably before it, and without taking into account the added value that it acquired as result of public utility works. The expropriation for public use, on one hand, creates an added value for the owner and, on the other hand, deprives him of his right to property. However, in these circumstances it is natural for the owner (private) to get only what he lost in favour of the expropriator, and not the added value, which the latter created.

We often come across cases when the three attributes of the right to property – possession, use and disposal – are exposed to abuse on behalf of authorities.

A group of residents from Briceni rayon informed the Ombudsman institution about such a case. The petitioners expressed their indignation in connection with the authentication of by the local public authority of a power of attorney, according to which the co-owners of the assets assigned for privatization of the agricultural Association "Drepcauti", empowered citizen V.C. to perform on their behalf the actions required for the termination of agricultural land leasing

[106] According to article 9 of Law No. 488 of 08/07/1999 on expropriation of property in public interest, in the case of dwelling or land expropriation, the owner is proposed another dwelling or land, and in case the cost of the proposed dwelling or land is lower than the cost of the expropriated dwelling or land, the expropriator shall pay the difference between the cost of the expropriated dwelling or expropriated land and the proposed dwelling or proposed land.
[107] Article 13 of Law 488 of 08/07/99 on expropriation for public use

contracts. V.C. was also empowered to register the assets of joint property, divided into quotas, with the local authority, the Territorial Cadastre Office, the State Fiscal Inspectorate and Evidence and Exploitation of Transport Service. The document offers to citizen V.C. the possibility to sign agreements on how to separate the plot-parts between different groups of co-owners, and how to use the assets with the conclusion and signing of selling-buying contracts of immobile and mobile goods jointly possessed at the privatization of the agricultural farm; to conclude agreements on transmission of disputes in connection with the use or separation of goods after the court ruling or of elected arbitraries; to represent the interests in court or arbitration proceedings; to formulate and to sign applications in connection with the related disputes; to present the interests at the general meetings of co-owners and to carry out land consolidation.

In spite of the fact that the mentioned power of attorney was certified by the secretary of the Town Hall, the property owners affirm that they do not know about conferring to citizen V.C. powers to perform actions on the agricultural quotas and the value of their shares, fact certified by the shareholders.

The circumstances found within the investigation demonstrate that the procedure of certification of the power of attorney, as well as the substantive rules referring to the duties of the persons in charge have been violated by the decision makers of the Town Hall, fact that attempted the right to property of the persons that have land shares and value shares and generated the violation of the provisions of Article 46 of the Constitution and Article 316 of the Civil Code, which stipulate that the right to private property us guaranteed and the property is inviolable.

It should be noted that under letter q), section 1, art. 39 of Law No. 436 of 28/12/2006 "On local public administration", one of the duties of the Mayoralty secretary is to compile notarial acts in accordance with the Law on notary. However, in accordance with letter e), section 1, Art. 37 of Law No. 1453 of 08/11/2002 on the notary, the persons in charge, authorized by the local public administration, undertake tasks of authentication of the powers of attorney for receiving pensions, benefits, funds distributed to shareholders in non-mutual investment funds in the process of liquidation, investment funds for privatization in the process of liquidation, for receiving indexed sums on citizens' deposits at the Banca de Economii, as

well as for the right to register, transmit in use and disposal of the right to property on the value shares of agricultural goods.

Thus, from the content of the certified power of attorney results that, in addition to all the powers granted to the representative, the right to terminate the lease was also held. Article 37 of the Law on Notary exhaustively sets out the categories of notarial acts, as well as types of powers of attorney, which can be certified by the local public administration authority. The Law does not stipulate that the local public authority can certify the power of attorney for the management of agricultural plots.

Paragraph 3 of Article 252 of the Civil Code stipulates that the powers of attorney certified under the law by the local public administration authorities are equivalent with the powers of attorney certified by the notary, while according to section 1 of the Regulations on the manner of fulfilling notarial acts and completing notarial registers", approved by the Order of the Ministry of Justice No. 95 of 28/02/2008, the provisions of the given Regulations shall be binding for the persons who are empowered to fulfil notarial acts, i.e. those of local public authorities in charge. In this case, the local public authority ignored Disposition No. 5 of the Regulations which stipulates that the notarial acts are signed by the parties or their representatives in the presence of the notary, and as appropriate, in the presence of those invited to confirm the conclusion of the acts that the parties draw up, as well as of the witnesses, if the law stipulates their presence. According to section 14, in the case of certification of legal acts on real estate (except wills), the notary verifies the ownership of the property and the tasks of the goods on the basis of the submitted documents. In this aim, the applicant of the notarial act will submit the papers on property, the extract from the immovable property register, the certificate of existence or absence of real estate tax arrears, and other documents necessary for the validity of the drawn notarial act, which is annexed to the document kept in the notary's archives, in the original or copies, as appropriate.

The petitioners indicated in their request that they do not agree with the drawn power of attorney and demand its cancellation.

Taking into account the provisions of paragraph 2, article 252 of the Civil Code, the person who issued the power of attorney has the right to cancel it at any time and considering the claimed circumstances, as the ones derogating from the legal provisions of the right to property, the ombudsmen, under article 27 of the Law on Ombudsman, submitted a notice to the local

government demanding the cancellation of the certified power of attorney. This however was not solved, which determined the Ombudsman Institution to file an action in court, which is currently being examined.

The cited case makes us conclude that enabling certification of powers of attorney, in which the certified object is an immovable good or land, to other persons the notaries can lead to abuses, which reduces the protective role of requesting an authentic form imposed by law for such types of powers of attorney. Sufficient pretexts might be invented so that the persons charged to certify the powers of attorney to abuse of their position and take advantage of empowers granted to them by law. In our opinion, the certification of the of powers of attorney by the notaries would be much safer, the more so that the law[108] allows to draw up notarial acts outside the office and office hours.

Violation of the right to property was specified in the petitions of the inhabitants of the village Sverdiac, Recea commune, Riscani rayon, addressed to the CHR. The petitioners allege the illegal actions of the manager of the agricultural farm "Fintina Recea", particularly in respect his unlawful disposal of their value shares of plots, which are in temporary use of the mentioned enterprise.

The right to private property of the value shares of the plots of the petitioners is fully attested by certificates on private property, which confirms their right to private property of the given plots and also by certificates of testamentary heirs.

Within the control carried out, it was found that there was a transaction concluded between the agricultural farm "Fintina Recea" and the owners of the value shares, according to which the temporary use of the named shares was made official. Nevertheless, the agricultural farm "Fintina Recea" disposes of the private property of the petitioners. Furthermore, the management of the enterprise does not pay anything for the use of such property.

Thus, on 7/11/2012 a summons to court was made by Riscani district court, requesting observance of the provisions of paragraph 1, article 46 of the Constitution of the Republic of Moldova, which stipulates that the right to private property is guaranteed. Respectively, it was requested to oblige the agricultural farm "Fîntîna Recea" to return to the petitioners the value shares that belong to them as property according to the documents which confirm this fact.

[108] Article 38 on the Notary No. 1453 of 08/11/2002

Lack of land lease contracts or their drawing with infringement of the legal acts is a frequent issue addressed by the citizens to CHR. Observance of the right to property analysis conducted by the Ombudsman, especially the leasing of the land shares of the owners to lessees made it possible to highlight stringent issues facing those involved in the process.

The compulsory requirement to conclude a lease agreement, its correct and proper form (clauses that do not contravene the law, etc.) are among the main conditions to ensure the enforcement of the lease objects, of the rights and obligations of the lessor and lessee. Non-inclusion in the lease contract of an essential clause or non-observance of its written form causes its annulment[109] , as only the good-will agreement of the contractual parties shall give it legal power.

Yet, these requirements are not always met, creating favourable conditions to commit abuses on behalf of lessees. Often the lessors do not possess sufficient legal information or do not solicit legal assistance when concluding contracts of such kind. Thus, the Ombudsman Institution registered cases when the lack of legal contractual clauses or their superficiality (e.g. diminishing the amounts for the land lease, the change of payment terms of the lease, etc.) resulted in lessors' damage.

Citizen M.R., inhabitant of the town Comrat is trying since 2006 to get the payment (according to the contract) for the leased land for a period of 25 years to SRL "DOLU BASAC", by **suing the company in court. There were issued two writs of execution on the recuperation of the amount of 29,010 lei, which was impossible to execute for lack of income or of the lessee's official property. However, the given company was liquidated, while the lessee registered two other agricultural enterprises which he manages.**

When the lease agreement on land and other agricultural property is concluded for a period of up to 3 years, it is entered in the lease register, kept by the Mayoralty of the community on whose territory the leased plots or other agricultural property are found[110]. We note that the local public authority exercises the role of registrar of the lease contracts, which allows the "legalization" of contractual abuses based on which the involved parties can later appeal to courts to claim their rights.

[109] Article 6, paragraph 6 of the Law on lease in agriculture No. 198 of 15/05/2003
[110] Article 11 of the Law on lease in agriculture No. 198 of 15/05/2003

It is also necessary to note that the leases are signed for a long period of time and do not change over time, even if certain inflationary processes take place. So, the payment for the land lease remains the initial one. Moreover, indicating the amount of lease payment in percentage of the collected harvest, the lessee does not specify the terms of checking the yield, which leads to a future concealing of the amount of the harvest.

The examination of the described above situations bring to the conclusion that in order to improve the land lease and its terms, it is necessary to create a legal mechanism that would allow correct and appropriate application of the provisions of the Law on lease in agriculture. In particular, clear regulations pertaining to drawing up the lease contract, as well as the creation and empowerment of a body with attribution to check up the essential contractual legal clauses is required. This would allow the prevention and exclusion of abuses of the involved actors and eventual appeals to courts.

Due attention should be paid to the problem of uncultivated lands. In this respect, claims related to the impossibility to process the plots because of lack of workforce, migration, aging and urbanization of the population are invoked. Other reasons are economic instability, high cost of farm works, lack of or worn out agricultural machinery.

The mentioned circumstances require that landowners accept the contractual terms of the lessees, which are often unfavourable for them. This impunity was "accepted" by landowners also because of the sanctions imposed by the state for failure to process the land, so as to ensure its use as intended[111], and for non-cultivation of the land[112], while additional obligations for the landowners are included[113]. In the ombudsmen's opinion, this conditioning cannot be objective, since the state does not provide a well-developed land policy and profitable economic conditions for land management, counting only on taxation and sanctioning the landowners.

With the development of real estate market in the city Chisinau, a new phenomenon appeared – building lofts. The building of lofts is allowed in exchange of works for the thermic insulation of the blocks, restoration of staircases and networks.

From the financial point of view, the business is profitable. Partial renovation of blocks does not involve financial expenses from the current apartment owners. On the other hand, the

[111] Article 117 of the Contravention Code of RM
[112] Article 118 of the Contravention Code of RM
[113] Article 29 of the Land Code of RM

prices for loft apartments are affordable for those who want to buy apartments but are limited in financial resources.

At first sight, building lofts offers solutions for a number of issues. But there is another side of the coin. The quality of the performed works leaves much to de desired. Much concern is raised in connection with the security of the renovated buildings. Many apartment owners are unsatisfied as result of building lofts at the top of the blocks.

Being a topic of great importance, which comes under article 47, paragraph 1 of the Constitution of the Republic of Moldova – provision of citizens with housing, the building of lofts attracted the attention of the ombudsmen. The ombudsmen appreciated the positive side of building lofts; this is offering to citizens optimal conditions for purchasing housing at a reasonable price. At the same time, the ombudsmen warn that the notion of "providing citizens with housing" should not be limited to providing this space free of charge.

During 2012, the Ombudsman Institution was informed several times by Chisinau inhabitants of apartment blocks, which were exposed to these *"profitable venture"* constructions. The petitioners complained that rather often these constructions are not coordinated with all the inhabitants of the block; the final consent for construction being taken only by the inhabitants of the last floor of the building. The companies which built the lofts do not realize in full the effect of performed works on the block and the landscaping, while the utility networks are not suited for operation for a large number of consumers.

Having analysed section II of the Chisinau City Hall Decision No. 16/5 of 2/08/2001 "On approval of the concept of building lofts on residence blocks in the city Chisinau", according to which in order to build the lofts it is necessary only the consent of the inhabitants of the last floor of the block, we came to the conclusion that it contravenes to the agreement principle, as well as the provisions of article 5 of the Law on condominium of the residence fund No. 913 of 30/03/2000. It states that "the common property of condominium includes all the allied parties in common use"[114]." Article 9, paragraph 2 of the Constitution of the Republic of Moldova provides that the property cannot be used against the rights, freedoms and dignity.

[114] In the context of the illegality of City Hall Decision No. 16/5 of 2/09/2001, on December 15, 2011, the Court of Appeals from Chisinau upheld the civil lawsuit filed by the Prosecutor's Office of the municipality Chisinau in the interests of the disabled inhabitants and pensioners residing in Pietrarilor street 14/2 and 14/4 from Chisinau versus Chisinau City Hall and Chisinau Municipal Council contesting the administrative decision and it was ruled the cancellation of the Decision and the Chisinau Municipal Council was obliged to introduce in the text "the consent of all inhabitants of the block".

Accordingly, the ombudsmen requested the local authority that the public property (the roof of the apartment block), where the construction of lofts is disposed, to be allowed with the consent of all the inhabitants of the block and not only with the consent of the inhabitants of the last floor. The modification and improvement of the administrative act, which would ensure full respect for human rights in this respect, was also requested

In the sent reply, the local authority ensured the Ombudsman Institution that the drafting and adoption of a new regulation was initiated.

Recommendations of ombudsmen

To improve the legal framework on housing condominiums, so as to enable an organ or an independent commission with control power for accurate and appropriate achievement of contractual clauses related to the process of building lofts above the apartment buildings by the involved stakeholders;

To amend and improve the regulatory framework to ensure full respect for human rights in the context of achieving the agreement principle in the process of building lofts above the apartment buildings;

To improve the leasing process of agricultural lands and its terms by creating a legal mechanism that would fairly and appropriately implement the provisions of the Law on lease in agriculture, especially of those related to the lease contract;

To review and improve the civil and land legislation in the context of creating rentable conditions for the agricultural landowners for a reliable management of the lands in private ownership.

12. Observance of human rights on the left bank of the Dniester River

An on-going unsolved issue, over the years, is the impossibility of the ombudsmen to intervene in the protection of human rights and freedoms of the people who live on the left bank of the Dniester River. This situation had determined the ombudsmen to propose in 2004 to international bodies to support the organization, in the districts from the conflict zone, of representations of the Centre for Human Rights to promote effective, objective and impartial monitoring of the situation, in terms of human rights, and to encourage the people of this region to defend their rights and interests.

Encountering with many difficulties, the Centre for Human Rights managed to open a representation in the town Varnita only on October 17, 2012.

Individual liberty and personal security, physical and mental integrity

The constitutional authorities, international bodies and other officials do not have access to places of detention in Transdnistria unless with the permission of Tiraspol administration. The activity of the National Preventive Mechanism against Torture does not extend to the places of detention in the region, these being outside any external control, including on behalf of international structures. In these circumstances, the region lacks a legal and effective mechanism of defence and protection of the people in the region.

Although the national legislation obliges the law enforcement institutions to initiate prosecution for any allegations of torture, the authorities invoke *de facto* lack of control on the Eastern territory of the country, decline their responsibilities and do not make efforts to protect the fundamental human rights. This argument is not acceptable in the context of state positive obligations. Accordingly, the Government could be found guilty for serious violations of the provisions of articles 1, 2, 3, 5, 13 of ECHR.

On the other hand, reopening negotiations with dialogue partners from Transdnistria could mean temporary success towards achieving and establishing the preconditions for human rights protection.

According to the information provided by Promo-Lex Association[115], "the deprivation of liberty of persons is made by structures that have assumed responsibilities of law enforcement and justice bodies. Moreover, there is no real and effective opportunity to influence the "decisions" of the Transdnistrian administration and of their illegal structures. At the same time, these "decisions" have results in the East of the Republic of Moldova. People are convicted, tortured, and imprisoned in inhuman and degrading conditions. Currently, there is no national mechanism for the rehabilitation of the victims of the Tiraspol regime".

On the territory of the town Bender there are two prisons subordinated to the Penitentiary Department of the Republic of Moldova. Over the years, the authorities of the town Bender prevent the normal activity of these prisons by disconnecting them from water supply, sewerage

[115] Promo-Lex Association is an apolitical and non-profit NGO, focused on the promotion of democratic values, of international standards in the field of human rights in the Republic of Moldova, including Transdnistria.

systems, and the heating network of the town. For this reason, it is difficult to supply the prisons with the minimum necessary for existence. Due to disconnections from the electric power network, it is not possible to provide uninterrupted supply of electricity to the prisons. The ombudsmen and Advisory Board members have unrestricted access to these institutions and periodically make preventive visits, whose results are communicated to the authorities.

Following the visits, the ombudsmen have publicly condemned the actions of Transdnistria related to the degree of compliance with the right to individual liberty and security of the person. Nevertheless, recommendations to create, in the limit of possibilities, conditions of detention appropriate to national and international standards were submitted to the administration of prisons No. 8 and No. 12 and the Police Commissariat from Bender.

Guaranteeing the right to physical and mental integrity is one of the priority areas requiring a qualitatively new approach. The experience on the right bank of the Dniester River on the implementation of the National Preventive Mechanism against Torture, the active involvement of the civil society in this activity would significantly improve the safeguards against abuses on behalf of power representatives. In this context, the ombudsmen proposed the extension of the activity of the National Preventive Mechanism against Torture in the Eastern part of the country.

Freedom of movement

The issues related to the freedom of movement in Transdnistria continued to be recorded in 2012 as well. In addition to partial resumption of the freight railway transport, other improvements were noticed.

The official delegations wishing to go to the left bank districts are required to prior notice the Transdnistrian authorities in order to get authorization. No consensus was reached on the legal status of cars registered in the Eastern region. A serious problem, related to ensuring the right of freedom of movement in the Transdnistrian region of the Republic of Moldova, remains the arbitrary location of illegal checkpoints by the representatives of Tiraspol administration in the localities in the security zone. Consequently, the access of farmers to their agricultural lands, which they have in possession, is limited. Persons are retained under the pretext "illegal border crossing".

CHR registered complaints coming from people residing in the Eastern region who are restricted movement on the territory of the left bank of the Dniester River in cars registered in the Republic of Moldova. In order to be able to move freely on this territory, the car owners have to pay a fee of 0.18 % of the vehicle cost, which is valid for a period of 60 days. After the expiry of 60 days, it is necessary to fill in a "customs declaration". In case of failure to comply with the term of staying on the territory specified in the declaration, a fine from 50 to 100 % of the vehicle cost is applied, with or without its confiscation. The cost for the vehicle valuation price must be paid by the vehicle owner.

The right to education

Restriction of human rights and of democratic process, based on equality, human values and cultural, economic and political diversity is reflected in the educational system.

Transdnistria has its own system of education, different from the national one. Laws that prohibit and stipulate sanctions for the use of the Latin alphabet[116] have been adopted.

In 2003, there was serious deterioration of the situation caused by the actions and declarations of Tiraspol administration in connection with the schools, where instruction is done based on curricula and textbooks approved by the Ministry of Education of the Republic of Moldova.

In order to solve the problems that the Moldovan schools confront, only in the period 2002-2003, 15 meetings at the level of experts in educational issues from the Republic of Moldova and Transdnistria, with the participation of OSCE Mission in Moldova, were held. Despite the fact that the Transdnistrian side committed, according to the signed protocols, to create appropriate conditions for the schools in question, they were not created. Moreover, measures have been taken to liquidate them, which led to a flagrant violation of children's right to education, the parents' right to choose the language of instruction for their children, as well as the children's right to study in their mother tongue.

In the autumn of 2004, the separatist authorities from Tiraspol have taken action, through the use of force, to close down the lyceums with instruction in the Moldovan language in Latin script. The victims appealed to the European Court of Human Rights on October 19, 2012. The Grand Chamber admitted the violation of the right to education of 170 applicants by the Russian

[116] The Law of MNR on languages of 8/09/1992.

Federation in the case *Catan and others vs. Moldova and Russia*. The case was filed both against the Republic of Moldova, on whose territory the region is found, and against Russia, who played a critical role in the formation and maintenance of the separatist administration in the region. The Court adjudicated damages of 1,020,000 euro for violation of the right to education of the ethnic Moldovans – pupils, parents, and teachers.

The Moldovan authorities have always supported the desire for further education and employability in the labour market in the Republic of Moldova of the Transdnistrian graduates. However, the certificates issued by the educational institutions from Transnistria cannot be internationally recognized. For this reason, in the case when the holders of such certificates want to continue their studies abroad or to get employed, the given certificates are substituted by the Ministry of Education. By the Order of the Ministry of Education No. 869 of 5/11/2012, the manner to perfect the study documents issued by educational institutions from the Eastern region of the Republic of Moldova and the town Bender was simplified.

A persistent problem for many years is that of unfair validation of the marks in the study documents, when the assessment of knowledge is performed in the system of five points valid for the Transnistrian region. The educational institutions from the region assess pupils' knowledge according to a five-point system, and the ones in the jurisdiction of Moldova according to a ten-point system. Thus, the marks of the Transdnistrian graduates, of any level, who decide to continue their studies in the educational institutions from the country, are equalled according to the established regulations by the Ministry of Education (maximum 9.5 for the mark 5). By the Order of the Ministry of Education No. 475 of 7/06/2012, the Regulation on the organization of admission to higher education (cycle I – Bachelor degree) in higher educational institutions from the Republic of Moldova was approved. Unfortunately, this document also preserves the same system of validation in the ten-point system: the marks "3", "4", "5" have as equivalents "5.5", "7.5" and "9.5" respectively.

The right to healthcare

Economic and political instability in the Transdnistrian region of the Republic of Moldova and the isolation of the region have a negative impact on the demography and the health of the region.

Since the self-declaration of the breakaway Transdnistrian republic, the central public authorities from the Republic of Moldova ceased to have access to the statistical indicators and epidemiological data, which led to the isolation and division of the health systems.

The main cause of increased mortality in the Transdnistrian region, as well as in the Republic of Moldova, is the cardiovascular and oncological diseases. Among the aggravating factors, which contribute to this situation, is the relatively long distance (90 km) between Tiraspol and Chisinau. This limits the physical access of citizens from Transdnistria to tertiary medical services.

Combating HIV/AIDS and tuberculosis in the Transdnistrian region, by using the models accepted by the Ministry of Health of the Republic of Moldova under international standards, is confronted with significant disadvantages and obstacles, particularly manifested by limited access to treatment, hospitalization of citizens from the Transdnistrian region and providing outpatient services in Chisinau. One of the main factors that determines these problems is lack of Republic of Moldova's citizenship. This induces legal restrictions in benefitting of the full spectrum of free of charge services, including for the patients suffering of HIV/AIDS and tuberculosis, which the citizens of the Republic of Moldova enjoy (hospitalization without payment, laboratory tests, etc).

There have been reported issues related to medical care under the mandatory health insurance policy.

By Government Decision No. 906 of 24/04/2010, a mechanism for examining the appeals of the citizens of the Republic of Moldova, residing in rural localities from the left bank and the administrative border localities was created, in order for them to obtain mandatory healthcare insurance policies. In spite of this, the persons, who are insured by the Government and the persons who buy their insurance policies, cannot benefit of the whole spectrum of medical services included in the Program of mandatory health insurance. This is because the medical institutions from the Transdnistrian region refuse to issue to patients referrals to medical-sanitary institutions falling within the compulsory health insurance system.

The right to property

In 2012, two types of problems remained without attention – indexation of citizens' deposits and the situation of the victims of political repressions, whose wealth was confiscated, nationalized or otherwise taken.

The ombudsmen have repeatedly expressed their opinion on the current manner of payments of indexation on citizens' savings by Banca de Economii (Savings Bank), which may be considered violation of the property right guaranteed by the Constitution, and which does not correspond to the concept of the European right on ownership and constitutional provisions.

While the indexation of savings on the right bank of the Dniester River is finalized, the inhabitants of the district in the Eastern part, who had savings in Banca de Economii as of January 2, 1992, have no possibility to recuperate the deposited money. This is because the Law on the indexation of citizens' savings in Banca de Economii No. of 12/12/2002 excludes this possibility until the financial-budgetary relations of the communities from the left bank of the Dniester River are restored with the state budget of the Republic of Moldova. Given that the problem on certain aspects of the right to property is delayed for an indefinite period, it contravenes to the principle of equality and non-discrimination. The ombudsmen have repeatedly warned[117] about the need to review Law 1530 but the issue of indexing the savings of the citizens of the Republic of Moldova in the branches of Banca de Economii in the localities on the left bank of the Dniester has not been solved in 2012 either.

The same uncertainty is known to the people who benefit of the right to recover the value of the goods illegally seized by being paid compensation. Given the significant number of complaints from citizens living in Transdniestria on this topic, the Ministry of Justice passed the proposed amendment of the Law on rehabilitation of the victims of political repressions No. 1225 of 8/12/1992, so as to extend the powers of special commissions from the adjacent localities to examine the applications of the given persons, related to the return of goods or recovery of their value through payment of compensations. After the entry into force of the discussed amendments on 28/09/2012, the Regulations on the return of the value of goods by paying compensation in case of the death of victims of political repression was approved by

[117] http://www.ombudsman.md/file/RAPOARTE%20PDF/Raport_2006.pdf;
http://www.ombudsman.md/file/RAPOARTE%20PDF/Raport%202007.pdf
http://www.ombudsman.md/file/RAPOARTE%20PDF/Raport%202009%20redactat.pdf
http://www.ombudsman.md/file/RAPOARTE%20PDF/finala%20raportului%202010.pdf

Government Decision No. 627 of 5/06/2007 and adjusted to the provisions of the new legal provisions[118].

The ombudsmen welcome these amendments and, at the same time, warn on the importance of continuing the revision of the laws in force in order to exclude all the discriminatory regulations regarding the citizens who live on the left bank of Dniester.

Children's rights

Limited access of the representatives of the Republic of Moldova's authorities, as well as of the organizations working in the field of children's rights, to the territory on the left bank of Dniester, does not allow the collection of official statistics and quality studies on the situation of children in this region. The available information, provided by the mass-media or by the few organizations that operate in the field, does not represent a comprehensive approach to child protection system. For this reason, it is not possible to draw clear conclusions regarding the observance of children's rights in Transdniestria.

Thus, the ombudsman found out from Chisinau press[119] about the situation of unattended children, originating from Transdniestria, who are more and more frequently found in Russia and Ukraine and their number is increasing in recent years. The ombudsmen expressed their opinion that the presence of the Border Assistance Mission to Ukraine and Moldova (EUBAM) on the Transdniestrian segment might have reduced the risk of fraudulent crossing of the border by children and the illegal transportation of minors out of the country.

Currently, the most difficult issues in the field of children's rights observance in the Trnasdiestrian region, identified by the ombudsmen, are related to the un-recognition by the authorities of the Republic of Moldova of the documents issued by the Transdniestrian authorities (court decisions on adoption, termination of parental rights, decisions establishing guardianship/ curatorship, etc.)

[118] Government Decision on amendments and completion of the Regulations on return of the value of goods through payment of compensation to the persons subjected to political repressions, as well as the payment of compensation in case of death due to political repressions No. 76 of 25/01/2013.

[119] www.arena.md. The information was provided by the specialist of the Swiss Foundation *Terre des Hommes* in an interview of the Tiraspol Agency *Novii Reghion*. In the last four years, 47 children found in Ukraine, 48 found in Russia, one in Romania, one in Italy and one in Belarus were included in the data base of the Foundation. The age of the children is between several months to 17 years old. The ones in Russia were born and abandoned in this country, travelled with the family and later were left unattended. As for the children found in Ukraine, most of them aged between 14 and 17, were identified in Odessa. Most of them appear in the records of Transdniestrian militia and crossed the border illegally on the border segment uncontrolled by the Republic of Moldova's authorities.

Some aspects of citizens' documentation

In the period October 30 – December 31, 2012, ten citizens appealed to Varnita Centre for Human Rights in connection with the procedure of documentation carried out by the Section on Registration and Documentation of the Population from Bender. Two of them have filed complaints about unjustified refusal and delays in issuing identify cards.

Generalizing the information found out during the citizens' receptions in audience, it was established that the persons residing in Transdniestria do not fully benefit of the facilities provided by the State for the issuance of identity cards.

Thus, contrary to the regulations in force[120], the citizens are refused documentation because of lack of proof that they possess housing. Moreover, they are recommended to look for people, who would agree to resister them in their homes. It should be mentioned that by the Decision on the control of the constitutionality of the provisions of section 10, paragraph 2 of the Regulations on the manner of issuing identity documents No. 16 of 19/05/1997, the Constitutional Court ruled and declared unconstitutional all the provisions that contain the phrases "permanent residence" and "residence permit".

In order to ensure the population from Transdniestria with identity documents issued by the national system of passports, the Government has determined[121] that the persons with permanent residence visa in Transdniestria and who meet the requirements of the Law on citizenship of the Republic of Moldova No. 1024-XIV of July 2, 2000, can confirm citizenship of the Republic of Moldova in any Territorial Office of Population Registration and Documentation by having the respective stamp applied in the passport of Soviet model (model of 1974). For this category of citizens, the Soviet model passports which contain the inscription about Republic of Moldova's citizenship and the state identification number of the individual (IDNP), are valid open-endedly. The Ministry of Information Technologies and Communication should provide a simplified procedure of confirming Republic of Moldova's citizenship for the people residing in Transdniestria.

According to section 5 of the Regulation on the Passport System in the USSR, approved by the Decision of the USSR Soviet of Ministers of August 28, 1974, passport validity is not

[120] The Instruction on the manner of issuing identity documents to the citizens of the Republic of Moldova, approved by Order 22 of 24/01/2007 of SE CRIS „ Registru": in the case when the citizen cannot prove evidence of possessing housing, S (B)EDP issues a notice on the issuance of the identity card without registration of residence due to lack of housing.

[121] Government decision on the measures of ensuring confirmation of citizenship to the people residing on the left bank of the Dniester (Transdniestria) No. 959 of 09/09/2005

limited in time. In the passports of the citizens, who reached the age of 25 and 45, new photographs, which correspond to the given age, are glued by the internal affairs bodies. The passports that do not have such photos are invalid.

Meanwhile, the national legal framework, governing the activity of the Sections for Population Registration and Documentation (SEDP) does not provide for the introduction of photos at the age of 25 and 45 in Soviet model passports (model of 1974). Therefore, to ensure the validity of the identity document, the citizens of the Republic of Moldova, holders of soviet model passports, resort to Transdniestrian internal affairs bodies for gluing new photograph that correspond to the given age of the holder. In the cases when the photographs were glued by Transdniestrian internal affairs bodies, Bender SEDP employees demand confirmation of identity under the provisions of section 1 of the Regulation on the manner of issuing identity documents of the National System of Passport, approved by Government Decision No. 376 of 6/06/1995[122]. In the case, when the identification of the person is impossible in the established order, his identity is determined by the court.

Therefore, although the state has taken steps to confirm citizenship and documentation in the Transdniestrian region, mechanisms to ensure the validity of the Soviet passport were not created.

According to section 1 of the Government Decision No. 959 of 9/09/2005, the persons with permanent residence in Trasndniestria and who meet the requirements of the Law on citizenship of the Republic of Moldova No. 1024-XIV of July 2, 2000, can confirm citizenship of the Republic of Moldova in any territorial Office of Population Registration and Documentation by having the respective stamp applied in the passport of Soviet model of 1974. Also, according to section 2 of the Regulation on the procedure of acquisition and loss of citizenship of the Republic of Moldova, approved by Government decision No. 197 of 12/03/2001, the person who is entitled to be recognized as citizen of the Republic of Moldova submits to the territorial Office of the Ministry of Information Technology and Communications, in whose jurisdiction he resides, an application-questionnaire addressed to the President of the Republic of Moldova to

[122] "Identification of people who have come of age and have not been documented before with identity cards, or their identity is impossible on the basis of the documents issued before, their identity is determined by the affidavit of one of the parents, legal guardians or other relatives of the I-III degree. In the case, when the identification is done by relatives of II-III degree, it is required to additionally submit other supporting documents issued by a local authority or other government agency, which possesses information about the given person (military card, pensioner card, certificate from the place of studies or workplace, etc. – if they contribute to establishing the identity of the person)".

which he annexes, in each separate case, the documents specifically listed[123] in the law, including the criminal record from the country of nationality or the country where he legally resided prior to settlement in Moldova. In this context, the employees of SEDP Bender request criminal record issued by the Internal Affairs Department of the Ministry of Internal Affairs from Transdniestria.

Although, measures to ensure the confirmation of citizenship and documentation of the population from Trandniestria have been taken at legislative level, there is no simplified procedure of confirming citizenship of the Republic of Moldova for the citizens with permanent residence in Transdniestria.

According to the Directives of the General Directorate of Civil Status No. 01/824, the civil status offices from Anenii Noi, Criuleni, Rezina, Sănătăuca, Ştefan-Vodă issue duplicates of civil status certificates on the basis of the copies of civil status documents recorded by the civil status bodies from Transdniestria to inhabitants from Grigoriopol, Rîbniţa, Bender, Tiraspol, Camenca and Slobozia. In 2012, about 5,000 inhabitants from Transdniestria received such duplicates from Varnita Civil Status Office.

On September 15, 2006, the General Directorate of Civil Status issued methodological letter No. 06-1863 by which requested the civil status offices not to recognize the civil status documents drawn up or amended on the basis of Transdniestrian court rulings.

In these circumstances, the citizens began to appeal to constitutional courts for confirming the facts that have legal value.

By letter No. 260/2 of 6/04/2007, addressed to the General Directorate of Civil Status of the Ministry of Informational Development and to Bender Court, the Supreme Court of Justice expressed its official position on judicial decisions adopted by Transdniestrian courts: *"the court*

[123] Copy of the identity card; criminal record from the country of nationality, criminal record from the country where legally resided prior to settlement in the Republic of Moldova; receipt for payment of the state tax; two photographs size 4.5x3.5 cm; the copies of civil status documents: birth certificate of minor children, certificates of marriage, divorce, change of name, copy of birth certificate of one of the parents or grandparents, in the case when the applicant was not born on the territory of the Republic of Moldova but is a descendent of those who were born on its territory; the copy of the birth certificate of one of the parents or grandparents or the certificate of permanent residence, which confirms the residence of the applicant or of his parents or grandparents on the territory of Bessarabia, Northern Bucovina, Herta regions and in MSSR before June 28, 1940, if the applicant has reason to obtain citizenship of the Republic of Moldova on the given ground; certificate from the place of residence which confirms the applicant's residence at the date of June 23, 1990 on the territory of the Republic of Moldova up to present, if the applicant has reason to obtain citizenship of the Republic of Moldova on the given ground; certificate from the competent authority which confirms deportation or refuge of the applicant or of his parents or grandparents from the territory of the Republic of Moldova starting with June 28, 1940, if the applicant has reason to obtain citizenship of the Republic of Moldova on this ground.

decisions made by Transdniestrian courts cannot be recognized as legal in the Republic of Moldova, as they are made by unconstitutional courts. We believe that the practice of recognizing the facts that have legal value is not acceptable either, in the case when the same illegal court decisions serve as argument (evidence)".

Subsequently, on April 10, 2012, the Superior Council of Magistracy adopted decision No. 209/14, according to which "*any document issued by the self-proclaimed Transdniestrian authorities contravene the Constitution from the outset, this equally refers to any ruling, decision, sentence pronounced by the courts illegally established in the given region. Thus, any collaboration and co-working of legal nature and proposals of legal solutions with the Transdniestrian structures are unacceptable".*

Thus, citizens are forced to obtain two court decisions on the same fact: one decision ruled by the Transdniestrian court and one ruled by the constitutional court. In these circumstances, in 2012, the Bender Court with headquarters in Varnita ruled on 297 decisions on the annulment of marriage, 29 on termination of parental rights and 18 on child adoption.

This procedure is not applicable in the situation when the child, adopted on the basis of a Trandniestrian court ruling, wishes to obtain national identity card as citizen of the Republic of Moldova after the age of 18. Under article 10 of the Law on the legal status of adoption, the constitutional court will reject the application for approval of adoption if the adoptable child has already turned 18.

After the ombudsmen's appeal to the vice-prime minister with prerogatives in issues of country reintegration, the latter made requests to the Ministry of Labour, Social Protection and Family and the Ministry of Justice in which he revealed the urgent need to initiate the procedure for amending the legislation in this respect, in order to liquidate the legislative gaps impeding law enforcement related to the protection of rights of persons from Transdniestria, especially the children's rights regarding adoption, guardianship, termination of parental rights, and deciding the child's residence place. So far, the given ministries have not taken steps to approach the vice-minister's appeal.

Conclusion

The new mechanisms for human rights protection are designed to offer an "alternative" vision on the social processes occurring in the Trandniestrian region and strengthen the existing instruments to ensure fundamental right and freedoms.

Therefore, it is imperative to place emphasis on negotiations for the protection of human rights and fundamental freedoms in the Trandniestrian region. The manner and depth, in which this problem will be solved, will undoubtedly influence the development and strengthening of human rights protection in the given region, and ultimately improve the rule of law and respect for democracy.

The cooperation relations established with international organizations involved in the settlement of the Transdniestrian conflict, including the participants in the "5+2" format, are, in the opinion of ombudsmen, some of the state's right solutions to ensure the observance of human rights and fundamental freedoms on the territory of Transdniestria. However, the dynamics and results of the consultations, within this format, determines the need for future clear strategies, the revision and adoption of the sector working groups strategy, approved by Government Decision No. 1178 of October 31, 2007, including the creation of the working group for human rights.

In the context of the above said, the ombudsmen reiterate that the decisions of the European Court for Human Rights indicate to the positive obligation of the state to protect its citizens, an obligation which persists even when the state's exercise of authority is limited on part of its territory, so the state has the obligation to take all appropriate measures in its power[124].

The ombudsmen are convinced that a broader approach of the spectrum of relations generated by the Trandniestrian conflict on the line of actions of international partners of the Republic of Moldova will significantly contribute to ensuring the guarantee of human rights and fundamental freedoms on the territory on the left bank of the Dniester.

[124]Ilascu and others vs. Moldova and Russia case

Chapter II

The activity of the Ombudsman and of the Advisory Council members under the provisions of the Optional Protocol to the Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment

Introduction

Torture is one of the most serious human rights violations. It destroys the dignity, the body and the spirit of the victims and has negative effects on their families and the community. Despite absolute prohibition of torture under international law, in isolated cases, it continues to be applied, especially in places outside public scrutiny.

Risk of torture and other ill treatment is everywhere. In some democratic states, national security interests prevail over the principles of human rights observance in the context of the "fight against terrorism", policies of the "iron hand against criminality", and the means used to obtain confessions.

Monitoring the places of detention by conducting regular and *ad hoc* visits represents one of the most effective ways of preventing detainees' torture and ill-treatment.

The reason for the introduction of continuous monitoring of places of detention, which are by definition with restricted access for the public, is that detainees are exposed to the risk of torture. Ill-treatment can result, inter alia, from the national penal policy, because of lack of financial resources to create adequate conditions of detention, from inadequate training of the staff or lack of a monitoring system.

In 2012, the National Preventive Mechanism against Torture (NPMT) made 251 visits to detention places. The fact that circumstances, which could be qualified as inhuman or degrading treatment, continue to be found in the visited detention places is extremely worrying. However, the prompt reaction of the administration of the majority of penitentiaries and police commissariats to the recommendations made by the NPMT, as result of the visits, is welcomed. This fact, in our opinion, encourages cooperation in the spirit of dialogue and understanding.

Currently, the National Preventive Mechanism against Torture still faces many challenges. To achieve the basic objective of the Mechanism, and namely, the prevention of torture, it is essential to regularly visit all detention places from the Republic of Moldova (about

70 institutions[125]). This task is impossible to carry out without sufficient human and financial resources, without a distinct subdivision within the Centre for Human Rights.

1. The visit of UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

The members of UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment visited the Republic of Moldova in the period October 1-4, 2012. The visit was made to consult and assist the National Preventive Mechanism against Torture in building its capacity and strengthening the mandate. Another objective of the visit was to assess the resources needed to reinforce the protection of persons deprived of liberty against torture and other cruel, inhuman or degrading treatment.

During the visit, the members of the Subcommittee met officials from the Ministry of Justice, Ministry of Foreign Affairs and European Integration, the Ministry of Internal Affairs, the General Prosecution's Office, Ministry of Health, Ministry of Defence, members of the Parliament, and representatives of the civil society. Given that one of the main objectives of this visit was to offer consultative assistance to the National Preventive Mechanism against Torture, a number of meetings with the members of the Advisory Council and with the employees of the CHR were held in order to discuss the working methods and to examine the ways of improving the efficiency of NPMT. The members of the Subcommittee together with representatives of NPMT visited Penitentiary No. 13 from Chisinau and IMPS "Psychiatric Clinical Hospital".

Based on the visit, the members of the UN Subcommittee wrote and transmitted to the National Preventive Mechanism against Torture a report in which a number of recommendations are made, including its publication. The Ombudsmen agreed with the members of the Advisory Board and decided that the UN Subcommittee Report should be made public and placed it on the webpage of the Centre for Human Rights from Moldova[126].

In order to ensure continuous dialogue and direct contact with the NPMT, the UN Subcommittee requested to be informed on the actions taken to implement the recommendations contained in the report by July 9, 2013.

[125]The figure does not include the number of military units.
[126]http://www.ombudsman.md/md/tematice/

2. The methodology of visits

In order to protect the persons against torture and other cruel, inhuman or degrading treatments and punishments, the Ombudsman, the members of the Advisory Council and other people, who may accompany them, make regular preventive visits to places, where are, or may be persons deprived of freedom. These visits have several functions: preventive, direct protection, documentation, a basis for dialogue with the authorities in charge of detention facilities.

It should be noted that under article 21, paragraph 1 of OPCAT, it is prohibited to order, apply, permit or tolerate any sanction against any person or organization for having communicated any information, whether true or false, to the Ombudsman, the members of the Advisory Council or any other persons who accompany them, when they exercise the function of preventing torture or any cruel, inhuman or degrading treatments or punishments.

In all visited by the NPMT institutions, the same methodology is applied. First, the composition of the group of monitors is determined, so as to ensure the required capacities and professional knowledge in accordance with OPCAT requirements. The visiting team usually consists of at least 3 persons, including one with the role of group coordinator. The visit usually lasts one day and depends on the size of the visited institution and the problems at the site. The other stages of the visit include the initial discussion with the administration, the visit of the rooms, individual and group discussions with prisoners, discussions with the staff, examination of registers and other documents, and final discussion with the administration.

Cameras and 4 in 1 Voltcraft environment measurement devices, which give comparative measurements of lighting, humidity, acoustics and temperature, are used during the visits.

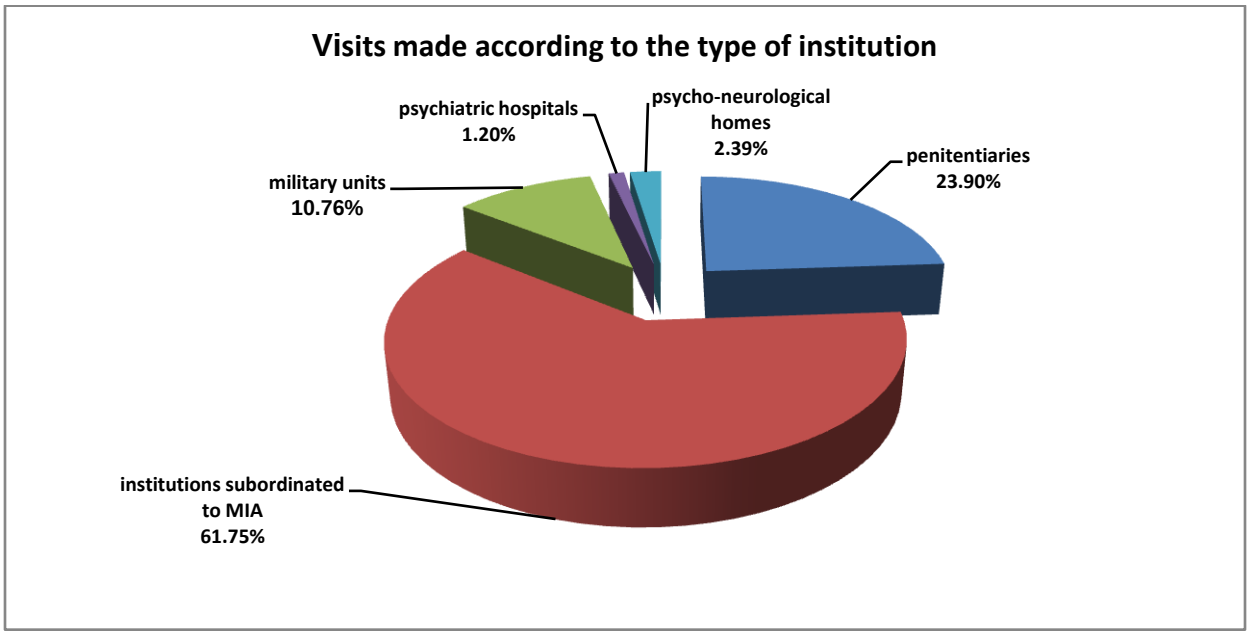
The report on the results of the visits includes information about the material conditions of detention and about the situation on observance of human rights related to distinct aspects such as catering, medical care, regime and activities, etc. The report contains the conclusions and recommendations of the National Preventive Mechanism against Torture. The reports on the made visits are submitted to the administration of the visited institutions, and where appropriate to the hierarchically higher institutions. The provisions of Article 22 of OPCAT require that competent authorities of the state examine the recommendations of the NPMT and enter into

dialogue with it on possible implementation measures. The implementation of the recommendations is verified mainly through correspondence and the monitoring of the term for submitting the reply.

3. Visits made in 2012

In 2012, the NPMT made 251 visits, out of which 12 to monitor the degree of implementation of the prior recommendations of the Mechanism. Most visits were made in the institutions subordinated to the Ministry of Internal Affairs (155 visits). Also, visits were made to penitentiaries (60), to military units within the Armed Forces (27), to psychiatric hospitals (3) and psycho-neurological homes (6).

The visits made by the NPMT in 2012 are shown in the figure below according to the type of visited institutions and the number of visits (in %).



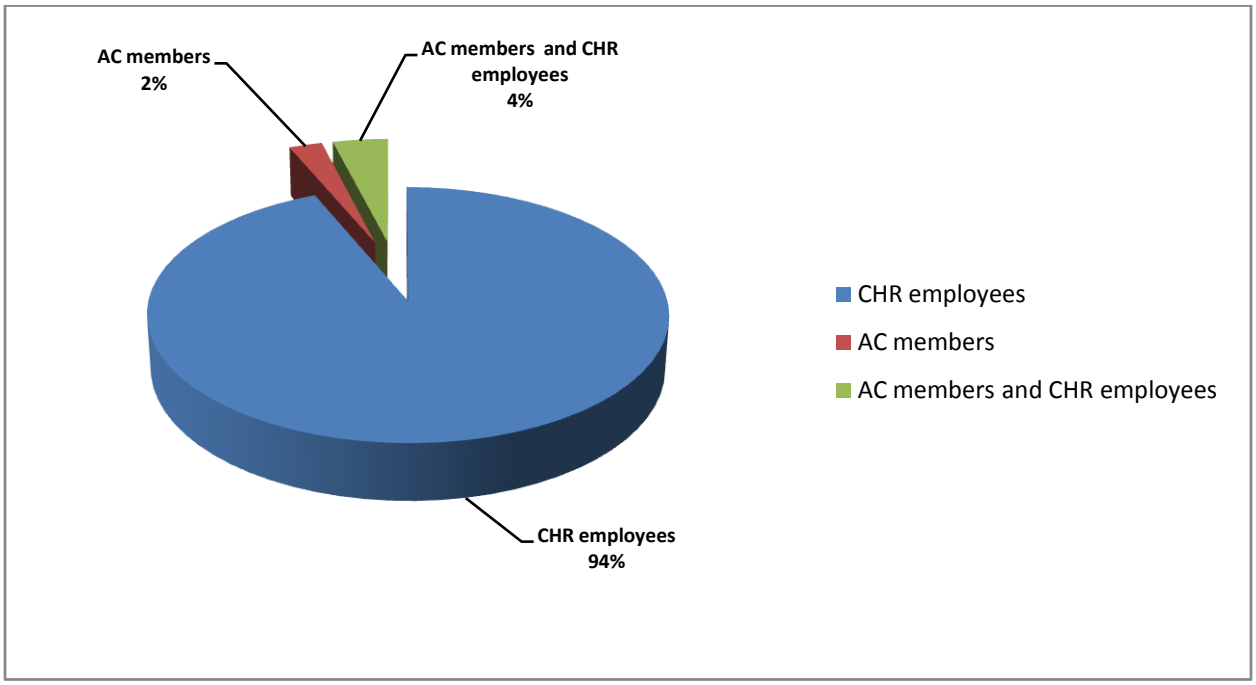
The table below gives an overview of all the visited places by NPMT in the period 2008 – 2012.

Type of visited institution	**2008**	**2009**	**2010**	**2011**	**2012**	**Total (2008-2012)**
institutions subordinated to the MIA	*	73	83	155	155	**466**
institutions subordinated to MJ	*	44	39	70	6	**213**

institutions subordinated to MH	*	6	2	4	3	**15**
institutions subordinated to MLSPF	*				6	**6**
Military units within AF	*	2	2	9	27	**40**
Total	**43**	**125**	**126**	**238**	**251**	**783**

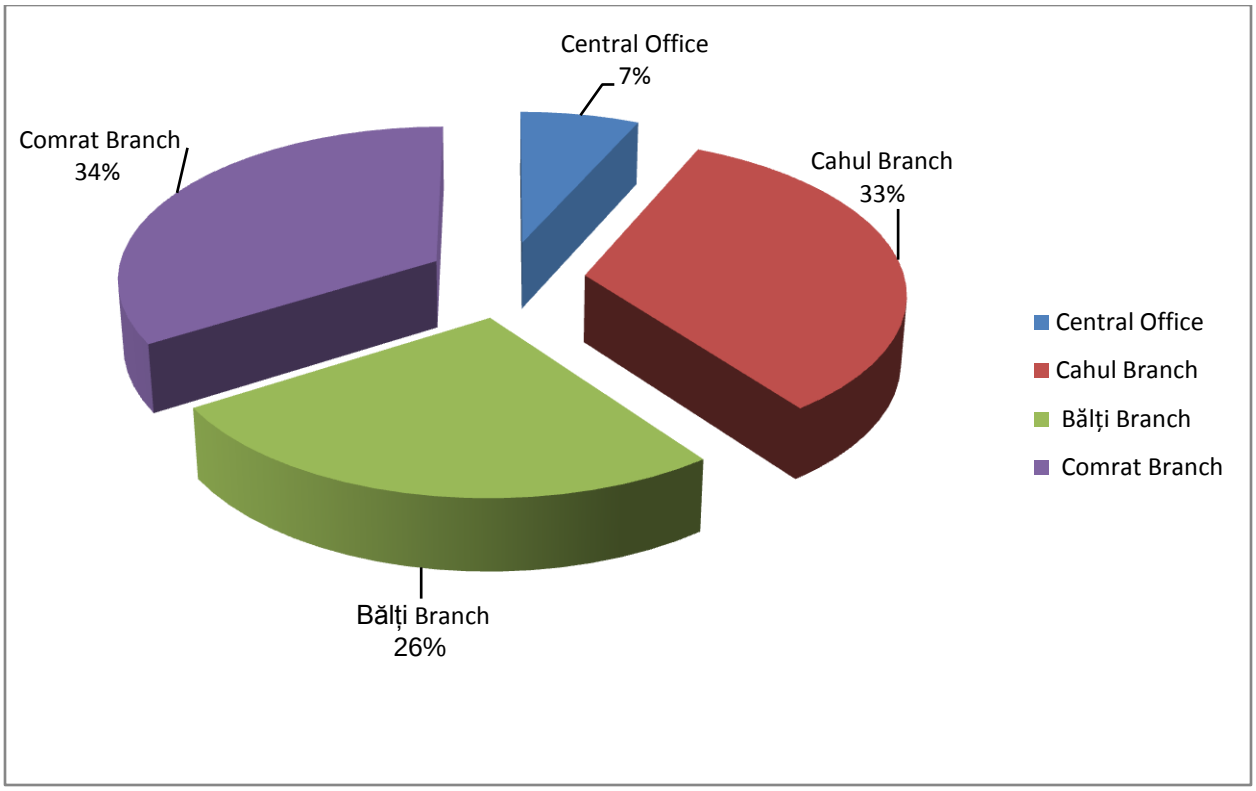
**no separate data have been collected*

The visits were made by the CHR employees, ombudsmen and members of the Advisory Council, depending on their availability: 225 visits were made by the ombudsmen and CHR employees; 10 visits by the members of the Advisory Council and 6 visits the members of the Advisory Council together with CHR employees and ombudsmen.



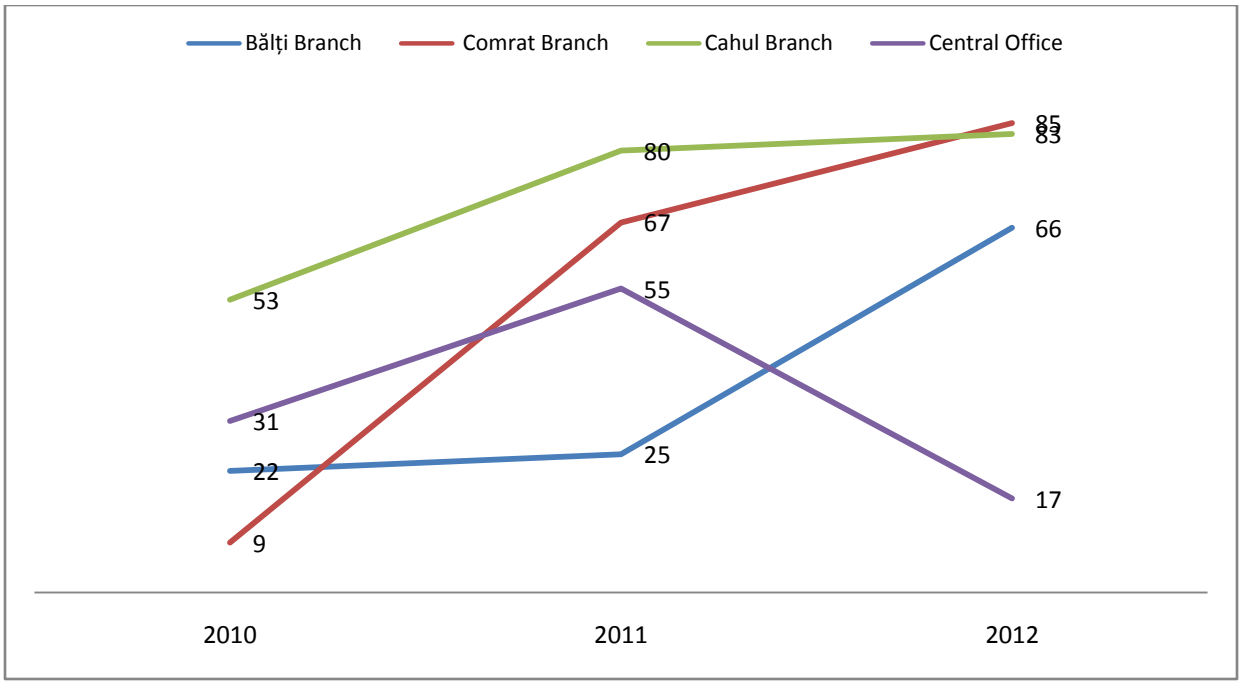
According to the provisions of section 45 of the Regulation on Human Rights Centre from Moldova[127], the representatives of the institution are in charge of making regular preventive visits to places, where there are, or may be persons deprived of liberty. Thus, they made a total of 234 visits: the employees of the branch in Balti – 66 visits, the branch in Comrat – 85 visits, the branch in Cahul – 83 visits, the central office – 17 visits.

[127] Approved by Parliament Decision No. 57 of 20/03/2008



The number of visits made by the branches increased due to the acquisition, with the support of European Union Delegation to the Republic of Moldova, of 3 cars at the end of 2011. Thus, they have proved to be effective and significantly contributed to carrying out the NPMT tasks.

year	No. of visits Bălţi Branch	No. of visits Comrat Branch	No. of visits Cahul Branch	No. of visits Central Office
2010	22	9	53	31
2011	25	67	80	55
2012	66	85	83	17



With the increasing number of visits made to the mentioned institutions, an increased number of reaction acts of the ombudsmen is observed, including proposals for improving the administrative work. Thus, during the year, pursuant to article 27 of the Law on Ombudsman, 29 notices were issued under article 28, paragraph 1, letter b); 13 requests were made under article 29, paragraph 1, letter b); 3 proposals were forwarded to improve the activity of the administration. Also, two proposals for the amendment of the Criminal Code and Criminal Procedure Code were formulated.

Reaction acts

Type of reaction	**2008**	**2009**	**2010**	**2011**	**2012**	**Total (2008-2012)**
Notices (art.27 of Law No. 1349 on Ombudsman)	2	11	34	28	35	110
Recommendations (art.29 p.(1) letter b) of Law No. 1349 on Ombudsman i)				4	3	7
Requests (art.28 p (1) letter b) of Law No. 1349 on Ombudsman)	2	17	17	9	13	58
Proposals to amend the legal framework					2	2
Total	4	28	51	41	53	177

The activities of CHR and of the members of the Advisory Council in combating the phenomenon of torture and ill treatment, in order to improve the conditions in which the persons with limited personal freedom are detained and to train certain professional groups, contributed to reducing the number of petitions addressed to the ombudsmen by people who allege abuses on behalf of state agents (see the chapter "*CHR Activity in figures*").

4. Institutions under the Ministry of Internal Affairs

General aspects

A democratic society shows its desire for order and freedom, which are two great hopes of the people.

According to some opinions, respect for human rights is somewhat inconsistent with the law enforcement means, meaning that breaking the law is sometimes unavoidable, such as, for example, use of physical or psychological pressure in order to obtain information or excessive use of force to perform an arrest. This way of thinking is unacceptable and cannot be tolerated, as respect for human rights by police employees is a requirement in law enforcement. Violation of human rights, and especially of ill-treatment, decreases the efficiency and diminishes the role of police in the difficult process of exercising professional duties.

Using physical force and means of restraint, under the law, are extreme measures and their application requires satisfactory arguments. In this context, it should be mentioned that the international human rights standards on police work serve as a source of guidance in the performance of policemen's duties. It is the task of the Ministry of Internal Affairs to permanently familiarize the employees with the main international instruments governing human rights and with the provisions of the national legal acts, so that they are able to use them in their daily activity.

Given the need to eradicate any type of abuse by the police, the inclusion of some specific objectives, to mitigate torture and other inhuman or degrading treatment in the Action Plan on Human Rights of the MIA for the period 2012-2014[128], is welcomed. They read:

[128] MIA Plan 2012-2012 Human Rights, www.mai.gov.md

"to build the capacity to prevent and combat torture and other ill-treatment through organizing training courses for the employees of prosecution bodies; to effectively investigate cases of torture and other inhuman and degrading treatment and reduce the incidence of cases of torture and other ill treatment applied to persons in prosecution custody through a series of events specified in the Plan; to point out the cases when the employees of internal affairs bodies used inhuman or degrading treatment on detainees; to provide a unique record of cases of mistreatment, inhuman or degrading treatment applied by the MIA employees; to consolidate the National Preventive Mechanism against Torture by informing the employees of subdivisions, where there are persons deprived of freedom, on the competences, prerogatives and rights of the members of the Advisory Council in its capacity as National Preventive Mechanism against Torture.

Prevention of ill-treatment in the institutions under the MIA is one of the primary tasks of the NPMT. Thus, 155 visits to 28 out of 43 Police Commissariats were made in 2012.

During the year, 8,708 people, compared to 7,996 in 2012, were detained in the institutions subordinated to the police. Of this number, 642 persons were detained for atonement of administrative arrest[129] under the provisions of article 313, paragraph 3 of the Enforcement Code[130]. Like before, in 2012, the authorities have not taken steps to build houses of arrest, whose operation is stipulated in the Law on the penitentiary system No. 1036 of 17/12/1996. In the opinion of the ombudsmen, the detention of persons in such institutions would reduce the phenomenon of torture, due to the possibility to avoid the direct contact between the arrested persons and the inspectors of criminal police.

It is a positive thing that the detention of persons, detained or arrested for a period exceeding 72 hours, is no longer allowed in the majority of police commissariats. On the expiry of such a term, the persons in police custody are transferred, as a rule, to penitentiaries. As exception from the general rule, the detention of persons in preventive arrest[131] still happens in some police commissariats. Thus, this term exceeds 10 days in Chişinău, Soroca, Bălţi, and Comrat.

[129] Informative note on the results of DIJ of DGPOP of DP of MIA of the Republic of Moldova during 12 months of the year 2012

[130] The execution of preventive arrest is done by penitentiaries, including the pre-trial isolators of the Penitentiary Institutions Department of the Ministry of Justice

[131] Enforcement Code, article 303, paragraph (1): persons to whom preventive arrest is applied are held in penitentiaries.

The transfer of the preventive detention prerogative from the subordination of the Ministry of Internal Affairs into the subordination of the Ministry of Justice, the validity and legality of holding the arrested and detained persons in the institutions subordinated to the Ministry of Justice is a highly debated issue in the context of implementation of the Strategy of Reforming the Penitentiary System[132], of the National Action Plan on Human Rights for 2011-2014, and of the amendment of the regulatory framework governing the operation of institutions that provide the detention of persons. Up to now, there is no common policy that would determine the status of the police temporary detention facilities, there are no rules that would regulate the registration and access of persons on the premises of the police buildings, the rules of food supply and personal hygiene of the detainees in police custody are nor regulated and observed, rules for the inmates in the penitentiaries. The rules that would regulate the procedure of transferring the arrested persons from penitentiaries to police temporary detention facilities are not set either. This creates prerequisites for the persistence of torture and other ill-treatment coming from the policemen.

We welcome the MIA initiative to develop an Instruction on the operation of temporary detention facilities of the Ministry of Internal Affairs. However, the experience shows that being kept in police custody for a long period, as well as the lack of strict regulations on recording the access of persons to police premises, contribute to the perpetuation of ill-treatment. For this reason, the strategy on preventive visits to police commissariats was modified within the activity of the NPMT in 2012. The members of the working group focus their attention on monitoring temporary detention facilities, as well as of the offices of police employees. Making preventive visits to police stations outside the police commissariats is a priority.

A matter of efficiency of the NPMT is to ensure unrestricted access of its members to information on the number of arrested persons in detention places pursuant to article 4 of OPCAT, as well as the number of these places and their location. In 2012, we did not encounter difficulties related to access to places of detention and information, with the exception of some isolated cases. Thus, the head of remand centre of the police commissariat from Ceadir-Lunga forbade access to the cells of the isolator by arguing the inefficiency of the visit. Another case took place on 24.02.2012 at the Police Commissariat of the Centre sector of Chisinau when the

[132]Action Plan for 2004-2020 on the implementation of the Concept of reforming the penitentiary system, Government Decision No. 624 of 31.12.2004, M.O. No. 13-13/101 of 16.01.2004

guard employees refused to submit the record registers. These incidents demonstrate that, in spite of the made efforts, the police employees are not sufficiently informed about the legal provisions that regulate the activity of NPMT. Moreover, the ombudsmen and the CHR employees periodically organize, at request, thematic trainings for different professional groups, including the staff of police commissariats.

Conditions of detention in temporary remand centres

During the visits made in 2012, it was found that in some institutions under MIA, the conditions of detention in the temporary remand centres are better than in the penitentiaries with the status of prosecution remand centre under the Ministry of Justice. The General Police Commissariat of the city Chisinau, Nisporeni CPR (Rayon Police Commissariat), Teleneşti CPR, Orhei CPR serve as examples. MIA must make efforts to ensure detention conditions in the rest of police commissariats. The situation is alarming in Comrat CPR, Soroca CPR, Causeni CPR, and Bender CPR.

It should be mentioned that the activity of the European Committee for the Prevention of Torture (CPT) is conceived as integral part of the human rights protection system of the Council of Europe. The CPT puts into action a "proactive" extrajudicial mechanism alongside with an existing reactive judicial mechanism of the European Court for Human Rights. Its activity in this domain is crucial and is used by ECHR when violation of article 3 of ECHR by the signatory states is found.

In the first report as a follow-up of CPT visit to the Republic of Moldova in the period October 11-21, 1998, the following recommendation was made: *"all police cells should be clean, with reasonable spacing for the persons supposed to co-live, have satisfactory lighting for reading and adequate ventilation; the cells should benefit of daylight. In addition, they should be set in such a way as to allow the detainees to rest (i.e. to have a chair or bench), and the persons obliged to stay in custody overnight should be provided with a sofa and clean blankets. The persons deprived of liberty should be able to meet their physiological needs in the desired time in clean and decent conditions; they should have adequate conditions for personal hygiene. These persons should have access to drinking water and food at regular hours, including a full meal at*

least once per day. The restrained persons for more than 24 hours should have walks in the open air to the extent possible"[133].

Based on the provisions contained in CPT standards, the members of the monitoring group of the NPMT focused on checking the material conditions in the cells of temporary detention facilities during their visits; the quality and quantity of food supply to detainees in police custody; the appropriateness and quality of medical care.

The detention conditions found in 2012 have not radically changed from those found by CPT in 1998. There are 8 – 10 cells in the majority of the operating temporary detention facilities, Of these, only 2-5 cells, repaired back in 2010, are used for detention, with the exception of Police Commissariats from Chisinau, Balti, Comrat and Causeni where the number of used cell is higher due to the operation of regional courts of appeals.

The temporary detention centre of Chisinau General Police Directorate (6 Tighina street) was opened on February 9, 2012. It was renovated with the support of the Council of Europe and European Union. The modernization of the centre was made according to the current standards, the cost of works amounting to 250,000 euro. The cells were designed so as to allow adequate lighting and ventilation. The cells are equipped with comfortable beds and new linens. There are sanitary areas and sinks with constant water supply and toilets that ensure privacy. The video cameras installed in the cells ensure the safety of the persons found in the isolator.

Although in 2010, in the majority of temporary detention facilities a large number of cells were repaired with the support of the Government, in Police Commissariats from Comrat, Ceadîr-Lunga, Basarabeasca, and Rîşcani there were cases when the detainees were placed in unrepaired cells. The Ombudsman, in its capacity of NPMT, expressed concern about holding people in unrepaired cells and recommended to seal them.

Another issue, which continues to be treated with indifference by the authorities, is the alimentation of the people in police custody. At present, food supply of the detainees in temporary detention facilities subordinated to the MIA is done by concluding contracts with local economic agents, according to Government Decision No. 609 of 29/05/2006 "On the approval of minimum daily meals to detainees and of detergents". The daily amount of food is set at the price of not less than 15 lei, 3 meals per day. Implementation of Government Decision

[133]Report addressed to the Republic of Moldova on CPT visit made on October 11.10.1998- 21.10.1998, Strasbourg, 14.12.2000, p. 19

No. 609 for food supply to the persons held in temporary detention facilities subordinated to the MIA is based on the provisions of article 435, paragraph 6 of the Contravention Code. According to them, the detained person is provided with at least the conditions stipulated in the Enforcement Code of the Republic of Moldova for the persons subjected to preventive detention measures. The provisions of article 306, paragraph 1 of the Enforcement Code, which stipulate the provisions of Chapter XXII of the present Code related to the detention conditions, are correspondingly applied to the persons under custody in the manner that do not contravene the provisions of the given title. But the conditions and norms for providing food to the persons from prisons are not entirely applicable to the remand persons held in temporary detention facilities subordinated to the Ministry of Internal Affairs.

The problem of food supply still remains current for the remand persons in the period when they are escorted from prison to police stations or to courts for criminal prosecution or participation in court hearings.

Another component of proper treatment of detainees in police custody is providing a minimum medical care. The guarantee of being examined by a doctor is one of the three guarantees meant to prevent torture and ill-treatment. In the majority police stations, there are employed medical assistants, but at present their activity is mostly a formality. The issue regarding the medical examination of the detained persons outside the working hours of the medical personnel or during the night is still persisting. However, some police stations do not have employed medical assistants and in the cases when the detained persons complain of health problems, the medical emergency service is called.

The existing problems related to health care could be definitely solved after the construction of arrest houses, meant for holding remanded, persons held for administrative offences; sentenced to imprisonment, in the cases when it is necessary to provide preventive, security or protection measures for them, as well as persons for whom the initial punishment in the form of a fine or unpaid community work was replaced by imprisonment.

Aspects related to prevention of torture

Any person has the right to physical and mental integrity. Ill-treatment of persons in custody of state authorities, including of the police, is strictly prohibited. The national legislation

and international standards prohibit torture in absolute terms, even when fighting with terrorism and organized crime[134].

The most vulnerable are the persons detained by the police. The risk of their being subjected to maltreatment persists from the first moments after arrest. Equally vulnerable are those who are interviewed in the police offices in the absence of a lawyer.

It is namely for these reasons and following the CPT recommendations, that 3 guarantees for detained persons were set up, which have also been included in the Instructions on the operation of temporary detention facilities:

1. The right to notify detention to a third chosen party (a member of the family, a friend);
2. Right to have access to a lawyer;
3. The right to request medical care, including by an independent physician.

As part of NPMT activity and as outcome of analysing the petitions addressed to the prosecution bodies, 7 requests for examining the opportunity to initiate criminal cases on maltreatment by police or DIP employees were made, three out of seven requests resulted in filing criminal investigations.

According to the synthesis information of the General Prosecutor's Office, the following torture-related situation is relevant for the last 3 years:

Period	Category of notifications registered under the articles of the Criminal Code						
	Art. 166[1]	Art. 309	Art. 309[1]	Art. 328 p. (2) and (3)	Art. 368 (with application of violence)	Art. 370	Total
2010	-	19	284	491	2	32	828
2011	-	23	295	587	26	7	958
2012	9	18	391	509	37	6	970

An effective means of collecting data on ill-treatment is the *"hot-line",* a service established by territorial and specialized prosecution bodies (51 hotlines involving in this activity 70 prosecutors). Information about the operation of this service was published in the local

[134]Corsacov vs. Moldova

newspapers, displayed on the premises of the local government establishment and placed on the website of the Prosecutor General's Office.

According to an analyses, conducted by prosecutors, in most cases, police employees resort to the use of violence in order to obtain confessions from people or self-denouncements. Such actions are also generated by tendencies to obtain favourable statistical indices related to crime discovery.

Of the total number of notifications on application of torture and ill-treatment, the actions that are based on the application of blows with the hands and feet prevail – about 66 % of complaints. About 11 % of notifications refer to the abusive application of special means, the use of guns, special equipment, other objects (sticks, water bottles, books). The maltreatment of persons ended in most cases with minor or mild injuries; in 25 cases with average injuries and in 5 cases with serious for the health injuries.

In 2012, criminal proceedings were initiated in 140 cases (in 2011, 108 cases were initiated); 46 criminal cases on application of ill-treatment were submitted with indictment to court (in 2011 - 36 cases).

With reference to the statistics of the examination of cases in court, in 2012 under article 309^1 of the Criminal Code, 13 sentences were pronounced on 30 persons. Of these, 5 sentences were pronounced on 10 police officers. All those convicted were sentenced to conditional suspension of the sentence, a person was fined.

In this context, the prosecutors stress the need "to prioritize the professional training of police officers and urge them to refuse the application of maltreatment; to conduct on-going relevant training that would integrate the human rights principles as an important component of the strategy for the prevention of maltreatment".[135]

The role of prosecutors related to the effective investigation of cases of alleged torture is essential. They are obliged to thoroughly investigate the alleged cases of torture having as task to find the truth, the perpetrators, the consequences of maltreatment cases, both physical and mental. In 2012, under the aegis of the National Institute of Justice through the Joint Program of the Council of Europe and the European Union, a number of seminars on strengthening measures

[135] Informative note of Prosecutor General's Office for the year 2012 on statistical data on the work of the prosecutor in charge of investigating cases of torture and ill-treatment in regional and specialized prosecution institutions.

to combat maltreatment and impunity, were conducted for the prosecutors specialized in investigating cases of torture.

In 2012, a number of amendments to the Criminal Code, the Code of Criminal Procedure, the Enforcement Code and other normative acts were made in order to perform the commitments made by the ratification of the international treaties against torture, inhuman and degrading treatment, so as to eliminate the existing deficiencies in this respect at legislative level.

The modifications introduced by Law No. 66 of 05/04/2012 are worth appreciation. According to these, section 3^1 was introduced in article 143 of the Code of Criminal Procedure. It establishes the obligation to dispose of and to perform mandatory expertise to find out the mental, psychological and physical state of the person alleged of having committed acts of torture, inhuman or degrading treatment.

Also, based on Law 252 of 08/11/2012, article 147 of the Code of Criminal Procedure was completed with section 1^1 which stipulates that in cases of torture, complex expertise, forensic and psychological examination, and, where appropriate, other forms of examination are mandatory. This provision will enable complex expertise, as torture involves both physical and mental damage.

The introduction in the Criminal Code of a new article "Torture, inhuman or degrading treatment" (article 166^1) is an additional reason for the police officers to understand the inadmissibility of applying torture, as the penalties for such acts of torture involve real punishment by imprisonment.

The notifications received by the Centre for Human Rights in 2012 demonstrate the veracity of the conclusions of the National Preventive Mechanism against Torture on the persistence of the phenomenon of torture and ill-treatment in the institutions under the MIA.

During a preventive visit made by a member of the Advisory Council to the General Police Commissariat in Chisinau on January 20, 2012, there appeared reasonable suspicions in connection with maltreatment of citizen F.A., resident of a suburb in Chisinau. From the accounts of his relatives, he was beaten inside the office of the police officers and forced to admit a crime he did not commit. Immediately after the first interview, which took place in the absence of a lawyer, citizen F.A. was transferred to the temporary detention centre of Anenii Noi CPR, the reason for this being the repair works in the detention centre from Chisinau GPC. Although the member of the Advisory Council, who made the visit, knew for certain that the remand was

on the premises of Chishinau GPC, when information on the given person was requested, the person in charge at the Commissariat could not provide credible and clear information about F.A.' s whereabouts. In conclusion, the deficiencies in the control of employee activity on behalf of Chisinau GPC leaders, non-observance of the rules on the escort of remanded from one police establishment to another led to maltreatment of the remanded.

Citizen V.P., resident of Balti, registered a complaint at CHR in which he alleged that after detention he was escorted to CPM Balti and was maltreated by 3 police officers in an office. The petitioner mentioned that he was undressed, cursed and threatened with death, hit with a bottle full of water on the head, hung on an iron bar and raped with a wine bottle. Based on the complaint and the examination, the ombudsman submitted a notification but the Prosecutor's Office in Balti decided against criminal proceedings.

On September 11, 2012, the employees of CPR Briceni escorted the minor S.V. from the gymnasium of the village Criva, Briceni district to the police station in the village Drepcauti. Here he was maltreated by a policeman being forced to admit having committed a theft. The ombudsman submitted a notification on the given case. The Prosecutor's Office from Briceni decided not to initiate prosecution. However, the prosecution established irregularities in the policemen's action – abuse of power, in connection with the fact that under article 270, paragraph 1, section 1) letter h) of the Code of Criminal Procedure, in the case of crimes committed by minors, investigations are conducted by prosecutors.

The lack of strict procedures for the registration of persons brought to the police stations creates premises for the person to be subjected to torture and maltreatment. Thus, on November 15, 2012, citizen A.G. was attacked by an unknown person. Only after being felled to the ground, handcuffed and kicked across the body, he realized that he was attacked by policemen. He was escorted to the police station from the town Singera, where he was beaten by the policemen and forced to admit committing a theft of goods. He was hit by a policeman for the reason that the policeman's watch broke at the moment of arrest. At present, the circumstances of the case are being investigated by the prosecution.

Torture and ill-treatment applied by police officers continues to be a dangerous phenomenon in the Republic of Moldova. It is important to acknowledge that torture entails negative consequences both for the victims and for the persons that use such practices in their professional activity. In this context, the National Preventive Mechanism against Torture has not

only the mission to make ad hoc visits to the establishments under the police, but also to promote zero tolerance of torture, inhuman and degrading ill-treatment.

108 notifications have been registered and examined concerning complaints and denunciations of the participants in April 2009 protests on alleged cases of torture, punishment, inhuman or degrading treatment by the police officers. Prosecutors took action on opening investigations in 31 of these cases.

Having made investigations under Article 274 of the Code of Criminal Procedure (including after rechecking the materials rejected by the Department against Torture), a total of 71 criminal cases were initiated, as follows:

- 42 cases under article $309^1$of the Criminal Code;
- 19 cases under article 328, paragraph 2, letter a) of the Criminal Code;
- 10 cases under other categories of offense.

Following the corroboration of all collected evidence, it was decided to dismiss and terminate prosecution in only 8 cases.

In the other 25 cases, the prosecutors suspended prosecution under section 2), paragraph 1, article 287/1 of the Code of Criminal Procedure on the ground that the persons, who might be accused, were not identified.

In the prosecution of these cases, a lot of prosecution work was carried out, but because the persons, who acted illegally, had hoods on their heads or the victims were tortured while they were up against the wall, or with the head bent, the perpetrators could not be identified.

It is namely on such facts, the use of violence in police stations by persons who cannot be identified, that 4 criminal proceedings were initiated under paragraph 1, article 329 of the Criminal Code – negligence at work committed by decision-makers of police commissariats from Chisinau GPC and Centre, Buiucani, Ciocana sector police stations; 3 of them were submitted with indictment in court.

The prosecutors requested provisional suspension from office of 14 employees of the MIA on the examined criminal cases. At the moment, this measure of constraint follows to be applied to only 9 defendants; 5 of the accused contested and the courts satisfied their contestations. Prosecution was finalized with indictment and submitted to court in 28 criminal cases against 45 policemen.

As result of judicial examination, trial courts have ruled different sentences against 34 policemen in 19 criminal cases (in two cases the files were joined in one proceeding).

- Conviction sentences were pronounced on 5 cases against 14 policemen;
- A sentence for the termination of the case was pronounced on one case against one policemen;
- Acquittal sentences were pronounced on 13 cases against 20 policemen.

Of these sentences, 3 court rulings became irrevocable, 4 persons were acquitted on this ground.

In 5 cases, the sentences were reversed by the courts of appeal, thus it was pronounced: 3 conviction rulings against 5 persons (2 acquittal sentences were annulled, and one conviction with the acquittal of only one accused) and 2 rulings of termination of proceedings against 5 persons (thus being annulled one conviction sentence against 3 persons and one acquittal sentence against 2 persons).

The court of appeals also annulled 2 acquittal sentences against 2 police officers and ruled their conviction.

At present, the prosecutors continue the investigations on 10 cases in which prosecution falls under article $309^1$of the Criminal Code.

Recommendations:

- To ensure compliance with legal provisions on detention on persons in preventive arrest;
- To ensure the rights of detainees, especially the right to inform relatives about detention, the right to a lawyer and the right to be examined by a doctor;
- To provide on-going training for police officers in terms of spreading the message of zero tolerance of torture;
- Provide psychological support to police officers in order to anticipate and avoid psychological problems caused by professional stress;
- Extend the installation of video surveillance system on the premises of all police commissariats and police stations;
- To build houses of arrest to ensure detention of the remanded.

5. Institutions under the Ministry of Justice

General aspects

Given the tasks assigned by law, the penitentiary system is not only a medium for criminal penalties, exclusion of the guilty individual, but also a place for humanization, in which the prisoner has to find the support needed to find effective solutions of social reintegration after exit from detention. Therefore, the execution of sentences aims to create in prisoners the will and skills, which, after release, will enable them to live in respect for the law and develop the sense of responsibility.

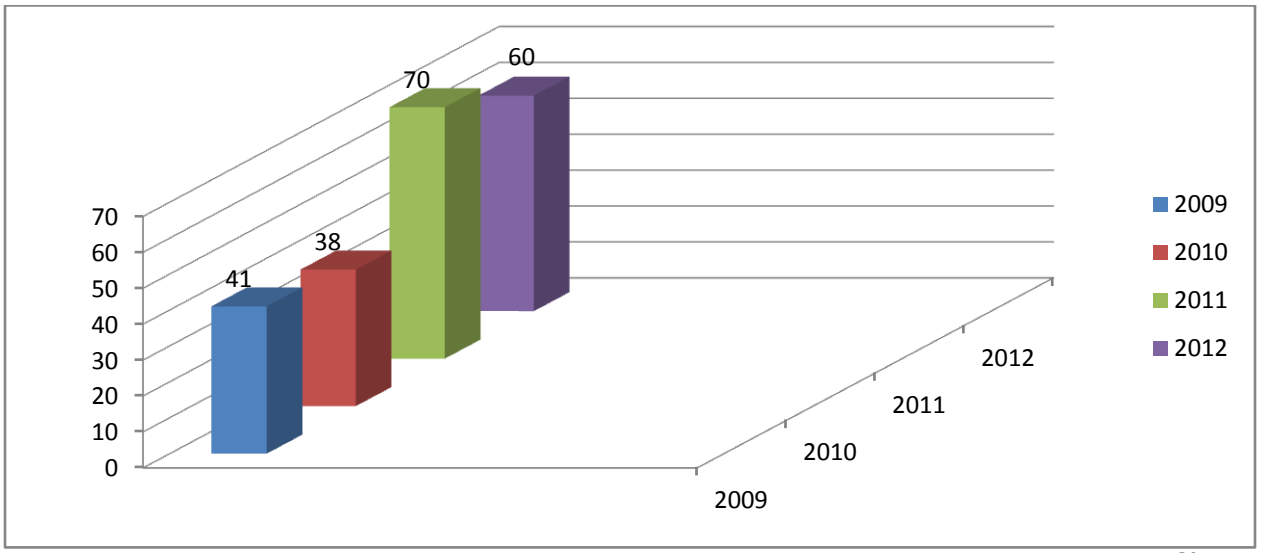
The society needs prisons, social institutions, which help reduce criminal behaviour. From this perspective, it can be deduced the meaning of developing the penitentiary institution, as a public service specialising in the recovery of those with serious or very serious criminal behaviour. Its function of *specialized social assistance* obviously weighs over the *"custodial"* one. In this context, by adopting the Law on probation, the legislative established a mechanism for the control of persons in conflict with the criminal law and their re-socialization, adaptation of persons released from prisons in order to prevent them from committing other crimes[136]. The ombudsmen expressed their opinion on the effectiveness of implementing this mechanism in a thematic report made in the period 2011-2012[137].

In the Republic of Moldova there are currently 17 penitentiaries operating under the Ministry of Justice (10 prisons of closed type, 5 with the status of pre-trial detention facility; 3 prisons of semi-closed type; 1 prison for medical purposes, 1 prison for women, 1 prison for former law enforcement employees; 1 juvenile prison).

In 2012, 60 visits were made to 15 penitentiaries within the NPMT activity.

[136] Law on Probation No. 8 of 14/02/2008.

[137] http://www.ombudsman.md/file/RAPOARTE%20TEMATICE%20PDF/FINAL%20RAPORT%20probatiunea%20(1)



Following these visits, under the provisions of the Law on Ombudsman, 12 notices[138] and a recommendation on improving the work of the administration [139] were formulated and sent to the administration of penitentiaries. In the sent notices, a series of recommendations were made on the conditions of detention, medical assistance, relations between the convicts and the administration, the material equipment of the penitentiaries. Thus, it appears that year by year the same problems remain unsolved in the penitentiary system, but which are in the centre of attention of Ombudsman as NPMT:

- Lack of adequate detention conditions;
- Inadequate healthcare;
- Overcrowded dormitories.

[138]Article 27, paragraph .1[1]) of the Law on Ombudsman No. 1349 of 17.10.1997: In its activity of prevention of torture and other cruel, inhuman or degrading treatment, the Ombudsman shall submit to the authority or the corresponding person in charge his recommendations on the improvement of the behaviour towards the persons deprived of liberty, on conditions of detention and on torture prevention. In the case when the ombudsman does not agree with the undertaken measures, it is entitled to appeal to a hierarchically superior body for appropriate action for enforcement of the recommendations contained in its notice and/or to inform the public, including to disclose the name of the authorized person, and act on behalf of that authority. (2)The institution or the person in charge who received the notice is bound to examine it within a month and communicate the ombudsman in writing of the taken measures.

[139] Article 29 of the Law on Ombudsman; based on the analysis on violations of citizens' constitutional rights and freedoms and on the results of the examination of the applications, as well as after making preventive visits to places, where there are, or may be persons deprived of liberty, the ombudsman is entitled to submit its objections and proposals to the central and local authorities related to ensuring citizens' constitutional rights and freedoms and the improvement of the work of the administration.

In addition to the system problems listed above, in 2012 for the first time, the issue of irregular relations between the prisoners was approached, especially the aspects related to a vulnerable group of prisoners – the co-called "humiliated prisoners".

Conditions of detention

Detention conditions have repeatedly been described in the previous reports on the activity of ombudsman as NPMT[140], in the reports on the visits made to penitentiaries by the members of the Advisory Council and the CHR employees, and in CPT reports after visits made to the Republic of Moldova[141]. Many of the imprisonment conditions have not considerably changed and serve as ground for prisoners' complaints.

According to the official data, only with respect to prison conditions found in penitentiary No. 13 in Chisinau, as being contrary to article 3 of ECHR, the European Court ruled on 11 judgements with penalties in the amount of 120,600 euro[142].

In spite of this, the Department of Penitentiary Institutions characterized the *de facto* situation as relatively satisfactory, due to the increase of funds allocated for the implementation of the measures of the Plan on Achievement of the Reform Concept in the Penitentiary System. Thus, if in 2009 the financial resources allocated covered 1.4 % of the needs in this aim, in the following years they increased: in 2010 – 4.2 %, in 2011 – 9.9 %, and in 2012 – 12.4 %.

Overcrowding in the pre-trial detention facilities is one of the major problems, the 4 m^2 space per person and 6 m^2 air per person recommended by CPT are not provided (Penitentiary No. 11 in Balti, Penitentiary No. 13 in Chisinau, penitentiary No. 17 in Rezina).

Truly disturbing is the state of affairs related to "conditions of detention" in Penitentiary No. 13 in Chisinau. On April 16, 2010 during a visit made to Penitentiary No. 13 from Chisinau, the former Minister of Justice of France, Robert Badinter publicly asked his counterpart from

[140] www.ombudsman.md

[141] http://www.cpt.coe.int/fr/visites.htm

[142] In the case **OSTROVAR vs. Moldova** 4500 Euro were granted; in 2007 in the case **ȚURCAN vs. Moldova** the sum of 11,000 Euro; in 2009 in the cases **STRĂISTEANU and others vs. Moldova, VALERIU AND NICOLAE ROȘCA vs. Moldova** – 42,100 were granted; in 2010 in the case **I.D. vs. Moldova –** 15,000; in 2011 in the cases **Ipencov vs. Moldova, Bisir and Tulut vs. Moldova, Ipate vs. Moldova, Haritonov vs. Moldova** 44,900 Euro were granted; in 2012 in the case **Hadji vs. Moldova -** 3,100 Euro.

Moldova to close the disciplinary cells in this prison. The Moldovan Minister of Justice confirmed that the invoked conditions correspond to the medieval period, noting that the situation in detention places is a systemic problem. According to the Minister, these problems are targeted by the Governmental Commission for strategic planning and in the future actions would be taken to remedy them. Moreover, to meet the conditions of detention of prisoners and persons under persecution, the disciplinary cells within Penitentiary No. 13 from Chisinau were closed[143]. But the prison continues to operate up to now and there is no premise to believe that in the nearest future its activity will be suspended.

The living spaces for the prisoners in the majority of prisons are of the type "barrack" with a capacity of 20 – 30 beds. The co-existence of a large number of prisoners in a common space creates preconditions of hierarchical relations among them, a fact that prompted the ombudsman to study this issue more profoundly.

Based on the prisoners' complaints received by the CHR in 2012, corroborated with de facto situation found during the preventive visits, the allegations that unconventional relations between prisoners prevail in prisons were confirmed. The prisoners, who particularly have to suffer, are in the vulnerable group of so-called "humiliated prisoners".

According to the results of the survey initiated by the ombudsmen in 2012 on a sample of 30 % of penitentiaries, the inmate placement in the inferior "caste" of the penitentiary is not necessarily done through sexual violence. The reasons why an inmate is classed in the given group may also be: denunciation, stealing from another prisoner, gambling debt, failure to observe the goods - financial[144] relations, excessive discussions about sexual life, unfounded insults. For example, a prisoner, who during the phone conversations with his concubine was permanently mentioning sexual topics, was placed in the "humiliated" group.

The „humiliated" prisoners reported that as a rule, they are not physically abused by other inmates. They may be subjected to physical ill-treatment if they conceal their status in the criminal subculture and in cases of so-called abuse of specific behavioural rules such as shaking hands with another inmate.

During the visit to Penitentiary No. 3 from Leova, it was found that the prisoners are placed in the detention block according to some specific criteria other than those of age, social

[143] CHR report for 2011
[144] The payment of debts in goods (cigarettes, sugar, SIM card, mobile phones)

menace of the committed crime, or health. One of these criteria is the separation of "humiliated" prisoners from the rest. At the moment of the visit, of the total number of 360 convicts, 70 were in the cast of "humiliated" prisoners and were placed in special residential blocks or separate rooms located before the entry into common dormitories.

The visit to the penitentiary took place during the preparation and serving of lunch. While examining the canteen, it was found that the food is prepared in different by size containers, from different food products in the three sections of the canteen. The prisoners explained that the food is different by quality and calories and is divided to the convicts by special criteria, depending on the status of the prisoners, not medical prescriptions. For example, only a special category of prisoners benefit of meat products, fish, eggs, dairy products. Vegetables and meat were missing from the pots in which food for the "humiliated" prisoners was being cooked. Moreover, the "humiliated" prisoners were the last to eat, only after the other prisoners had eaten.

The "humiliated" prisoners do not have access to the shower room like the other convicts and can have a shower only with the permission of the penitentiary employees. They are not employed; do not have access to the gym or to the volley-ball court or football field; they are forbidden to walk on the territory of the penitentiary, are not offered the possibility to study. The parcels sent by relatives to these prisoners do not reach them. The heads of the sections decide themselves whom to give them. This category of prisoners is completely isolated, including communicating with the other prisoners.

During the visit to Penitentiary No. 5 from Cahul, 13 prisoners from the group of "humiliated" were there. They were placed in three separate detention cells in order to avoid any trouble with the rest of the prisoners. No cases of sexual violence were attested against them in this penitentiary. At the end of individual discussions, one of the prisoners generalized in one sentence his conditions of detention in the penitentiary: "*If you remember which category of prisoners you belong to and follow some elementary rules, then your life in prison will not be different from that of the other inmates".*

A similar situation was noticed in Penitentiary No. 1 from Taraclia.

According to the ombudsman, the administration of penitentiaries resort to the separation of the so-called "humiliated" prisoners to be able to maintain the discipline in prisons, without making extra effort to eradicate the phenomenon of criminal subculture. No doubt, this

criterion of separation hurts human dignity and has a discriminatory character[145]. It risks to aggravate the inherent suffering of the prisoners, which is stipulated in section 57 of the Standard Minimum Rules for the Treatment of Prisoners and Related Recommendations[146]

It should be mentioned in this context, that two prisoners confirmed that in the period of serving their sentence, they were forced by other prisoners, with the tacit approval of prison administration to make monthly payments to the penitentiary criminal authorities, to do housework, to gamble. At the request of the ombudsman, on December 6, 2012, the Prosecutor General's Office initiated a criminal offence under the provisions of Article 284, paragraph 1 of the Criminal Code (the creation and leading of a criminal organization).

It should also be noted that the European Court of Human Rights condemns "official tolerance" [147], the fact that even though some actions are evidently illegal, they are still tolerated in the sense that the hierarchically superior officials, of those in charge, knowing about such acts do not take actions to prevent their recurrence; or the hierarchically superior officials are indifferent to the numerous complaints addressed to them and do not look into the truth or falsehood if such complaints; or the plaintiffs are denied a fair trial in court. Thus, the concept of official tolerance reflects something more than the official approval of certain practices. Sooner, this concept shows the attitude of the officials to an existing practice or the evidence that attests the existence of such practices. In this regard, official tolerance focusses on the actions undertaken by the authorities to put an end to the recurrence of such acts and the effectiveness aimed at achieving this goal. According to the ombudsman, the state's inactions, in terms of taking efficient measures to eradicate the phenomenon of criminal subculture and its effects, could be qualified as 'official tolerance'.

Aspects related to torture prevention

In 2012, DIP received 16 complaints about unjustified application of special means, violation of search rules, and use of physical force while escorting prisoners; 15 complaints

[145]Art.205, par..(3) of Enforcement Code „Separate detention of convicts in prison must not have a discriminatory character or offend human dignity".
[146]Standard Minimum Rules for the Treatment of Prisoners and Related Recommendations, Resolution adopted on August 30, 1955 at the First United Nations Congress.
[147]The Greek case. European Commission on Human Rights.In: Report of 5November, 1969, Yearbook 12. Aisling Reidy. The Prohibition of Torture. A guide to the implementation of article 3 of the European Convention on Human Rights .*www.coehelp.org/file.../art_3_romanian.pdf*

related to alleged torture and ill-treatment applied by the employees of Penitentiary System (for comparison, in 2012 there were 3 complaints, in 2011 – 10 complaints). In spite of this, not a single investigation was initiated on the basis of the information on unjustified application of special means, violation of search rules, and use of physical force while being escorted, etc.

In the same period, 13 criminal cases were initiated on abuse of power and 7 cases of torture against the employees of the penitentiary system. On one of the cases out of the 7, a DIP employee was sentenced to 1 year in prison under article 79 of the CC of RM, with the execution of the sentence in a penitentiary of closed type and with the deprivation of the right to occupy positions of responsibility in law enforcement bodies for a period of 3 years. There were 9 disciplinary proceedings and after their conclusion, 9 employees were disciplinarily sanctioned for misconduct in relation with the convicts. 13 employees were fired from the penitentiary system for breach of discipline (for comparison, 20 persons in 2010 and 13 – in 2011) and 4 employees were fired for disparagement (in 2010 – 11 persons, in 2011 – 20 persons).

DIP actions directed towards the propagation of "zero tolerance to torture" attitude and training of penitentiary system employees regarding human rights observance deserve appreciation. Thus, in 2012, as result of DIP cooperation with the Centre for Human Right, the training of the staff was conducted with the participation of representatives of the Centre as experts. This practice follows to be extended inn 2013 as well on the basis of a developed training plan.

At the sitting of DIP Advisory Council of 21.09.2012, the Action Plan on combating torture and ill-treatment in penitentiaries was developed and approved. It includes organizational measures designed to solve the encountered difficulties in this field. The good functioning of the trust phone for reporting cases of torture, punishment or inhuman and degrading ill-treatment was provided. The telephone is installed in the DIP guard unit. According to the entries in the log-book of the trust telephone calls, 21 such calls were registered, of which in 2 cases ill-treatment was alleged (one case was not proved, the other is under examination).

The authorised services in the penitentiaries permanently perform operative actions of investigation, education and prophylaxis, aimed at preventing and combating all forms of intimidation, as well as ensuring equal rights in the prison environment. In this respect, measures were taken to identify and isolate interlope leaders from the mass of prisoners in order to dismember the interlope groups and diminish their authority. In all the penitentiaries, with the

exception of Penitentiary Nos. 8 and 12 from Bender, video surveillance systems were installed. During the year, the informative posters "Legal Information" were updated in the penitentiaries. The updated information includes Regulations on Enforcement Code, the Statute of servicing the punishment by the prisoners, the Criminal Code and information of the national institutions in the field of human rights protection. Simultaneously, the cooperation with mass media became a priority in the context of not-admittance of torture. In this sense, spokespersons from among penitentiary employees were assigned and trained by the experts in the field of communication.

An implicit index for the improvement of the situation in this area is the considerable decrease of prisoners' complaints about the application of physical force and special means and of the number of self-mutilations and injuries caused by the employees of the penitentiary system. During the preventive and monitoring visits to the penitentiaries from the country made in 2012, the prisoners complained, as a rule, about the detention conditions, the quality and timely medical assistance, the quality and quantity of food, social protection measures.

Healthcare

Health care services for the persons deprived of freedom are an issue of particular interest to CPT, as resulting from its mandate. Improper medical care could lead to situations that have much in common with "inhuman and degrading treatment". Health care service in a given institution may play an important role in combating ill-treatment, both in that institution and in other (especially in police establishments). Moreover, it is designed to have a positive impact on the overall quality of life within the institution where it operates. A general principle already recognized in the majority of countries, based on fundamental human rights, is to provide the same level of medical care for the prisoners, like for the persons who live in liberty: access to doctor; equivalence of medical care; patient consent and confidentiality; preventive medical care; humanitarian aid; professional independence; professional competence.

When in custody, the prisoners should have access to a doctor at any time, regardless of the type of imprisonment to which they are subjected. The organization of medical care should make it possible to respond to requests for consultation without any delay. It should offer medical treatment and care, diet, physiotherapy, psychotherapy or other arrangements needed, comparable with those of the patents who are not in prison. Prison medical services should pay special attention to the needs of specific categories of vulnerable prisoners: mothers and children, adolescents, persons with personality

disorders, persons who suffer of serious diseases. Continuous incarceration of those, who display a fatal symptom in a short time, of those who suffer of a serious disease, which cannot properly be treated in prison, who suffer of a severe handicap or advanced old age, can create an intolerable situation. Similarly, some prisoners may have special needs and ignoring them can lead to degrading treatment.

ECHR does not include a specific provision on the situation of the persons deprived of liberty, *a fortiori* ill, but it is not excluded that the detention of a sick person becomes problematic under article 3 of the Convention (*Mouisel vs. France*)[148]. In the case when a general obligation of releasing a prisoner on health grounds is impossible, Article No. 3 of the Convention obliges the state to protect the physical integrity of the prisoner, especially by providing necessary medical care. (*Rivičre vs. France*)[149].

ECHR recognizes the right of any convict to benefit of detention conditions complying with the respect of human dignity, so as to ensure that the taken measures do not subject the given person to suffering, or a test exceeding the unavoidable level of suffering inherent in detention; it also adds that apart from the person's health, his comfort must be secured in a corresponding manner given the practical requirements of detention.

The state has no obligation to immediately release the person from prison because of his health, the Court states in the case *Sarban vs. Moldova*[150] with reference to the case *Hurtado vs. Switzerland*[151]. But also in this case, the Court emphasized the fact that by placing a sick person in detention, the state has the obligation to protect the health of the prisoner – the same manifestation of the general obligation to provide corresponding detention conditions. Thus, denial of adequate medical care, in general, the detention of a sick person in inadequate conditions, in principle, is against Article 3 (*Vincent vs. France*, *Gennadi Naoumenko vs. Ukraine*, *Farbtuhs vs. Latvia*, *Paladi vs, Moldova*, *Holomiov vs. Moldova*). In the case *Holomiov vs. Moldova*[152] , the plaintiff declared that in the penitentiary and in the penitentiary hospital, there were no urologists, cardiologists and neurologists. His medical condition was serious enough to be incompatible with his extended detention. The Court

[148]Mouisel vs. France, application No. 67263/01, ECHR decision of 14.11.2002.[On-line]: http://cmiskp.echr.coe.int. (retrieved on 03.03.2012).
[149]Rivičrevs. France, application No. 33834/03, ECHR decision of 11.07.2006.[On-line]: http://cmiskp.echr.coe.int. (retrieved on 03.03.2012).
[150]Sarban vs. Moldova, application 3456/05, ECHU decision of 04.10.2005, Judgements and Decisions of the European Court of Human Rights in the cases of Moldova, volume III,.Chisinău: Cartier, 2007, p. 141.
[151]Hurtado vs. Switzerland , application No. 17549/90, ECHR decision of 28.01.1994. [On-line]: http://www.humanrights.is. (retrieved on 03.03.2012).
[152]Holomiov vs. Moldova, application No. 30649/05, ECHR decision of 97.11.2006, Judgements and Decisions of the European Court of Human Rights in the cases of Moldova, volume III,.Chisinău: Cartier, 2007, p. 223.

reiterated that although article 3 of the Convention cannot be interpreted as a general obligation to release prisoners on health grounds, it still requires the state to protect the physical integrity of the people deprived of liberty, for example, by providing needed medical care *(Sarban vs. Moldova).*

In light of the above said, it should be noted that during the preventive visits, there were detected cases that reveal sole legal deficiencies. Thus, prisoner M.C., sentenced to 16 years of closed type imprisonment, disabled of 1st degree, suffers of some diseases with irreversible consequences for his health. He cannot take care of himself or move without help. He is looked after by another prisoner, who assumed this obligation on his own will, based on common sense and his religious beliefs. He could be called 8-10 times in 24 hours. According to the ombudsman's findings, the penitentiary medical facility does not have a room adapted for the placement of such patients as the given prisoner.

The wording of paragraph 2, article 95 of the Criminal Code, in force at the moment of the visit to the penitentiary, allows, in the ombudsman's opinion, ambiguous and subjective interpretations, which cause the application of the given rule in a discriminatory and privileged manner to practically all the people in the same situation. Thus, according to the provision of the above mentioned law, release from punishment is done in the cases of the persons who contracted a serious disease (stipulated by the disease classifier, approved by the Order of the Minister of Justice No. 331 of 06.09.2006) only *"after committing the crime or during imprisonment"*. Consequently, it is impossible the application of the provision to another category of prisoners – those who contracted the disease before committing the crime, or who contracted a less serious disease before the crime. At that stage, such persons do not fall under the incidence of law, but, if the disease is aggravated while serving the sentence, it is included in the category of serious diseases that hinder the execution of punishment.

With the unconditioned support of DIP, the ombudsman promoted amendments of article 95 of the Criminal Code, which are in force since December 9, 2012. The amendments and completions will contribute to the release from punishment execution, will not admit keeping seriously ill persons in conditions inadequate to their health state, and, implicitly, will not allow violation of Article 3 of the Convention in relation to such persons. According to the provisions of article 230 of the Enforcement Code, the right to medical care is guaranteed to the condemned persons; medical care in prisons is granted whenever necessary or upon request by qualified personnel, free of charge, under the law, and the prisoners benefit of free medical treatment and medications. Each prison must have at least a physician, a dentist and a psychiatrist. In penitentiaries with a capacity of at least 100 seats, a centre for curative medical care must operate full-time to offer medical assistance to every prisoner.

An alarming situation related to providing the penitentiary system with medical personnel persists from year to year. Currently, medical assistance is provided by medical staff covering 236.25 positions. However, for a better functioning of the medical services, it is necessary to employ about 270 medical staff, as seen in the table below:

Penitentiary institution	**Staff needed according to positions**	**Actually occupied**
DIP medical direction	8	6
Penitentiary No. 1Taraclia	7	3
Penitentiary No. 2 Lipcani	6.5	5
Penitentiary No. 3 Leova	6.5	5
Penitentiary No. 4 Cricova	11	9
Penitentiary No. 5Cahul	8	6
Penitentiary No. 6 Soroca	10.5	9
Penitentiary No. 7 Rusca	8	8
Penitentiary No. 8 Bender	7.5	6.5
Penitentiary No. 9 Pruncul	6.5	4.5
Penitentiary No. 10 Goian	6	2
Penitentiary No. 11 Bălți	9	7
Penitentiary No. 12 Bender	7.75	7.25
Penitentiary No. 13 Chișinău	27.5	24
Penitentiary No. 14	8.5	6.5
Penitentiary No. 16 Pruncul	110	99.5
Penitentiary No. 17 Rezina	23	20.5
Penitentiary No. 18 Brăneşti	7.5	7.5
Total	**278.75**	**236,25**

DIP purchases drugs and pharmaceutical items for the penitentiaries based on the request addressed to the Agency of Medicine, which, according to Government Decision No. 568 of 10.09.2009, organizes and conducts centralized procurement at national level. The drugs and pharmaceutical items delivered to the penitentiaries are received by the head of the medical service and the person in charge of the mentioned items.

In the course of 2012, DIP purchased drugs and pharmaceutical items in the sum of 1,506,498.27 lei (1,120,882.35 lei from budgetary sources and 385,615.92 lei from extra budgetary sources), which is much lower compared with 2011 (2,077,609.08 lei, including 1,586,473.44 lei from budgetary sources and 491,135.64 lei from extra budgetary sources). Despite decreased financial resources for drugs and pharmaceutical items, DIP reports on a favourable situation in this respect. Meanwhile, the prisoners continue to invoke lack of

medications, the distribution of one and the same drug for the treatment of various diseases (analgine, no-spa, tincture of valerian).

The tables below reflect the situation on the comparative structure of morbidity and mortality among the prisoners:

Structure of morbidity among prisoners

Indices	**2010**	**2011**	**2012**
digestive system diseases	1464	3658	4410
Mental and behavioural disorders	2561	2411	2486
Respiratory system diseases	3210	2011	2362
Trauma and intoxications	1805	1365	1260
Infectious and parasitic diseases	1152	1177	1651
Cardiovascular system diseases	824	743	784
Nervous system diseases	322	335	359
Tuberculosis	164	133	162
*including at entry	42(25.4%)	31(23%)	56(34.5%)
TOTAL	**12948**	**14360**	**14499**

Structure of mortality among prisoners

Disease	**2010**	**2011**	**2012**
Tuberculosis	10	10	3
HIV / TB	3	11	4
AIDS (without TB)	0	1	2
Cancer	7	5	0
Nervous system diseases	1	0	0
Cardiovascular system diseases	15	13	6
Respiratory system diseases (without TB)	1	0	1
digestive system diseases	1	0	6
Traumatic injuries, intoxications, septicaemia	1	2	4
Suicide	5	7	5
TOTAL	**44**	**49**	**31**

Although in 2012, the mortality among prisoners considerably decreased, a tendency of morbidity increase is observed caused by tuberculosis, respiratory system diseases, infectious and parasitic diseases, digestive system diseases. In the opinion of the parliamentary advocate, these data are a reason for concern, especially for DIP and the administration of the penitentiary institutions.

The following situation is attested in regard to the number of prisoners who are registered with TB (new cases, relapses) including MDR TB (multidrug resistant), the number of prisoners identified with TB in the period 2006-2013, and the number of prisoners treated under DOTS and DOTS+.

Categories	2006	2007	2008	2009	2010	2011	2012
microscopic positive new case	106	71	38	38	33	14	30
microscopic negative new case	195	153	110	76	77	51	87
extra-pulmonary new case	13	6	3	5	5	7	0
extra-respiratory new case	0	3	2	1	3	1	0
microscopic positive relapse	82	82	44	38	19	21	13
microscopic negative relapse	99	91	48	36	26	35	32
extra-pulmonary relapse	0	1	0	0	1	1	0
Overall incidence	**495**	**406**	**245**	**192**	**164**	**133**	**162**

According to the Action Plan for the Implementation of the Justice Sector Reform Strategy[153] in 2012, the draft of the regulatory framework on ensuring professional independence of the medical workers in detention places by transferring them under the subordination of the Ministry of Health followed to be developed. These modifications were supposed to give probative value to the independent medical examination in the alleged cases of torture, in order to eliminate the inconsistences in the classification of actions as acts of torture, and in order to toughen the punishment for acts of torture depending on the degree of their seriousness. Non-finalizing the drafts for the modifications in the regulatory framework related to ensuring the organizational and institutional independence of the medical workers in detention institutions is one of the greatest deficiencies in the implementation of Pillar VI of the Strategy – "Observance of human rights in the justice sector".

Recommendations

- To analyse the financial needs of the penitentiary institutions in order to gradually increase the financial resources allocated to such institutions;
- To carry out an effective control of compliance with sanitary and hygienic norms in penitentiaries, including the state of prisoners' clothing and beddings;
- To train the staff of the institutions, which keep persons in detention, in preventing and combating torture and ill-treatment;
- To put an end to the operation of penitentiary No. 13 from Chisinau.

[153] Approved by parliament Decision No. 6 of 16.02.2012

4. The status of legality and military discipline in the armed forces

In order to implement NPMT tasks and prevent non-statutory relations among the military, 27 visits were made to Armed Forces in 2012; 11 visits were made to the military units of Carabinieri Troops Department (CTD), 12 visits to the military units of the National Army, and 4 visits to the Border Guard Service.

Compared with the previous years, there were no major difficulties related to the access to these institutions, with the exception of Vulcanesti frontier picket (at present Border Police).

During the discussions with unit commanders, they highlighted the shortcomings of the process of incorporation of the military, in particular, the unsatisfactory activity or inactivity of the military medical commissions and of citizens' recruitment/incorporation. Thus, during the military service, many conscripts are diagnosed with mental or other serious illnesses that do not allow military service. For example, recruit X. was enrolled on April 26, 2012, and 4 days later he had a conflict with another recruit and became depressed. He refused to eat, to execute the orders of the superiors, isolated himself from the rest without showing aggression. The soldier was admitted to Central Medical Clinical Hospital and later to the IMPS Psychiatric Clinical Hospital. Following the expertise for stating his mental state, he was found inapt for military service.

During all the visits, individual discussions were held with the conscripts in day duty, those who were on duty in the canteen, in security service and in patrol service. None of them complained of torture, discrimination or misconduct on behalf of commanders, teachers, officers or sergeants.

Accommodation conditions

Usually, in all military units the dormitories are spacious and clean, well ventilated, the windows are large enough to allow natural light. The bedrooms are furnished with separate beds, equipped with enough linen, blankets, pillows, towels (for the face and feet), and bath slippers. Each soldier has a stool at his disposal and a bedside table for keeping personal belongings.

However, some drawbacks were also identified during the visits. Thus, dampness still persists in some military units (in bedrooms, canteens, bathrooms), which does not disappear in spite of regularly performed repairs. In the military unit 1045 of Carabineri Troops Department,

only one side of the building is being used, the other one is unfit for living conditions. The bathroom and the canteen are in a deplorable state and require capital repairs.

No complaints were made by the military related to the quantity, quality, or lack of some food products. During the visits, it was found that dampness persists on the ceiling in the catering facilities of some military units (canteen, food preparation section, dish washing section); there is high humidity and an unpleasant smell. The floor and the walls are damaged in some places in the dish washing section, the taps and the drainage pipes are rusted. The walls are also damp in the food processing sections; the pipes that pass through these sections are also corroded.

According to the Regulation on Catering of the National Army in Peacetime, approved by the Order of the Minister of Defence No. 150 of 1 July, 2003, "each canteen of the military unit should dispose of all necessary facilities for production, household and technical needs, a room for serving food, technological equipment, refrigerators and other inventory that ensures proper conditions for preparing and serving food". The state of the catering facilities found in military unit 1045 contravenes the cited provision. The ombudsman as NPMT submitted a notice with recommendations for repairs to extend the living space for the conscripts and to perform repair works in the bathroom and canteen.

Deficiencies were also found in military unit No. 1003 of CTD where the canteen personnel do not comply with the sanitary norms of dishwashing. The conditions for keeping easily alterable food are not observed, as well as the temperature regime required for storing frozen meat, the motive being that the refrigerator functions only in the temperature regime of 10^{o} C.

The toilets, in the same unit, are in poor condition, odour and anti-sanitary persists, disinfectant solutions for washing hands are missing, the toilets are placed in such a way that do not ensure people's privacy while satisfying physiological needs. The sanitary block needs capital repair. The same deficiencies were found in the bathroom. The situation in this military unit can be considered unsatisfactory.

According to article 26, letter j) of the Law on the Status of Military No. 162-XVI of 22.07.2005, it is stipulated that the military should take care of their health, respect personal and social hygiene rules, and not develop harmful habits. According to the standards set by the Ministry of Defence, 2-3 shower cabins must be installed in the lavatories. The taps and the

shower cabins must ne connected to cold and hot running water. In the absence of such facilities, 2 or 3 electric water heaters should be installed.[154] In some military units there are no shower cabins, where the military could perform their daily personal hygiene. In such cases, the military wash over the sink with cold water.

From the discussions with the Ministry of Defence administration about the described conditions, results that in order to eliminate the found deficiencies, additional financial resources are necessary for capital repairs of the spaces in poor condition. The annual cosmetic renovations do not change the situation significantly.

In order to ensure the conscripts' access to information, each military unit has one or more TVs, on which TV programs can be viewed according to the daily schedule of the unit. Every company has a room for relaxation, where the military can spend their free time. Some of them are equipped with books; there can be a legal corner, fiction books, newspapers, a 'religious' corner, where the military can practice a religious cult[155], or even rooms specially designed for this purpose. An observed drawback is the insufficiency of books, especially fiction, written in the state language. The majority of the books are in Russian or in the Moldovan language printed with the Cyrillic alphabet. The conscripts are satisfied with what they have at the disposal and did not complain.

Daily, according to the schedule, the platoons and company commanders teach lessons on socio-state and legal training. In order to identify the issues that the military face, systematic individual and group educational work is organized.

Medical care

Under Article 15 of the Law on the Status of the Military No. 162 of 22.07.2005, the military have the right to medical assistance and treatment (outpatient and inpatient) for free, granted by the state in the subunits, units and military medical institutions. In order to implement this legal provision, the military units dispose of medical facilities in which doctors and nurses

[154]Guide of the Company Sergeant approved by the Directive of the Chief of Staff of the National Army No. D-1 of 18.01.

[155] Article 11, paragraph 1 of Law No. 162-XVI of 22/07/2005 on the status of the military stipulates that the military have the right to practice a known religious cult or religious rituals when they are not performing military service obligations.

work. The doctors are responsible for providing the military with medical care, whenever needed, and for the quality of their nutrition.

In case of illness, the soldiers are treated as outpatients or are taken to the medical facilities for hospitalization. In case of complications, serious diseases or surgical interventions, the CTD military are placed in the Hospital of the Ministry of Internal Affairs, while the military of the national Army in the Military Clinical Hospital of the Ministry of Defence or in the Diagnostic Consultative Centre. In some units, there are first aid wards and rooms for bandages, septic surgery, dental care.

The quality of medical care is appropriate. The rooms for procedures and medical isolators are, as a rule, clean, correctly ventilated and disinfected. Yet, in some monitored units, the conditions in which medical care is provided are unsatisfactory: dampness persists, insufficient ventilation, low temperature; the dampness is because of the damaged roof. The unit commanders explain the existence of such a situation due to lack of financial resources.

However, the soldiers did not complain about the quality or the conditions in which medical care is offered.

By the Order of the Ministry of Defence No. 464 of December 10, 2012, a Commission to study the issue of violation of statutory rules by the military of the National Army was created. It worked until January 31, 2013. The Commission was made up of representatives of academics, NGOs, psychologists, lawyers. The representative of the Centre for Human Rights from Moldova was invited to participate as national expert.

During the work of the Commission, 15 military units of the Ministry of Defence were monitored, including the Military Clinical Hospital and the Diagnostic-Consultative Centre. The living conditions, the soldiers' nutrition, the quantity and quality of medical care and the equipment were examined. Also, the soldiers were surveyed through anonymous questionnaires.

The Commission found that for all young people, but especially for those coming from socially vulnerable families, the army is an opportunity to develop, to learn and to gain life experience.

What concerns irregular relations, it was found that 2.4 % of the surveyed soldiers were physically mistreated during the service. Even if the psychologists say that this is a very small percentage, it will be thoroughly analysed by the leadership of the National Army.

As a rule, the detected irregular relations do not depend on the environment in which the military are, but on their personality, on the way they manifest themselves in difficult situations, on the soldierly specific environment, which is a more rigorous one. On this basis, the Psychological Service was created in the National Army. It will allow psychologists to work with each soldier individually, especially in situations when the person is stressed or reacts spontaneously or unexpectedly.

It should be mentioned in conclusion, that during the visits made in 2012, the same irregularities were detected in the military units as in the previous years: lack of financial resources to carry out capital repairs; unsatisfactory conditions of accommodation and catering facilities, in the bathrooms; lack of efficient control over the observance of sanitary and hygienic norms in canteens and bathrooms; inadequate hygienic state of the linen; unsatisfactory work of the military medical commissions.

In the majority of cases, the leadership of the Ministry of Defence and of the Carabineri Troops Department reasoned the non-fulfilment of the previous recommendations submitted by the parliamentary advocate, as NPMT, due to the lack of financial resources.

Recommendations:

- To organize professional development and training courses related to general and special duties of the employees of the military units, in the aspect of nurturing the spirit of intolerance against ill-treatment;
- To undertake organizational measures in all military units and Carabineri Troops Department to identify the deficiencies of the condition of the catering facilities, bathrooms and medical facilities in order to diminish them and to provide decent conditions for the military during their service;
- To take organizational measures to provide the Medical Commissions for Recruitment of the citizens in the Armed Forces of the Republic of Moldova with necessary qualified specialists in order to guarantee their functionality.

5. Psychiatric Institutions

The Republic of Moldova has a population of 3,560,400. In this number, the population from the left bank of the Dniester and the municipality Bender is not included. It is estimated

that the prevalence of mental and behavioural disorders is about 95,000[156], but no one knows the exact number of people with mental disabilities, who are separated from the society and isolated from the public eye, becoming "invisible" in psychiatric hospitals and psycho-neurological homes often located in remote places. Being placed in such institutions the persons with mental disabilities are vulnerable to exploitation and abuse, as they have little contact with the outside world and have limited access to services, such as qualified consultancy and legal assistance, advocacy campaigns.

By its Constitution, the Republic of Moldova committed to ensure, on behalf of the whole society, social protection, adequate conditions of treatment, education and social integration to the people with disabilities. The Republic of Moldova recognized the international standards, which became component part of the national legal framework, undertook a series of reforms and national programmes related to mental health. Yet, inconsistent legislation and the measures for its implementation, lack of coordination between governmental bodies in charge lead to leaving many persons with disabilities without the much-needed support. These people continue to be confronted with stigmatization, isolation and discrimination due to their disability, which are often exacerbated by stereotypes and prejudices. The living conditions are often deplorable; the psychological and social barriers hinder their inclusion and participation in the social life of the community. According to the ombudsman, Moldova did not make enough effort to improve the lives of the persons with mental disabilities and to conform the laws, the policies and practices to the requirements of international standards.

The public opinion knows little about what is happening in these closed institutions, in which there is a high rick of human rights violation. Therefore, public control through monitoring and independent inspections can considerably contribute to the prevention of torture and inhuman or degrading treatment.

In the course of 2012, the ombudsmen with the support of the members of the Advisory Council and experts, continued to monitor the application of standards on human rights in the psychiatric hospitals and psycho-neurological homes, providers of medical and social services to persons with mental disabilities. 9 visits were made to the hospitals under the subordination of the Ministry of Health and 6 visits to the psycho-neurological homes under the subordination of

[156] http://ms.gov.md/_files/10855-Indicatori%2520preliminari%2520%2520anii%25202010-2011.pdf

Ministry of Labour, Social Protection and Family. The situation was assessed and evaluated through the CPT standards in relation to living conditions, prevention of ill-treatment, the applied means of coercion and other important aspects.

The analysis of the information and data collected during the visits highlights the lack of evident progress in implementing the National Convention on the Rights of Persons with Disabilities, the underdevelopment of community support programmes for the persons with mental disabilities, and consequently, not a single move was made to stop the continuous denial of the fundamental human rights of the persons with mental disabilities.

7. Psychiatric hospitals

Psychiatric hospitals are public medical institutions, which provide in-hospital specialized medical care related to the examination, diagnosis, treatment and psychosocial recovery. Psychiatric hospitals are directly subordinated to the founders, and from the organizational and methodological points of view to the Ministry of Health.

In the Republic of Moldova, there are three psychiatric hospitals: the psychiatric clinical hospital from Chisinau, and psychiatric hospitals in Balti and Orhei.

In the psychiatric hospitals, besides the patients hospitalized on their own will (voluntary hospitalization), there are persons hospitalized without their consent, in the case of circumstances[157] resulting from civil proceedings (involuntary hospitalization). Persons, who committed harmful acts in a state of irresponsibility provided by the law, and whose hospitalization was ordered by a judge, in the case of criminal proceedings, are also placed in such medical institutions.

Some problems typical of psychiatric hospitals, related to the hospitalization procedure without consent, the application of coercion measures, the living standards and conditions, mechanisms of petitioning, etc. were described in the previous reports[158]. Generalizing the situation, based on the visits made in the last two years, a number of system problems have been found which could easily be classified as violations of human rights.

[157] Article 28 of the Law on mental health No. 1402 of 16.12.1997: the person suffering of mental disorders can be placed in psychiatric hospitals without personal consent or of his/her legal representative before the issuance of the judgement, if his/her examination and treatment can only be done in hospital and the mental disorder is serious and leads to: a) direct social menace; b) damage to his health if psychiatric care is not provided.

[158] http://www.ombudsman.md/md/tematice/;http://www.ombudsman.md/md/rapoarte%20mnpt/;http://www.ombudsman.md/file/RAPOARTE%20PDF/CpDOM_Raport_2011ANEXE.pdf

The material conditions of psychiatric hospitals should create a positive therapeutic environment, which presupposes, first of all, providing sufficient space for each patient, as well as lighting, heating, adequate ventilation, satisfactory maintenance of the institution and compliance with the sanitary and hygienic norms. Inadequacies in these areas can lead to situations similar to inhuman or degrading treatment. The implementation of the monitoring mechanism on the quality of services provided by public health facilities through evaluation and accreditation"[159] spurred, to some extent, an improvement of the accommodation conditions by repairs, installation of water heating boilers, renovation of bathrooms and WCs, reducing the number of beds in the wards, renovating the furniture. The sanitary norms on hygienic conditions for the healthcare institutions[160] contribute to some extent to the creation and maintenance of unique requirements regarding the location, layout, equipment and maintenance of medical institutions. However, the psychiatric hospitals have not managed yet to implement the requirements regarding the location, layout, equipment and maintenance of medical institutions specified in the sanitary Regulation on the conditions of hygiene for health care institutions. As consequence, the conditions of stay are not maximally favourable for psycho–social recuperation; the privacy of the patient is not ensured.

Working with people suffering from mental disabilities is a difficult task for any person involved – doctors, medical assistants, nurses, and auxiliary staff. In this context, the deficit of personnel, inadequate training, and the poor working conditions are only some aspects tightly connected with the prevention of ill-treatment.

Increased staff turnover is characteristic of all psychiatric hospitals, as well as lack of specialists (psychologists, social assistants and occupational therapy instructors), the large number of patients for a psychiatrist, insufficient remuneration, reduced bonuses for working in hazardous and high risk conditions, the excessive emotional effort and overtiredness resulting from permanent contact with the patients, shortage of nurses, failure to provide physical security of the personnel. Initial and continuous training of nurses on the specifics of working with mentally disabled persons is not provided; there are no special instructions on the prevention and management of aggressive behaviour; on prevention of abusive use and the safety use of

[159] The Law on evaluation and accreditation in health No. 552 of October 18, 2001; Government Decision on the National Council of Evaluation and Accreditation in Health No. 526 of April 29, 2002.
[160] Government Decision No. 663 of 23.07.2010 on the approval of the Regulations on hygienic conditions in medical-sanitary institutions

immobilization and isolation measures; human rights, in general, and patient's rights, in particular. The attitude of the medical personnel towards patients, in some cases, even violates human dignity. All these have a direct impact on the human rights, the quality of care, treatment and rehabilitation and create a serious risk in terms of potential abuse of patients by staff less qualified.

Failure to ensure procedural guarantees for hospitalization without consent is another flaw in the system.

Normally, patients are requested to sign consent for hospitalization at admission to psychiatric hospitals and must be given explanations about the diagnosis and the treatment/medicines. The consent form is attached to the patient's disease file. Having examined the medical documentation, it was found that patients do not always sign the consent from for hospitalization or the signature on it does not correspond to the signature on other papers. It was found during the visits, that when the patient refuses to give voluntary consent for hospitalization, the signature is obtained by persuasion and persistence, making reference to hospitalization without consent or even judicial proceedings. Persuasion or even "constraint" to give "free" consent for admission to the psychiatric hospital is a widespread practice in all psychiatric hospitals.

Numerous discussions with the patients and the staff about the admission procedure distrust the validity of the patients' consent for voluntary hospitalization and suggest that they are actually deprived of freedom. These cases should, in fact, be considered as "involuntary admission". Moreover, the efforts made by the medical staff to obtain free consent to inpatient psychiatric hospitalization, means that these patients are deprived of the rights and protection guarantees valid for involuntary admission, such as judicial review of detention. Considering that the majority of patients are hospitalized with free consent, the concern is about the reduced use of legal procedures in hospitalization without free consent, as the *de facto* situation attested.

In conclusion, it seems that the personnel of the psychiatric hospitals resorts to persuasion and exercise pressure to obtain free consent to inpatient psychiatric hospitalization in order to avoid the initiating of legal proceedings for involuntary hospitalization, which is more complicated and lengthy. This approach cultivates lack of respect for human rights in psychiatric hospitals and foster environments in which human rights violations can be easier.

Patients with serious psychiatric disorders, which can cause serious danger for themselves and for those around them, if psychiatric care is not provided in hospitals, may be hospitalized without their free consent. In the psychiatric hospitals, there are no centralized statistical data on the total number of patients hospitalized without voluntary consent. This information can be selected only from each hospital section directly.

According to the examined materials, in the majority of cases, the institutions comply with the time limit of 48 hours, time in which the hospitalized person must be subjected to medical examination. The deadline of 24 hours for dispatch of medical opinion to the court, for the latter to decide on the subsequent stay of the person in hospital is also observed.

The patients hospitalized without their free consent complained about not being taken to the court and that they do not meet with the lawyer, who represents them in court, that they do not receive the copy of the judgement and that they are excluded from the court hearings process which decides their fate. For example, during the visit on October 2, 2012 to the Psychiatric Clinical Hospital (section No. 11 for women), the staff confirmed once more that the patients do not participate, as a rule, in the examination of the application for inpatient psychiatric hospitalization without free consent; that practically there are no cases when the lawyers visited the patients; that the court judgements on hospitalization without free consent are not handed to patients or that they are not even informed about the decision (these are annexed to the patient's personal file).

Failure to comply with the procedural guarantees of patient's admission without free consent has become a system problem, generated by the imperfection of the legal framework, as well as by human factors. Previously, the ombudsmen have taken actions, in the limits of their power, to solve this problem but, during the visits made in the course of 2012, it was found that the situation did not change for the better.

Thus, in the situation when the law governing the procedure of admission without free consent to the psychiatric hospitals[161] does not fully ensure the coherence of the basic legal

[161] According to article 315 of the Code of Civil Procedure, the demand for inpatient psychiatric hospitalization without free consent shall be examined within five days since the initiation of the process. The proceedings take place on the court premises. The person for inpatient psychiatric hospitalization without free consent is entitled to participate in solving the case if the representative of the psychiatric institution states that his health allows this. The examination of the application for inpatient psychiatric hospitalization without free consent takes place in the court with the obligatory participation of the representative of the psychiatric institution who requests hospitalization and of the legal representative of the person whose hospitalization is requested. At the same time, article 33 of the Law on mental health stipulates that "the application for inpatient psychiatric hospitalization without free consent shall be examined by the judge within 3 days from the receipt in court or in hospital. The

principles, - the coherence, consistency and balance of the competitive regulations related to the place of examination of the hospitalization request, we are confronted with its uneven application. Accordingly, requests for inpatient psychiatric hospitalization without free consent are examined, in some cases, on the premises of the hospital with the participation of the patient, and in other cases on the premises of the court without his participation. In the majority of cases, the decisions are pronounced in the absence of the patients, the administration of the institution invoking their mental state, which does not allow them to appear in court. The examination of the request for inpatient psychiatric hospitalization without free consent takes place in court hearings with the representative of the psychiatric institution which requests hospitalization and of the legal representative of the person whose hospitalization is requested. During the monitoring, we could not determine the number of applications for hospitalization without free consent rejected by the judges. The medical staff of the visited institutions affirmed that all the applications are accepted. Similarly, it was not possible to identify the number of court judgements contested by the patients or by their legal representatives.

Based on the discussions with professional groups and on the requested information from different institutions, it was found that the magistrates do not have special training and do not benefit of continuous training in this domain. More often their decisions on approval of hospitalization in psychiatric hospitals are based on the documents submitted by the hospital representatives and the discussion with the doctor who requests forced hospitalization, while the patients are outside any interactions with the judges. This is a serious concern, especially taking into consideration the fact that the discussion of the patient with the judge may be the only opportunity for him to have access to justice and the only chance of speaking about the unwillingness of admission. The continuous professional training plan of the judges, including for the year 2013, developed by the National Institute of Justice, does not contain topics related to the study of the peculiarities of solving cases on approval of hospitalization in psychiatric hospitals without free consent, declaring the incapacity of the person because of mental disorder, and other aspects dealing with this domain. In the 1st semester of the year 2012 (March 26) the

person hospitalized in a psychiatric hospital without free consent is entitled to participate in examining the issue of his hospitalization. If the mental state does not allow the person to appear in court, the application for hospitalization without free consent is considered by the judge on the premises of the psychiatric hospital.

National Institute of Justice organized a seminar entitled "Application of the Law on Mental Health" which was supposed to be attended by 23 judges and 10 prosecutors.[162]

When in psychiatric care, the person suffering from mental disorders is entitled to legal assistance, including an appointed lawyer. The law obliges the administration of the institution, which offers psychiatric care, to guarantee the possibility of inviting a lawyer, with the exception of the case when the suffering person presents increased social menace[163]. The administration of the psychiatric hospital and the medical staff are obliged to create mailing conditions, for the patients to send complaints and applications to the lawyer, public authorities, prosecutor's office, and courts[164]. As a rule, the patients do not benefit of the services of a chosen lawyer, either because of material constraints, or because they do not know that they are entitled to such a right. In the majority of cases, the persons, whose hospitalizations in psychiatric hospitals is requested, are not represented in court by a chosen lawyer but by one appointed by the territorial office of the National Council of State Guaranteed Legal Assistance, who provides assistance free of charge. The majority of patients admitted without their free consent complained that they had no opportunity to meet the appointed lawyer before court hearings. The lawyer usually supports the request for admission without free consent of the hospital, or the proposal of the hospital on verification, termination or change of the coercive measure of medical nature. Patients are not offered legal aid for contesting the admission in the psychiatric hospital.

The normative framework obliges the psychiatric institutions to inform the patients about their legal rights and obligations (patients' rights specified in the Law on the Patient's Rights and Responsibilities, or the rights and obligations of the patients in the psychiatric hospitals specified in the Law on Mental Health). To exercise this provision, the form of Informed Consent on the Therapeutic Investigations and Treatment is used, which is annexed to the patient's medical record. As required by this form, patients must be informed, in clear and accessible language and with sufficient explanations about the following information: the presumptive diagnosis and the way of setting it, the purpose, method and duration of the proposed treatment, possible inconveniences, risks and side effects of the treatment, the risks and possible consequences of refusal from, or termination of treatment. Also, the patients should be

[162] Continuous professional development training Plan for the 1st rem of the year 2012,http://www.inj.md/files/u1/PDFOnline.pdf
[163]Law on mental health, article 7 (3)
[164]Law on mental health, article 38, letter c)

informed about the rights and responsibilities they have, about the right to privacy, the right to refuse a specific diagnostic procedure or treatment they disagree with. The form must be signed by the patient or by his legal representative.

However, patients are aware that in addition to the rights contained in the Consent form, they are also entitled to other rights, including procedural ones[165]. This would mean that they do not know about their right to meet the lawyer and to be represented by him, to get acquainted with the judgement and to contest it, etc. It was found that the administration of psychiatric hospitals not only makes little effort to inform the patients about human rights, but do not give due importance to this. For example, the staff of a hospital affirmed that some patients know, in principle, that they are entitled to the right to contest the judgement, but they are "too ill to do it or do not want to do it". For this reason, the court judgements on inpatient psychiatric hospitalization without free consent is not handed to the patients; they are automatically attached to the medical records.

From the discussions with the medical personal, it was found that there were no cases that the patients contested the court judgement on prolonging hospitalization without free consent. Moreover, there is no clear and well-defined procedure of announcing (handing) the court judgements to the patients. Yet, medical records contain no evidence that the medical staff inform the patients about the grounds of detention, as required by article 5, paragraph 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The main argument invoked by the administration and the staff of psychiatric hospitals, to justify the existing situation, is the fact that their primary mission is to provide medical care, while the legal procedures and special knowledge in this field is not their responsibility. Such approaches, ignorance and stigmatization of the persons with mental disabilities, as well as ignorance / insufficient knowledge of human rights by the psychiatric hospitals personnel raise reasons of particular concern.

During the visits to psychiatric hospitals a legislative flaw was found related to the application of the provisions of article 490 of the Criminal Procedure[166]. At present, enforcement of rulings on admission to a psychiatric institution is performed under article 490 of the Criminal

[165]Law on mental health, article 5 (2), letter b

[166] "When the fact of illness of the person under criminal investigation and who is under arrest, is confirmed, the investigating judge orders, on the basis of the prosecutor's request, his hospitalization in a psychiatric institution adapted for holding persons under arrest, and revokes the preventive arrest. The administration of the institution immediately notifies the investigating prosecutor of the given case of a further improvement of the health of the hospitalized person".

Procedure Code by the Public Medical-Sanitary Institution Clinical Psychiatric Hospital. The persons, who are investigated and, who are under arrest, are placed for forced treatment under rigorous supervision in the Psychiatric Department, which is a curative-preventive subdivision meant for the application of safety measures in the form of forced treatment, which is carried out on the basis of the court sentence. Thus, the arrested persons to whom preventive arrest was revoked, are placed in the subdivision, which applies coercive measures of medical nature for the persons, whose crime was proved under criminal law, on the basis of the sentence of criminal liability, either on the basis of the sentence of release from punishment and the application of coercive measures of medical nature.

It should be noted that the Psychiatric Clinical Hospital is guided in its activity by the Law on Mental Health No. 1402 of 16.12.1997, the Law on Judicial Expertise, Technical-Scientific and Forensic Results No. 1086 of 23.06.2000, the Code of Criminal Procedure, the Criminal Code, the Enforcement Code. According to the provisions of article 11 of the Law on Mental Health, the treatment of the persons suffering from mental disorders is done with their free consent, except for cases of applying coercive medical measures according to the provisions of the Criminal Code[167]. In the case, when there is no clarity with regard to the detention of arrested persons, whose preventive arrest was revoked, and with regard to the tactics of offering psychiatric care according to all regulatory acts in the field of psychiatrics, pursuant to article 490 of the Criminal Procedure Code we are faced with illegal detention of the hospitalized person in the Psychiatric Department for coercive treatment through rigorous supervision of the IMSP Clinical Psychiatric Hospital until the pronunciation of the sentence. Numerous recommendations and proposals on the revision of the legal framework in force were submitted to solve this problem, so as to ensure the legality of detention in psychiatric institutions of persons, who are under criminal investigation and custody.

Recommendations:

- To raise public awareness on the situation of people with mental disabilities;
- To review the regulatory framework governing the admission procedure to the psychiatric institution of the persons whose illness is confirmed but are under criminal investigation and in custody;

[167] Article 99 of the Criminal Code

- To ensure the quality of qualified legal assistance by raising the responsibility of the public defenders;
- To provide special training for the judges who handle cases of inpatient psychiatric hospitalization without free consent;
- To provide information to patients about human rights and fundamental freedoms;
- To ensure procedural rights to the patients, in cases of hospitalization without free consent;
- To provide the hospital employees with knowledge about the international principles and standards of human rights, in general, and of the persons with disabilities, in particular;
- To develop and maintain the staff's skills on the following issues: prevention and management of aggressive behaviour; prevention of abusive use and safety use of immobilization and isolation measures; human rights, in general, and patient's rights, in particular.

8. Psycho-neurological homes

In the third CPT report, in the section about health services in prisons (CPT/Inf. (93) 12, paragraphs from 30 - to 77), CPT reminds a number of general criteria that guided its activity (access to a doctor, equal treatment, patient consent and confidentiality, preventive medicine, professional independence and competence). The same criteria are applied in the case of voluntary placement in psychiatric institutions.

For this reason, increased attention was paid to the monitoring of human rights observance in psycho-neurological homes under the subordination of the Ministry of Labour, Social Protection and Family. The sad findings on the situation in these residential institutions prompted to continue monitoring the psycho-neurological homes and make it a priority on the agenda for 2012.

There are 4 psycho-neurological homes and 2 boarding houses for children with mental disabilities in the Republic of Moldova: the psycho-neurological home in Balti, the psycho-neurological home from Badiceni (Soroca), the psycho-neurological home from Brinzeni (Edinet), the psycho-neurological home from Cocieri (Dubasari), the boarding house for children with mental disabilities from Orhei and the boarding house for children with mental disabilities from Hincesti.

According to the Framework Regulations on the Operation of the Psycho-Neurological Home from the city Balti, approved by the Minister of Social Protection, Family and Child of

April 9, 2008 "*the boarding home is a temporary or permanent placement institution, which provides social and medical services for persons with mental disabilities".* The beneficiaries of social services are people, who are in a difficult situation generating marginalization or social exclusion in the absence of support provided by family or community and are depended on tertiary assistance. The purpose of the Boarding Home is "to provide social protection to beneficiaries by offering measures for recuperation, maintenance of their capabilities and social reintegration. The objectives of the Boarding Home are: to provide social and medical assistance to beneficiaries according to their special needs and individual development peculiarities; facilitate socialization and re-socialization of the beneficiary with the extended biological family or community.

According to the Instructions on accommodation of the patronized in social institutions subordinated to the Ministry of Labour, Social Protection and Family of the Republic of Moldova, approved by the Minister of Labour, Social Protection and Family (No. 61/227 of 16.02.2000) and the Minister of Health (No. 06-34/188 of 16.03.2000), "*citizens of the Republic of Moldova from the age of 4 (children with physical or mental disabilities), persons with chronic psychic diseases, and solitary senior citizens, requiring the care of another person, can be permanently or temporary accommodated in the social institutions under the Ministry of Labour, Social Protection and Family".*

The provisions of the Instructions and the Regulations for the Operation of the Psycho-Neurologic Home contain divergences related to the mission of the institutions, the categories of beneficiaries, contraindications for placement in the institution, etc. Thus, two regulatory acts, having the same purpose and approved by the same authority, contain different regulations on the same matter, which creates confusions. Moreover, the regulations contained in these acts do not guarantee full respect of all human rights and fundamental freedoms, including the rights of persons with mental disabilities.

The psycho-neurological homes provide social and medical services both for the elderly, and for the persons with mental disabilities.

Although the authorities make significant effort to provide adequate living conditions and basic needs (food, clothing, hygienic-sanitary norms, etc.), social and medical services of recuperation and rehabilitation (kinetic therapy, physiotherapy, occupational therapy, psychotherapy), they are not sufficient. Too little attention is paid to the preparation for socio-

family reintegration, the development and maintenance of the relations with the family and community. The listed services are not *de facto* provided in some institutions.

None of the institutions has sufficient medical staff and nurses, which makes it impossible to provide adequate medical care and proper care of the beneficiaries with a high degree of disability. Moreover, the nurses are not qualified or do not have specialized training in psychiatric nursing.

The institutions have limited financial resources for the continuous professional development training of doctors and nurses. The nurses are not at all included in the initial and on-going training programmes. Like in psychiatric hospitals, the shortage of personnel, inadequate training and the working conditions contribute to increased risk of ill-treatment and manifestation of aggression towards the beneficiaries by the staff,

A serious deficiency in the activity of the psycho-neurological homes is the defective completion of personal files. Contrary to the requirements of the Regulation Framework for the Operation of the Psycho-Neurologic Home, necessary documents are missing from the files, including copies of identity documents. Thus, in one of the psycho-neurological homes, about 120 persons, out of 458, had no identity cards. The competent Ministry (MLSPF) was informed on this issue, but no efficient measures are taken at the level of central authority, the main reason being "*limited financial resources allocated to the boarding homes, and the contributions of the beneficiaries is insignificant taking into consideration the cost of keeping a person in the institution*[168]". In this context, on the one hand, there are doubts about the identity of the persons kept in the institutions; on the other hand, the risk of human trafficking is high. In the same order of ideas, the aspect related to pensions, benefits and other rights/services, of which the persons cannot benefit in the absence of identity documents, remains unclear.

The beneficiaries accommodated in psycho-neurological homes possess mandatory health insurance policies and can benefit of medical services in the amount and in the conditions stipulated in the Unique Mandatory Medical Insurance Programme. When necessary medical care cannot be provided directly in the boarding homes, the beneficiaries are transported to public medical-sanitary institutions in the region.

[168]From the answer of the MLSPF No. 01-3828 of 25/10/2012.

In case of acute mental diseases, the beneficiaries are transferred for treatment to psychiatric hospitals. The duration of treatment in hospitals varies from 5 to 30 days, depending on the severity of the disease.

Following the ratification of the Convention of the Rights of Persons with Disabilities, the Republic of Moldova committed to undertake appropriate and effective measures to guarantee the rights of persons with disabilities so as they decide freely and responsibly on the number of children and the period between births and have access to information, corresponding to their age about sexual education and family planning, as well as provide the necessary means to achieve these rights. Moreover, the state recognizes, regulates and guarantees the rights of the persons of reproductive age, which are an integral part of human rights[169] and stem from the constitutional rights of respect and protection of private and family life. Contrary to these guarantees, the women, who live in psycho-neurological homes, are deprived of the right to reproduction. Although the beneficiaries of homes are not precluded to create couples and to decide on the lifestyle they lead together, the administration of psycho-neurological homes make considerable efforts to prevent pregnancies through monitoring and permanent medical examinations and categorically deny the existence of cases of pregnancies among the beneficiaries. At the same time, the beneficiaries and the nurses mentioned, among other things, that pregnancies are interrupted by abortion in the public medical-sanitary institutions in the region. Given the fact that the information about pregnancy and the informed consent about its interruption is missing in the medical documentation, there is reasonable suspicion that abortions are performed at the discrete decision of the personnel of the boarding homes without taking into consideration the opinions/wishes of the women. Measures for beneficiaries' sexual education, for popularizing and distributing contraceptives are not taken in psycho-neurological homes.

At the same time, neither the legislation in force, nor the competent Ministry offer solutions for the beneficiaries of the psycho-neurological homes, who decided to become mothers. The administration of the institutions is to solve all the problems independently.

During the visits, it was found that the staff of psycho-neurologic homes shows no respect for the privacy and intimacy of the beneficiaries; they do not knock on the door and do not ask permission to come into the rooms. For example, during the visit itself, which was made during the "quiet hours" time after lunch, in the period when many beneficiaries were resting or

[169] Law on reproductive healthcare and family planning No. 185 of 24.05.2001.

even sleeping, the staff, accompanying the representatives of the Centre for Human Rights, opened the doors and entered into the rooms, waking and disturbing the people who were resting.

It was noted that some beneficiaries feel inferior and fear the nurses. Although many affirmed that in some cases they are beaten or tied to the bed, the nurses categorically denied this fact and said that they do not resort in any way to means that are restricting the free movement of the aggressive or restless beneficiaries. The visible signs of physical violence are justified by the fights among the beneficiaries, accidental falls, or hits. Otherwise, the findings on the site corroborated with the statements of the persons with whom it was discussed during the visits raise serious questions on the degree of protection against torture and ill-treatment offered by the state to the beneficiaries of psycho-neurological homes. The lack of effective control/of a mechanism to prevent violence and abuse on behalf of the staff towards the beneficiaries and among beneficiaries provide sufficient grounds for a reasonable doubt about causing physical or mental suffering, which represents inhuman and degrading treatment.

Based on the visits made to the psycho-neurological homes under the subordination of the Ministry of Labour, Social Protection and Family, it is possible to conclude that the state does not make enough efforts to guarantee the fact that the residential institutions are safe places both for the beneficiaries and for the employees.

Recommendations:

- To review the Instruction on of accommodation of the patronized in social institutions subordinated to the Ministry of Labour, Social Protection and Family and the Regulations for the Operation of the Psycho-neurologic Homes, so as to exclude divergences and fully guarantee respect for human rights and fundamental freedoms;
- To review the personnel policy to provide sufficient number of staff , especially medical one (doctors of various profiles, nurses, orderlies);
- To take actions to identify the causes and conditions that favour the application of ill-treatment to the beneficiaries and measures to counteract them;
- To identify opportunities to support professional development trainings of the staff, including for the nurses;
- To exclude the transfer of beneficiaries to the closed regime section as punishment;
- Not to allow the involvement of beneficiaries in cleaning against their will;
- To take minimally necessary measures to provide adequate living conditions: repairs of sockets and switches, illumination and ventilation of rooms, repair of flooring in the hallways, etc.;

- To examine each case of violence and the appearance of injuries and report to law enforcement agencies, as appropriate;
- To establish strict supervision of the technical staff by the administration and the qualified medical staff in order to prevent the ill-treatment of the beneficiaries.

CHAPTER III

Observance of Children's Rights in the Republic of Moldova

1. Juvenile Justice

The juvenile justice system continues to be a priority issue for the Republic of Moldova. The importance of this issue is determined by the impact the justice system has on both, the children in conflict with the law (juvenile delinquents) and the children in contact with the law (juvenile victims or witnesses).

The most efficient method to combat juvenile delinquency is to create effective prevention programs that meet the provisions of Resolution No. 45/112 of December 14, 1990 regarding the prevention and combating of juvenile delinquency, adopted on by the General Assembly of the United Nations, also known as the "United Nations Guidelines for the Prevention of Juvenile Delinquency" or "The Riyadh Guidelines".[170]

Currently, there is no well-structured and effective juvenile delinquency prevention program in the Republic of Moldova that would correspond to the above-mentioned guidelines. The existing programs are limited because they refer to actions for preventing juvenile offences during summer or religious holidays in particular, and consist of police supervision of the

[170] 1. The prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young persons can develop non-criminogenic attitudes.
2. The successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood;
3. For the purposes of the interpretation of the present Guidelines, a child-centred orientation should be pursued. Young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control;
4. In the implementation of the present Guidelines, in accordance with national legal systems, the well-being of young persons from their early childhood should be the focus of any preventive program;
5. The need for and importance of progressive juvenile delinquency prevention policies and the systematic study and the elaboration of measures should be recognized. These should avoid criminalizing and penalizing a child for behaviour that do not cause serious damage.
6. Community-based services and programs should be developed for the prevention of juvenile delinquency, particularly where no agencies have yet been established. Formal agencies or social control should only be used as a means of last resort.

entertainment facilities, etc. Such actions, however, are not effective for the long-term prevention of delinquent behaviour among minors, and they provide neither mechanisms nor a functional framework for juvenile delinquency prevention and control.

Offences committed by juveniles during 2012	
art. 145 of the CC – Deliberate murder	14
art. 151 of the CC - Intentional severe bodily injury or damage to health	11
art. 152 of the CC – Intentional severe bodily injury or damage to health	13
art. 155 of the CC – Threatening with murder or severe bodily injury or damage to health	4
art. 164 of the CC – Kidnapping	6
art. 171 of the CC – Rape	35
art. 172 of the CC – Violent actions of sexual nature	13
art. 174 of the CC – Sexual intercourse with a person under the age of 16	18
art. 175 of the CC – Perverted actions	7
art. 186 of the CC – Theft	1622
art. 187 of the CC – Robbery	108
art. 188 of the CC – Burglary	43
art. 190 of the CC – Fraud	19
art. 192 of the CC – Pick-pocketing	7
art. 179 of the CC – Violation of the Inviolability of the Domicile	17
art. 192/1 of the CC – Theft of vehicles	30
art. 197 of the CC – Deliberate destruction or damaging of goods	1
art. 199 of the CC – Acquisition or selling of goods known to have been obtained by criminal means	3
art. 217 of the CC – Illegal circulation of narcotic or psychotropic substances or their analogues without purpose of alienation	38
art. 222 of the CC – Profanation of graves	2
art. 264 of the CC – Violation of safety traffic rules or operation of the vehicles by the person driving the vehicle	5
art. 264/1 of the CC –Driving in a state of acute alcoholic intoxication or in a state of intoxications caused by other substances	7
art. 269 of the CC – Violation of order and safety traffic rules	1
art. 287 of the CC – Hooliganism	70
art. 290 of the CC – Illegal holding, maintenance, procurement, manufacture, repair or sale of firearms and ammunition and their theft	2
art. 311 of the CC – False denunciation	1
art. 328 of the CC – Excess of power or excess of official authority	1
art. 362 of the CC – Illegal crossing of state borders	12

The analysis of the official statistics related to juvenile delinquency reveals that theft and robbery are the most often offences committed by minors, followed by offences such as: hooliganism, sexual offences and illegal drug circulation offences. The majority of minors who committed crimes do not attend school and are not employed. Most juvenile offenders are of the

age between 16 - 17 (about 70% of all offences); followed by the 14-15 age group (about 27% of all offences) and, to a very limited extent, by minors under 14 (about 3% of all of offences). In most cases, minors commit crimes for the first time. They come mainly from disadvantaged, single-parent, or multiple children families or minors remained without parental supervision. Thus, the criminological analysis of the phenomenon shows that the precarious financial situation is one of the factors that determine the deviant behaviour among minors. About 80% of all crimes are committed by minors from this social category. The government should therefore strive to ensure the welfare of young persons, such as provided for by the Riyadh Guidelines.

The sexual offences and the illegal drug circulation offences are basis of concern as well. It was shown that the victims of this type of offences are mainly children deprived of parental supervision.

The provisions of the Resolution emphasize the need to strengthen the society efforts, the community role in influencing the child's orientation, as well as the development of community-based services and programs. Regretfully, we should mention that community-based programs, such as sportive, cultural and other activities aimed at cultivating a healthy lifestyle among the youth and at establishing a favourable environment for youth socialization and healthy interpersonal relations, are weakly developed[171].

At the same time, although recidivism is much less frequent among offence committing youth, the strengthening of the probation system could, however, substantially contribute to the social reintegration of persons in conflict with the law.

According to official statistics[172], 946 of all criminal cases were ceased during the investigation stage, of which 47 cases were closed under articles 54 and 104 of the Criminal Code of the Republic of Moldova. These articles stipulate the release of minors from criminal liability by applying coercive educational measures, preponderantly such as warnings and the minor's entrust under the supervision of his/her parents or of the persons replacing them. The ombudsman considers that this procedure is a formal one and that the supervision of minors does not actually take place.

[171]Although according to the provisions of art. 14, letter v) of the Law on Local Public Administration, No. 436-XVI, of 28.12.2006, one of the basic competences of the local Councils is to contribute to the organization of cultural, artistic, sportive and entertainment activities of local interest, the provisions remain largely at the legislation level.

[172]Submitted by the General Prosecutor's Office at the request of the ombudsman

The issue regarding the creation of an institution specialized in the rehabilitation and social reintegration of children, who committed but were not held liable for crimes, was not solved in 2012 either. The vacuum, thus created, persists since 2010, when the boarding school for children with deviant behaviour from Solonet, Soroca district, was shut down due to non-compliance with appropriate standards in the field.

The special rooms for hearing the minor victims or crime witnesses are an efficient mechanism to avoid the minor's re-victimization during the hearing process. The use of such rooms in developed countries has shown good results in this regard. The ombudsman welcomes the authorities' actions to strengthen this mechanism.

2. The Right to Education

2.1. Structural educational reform

The structural educational reform was one of the most important issues in the field of children's rights in 2011 and 2012.

The Report on Observance of Human Rights for 2011 includes an analysis of the implementation of the structural educational reform. Additional data were solicited later in 2012 for a more extensive analysis, as well as to monitor the developments in this field. Thus, it was found that, of all the institutions touched by the reform, approximately 74% (or 128) were reorganized and 26% (or 45) were closed[173].

Related to human resources, approximately 20% (or 258 persons) of the employees were transferred, 7% (or 88 persons) - retrained, and 73% (or 917 persons) – laid off. 34% of the dismissed personnel (or 313 persons) were employed as technical staff and 66% (or 604 persons) – as teachers. The reasons for the teachers' layoff were the following: 49% (or 298 persons) were dismissed due to having reached the retirement age, 12% (or 71 persons) – based on their own resignation requests and 39% (or 235 persons) – as a direct result of the reform implementation[174].

With regard to the children's commute to district schools, we found that 9,243 children use transportation means to go to school on a daily basis. According to the data provided by the LPA, approximately 231 vehicles were needed for this aim at the time of the data collection.

[173] http://ombudsman.md/file/MNPT%20PDF/Raport%20tematic%20%20REFORMA%20IN%20INVATAMANT%202222.pdf
[174] Information provided by the district/municipal education departments.

However, the LPA had only 207 vehicles, of which 104 (or 50%) were provided by the CPA, 41 (or 20%) - by the LPA, and 62 vehicles (or 30%) were rented.

In view of the above, the ombudsman points out the issue related to the children's commute to district schools, which is affected by the fact that LPAs lack the necessary vehicles. At the same time, the large number of dismissed teachers, particularly based on voluntary resignation applications, and as a direct result of reform implementation, calls for a rigorous monitoring by the relevant institutions, in order to avoid abuses or pressure that could lead to the violation of the dismissed persons' right to labour.

The Ombudsman is aware that this reform is necessary, in order to ensure the children's access to quality education, particularly of children from rural areas. On the other hand, the authorities should make sure that the reform implementation benefits of a realistic financial coverage and that no violation of the dismissed persons', children's and parents' rights is admitted during its implementation.

2.2. Obligatory vaccination

The mandatory prophylactic vaccination upon children's admission to educational and recreational institutions was an important and echoing issue in 2012. This norm is provided for in paragraph (6), article 52 of the Law on State Control on Public Health, No. 10 of 03.02.2009.

In their appeals to the ombudsman, the parents, whose children were not admitted to educational institutions because they had not been vaccinated, alleged that their refusal to immunize their children was determined either by the lack of trust in the vaccine quality and the possible side effects of the vaccination, or by their religious beliefs, the lack of detailed information that would have calmed their concerns regarding the vaccination and its benefits, the imposition of certain conditions to obtain the parental consent for vaccination. The parents also think that the mentioned legal provision considerably limits their right to take decisions regarding their children's health, to take responsibility for their children's health through vaccination, vaccination refusal or selective vaccination, depending on the individual characteristics of each child.

Through this legal provision, the Parliament has unduly imposed the restriction of the right to education to a minority group, that of unvaccinated children, and has neglected the principle

of compulsory general education. This restriction does not conform to the provisions of art. 35, paragraph (1) of the Constitution, and is not commensurate with the situation that determined its establishment and, subsequently, affects the substance of the law.

The ombudsman considers that there are sufficient leverages in the national legislation to ensure the public health maintenance and that the parents, or their legal representatives, are the primary caretakers who have direct responsibility for their children's health. However, in the ombudsman's opinion, the following allow state control of public health without rejecting a fundamental right – the right to education, that is provided in the Constitution by means of the principle of compulsory general education: adequate legal provisions coupled with the consolidation of public confidence in the children's immunization programs and in the benefits of vaccination; the training of the medical staff in charge of the children's immunization; and the use of innovative and effective vaccines.

It is the state authorities' responsibility to ensure a balance between the need for the public interest protection, on one hand, and the fundamental human rights, on the other. The special measures taken by the Republic of Moldova to ensure the public health control and the public interest protection comes at the expense of the best interests of the child and does not keep this fair balance, based on which the objectives of the Convention for the Protection of Human Rights and Fundamental Freedoms were determined by the European Court of Human Rights.

2.3 Textbook rental

Article 35, paragraph (4) of the Constitution of the Republic of Moldova provides that public education is free of charge.

However, according to Government Decision No. 448 of 04.09.98 "Regarding textbook provision to students in primary, gymnasium and lyceum education", a textbook rental system was introduced for students in gymnasiums and lyceums starting with the school year of 1998-1999. The Ministry of Education, in coordination with the Ministry of Finance and the Ministry of Labour, Social Protection and Family, establishes a rental fee for each textbook yearly, depending on its condition and full cost[175].

[175]Section 2, subsection 5) of the Government Decision No. 448 of 09.04.98 „Regarding textbook provision to students in primary, gymnasium and lyceum education"

Fully (100%) subsidized from the state budget are only curricula and syllabi for all the educational institutions; pre-school manuals and other didactic books; textbooks, didactic materials, atlases and maps for students attending all types of boarding schools; manuals and other didactic books for the elementary education in schools of all types[176].

The publication of textbooks in Bulgarian, Gagauz and Ukrainian, as manuals of native language, is partially subsidized from the state budget, as jointly established by the Ministry of Education and the Ministry of Finance.

According to section 4 of the above-mentioned Government Decision, the local public administration authorities define special allowances for children from disadvantaged families to pay the textbook rental fees and plan in their budget the necessary amounts to cover a partial exemption of up to 70% of these fees. The beneficiaries of the textbook rental fee will not exceed 20% of the total number of students.

The Minister of Education issued Order No. 400 of 23.05.2012 on the approval of rental fees for gymnasium and lyceum textbooks for the academic year 2012-2013 based on the Government Decision No. 448 of 09.04.1998 "Regarding textbook provisions to students in in primary, gymnasium and lyceum education" (including ulterior amendments), annex No. 2, section 5.

The ombudsman believes that Order No. 400 of 23.05.2012 of the Minister of Education, as well as the Government Decision No. 448 of 09.04.1998, based on which this Order had been issued, obviously contradicts the provisions of the Constitution, and this issue will be examined during 2013.

2.4.School fees

[176]Section 2, subsection 1) of Government Decision No. 448 of 09.04.98 „Regarding textbook provision to students in primary, gymnasium and lyceum education"

The issue of school fees was a hot topic in 2012 as well. Although the authorities declare that the school fees are parents' voluntary donations, in reality, various methods are used to compel the parents to pay these fees. The first step is to force the parents to become members of the parent associations under the pretext of the right to associate. This is usually a prerequisite for a child's admission to an educational institution. According to the associations' statute, one of the members' responsibilities is the payment of fees, such as established by the Parent Council of the educational institution.

> Because a child was raised in a single-parent family, his mother did not have the possibility to pay the school fees for the first two months of his 5th grade. Thus, the pressures on the child began, which led to his aggressive behaviour, poor school performance, etc. In December, the child refused to go to school for the above-mentioned reasons. He was subsequently transferred to another educational institution.

The stigmatization of children by means of a biased evaluation of their school performance is a second step to compel the parents pay the fees. Such cases were examined by the ombudsman in the previous years.

Taking into consideration that the proposals of the Ministry of Education to forbid the teachers' involvement in "donations" collection and the approval of the Regulation on the cooperation of educational institutions with community-based associations are not viable means to solve this problem for good, the ombudsman reiterates his previous recommendations regarding the elaboration of effective mechanisms that would ensure the do nors' anonymity, so as to avoid the identification of the parents, who do not pay the school fees or who cover them partially, depending on their possibilities. Such an approach would eliminate the parents' coercion leverages and would guarantee at the same time an equal and non-discriminatory treatment towards their children.

2.5. Inclusive education

The Constitution of the Republic of Moldova and the Law on Education[177] guarantee the right to education, with disregard of nationality, sex, age, origin and social status, political or

[177] Art. 6 of the Law on Education No. 547- XIII of 21/07/95

religious affiliation, criminal record of the beneficiary of education. The State shall ensure equal access to the educational institutions of all levels and stages, depending on skills and capacities.

At the same time, the right of children with disabilities is stipulated in Article 23 of the UN Convention on the Rights of the Child, which stipulates that "recognizing the special needs of a disabled child, assistance extended shall be provided for free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access and receives education ..."

In the context of the constitutional provisions, as well as of the commitments taken by the Republic of Moldova at the ratification of the Convention, the Government of the Republic of Moldova approved the Inclusive Education Development Programme for the periood 2011-2020[178], that places inclusive education among the educational priorities. This program will be implemented in three stages: a) 2011-2012: the elaboration of a regulatory framework for the development of inclusive education, b) 2013-2016: the implementation of inclusive education models; c) 2017-2020: the Program implementation on a large scale.

The document stipulates the inclusion conditions for the de-institutionalized children from boarding schools, as well as the schooling of children with special educational needs in general educational institutions. In conformity with Order No. 739 of the Ministry of Education of the 15, August 2011, the inclusive education model was to be implemented in the educational institutions from Floresti and Ialoveni districts.

Capacity strengthening of the human resources that will be involved in the organization of the inclusive education process is a necessary condition for the success of this process. Methodological seminars were organized for school managers, deputy school managers on education and psychologists from general education institutions in this aim. During these seminars, the participants were trained on inclusive education methodology, the role of the administrative and teaching staff in the promotion and implementation of inclusive education principles. Also, several workshops were organized in the framework of these seminars and were aimed at addressing practical aspects of inclusive education.

[178] Government Decision No. 523 of 11.07.2011, on the approval of Inclusive Education Development Programme in the Republic of Moldova for the period 2011-2020

Equal rights and opportunities, the best interests of the child, non-discrimination, and appreciation of the differences between children, early intervention, and individualization of the education process are fundamental pillars in the organization of the inclusive education process.

The ombudsman appreciates the authorities' initiative to intensify the efforts aimed at the achievement of the provisions of the UN Convention on the Rights of the Child. At the same time, in terms of the right to education, this program will contribute to the elimination of all forms of discrimination against the children with disabilities. The development of an infrastructure tailored to the needs of the disabled persons is also very important for the entire network of educational institutions. We would like to remind that, according to the results of an evaluation carried out by the ombudsman[179], only 2% (48 institutions) of the monitored educational institutions were adapted for the access of persons with disabilities, while 98% (1882 institutions) did not provide the necessary access conditions for this group.

3. Child Protection against Abuse

The provisions of article 24, paragraph (1) of the Constitution of the Republic of Moldova guarantee to everybody the right to life and physical and mental integrity. Also, according to the provisions of the UN Convention on the Rights of the Child, the State has the obligation to protect the child from all forms of violence, physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse[180].

Child abuse is still a major issue in the focus of attention of the Ombudsman. The Ombudsman shared its opinion on different forms of abuse in the previous reports.

Violence in schools is a growing phenomenon that takes least expected forms. For example, the number of student-teacher violence cases is increasing. These are outnumbered by the student-student violence acts only, and are more frequent than the teacher-student violence cases. The ombudsman continues to believe that violence in school, particularly in cases where the student is the aggressor, can be opposed through qualified psychological assistance of preventing, identification and resolution of simple cases at educational institution level and, in more complex cases, through the creation of regional psychological assistance centres. These

[179] http://www.ombudsman.md/file/RAPOARTE%20TEMATICE%20PDF/acces%20educatie%20FINAL.pdf
[180] Article 19 of the UN Convention on the Rights of the Child

regional centres could be an alternative solution to the mechanisms foreseen in paragraph (7), art. 43 of the Law on Education No. 547-XIII of July,21, 1995[181], that should provide these psychological services and elaborate special programmes (such as mutual support groups) for the teachers and the other staff of the pre-university educational institutions in order to maintain a non-violent environment. In reality, these mechanisms are mainly non-functional[182].

Domestic violence is a social phenomenon in which children are usually collateral victims. With regard to this issue, we have to mention that the most viable solution to combat this phenomenon is continuous public information on the rights, in order to contribute to the change of perception on the domestic violence phenomenon, as well as social and psychological assistance provided to families, where violent acts take place.

At the same time, the aggressor's isolation from the victims remains a valid problem. Although according to the legal framework, the court may decide on the need to set a protection order, the application of this measure is hampered by the lack of facilities, where the aggressor could be placed. In these circumstances, the aggressor continues to live with his victims in the majority of the cases. We would like to note that, in this context, it is more reasonable, from both methodological and financial considerations, for the aggressor, rather than his victims, to be placed in a specialized rehabilitation centre. The need to coerce the aggressor to follow an appropriate treatment could be simultaneously examined during his placement in such a centre.

One of the worst forms of child abuse is certainly the sexual abuse, due to the serious consequences on the child's development and on his/her psychological integrity. This type of abuse is considered as serious because it is the most difficult to document. According to specialists, it is difficult to assess the true extent of the phenomenon given that many cases are not reported neither by the victims nor by the witnesses, because both fear the abuser, or the victims are afraid of being stigmatized. In some cases, when the victim comes from a disadvantaged family, whose parents lead an immoral life or abuse alcohol, it appears that children become victims also because of their parents' unconsciousness, as the latter accept financial arrangements in order to withdraw the complaint filed against the abuser. According to the ombudsman, the children feel abandoned and betrayed in such situations. They lose their

[181] *pedagogic labs, methodical-psycho-pedagogical centers, psychological services, child protection inspectorates and medico-psycho-pedagogical committees,* that are subordinated to the educational departments, whose structure and responsibilities are established through regulations approved by the Government in the framework of the General Department of Education.
[182] http://ombudsman.md/file/RAPOARTE%20TEMATICE%20PDF/Raport%20Tematic%20art.%2043%20%20final.pdf

self-esteem, which leads to serious psychological consequences, i.e. imminent danger for the child's life and development.

During the examination of a case on e sexual abuse of a minor, the ombudsman found that the prosecutor reclassified the abuser's gestures from the extremely serious offence category to that of less serious offences. Although the abuser pleaded guilty, the prosecutor's actions allowed the application of Art. 109 of the Criminal Code[183], based on which the criminal prosecution was terminated. The prosecutor's actions aroused the ombudsman's suspicion, particularly given the fact that the child came from a disadvantaged family, and her mother was an alcohol addict. The ombudsman asked the General Prosecutor's Office to verify the legality of the decisions issued during the criminal prosecution, and to warn the prosecutors on their duties, particularly when examining criminal cases involving minors. As a result of the ombudsman's intervention, the decision on the criminal prosecution termination was cancelled by the order of the Prime Deputy of the General Prosecutor and the prosecutor who handled this criminal case, as well as the Deputy District Attorney received disciplinary sanctions. The child victim benefited of needed psychological rehabilitation assistance.

3.1. Juvenile Suicide

Juvenile suicide cases are being publicized more frequently. According to official data, 15 suicide cases were registered among minors in 2008, 10 cases - in 2009, 12 - in 2010, 18 - in 2011, and 26 cases of juvenile suicides were recorded in 2012.

According to experts, the suicide in minors is caused by oppressive disturbances, profound disappointment, severe shock, emotional conflict, etc.

Suicide is determined by: the victim's desire to reach out to his/her parents, loved ones and/or friends; jealousy of a girlfriend/boyfriend; loneliness; marginalization or ignorance of close people; interdictions imposed by the legal representatives; etc. The juveniles often commit suicide through medicine overdose, strangulation, jumps-offs from significant heights.

[183]**Reconciliation** (1) Reconciliation is the act of avoiding criminal liability for a minor or less serious offence. In the case of minors it also includes avoiding a serious offence and offences referred to in chapters II-VI of the Special Part, as well as in the cases referred to in the criminal procedures. (2) The reconciliation is personal and has juridical impact from the moment when criminal investigation is initiated to the time when the panel of judges is recessed for deliberation. (3) In the case of the person lacks legal capacity, the reconciliation is negotiated by their legal representatives. Those with limited legal capacity can reconcile with the consent of the persons provided by the law.

Given the fact, that some of the children, who committed suicide, had their parents working abroad, we conclude that the children in lack of parental care are left without the necessary support to overcome their age-specific difficulties. It is a proof that the existing services, which should represent an alternative to parental care, are underdeveloped. In this context, we reiterate the problems previously enunciated by the ombudsman and namely: poor operation of the mechanisms stated in article 43, paragraph (7) of the Law on Education; absence of psychologists in schools; and inadequate provision of social services.

The community social worker has a key role in identifying the children left without parental care, especially the children that do not benefit of any form of protection and who are most at risk of committing suicide. Once identified, these children should be the focus of attention of the educational institutions. The tutelage authority should work very closely with the educational institutions, given that the school is another major player in a child's life, particularly in monitoring his/her state of mind, which is facilitated by the daily interaction of educational institution representatives with children. Unfortunately, due to insufficient operation of the mechanisms stipulated in article 43, paragraph (7) of the Law on Education, which provide for teacher training on the early identification and prophylaxis of the emotional and behavioural deviations in pupils, it is possible that some of the teaching staff lack the necessary knowledge to accomplish such tasks. At the same time, the presence of a school psychologist, who would oversee the maintenance of a healthy emotional atmosphere in the educational institution, is necessary for both, the prevention and the prophylaxis of emotional deviations in schoolchildren.

According to the ombudsman, such a comprehensive approach to the problem, which implies both close and effective cooperation of all authorities at the community level, as well as consolidation of the efforts of the entire community, is a viable solution for such important social problems as the juvenile suicide.

4. The Right to Health Care

According to article 24 of the UN Convention on the Rights of the Child, “State Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: (a) to diminish

infant and child mortality; (b) to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care...”

During 2012, the Ombudsman examined 7 cases on negligent violation of the rules and methods of medical assistance provision, which needed the involvement of the Prosecutor’s Office. Subsequent criminal prosecution was initiated in all of the above-mentioned cases.

Also, acting in the best child’s interest, the ombudsman filed a civil action in court. The civil case examination was suspended, however, because the criminal prosecution had not been completed.

Unfortunately, in the cases examined by the ombudsman on negligent infringement of the rules and methods of medical assistance provision, the consequences, for the children that were subject to such negligence, were serious and very serious, including misdiagnosis[184] or even death[185].

> A child of only 4 years of age had to suffer unbearable pain for 20 days because the doctors diagnosed her incorrectly. Having fallen from a swing, the child fractured her hand. The parents called an ambulance the same day and the child was transported to the Children’s Hospital No. 3. There, the minor underwent radiographic examination. Subsequently, the patient’s doctor recommended the application of an elastic bandage, an ointment and drinking syrup for 10 days. Since the child was in pain, the parents took her to another doctor, who repeated the radiographs. Following the repeated examination, the doctor concluded on a bone fracture. Twenty days after the incident, the child underwent an emergency surgery. Having examined the mother’s complaint and the enclosed papers, the ombudsman requested the involvement of the Ministry of Health and of the Prosecutor’s Office in the investigation of this case. Thus, a disciplinary sanction was issued to the doctor who diagnosed the child incorrectly and the Prosecutor’s Office started criminal prosecution case based on the offence under article 213 of the Criminal Code “negligent infringement of the rules and methods of medical assistance provision”.

One of the most resonant cases was that of the gymnasium pupils from the village of Baltata, Criuleni district, who underwent tuberculin testing (Mantoux 2 UT sampling). Following the test, a large number of children experienced side effects. As result, 18 of the tested pupils

[184] http://ombudsman.md/md/newslst/1211/1/5917/
[185] http://ziar.jurnal.md/2012/11/09/%E2%80%9Eof-ne-mananca-puscaria%E2%80%9D/
http://www.protv.md/stiri/social/anestezicul-administrat-copilului-decedat-pe-masa-de-operatie.html
http://www.publika.md/viata-distrusa-la-nastere--o-mama-nu-se-poate-bucura-de-zambetul-propriului-copil_899741.html
http://www.jurnal.md/ro/news/avocatul-parlamentar-al-copilului-a-vizitat-satul-bal-ata-219755/
http://www.prime.md/ro/news/un-copil-de-patru-luni-a-decedat-la-o-zi-dupa-vaccinare-2012396/

were hospitalized in the Reanimation Ward of the Scientific Research Institute of Mother and Child Health Care in Chisinau.

The ombudsman made a visit Baltata and talked to the children, involved in this case, and to their parents. According to them, the parents had not been informed about the test, which was performed with usual syringes and not with the self-locking disposable ones, as required by current regulations. Thus, it is assumed that a dosage error occurred, which caused side effects in some children.

Asked to provide explanations on this case, the Ministry of Health denies these allegations, specifying in its answer to the ombudsman that the testing process was carried out in accordance with all requirements in force[186].

The ombudsman is concerned about the seriousness and the professionalism of the health system employees, given the growing number of cases of non-compliance to the rules and methods of medical assistance provision committed by the health care staff. Another reason for concern is the absence of known cases of sanctioning for committed medical errors or non-correspondence of sanctions with the seriousness of the committed malpractice.

5. The Right to Social Aid and Protection

As a result of the examination of the complaints received by the Centre for Human Rights, it was found that one of the problems citizens deal with is related to the establishment and payment of allowances for adopted children and youth under guardianship/curatorship. These allowances must be provided in order to ensure a decent living to children without parental care in conformity with the Government Decision No. 198 of April 16, 1993 on Protection of Children and Socially Disadvantaged Families.

In order to evaluate the status quo in this field, the ombudsman initiated the monitoring of the allowance management by the tutelage authorities from the Soldanesti territorial-administrative unit. Information was requested from local public authorities of both I and II levels, in order to verify the accuracy of allowance management.

It was found that the data provided by the local public authorities of level I differed from those provided by the local public authorities of level II. The data discrepancy revealed poor and

[186]Letter No. 01-8/1188 of the 29th of May, 2012 signed by the Minister of Health

ineffective collaboration between the two levels of the LPA, as well as the failure of the level II authorities to fulfil their specific duties in coordinating the authorities of level I[187].

The ombudsman considers that the discrepancy of the data collected by the social aid structures and the local authorities of level I could be eliminated by creating a single information system. Such a system would allow the centralised collection of data on children without parental care, that were adopted, or who are under guardianship or curatorship, as well as a more rigorous control of both, the veracity of information, and the compliance with legal provisions. At the same time, it was discovered that some authorities did not pay allowances of 600 lei based on the recent modifications[188], but rather continued to pay an amount of 500 lei in accordance with the previous provisions. Another issue for concern regards the community information on the forms of protection provided to children without parental care and on the importance of these mechanisms in the observance of the rights of the child.

During its evaluation, the Ombudsman also identified cases when the allowances were not paid at all, although the applicants met all the legal requirements.

The ombudsman thinks that in such situations the child's constitutional right to social aid and protection, such as stipulated in article 47 of the Constitution of the Republic of Moldova, according to which the State is obligated to ensure that every person has a decent standard of living, was infringed.

At the same time, according to article 27, paragraph (4) of the UN Convention, governments are required to take appropriate measures to ensure that the child receives alimonies from his/her parents or from other persons having financial responsibility for him/her, regardless of whether these are in the home country or abroad. In the cases when a person, who has financial responsibility for a child, lives in a different country than the child's, the governments should promote the adherence to international agreements or the signature of such agreements, as well as the adoption of other relevant arrangements.

Based on citizens' appeals received year after year, alleging that the alimony payment is a serious problem, which violates the child's right to a decent living, the ombudsman has launched

[187]The duties of the social aid structure are set forth in article 13 of the Law on Social Aid No. 547 of December 25, 2003 and in the Framework Regulation on the Organization and Functioning of the Territorial Social Aid Structure, approved by Order of the Minister of Labor, Social Protection and Family No. 024 of December 8, 2009.

[188]On February 10, 2012, Government Decision No. 78 of February 8, 2012, regarding the approval of amendments and the additions to certain Government decisions, entered into force. According to this Decision, a monthly allowance of 600 lei shall be paid to the adoptive parents and guardians/curators for each adopted child or youth under guardianship or curatorship.

an investigation in order to determine the conditions, which generate this situation, and to find solutions.

Thus, the information obtained from courts revealed that, during the years 2010-2012, 5,876 appeals were filed with regard to alimony payment. After thorough examination, the court decided to issue 1,444 court orders establishing the alimony amount and 3,500 enforcements for alimony payment.

To monitor the extent to which suchlike enforcements are being implemented, the ombudsman analysed data from 41 bailiffs. It was found that out of a total of 2,696 issued enforcements, only 309 were executed. At the same time, reconciliations were concluded in 113 cases, the implementation of enforcements was suspended in 40 cases, and, in 196 cases, the debtor refused to pay the claimed alimony. As for the other enforcements[189], the bailiffs mention not being able to fulfil their duties in the execution of the court order due to the fact that the debtors are either abroad or their residence place cannot be determined.

In the case of the debtor's refusal to pay the alimony, the bailiffs submitted 20 subpoenas to summon the debtor for offence liability[190] for the non-execution of the court order and, later on, 16 subpoenas - for deliberate non-execution or for evasion from serving a court order, if these were committed after the application of the offence sanction.

Thus, we conclude that the percentage of the solved cases on the collection of alimonies for a minor child is reduced, representing approximately 15.65% of the total number of enforcements received by bailiffs. According to the ombudsman, this trend represents a serious violation of children's right to a decent life, since, in many cases, these funds are the only source of survival for these children.

6. The Right to Freedom of Opinion

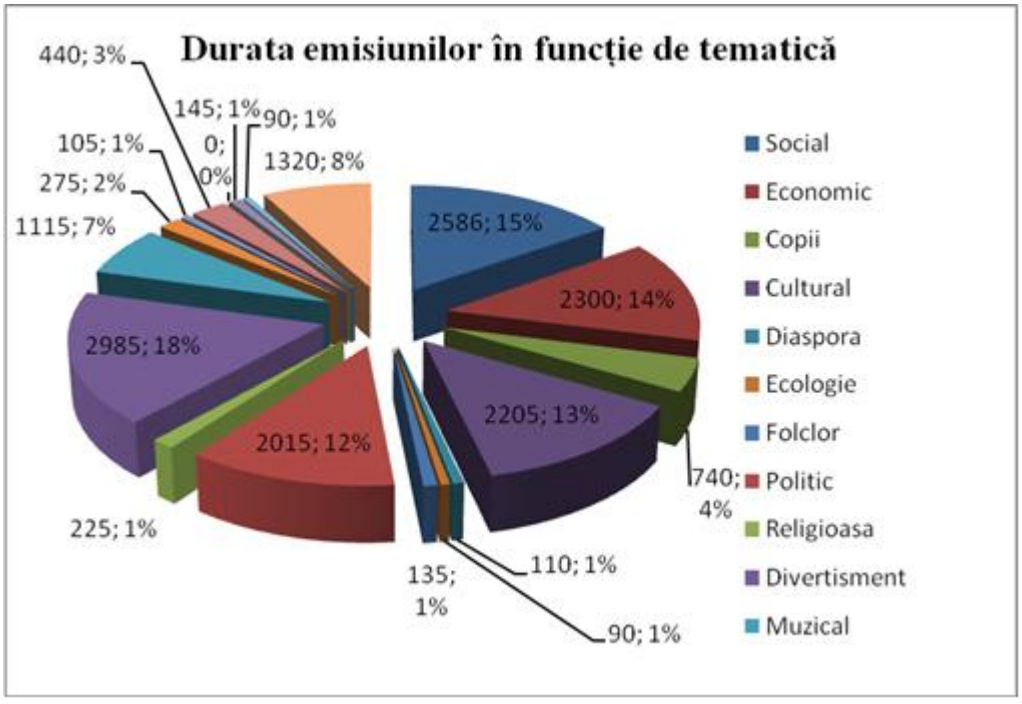
Studies on the impact of television on child development showed that the perceptions, a TV-watching child could have, vary based on his/her age, sex, residential environment, and, at times, also based on the consumer's profile. The TV-watching child develops due to different variables. The TV is a socialization factor and an element that contributes to the identity

[189]Their share is of 2038 enforcements or of 75% of the total of 2,696 enforcements received by the 41 bailiffs, who were included in the ombudsman's investigation.
[190]In conformity with provisions of article 318 of the Contravention Code of the Republic of Moldova

development in youth. Television reveals to a child a world he/she could talk about, serves as a means of entertainment, and provides behaviour and "role models" to follow.

These aspects of TV influence on children demonstrate the importance of the contents of the TV programs, the child has access to, and thus, the information flow should be conditioned by these factors.

The results of our analysis of the schedule of programmes on the national TV channel showed that only about 4% and, respectively, 2% of airtime is reserved for programmes for children and youth.



Based on the observations of the Centre for Human Rights and on the opinions expressed by specialists in the field, it must be concluded that children in the Republic of Moldova are mainly consumers of programs for adults, which leaves its print on child development.

The role of television, as a source of information, is very important. In the current context of parental labour migration, its role is amplified. It is known reality that in the Republic of Moldova many children are left without parental supervision, responsible for their own education. As result, according to statistics, the rates of suicide in youth, juvenile delinquency,

school dropout, child abuse, etc. are on the increase. Accordingly, in such circumstances the education-development function of television gets amplified.

Besides this social approach to the right to freedom of opinion, we should mention that the freedom of opinion and expression is also a right guaranteed by the Constitution of the Republic of Moldova, through the provisions of article 32. However, article 9 of the Law on Child's Rights, No. 338-XIII of 15.12.94, stipulates the child's right to intellectual capacity development. This right of the child is also stipulated in articles 12 and 13 of the UN Convention on the Rights of the Child.

Summarizing the mentioned above, the ombudsman considers that Moldovan television channels should reserve more airtime for children and teen programs that would equally aim at opinion expression and cognitive development.

Although we realize that the "Teleradio-Moldova" Company is a public institution that enjoys the right to editorial independence and whose TV programmes are of generalized character, nevertheless, the social responsibility of this institution, as compared to other similar institutions, is much more important, based on its duties that are stipulated in the legislation governing this field[191].

7. Right to Habitation in a Family

The family is the natural and fundamental element of society and is entitled to being protected by the society and the State. The state and society protection of children, families and maternity is of primary political, social and economic concern in the Republic of Moldova. For the harmonious development of his/her personality, the child must grow in a family environment, in an atmosphere of happiness, love and understanding. The right to family, the facilitation of the child's development and his/her protection, as well as the care of orphans are recognized in article 48, 49 and 50 of the Constitution of the Republic of Moldova.

Every child has the right to live in a family, to know his/her parents, to be cared for by the latter, to co-live with them, unless the separation from a parent or both parents is required in the interest of the child[192].

[191] Articles 50 and 51 of the Code on Audio-visual of the Republic of Moldova
[192] Art. 16 of the Law on Child's Rights No. 338-XIII of 15.12.1994

According to article 20 of the UN Convention on the Rights of the Child, "A child, who is temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State. State Parties shall in accordance with their national laws ensure alternative care for such a child. …When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background."

Adoption is one of the priority forms of protection for a child without parental care[193]. This special form of protection, applied in the best interests of the child, establishes the filiation between the adopted child and his/her adoptive parents, as well as kinship ties between the adopted child and the relatives of the adoptive parents[194].

According to the official data provided by the Ministry of Labour, Social Protection and Family, the number of domestic and international adoptions is decreasing. Thus, during the years of 2010-2012 the following figures were recorded: in 2010 - 162 domestic and 46 international adoptions; in 2011 - 78 domestic and 23 international adoptions; and in 2012 - 33 domestic and no international adoptions.

During his meetings with the local public administration authorities[195], the ombudsman addressed, among others, the issues related to the implementation of the Law on the Legal Adoption Procedures No. 99 of 26.05.2010. Based on the discussions during the above-mentioned meetings, as well as on the information requested from the tutelage authorities[196], the ombudsman identified serious problems that hinder the implementation of this law, such as:

Lack of psychologists

According to the legal provisions[197], the applicants for adoption should have their moral capacities and skills for the adoption of one or more children evaluated. However, the territorial social assistance structures are not staffed with psychologists;

Poorly performed psychological expertise

[193] Art. 115 of the Family Code of the Republic of Moldova
[194] Art. 2 of the Law on the legal adoption procedures No. 99 of 28.05.2010
[195]We refer here to the meetings that the ombudsman had with representatives of the LPA from Drochia, Rîşcani, Căuşeni and Cantemir.
[196]The information regarding the implementation of the Law on the legal adoption procedures No. 99 of 28.05.2010wascollectedfrom 36 administrative-territorial units
[197]Articles 16 and17 of the Law on the legal adoption procedures No. 99 of 28.05.2010

In order to observe the legal provisions, the leading specialist of the territorial tutelage authority is forced to request the services of psychologists from other institutions who are not aware of the specific aspects of adoption. Also, the psychosocial evaluation should be performed by a psychologist based on at least 3 meetings with the applicants for adoption, of which at least one should be held in their home and the others in the psychologist's office, the territorial authority offices or on any other premises properly set to ensure the privacy of the conversation and confidentiality of information[198];

Bureaucratic and lengthy process

No specific deadline for the stages of the adoption procedure is set in the legislation in the field. Sometimes the adoption procedure can take up to two years[199];

Lack of a regulatory framework regarding the medical contraindications for persons who plan to adopt children

According to the provisions of the legal framework[200], the persons, suffering from mental illness and other ailments that make it impossible to fulfil the rights and obligations of parenthood, cannot adopt children. Article 58, paragraph (3), letters a) and b) of the Law on the Legal Adoption Procedures stipulates that the Government should submit proposals for bringing the legislation in conformity with this Law within 3 months from the Law entry into force. However, up to now there is no list of medical contraindications for persons planning to adopt a child, which had been approved by the Government. Previously, the list of medical contraindications was provided in the common Order No. 113 of April 11, 1994 of the Ministry of Science and Education, No. 64 of April 5, 1994 of the Ministry of Health and No. 47 of the April 11, 1994 of the Ministry of Justice. With the adoption new regulations, the above-mentioned common Order fell into disuse and became obsolete[201].

The ombudsman considers that, in order to observe a child's right to habitation in a family, the state should create favourable conditions for adoption and eliminate the bureaucratic barriers that discourage the applicants for adoption.

[198]According to chapter VI of the Regulation on the procedure for the assessment of the moral guarantees and material conditions of the applicants for adoption

[199] The child born of a single mother was abandoned in the maternity ward. Later on, the mother was deprived of her parental rights, whereas the child was proposed for adoption. Examining the materials of this case, the ombudsman found that the adoption procedure lasts for over 2 years. Thus, acting in the best interest of the child, the ombudsman contacted the court contesting the bureaucratic procedure and the refusal of the Ministry of Labour, Social Protection and Family to issue a consent letter for the continuation of the international adoption procedure in order to fulfil the child's right to have a family.

[200]Article 12, paragraph (4), letter b) of the Law on the legal adoption procedures

[201]Letter No. 03/10131 of December 18, 2012, signed by the Deputy-Minister of Justice

Compliance with minimum quality standards for the care, education and socialization of children from residential institutions

Research[202] has shown that the residential environment is not favourable for the child's development. Therefore, the state protection provided to a child in need should be a fast and effective intervention measure.

In this respect, there are certain minimum quality standards for the care, education and socialization of children from residential institutions[203].

In order to monitor the observance of the constitutional and UN Convention provisions, as well as the enforcement of minimum quality standards, especially during children's housing in residential institutions, the ombudsman examined the activity of 14 boarding-type schools for orphans and children without parental care[204], three boarding-sanatorium schools[205], 17 auxiliary boarding schools[206] and 5 specialized institutions for children with physical and sensory disabilities[207].

The implementation of the minimum quality standards for the care, education and socialization of children from residential institutions is carried out by the District/Municipal Department of Youth and Sports that monitor and evaluate an institution in coordination with the Social Assistance and Family Protection Section/Department.

Under Standard 3 of the National Strategy regarding the Residential Child Care System for the years of 2007-2012, the period of the child's accommodation in a residential institution does not exceed 12 calendar months, during which the dossier coordinator shall find, in collaboration with the local authorities, the final solution, i.e. the family-type placement. Under that same standard, the decision on the extension of a child's placement for more than 12 months is taken by the tutelage authority from the child's place of residence.

[202] http://www.cnaa.md/files/theses/2012/22865/irina_malanciuc_thesis.pdf; http://particip.gov.md/public/documente/139/ro_572_121118-StrategiaProtectiaFamilieCopil-v5-ro.pdf

[203] According to the Government Decision No. 432 of April 20, 2007, these Standards are implamented by all the institutions of this kind, within the approved annual allocations in the central and respective local public authorities' budgets, as well as using the financial means collected from donations, grants and other sources, in conformity with the normative acts in force.

[204] Bender, Fălești, Cupcini, Căzănești, Cărpineni, Bălți, Strășeni, Orhei, Leova, Văscăuți, Năpadova, Ceadîr-Lunga, gymnasiums No. 2 and No. 3 from Chișinău.

[205] Cineșeuți, Rezina, Ivancea

[206] Visoca, Crihana-Veche, Mărculești, Grinăuți, SarataGalbenă, Strășeni, Popeasca, Bulboaca, Rezina, Corten, Nisporeni, Țarigrad, SarataNouă, Telenești, Tocuz

[207] Hîrbovăț, Cahul, Ialoveni, Bălți, Hîncești

According to the information submitted by the managers of residential institutions, we conclude that the 12-month limit of accommodation in a residential institution[208] without a decision to extend the child placement is outdated, which was confirmed after examining the statistics of child placement evaluation.

In 2011, experts from the public authorities have reviewed the placement of 968 children from boarding gymnasiums for orphans and children without parental care, 508 children from auxiliary gymnasiums, 129 children from senatorial gymnasiums and 129 children from specialized middle schools for children with physical and sensory disabilities.

The placement has not been re-evaluated or information is missing regarding the re-evaluation of the placement of 573 children from gymnasiums for orphans and children without parental care, 35 children from boarding-sanatorium gymnasium, 649 children from auxiliary boarding gymnasiums and 219 children from specialized institutions for children with physical and sensory disabilities.

The ombudsman considers that the analysis of the Minimum Quality Standards for the care, education and socialization of children from residential institutions revealed two important moments that show violations of the constitutional rights of the child, as well as of the rights stipulated in the Convention.

First of all, failure to comply with the national regulatory framework on the minimum quality standards is observed. Thus, although the national legal framework stipulates a mechanism to ensure the proper implementation of the legal framework on child education in a family environment, the inappropriate implementation of this mechanism, caused exclusively by the human factor, allows direct infringement of the child right to habitation in a family. Given the above, the ombudsman recommends that the Ministry of Education and the Ministry of Labour, Social Protection and Family take all the necessary measures to ensure the functionality and appropriate application of Minimum Quality Standards, which represent a key mechanism for the observance of the child's right to special protection in critical situations, as well as the right to habitation in a family.

Secondly, the fact that children are accommodated for a long time in residential institutions proves that alternative placement services are underdeveloped.

[208] The auxiliary school from Hîrbovăţ, the auxiliary school from Ialoveni, the auxiliary school from Popeasca village, Ştefan-Vodă district, the auxiliary school from Visoca village, Soroca district, etc.

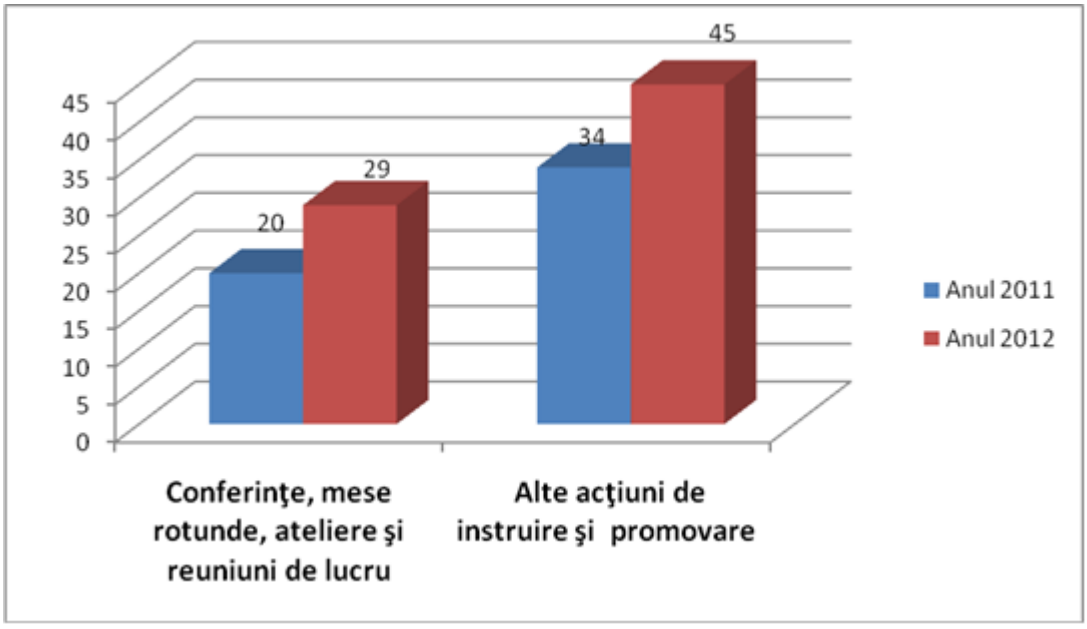
According to the ombudsman, the poor development of the alternative placement services for children without parental care is caused by the poor state funding. The ombudsman mentioned this problem in the previous reports as well.

CHAPTER IV

Information and Promotion of Human Rights in the Community

Working meetings, conferences, round-tables, activities for human rights promotion and legal education of the population

In 2012, the Centre for Human Rights organized **29** conferences, round-tables, workshops, presentations (**20 in 2011**). Various issues related to the enforcement of human rights in the Republic Moldova were discussed in the framework of these events. Also, **45 actions to promote** human rights (meetings, seminars, lectures) were carried out. Pupils, students, civil servants, representatives of several communities, people with disabilities and other categories of people were among the participants in these events.



The above-mentioned activities touched upon the topics on the fight against tortures and ill-treatments, the protection of social rights and of the persons with disabilities, the promotion of

tolerance in the society and the fight against discrimination. The events organized by the Centre for Human Rights served as an opportunity to exchange various opinions and information, as well as, an occasion for establishing a dialogue on topics regarding the status quo of the observance of human rights and fundamental freedoms, regarding the possibilities to improve the current situation, including improving the legislation in the field.

Among the major events carried out by the CHR in 2012 are the following:

- **The international scientific-practical Conference commemorating the 5th anniversary of the implementation of the National Preventive Mechanism against Torture, which took place on the 25th of July, with the support of UNDP Moldova.** The conference brought together a total of approximately 70 participants, including: senior officials from the UN specialized structures (the UN Committee against Torture, the UN Subcommittee against Torture, the European Committee for the Prevention of Torture); NPM officials from the Ombudsman Offices in Slovenia, Poland, Armenia, Georgia and Azerbaijan; researchers and professors; representatives of the law and central public administration institutions, and NGOs working in the field of human rights.

- **On the 10th of December, CHR held a working Conference on the occasion of the International Day of Human Rights. The event had a two-fold significance, as it coincided with the 15th anniversary of the adoption of the Law on Ombudsmen,** which led to the subsequent creation of the National Institution of the Ombudsman. The following persons attended the meeting: the president of the Parliament, Marian Lupu; the president of the Parliamentary Committee for human rights and interethnic relations, Vadim Misin; the MP and former CHR director, Raisa Apolschii; the former ombudsmen – Mihail Sidorov and Iurii Perevoznic; the current ombudsmen – Anatolie Munteanu, Aurelia Grigoriu, Tudor Lazar and Tamara Plamadeala; the Permanent Representative of UNICEF in Moldova, Alexandra Yuster; representatives of various central public institutions; external and social partners of CHR. The following issues were discussed during the event: the current in the field of human rights; the evolution and perspectives of the Centre for Human Rights; developmental and enhancement strategies for the National Institution for Human Rights Protection. The meeting, which was attended by

64 participants, culminated with 2012 Ombudsman Award Edition, during which prizes and diplomas were handed to the Ombudsmen, as well as the signing of a cooperation agreement between the Centre for Human Rights and the NGO "Youth League of Moldova".

- **On October 17 on the occasion of the 15th anniversary of the adoption of the Law on Ombudsmen, the CHR opened its fourth branch in Varnita village, Anenii Noi district.** This activity was carried out in conformity with the National Action Plan in the field of human rights for the years of 2011-2014.

- **On March 27, the public presentation of the CHR Report on the Observance of Human Rights in 2011took place.** At this event, the ombudsmen presented information on different aspects of human rights observance in our country during the last year. Over 40 persons participated at the CHR Report presentation, among whom: representatives of the country leadership; MPs; officials from the central public institutions; representatives of NGOs and international organizations.

- **11 activities were dedicated to issues of social protection and observance of rights of persons with disabilities**. A number of activities were dedicated to issues of tolerance promotion and fight against discrimination and domestic violence.

Decade of Human Rights and activities dedicated to the 15th anniversary of the Ombudsmen Institute

During November-December, the Centre for Human Rights carried out approximately 70 events to celebrate the 15th anniversary of the foundation of the Ombudsmen Institute and, implicitly, events within the Decade of Human Rights (December 1 to 10).

The events included conferences, round-tables, seminars, meetings with various groups of citizens, interviews and participation in TV and radio programs.

At CHR's initiative and with the support of the Ministry of Education, the civic education classes in gymnasiums and lyceums covered the topic of human rights in the reporting period.

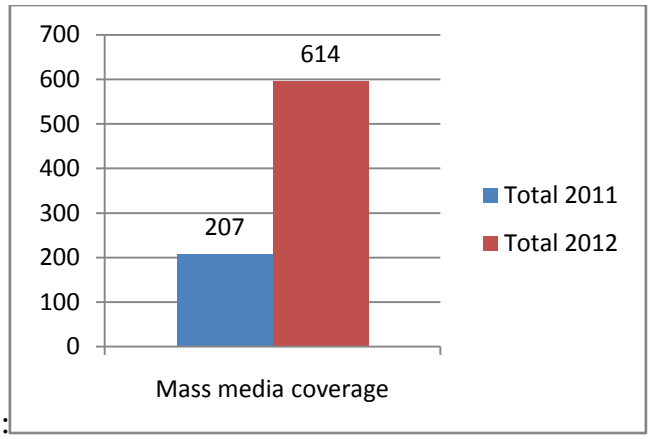
The CHR staff attended the civic education classes and lectured in 20lyceums and gymnasiums. Also, the ombudsmen and the CHR staff met with students and professors from seven higher educational institutions in the country, including: the Slavonic University; the State University from Comrat; Moldova State University (Faculty of International Relations and Political Sciences); "A. Russo" University; the Contemporary Humanities Institute from Balti; "B. P. Hasdeu" University from Cahul; and the Academy of Public Administration under the President of the Republic of Moldova.

In the context of the Decade of Human Rights, the CHR made **18 donations of book** published by the National Institution for Human Rights Protection (over 200 book titles, not counting the booklets) to: the National Library (in order to be further distributed to libraries throughout the country); the Public Law Library; the Library of the Academy of Public Administration under the President of the Republic of Moldova; Cahul University Library: "A. Russo" University Library; and to the Technical-Vocational School No. 2 from Hincesti.

In the period, November 8 - 30, at the initiative of the Centre for Human Rights and with the support of the "Teleradio-Moldova" Company, Radio Moldova organized the contest "My rights: What do I know about them?". The contest was aimed at stimulating the children to document themselves on their rights and at cultivating a respectful attitude towards human dignity and the universal values in the field of fundamental rights and freedoms.

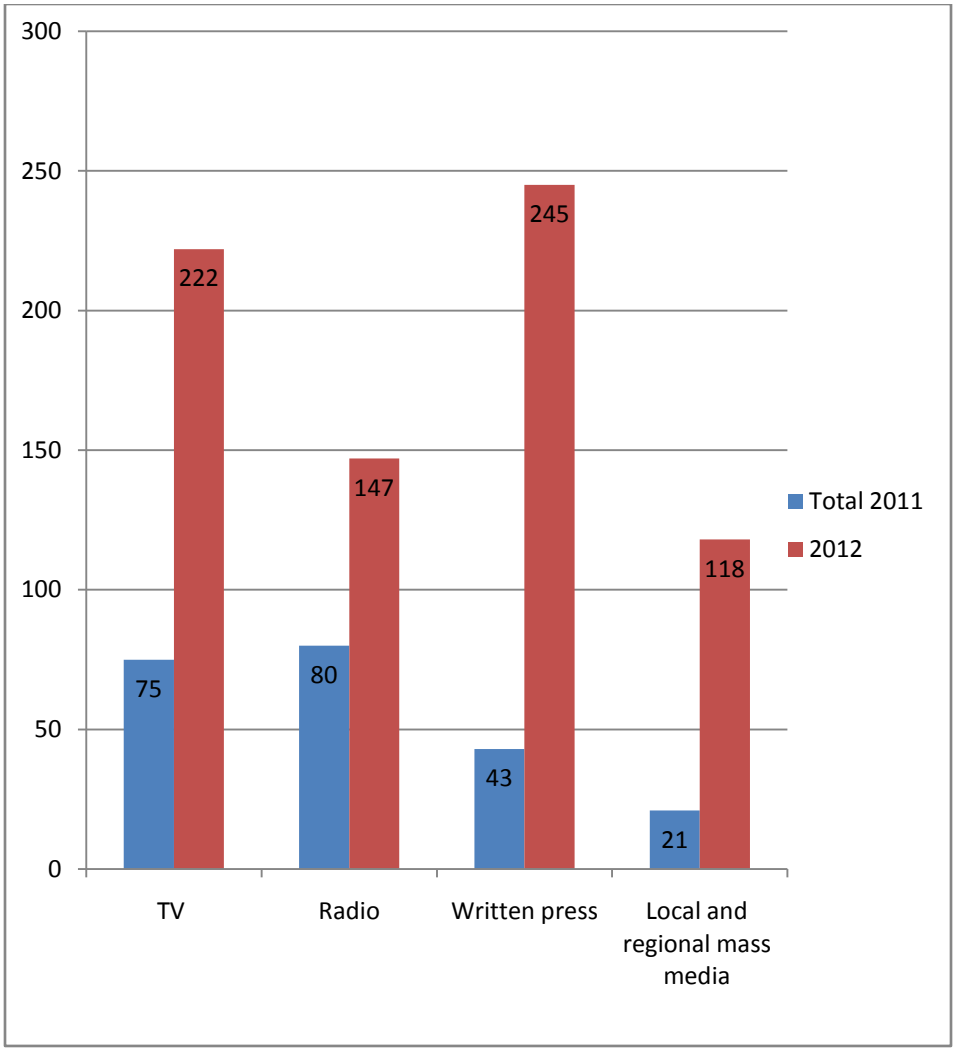
Coverage of CHR's and ombudsmen's activity in mass media

In 2012, the press coverage of the CHR's and ombudsmen's activity **was 3 times larger** as compared to the previous year. Thus, **614** occurrences of **unique** media coverage were recorded, compared to **207** in 2011, of which:

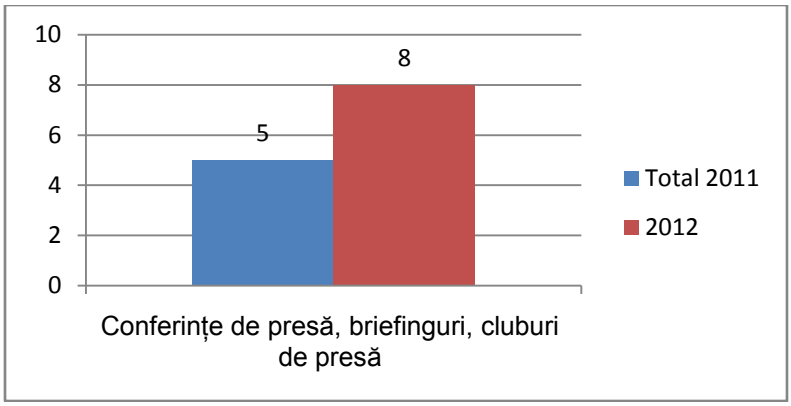


:

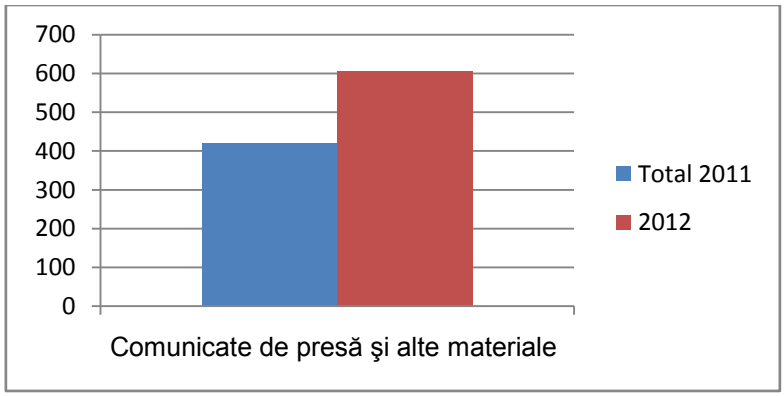
- **222** TV appearances, compared to **75** recorded last year;
- **147** radio appearances, compared to **80** – in 2011;
- **245** articles in written press, portals and press agencies;
- Including**118** in local and regional mass-media.



b) Press conferences, briefings, press clubs – **8**, as compared to **5** throughout last year.



c) Press releases and other materials – **605**, compared to **420** in 2011. The web page is promptly updated not only with press releases, but also with other materials, including with information on the NPMT activity.



In the context of the organization of the international scientific-practical conference "*Five years of NPMT activity*" on July 25, social anti-torture advertisements were broadcasted for a month for free on **3 central television channels** (Moldova 1, Publika TV and TV N4) and on 4 regional television channels (GRTV, ATV, Eny-ai TV, and Pervii narodnii (in Gagauz Yeri)).

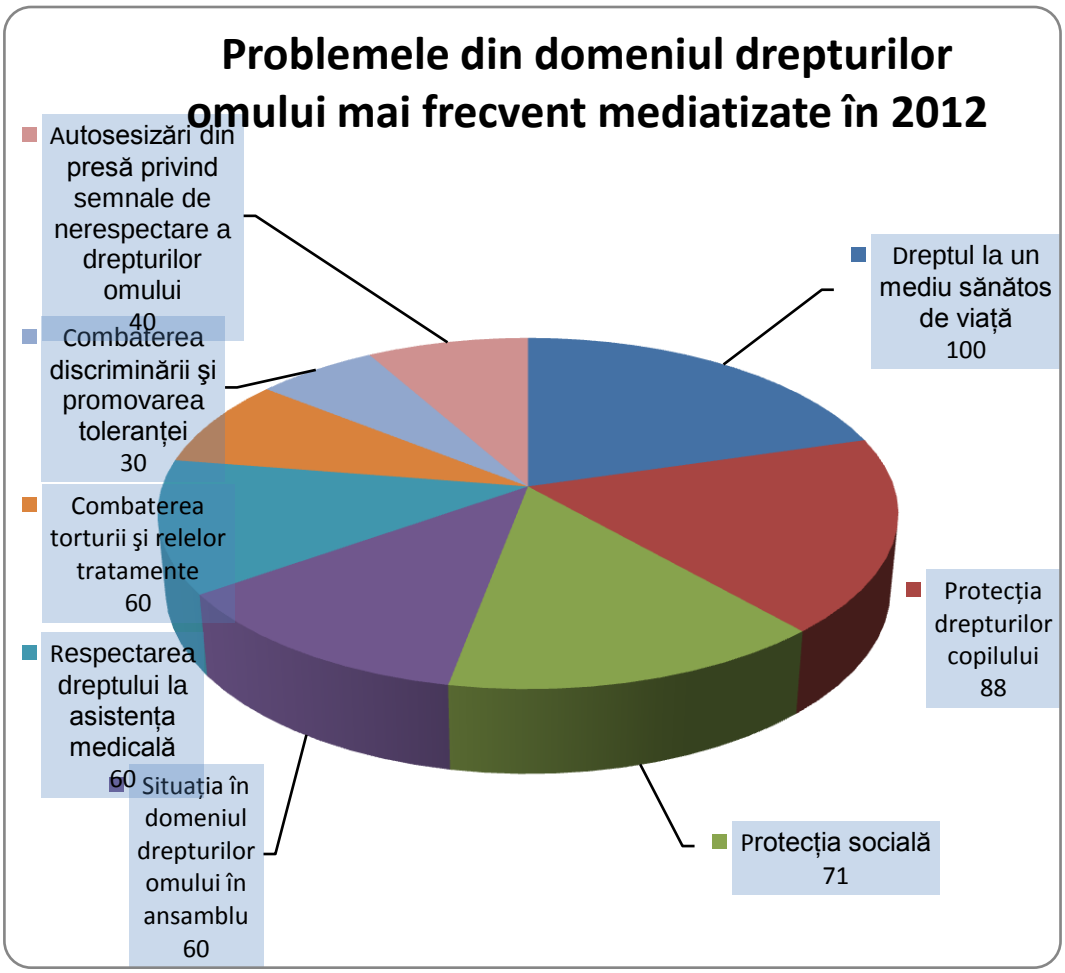
Collaboration was established with the Centre for Investigative Journalism. Together with the CIJ journalists, **two press clubs** were carried out **on the topic: *"What happened in the state institutions in the last 5 years since NPMT foundation in Moldova"*** and "***Poverty as a barrier to equality of opportunity".*** The ombudsmen Anatolie Munteanu and Aurelia Grigoriu participated in the above-mentioned press clubs.

The human rights issues with the participation of CHR employees (implicitly topics based on CHR press releases, ombudsmen's comments and declarations) were more frequently touched upon in different programs of Radio-Moldova, Publika TV, MIR Interstate Company; Moldova 1; Jurnal TV, Public Television from the ATU of Gagauzia, Europa Libera Radio, Vocea Basarabiei Radio, Radio Chisinau, and the Info-Prim-Neo Press Agency. The ombudsmen and the CHR staff were regularly invited to talk on various human rights issues in the following shows: "Publika report", "Tara lui Dogaru", "Publika news", "VoxPublika", "День за днём", newscasts at Publika TV, in the TV show "Moldova in direct" and the talk show "Buna seara", in the morning program "Buna dimineata" on TV Moldova 1. The ombudsmen and the CHR staff were frequently invited to the show "Primatul legii" (The rule of law), "Noi si societatea" (We and the Society" of Radio Moldova. For the second year, the CHR employees daily participate in the "Radio-magazin socio-cultural" program during the period of the Decade of Human Rights. With the support of UNICEF, the ombudsman for the protection of children's rights, Tamara Plamadeala, participated in 25 programs "Vocea copilului" (The child's voice). Also, the Head of CHR Branch in Comrat, Svetlana Mironova, was invited to participate in the show "Обсуждаем вместе" (We discuss together) on the public television of the Gagauz ATU weekly.

The most covered human rights issues were:

Protection of children's rights – 88; social protection of citizens and observance of their social rights - 71; the overall situation in the field of human rights – 60; issues related to the fight against torture and ill-treatment - 60; the warning made by the ombudsman with regard to a possible ecologic disaster on the Dniester river – the information on this issue was broadcasted by approximately 110 media institutions from Moldova, as well as from Ukraine and Romania; the Constitutional Court's support of the ombudsman's notice regarding the sick leave allowance payment (41 articles on this issue were published in the press); the case of TB infection of children from the kindergarten in Baltata village, Criuleni district.

Among the issues covered in the media were also included: the fight against all forms of discrimination and promotion of the culture of tolerance – 18; observance of the rights to health care, healthy living environment and access to quality health care (14).



The positive experience of self-notification of ombudsmen from the press on cases of human rights infringement should be remarked. In over 40 cases, the ombudsmen's reactions to the press coverage of human rights infringement contributed to the solution of the alleged issues or to the mobilization of authorities to act promptly in order to eliminate the documented deficiencies. The most eloquent examples in this respect are the cases of the ombudsmen's reactions to the articles on: the TB infection of the pupils attending the boarding school from CrihanaVeche, Cahul[209]; on the overdose of the mantoux test in pupils and minors (the cases from Condrita village, Balti municipality and Hincesti)[210]; the irregularities related to the

[209]The press releases of February 28, 29 and of March 2, 2012 (http://ombudsman.md/md/newslst/1211/1/5506/; http://ombudsman.md/md/newslst/1211/1/5509/; http://ombudsman.md/md/newslst/1211/1/5514/; http://ombudsman.md/md/newslst/1211/1/5827)
[210]The press release of March 1, 2012 (http://ombudsman.md/md/newslst/1211/1/5511/)

deactivation of the medical insurance policies[211]; the drug tests on the mentally ill persons from the psychiatric hospital in Chisinau; the deaths or the serious health problems caused by physicians' malpractices (the case of the minor who died and that of another one who fell into a coma after a visit to the dentist).

The CHR web page

In the context of public presentation of CHR Report for 2012, and namely in March 2013, a new version of the Centre for Human Rights web page shall be launched. The new web page was developed in collaboration with the Centre for Electronic Governance and with the State Enterprise „Centrul de Telecomunicatii Speciale" (Special Telecommunications Centre), in conformity with the Government policy on the technological modernization of the public institution websites (Government Decision No.188 "On the official websites of the public administration authorities in the Internet", of 03.04.2012).

The new website has many advantages: it is richer in its contents; it observes the transparency and accessibility principles; it was developed based on the set blueprint and corresponds to the requirements on information security. Taking into consideration the Centre for e-Governance requirements, a clear visual identity was successfully shaped for the new website. The structure and the graphic presentation of the contents were developed in such a way as to be of interest to the general public and to ensure a more effective communication with the society. Accounts were opened on the YouTube, Facebook and Tweeter social networks linked to the new site for on-line promotion. The menu was simplified and easy to comprehend for the web page visitors. The activation of a new application is planned in the future which will enable access to persons with visual impairment.

Cooperation agreements

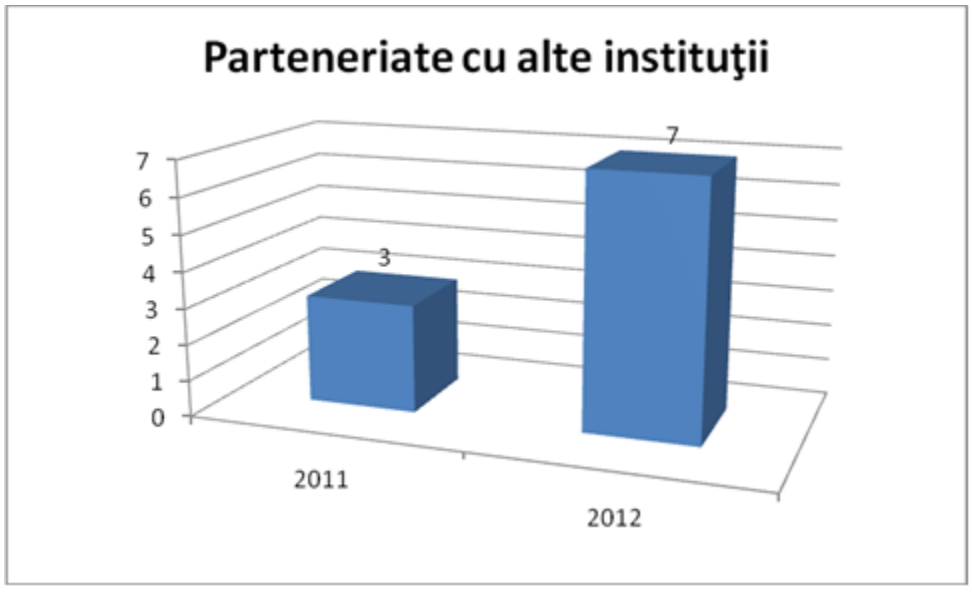
Open and intense communication with all the stakeholders and close and effective interaction with various institutions and organizations, as well as with the general public are important conditions for the fulfilment of the objectives on human rights and fundamental freedoms

[211]The press release of the 16th of March, 2012 (http://ombudsman.md/md/newslst/1211/1/5535/)

promotion. From this point of view, it is necessary to highlight the importance of the partnerships that the CHR established in 2012.

In the reporting period, 7 cooperation agreements were signed, compared to 3 that had been signed in 2011:

- Cooperation Agreement between the Ombudsmen Institution and the National Trade-Union Confederation from Moldova – partnership to strengthen the employee protection system in the Republic of Moldova;
- Cooperation Agreement with the CRIS Foundation – „Ecoul Cernobilului" (Chernobyl Echo);
- Partnership Agreement between the Ombudsman National Institution and the Rehabilitation Centre for Victims of Torture "Memoria" (Memory);
- Partnership Agreement between the CHR and the International Anti-Drug Centre – IDEC Moldova;
- Cooperation Agreement between the CHR and "Teleradio-Moldova" Company;
- Cooperation Agreement between the Commissioner for Human Rights of the Supreme Rada (Parliament) of the Ukraine, Valeria Lutkovskaia, and the ombudsmen from the Republic of Moldova;
- Cooperation Agreement between the Centre for Human Rights and the Non-Governmental Organization „LigaTineretului din Moldova" (Youth League of Moldova).



The above-mentioned agreements are functional. Thus, the Public Company „Teleradio-Moldova" was the CHR's media partner in conducting the International Scientific-Practical Conference commemorating the 5th anniversary of the foundation of the National Preventive Mechanism against Torture in the Republic of Moldova. At the initiative of the Centre for Human Rights, the Public Office of the Ombudsman was inaugurated on May 22 of the current year, on the premises of the Republican Centre for Rehabilitation and Social Integration (CRIS). At the same time, a round-table on the fight against drug use issues was held (on June, 26) and the book "Legal drugs and adolescence - answers to pupils' and students' questions" was launched (on October, 6) in cooperation with the International Anti-Drug Centre IDEC Moldova.

According to the agreement signed with the Rehabilitation Centre for Victims of Torture "Memoria", a study was jointly prepared on the topic: *"Torture and cruel treatment of children in the context of juvenile justice: extent, influence, prevention, identification, provision of support and reporting".* The given study includes a thorough analysis on the use of torture or other forms of abuse against minors, who are in the custody of state institutions, and formulates conclusions and recommendations to improve the situation.

Human Rights Training for civil servants and various categories of persons who administer justice

The ombudsmen and the CHR employees participated, upon request, in the training of groups of professionals, as follows:

- Training for judges on "*National and international monitoring mechanisms regarding the observance of the rights of persons with disabilities and mental disorders"* (March 26, 2012, at the National Institute of Justice);
- Training for para-lawyers working in the field of human rights "*Interaction between the para-lawyers and the ombudsmen"* (July 18-19, 2012);
- Training for the staff of the Department of Penitentiary Institutions "*Detainees' access to information – a fundamental right"* (September 5, 2012); Training for the staff of the Department of Penitentiary Institutions *"Relations between the administration and the detainees, and the social reintegration in compliance with art. 24 of the Constitution and art. 3of ECHR"* (September 19, 2012);

- Training for the civil servants from the Sector Mayor's Office, Riscani sector of Chisinau municipality *"Role of the local public authorities in the observance of human rights and fundamental freedoms"* (February 10, 2012);
- Training for managers of specialised education institutions on the rights of the persons with disabilities (January 20, 2012);
- Trainings for the members of the Advisory Council on monitoring techniques in places of detention.

Among the beneficiaries of these trainings there were: 30 judges, 25 para-lawyers, 45 employees of the penitentiary system, 25 civil servants from the Sector Mayor's Offices and Chisinau Municipality City Hall, 20 teachers working in specialized educational institutions, 8 members of the Advisory Council.

CHR Publications

In 2012, 6 brochures and flyers were published to promote the legal education of the population on human rights and fundamental freedoms, as follows:

- Flyer "Child's Helpline" for adults;
- Flyer "Child's Helpline" for children;
- Brochure "National Preventive Mechanism against Torture";
- Brochure "Right to petition";
- Brochure "Rights of persons with disabilities";
- Brochure "Principle of equality and non-discrimination".

The CHR also published the Report on the Observance of Human Rights in the Republic of Moldova in 2011.

The CHR staff developed two guides: *"Civil servant's manual on human rights"* and *"Human rights and the issue of disabilities"* for persons with disabilities and their families.

The listed publications were distributed to petitioners, local public authorities, municipal and district libraries, the Academy of Public Administration under the President of the Republic of Moldova. The Government Chancellery received a set of copies of "Civil servant's manual on human rights", which was distributed amongst various ministries and departments.

Shortcomings in the field of communication and public relations

Despite several positive results in increasing the institution visibility, the CHR has still much to do in order to eliminate the existing shortcomings in the field of communication and public relations. The shortcomings are mainly due to: poor internal communication, which hinders the best intentions or action plans; the insufficient and inefficient involvement of the representatives of the regional CHR branches in the promotional and training activities. The Balti and Cahul CHR branches are practically absent from the regional information medium organizing occasional promotional activities, carried out mainly at the request or at the suggestion of the ombudsmen or of the public relations staff of the Educational Programs Service. For example, the 118 appearances in the regional media in 2012 were mainly due to the Comrat Branch of the CHR that had 85 appearances in radio and TV programs, and in the printed press. Cahul and Balti offices had only 16 appearances each throughout the year.

A more active participation of the public authorities is desirable in the promotional and training activities on human rights, particularly taking into consideration that National Action Plan on Human Rights for the period 2011-2014 foresees that the CPA and the LPA organize public awareness events on human rights and fundamental freedoms, the fight against torture, ill-treatment, discrimination based on different criteria, and on domestic violence. Section 82/6 of the NAPHR "Education and information on human rights" expressly stipulates "the organization of events in the framework of the decade for human rights at every level of any public authority"[212], to be carried out in December yearly. Nevertheless, the promotion of human rights and the organization of events in the framework of the decade for human rights continue to be an important concern and primary obligation of the Centre for Human Rights.

The current situation in the field of human rights observance and the information of the people from rural areas about their rights request serious efforts and strenuous actions on behalf of CHR, CPA, LPA and NGOs. The human and financial resources should be directed towards this group of citizens, who do not have the necessary knowledge to defend their rights or are insufficiently informed, including on the possibility to seek the ombudsmen's assistance. To reach out to the target audience, the promotional and training events should be organized closer to these citizens – in villages and district centres. At the same time, the informational and promotional materials could be more accessible to the public in the form of video or audio

[212]Parliament Decision 90/12.05.2011 Decision on the approval of National Action Plan on Human Rights for the period 2011-2014 *//Monitorul Oficial 118-121/331, 22.07.2011*

advertisements, banners and outdoor advertising which are unaffordable luxuries for CHR because of a very modest budget for promotional activities.

CHAPTER V

Other Aspects of the Activity of Centre for Human Rights in 2012

1. The Activity of the Centre for Human Rights in Figures

To carry out the ombudsmen's duties in the current context of human rights observance and given the pressing problems citizens face in this field, CHR activity is planned annually, quarterly, and monthly. The Institution's agenda may, however, be changed depending on the development of events, allowing the ombudsmen and the CHR staff to intervene promptly, using the legal leverages, in the cases of serious infringement of human rights of a person or of a group of persons. Certainly, the activities planned and carried out by CHR reflect the objectives and tasks outlined in National Action Plan on Human Rights for the period 2011-2014.

More recently, an important step was taken in 2012 towards developing the strategic development plan of the Centre for Human Rights in Moldova, which is an essential action in the context of the justice system reform, which will trigger subsequently the reform and institutional development of the CHR. Thus, in 2012, with the financial support of UNDP Moldova, a group of experts prepared a report on the institutional analysis and assessment of the Centre for Human Rights in Moldova. Both, the ombudsmen and the CHR staff participated in the institutional assessment. Together, they have identified the institution's strengths and weaknesses from the perspective of the internal management processes implemented in the CHR. The findings and the recommendations of this document will serve as basis for the second stage – the elaboration of CHR's strategic development plan, which will include the institution's strategic objectives and the respective action plan.

A more appropriate management model to improve the institution's efficiency and performance was identified in this way. CHR's experience in activity planning is an eloquent proof of the importance of this process to achieve the set objectives. Thus, in 2012, the activity

plan included 35 activities in different fields, of which 32 were carried out or 91.4% fulfilment of the planned activities.

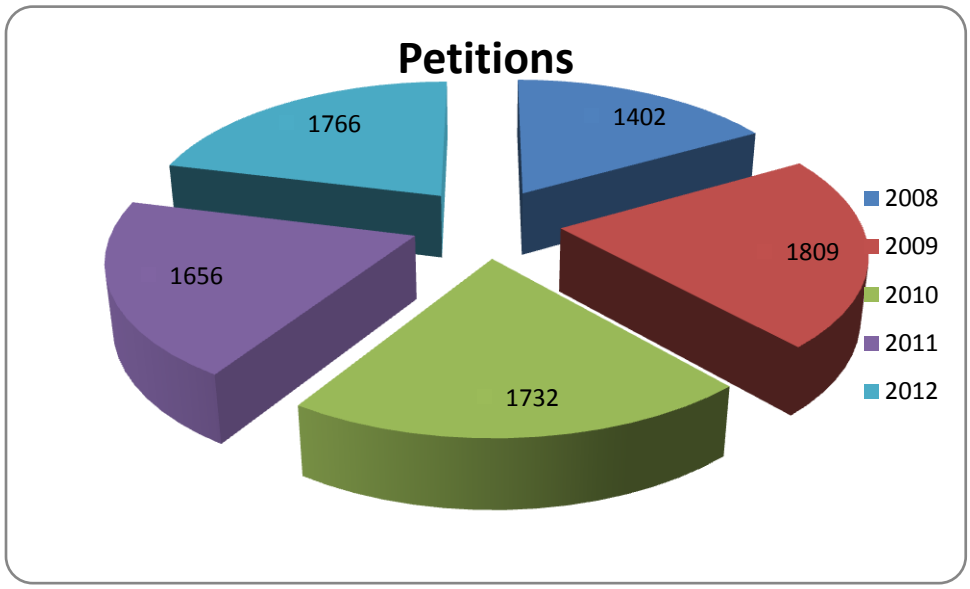
Under article 15 of the Law on Ombudsmen No. 1349 of 17.10.1997, the ombudsmen examine the applications on the decisions or actions (inactions) taken by central and local public authorities, institutions, organizations and enterprises, regardless of the type of ownership, NGOs and officials of all levels, that violated, according to the petitioner, his/her constitutions rights and freedoms.

Thus, in order to benefit of their rights, the citizens, who claim that their constitutional rights and freedoms were violated, are given the opportunity to notify the Centre for Human Rights in written form or verbally during the receptions in audience.

The petitions coming from any natural person, regardless of his/her citizenship, age, sex, political or religious beliefs, are received, examined and solved, as provided by law.

In the period January 1 – December 30, 2012, the Centre for Human Rights in Moldova received 1,766 petitions, of which 1,473 were received by the Central Office in Chisinau. The CHR branches received petitions as follows: 91 – in Cahul; 135 - in Balti; 61 – in Comrat and 6 – in the village of Varnita.

Annex no.1 Statistics of petitions in dynamics since 2008



The analysis of the statistical data reveals that among the most common reasons for addressing petitions to Human Rights Centre are the ones linked to the alleged violations of the right to free access to justice, the right to social security, private property and labour, as well as non-observance of personal security and dignity. The most current topic revealed by the applicants is *alleged violation of the right to free access to justice*. A total of 1,766 petitions were received in 2012, the same number as in the previous year. Thus, 397 petitioners alleged multiple objections to the quality of justice. Of these, 174 petitions claim delays in case examination, 49 – non-execution of court decisions, 105 appeals invoke disagreement with the pronounced sentences/decisions, and 69 cases are related to the violation of the right to effective remedy.

According to the CHR statistics, the number of petitions related to the free access to justice is relatively constant, varying insignificantly from one year to year.

Annex No.2 Classification of petitions based on the allegedly violated right

Issue	Petitions in 2012	2011	2010	2009	2008
Free access to justice	**397**	**361**	**429**	**392**	**401**
Personal security and dignity	**217**	**280**	**422**	**536**	**264**
Right to social assistance and protection	**187**	**190**	**172**	**177**	**127**
Right to private property	**144**	**113**	**148**	**136**	**78**
Access to information	**93**	**130**	**160**	**146**	**131**
Right to employment	**109**	**93**	**73**	**110**	**73**
Family life	**116**	**92**	**117**	**88**	**27**
Right to defence	**45**	**54**	**39**	**69**	**12**
Intimate and private life	**6**	**21**	**12**	**12**	**4**
Right to education	**39**	**25**	**16**	**9**	**2**
Right to petition	**17**	**25**	**37**	**15**	**23**
Right to free movement	**12**	**10**	**30**	**18**	**10**
Right to health care	**59**	**50**	**45**	**43**	**44**
Personal freedoms	**35**	**16**	**4**	**9**	**11**
Right to administration	**12**	**13**	**10**	**2**	**5**
Right to citizenship	**7**	**7**	**3**	**5**	**6**
Right to vote and be elected	**1**	**2**	**1**	**-**	**-**
Other	**270**	**170**	**5**	**98**	**178**

Note: The heading "Other" includes the petitions claiming an allegedly violated constitutional right, which cannot be integrated in the CHR's automated petition record system. These petitions include: claims on violation of consumer rights; requests for legal advice; interpretations of legal acts; as well as alleged violations that occurred outside the territory of the Republic of Moldova.

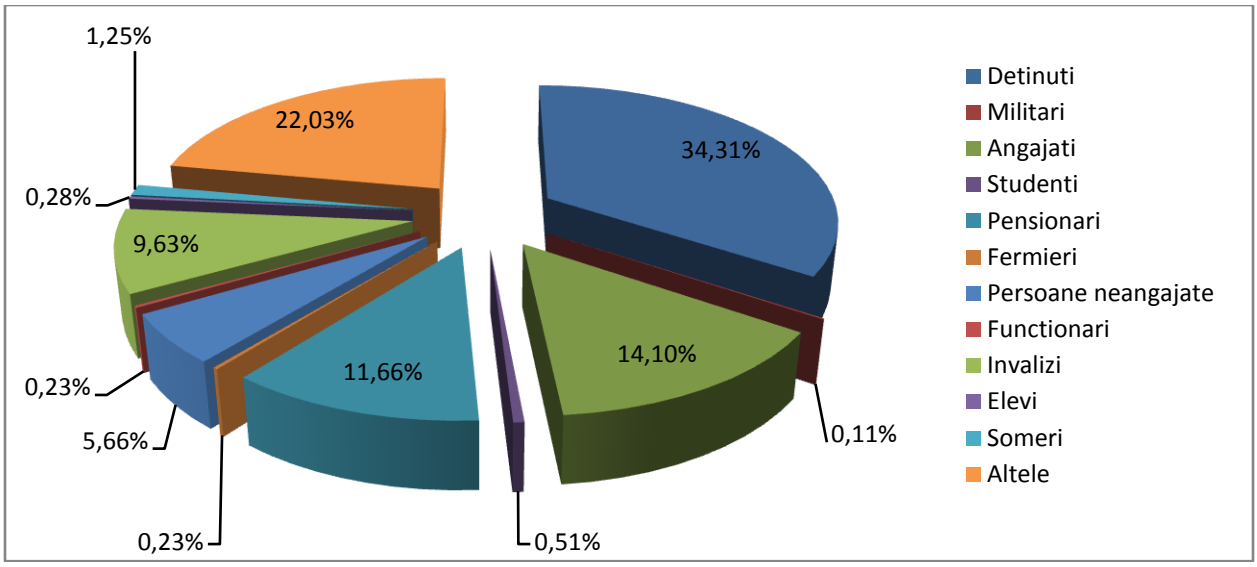
If, up till now, the number of petitions related to the *personal security and dignity* was constantly growing, in the reporting year, the institution recorded an essential decrease of such

petitions from 280 in 2011 to 217 in 2012. It should be mentioned the year 2012 recorded the lowest indicator over the last 5 years of this issue. Compared to 2009, when the majority of petitions received by the CHR claimed the violation of the right to personal security and dignity (536 applications), this indicator has decreased by 319 applications. Thus, of the 217 petitions registered on this issue, inadequate conditions of detention in penitentiary institutions are alleged in 133 cases. Of these, 117 petitions invoke inadequate detention conditions, compared to 134 petitions in 2011 and 15 other – inadequate medical assistance. Torture and inhuman or degrading treatments were alleged in 40 cases (50 cases in 2011), whereas 28 petitions refer to the violation of personal dignity (28 cases in 2011). The violation of the right to be informed at detention or arrest was specified in 3 appeals, the violation of the right to life – in 8 petitions, and a single case referred to infringements of law during the search procedure (3 cases in 2011).

The right to social security is another right, the violation of which is frequently invoked by the CHR beneficiaries. The examination of the economic, social and cultural rights through the prism of the International Pact on Economic, Social and Cultural Rights, places this issue on the second position in the institution's official statistics. In 78 cases, the petitioners claim that they did not receive the due social benefit, 54 persons believe that their right to adequate living standards is not observed, whereas the improper calculation of allowances is claimed in 55 cases. According to the CHR statistics, the number of petitions invoking the violation of the right to social security is relatively constant.

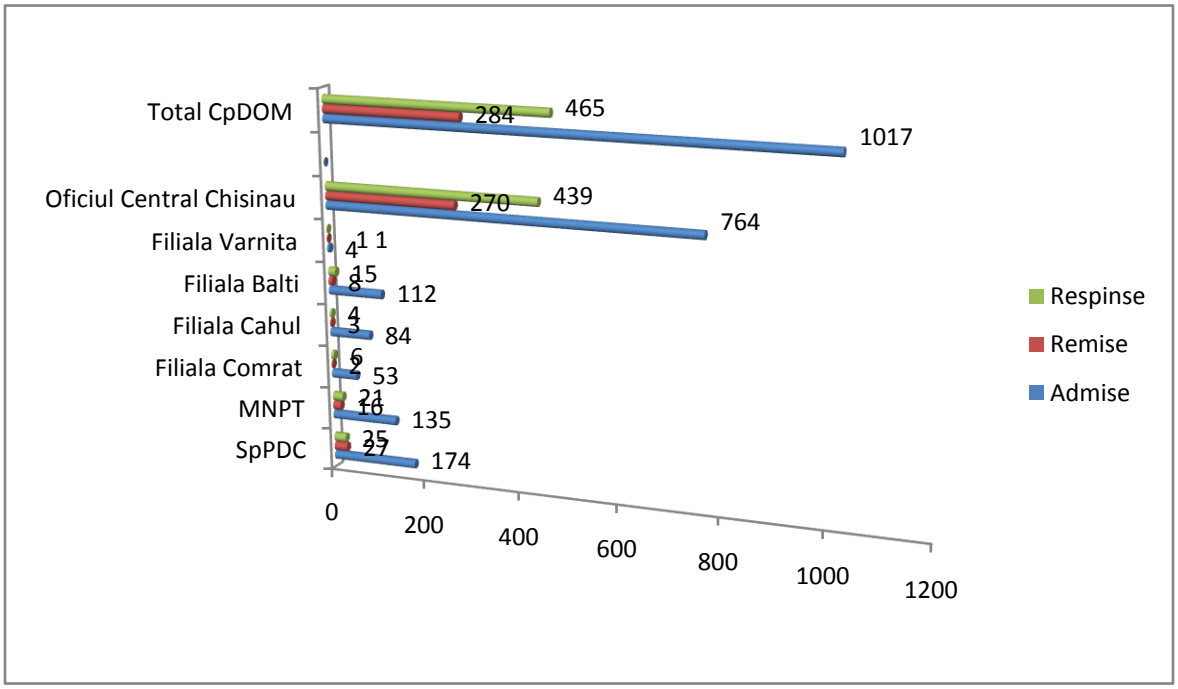
Of the total number of persons who sent petitions to the Centre for Human Rights in 2012, 34.31% are prisoners, 14.10% - employees, 11.66% - pensioners, 5.66% - jobless people, 9.63% - persons with disabilities, 0.51% - students, 1.25% - unemployed, as well as other less numerous groups. The percentage of the above mentioned data is indicated in the annex below.

Annex No. 3 Classification of petitions based on categories of applicants



The examination of petitions is aimed at identifying the allegedly violated rights, at verifying the validity of the claim against the national and international legal and regulatory frameworks, at examining the possibilities for ombudsman's involvement and, when a petition is outside the ombudsman's competence at delegating the case to a competent institution that would solve it.

1. Annex no.4 Classification of petitions based on the taken decision



Of the 1,766 registered petitions, 1017 have been accepted for review. The following actions were taken to solve the given cases: reaction acts were issued; the assistance of different officials and persons in charge was requested; proposals to amend the legislation were submitted, etc.

In 284 cases, the petitions were forwarded for examination to competent authorities under the provisions of article 20, letter c) of Law No. 1349 of 17.10.1997 and the ombudsman monitored the results of the examination. Other 465 applications were rejected under articles 16, 17 and 18 of the Law on Ombudsmen. The petitioners were informed on the procedures they are entitled to for the defence of their rights and freedoms.

Compared to the previous years, the ombudsman institution has changed the management of its activity in the recent years by getting more actively involved in the issues raised by the citizens. Thus, in 2008 only about 21% petitions were accepted; half of the total number of petitions was remitted. Throughout the years the number of accepted petitions was in continuous growth, reaching up to 57 % quota in 2012. This led to gradual increase of ombudsman's interventions, as well as of reaction acts.

Provision of free of charge legal assistance services to citizens (art. 38 of the Law on Ombudsmen, section 19 of CHR Regulations)

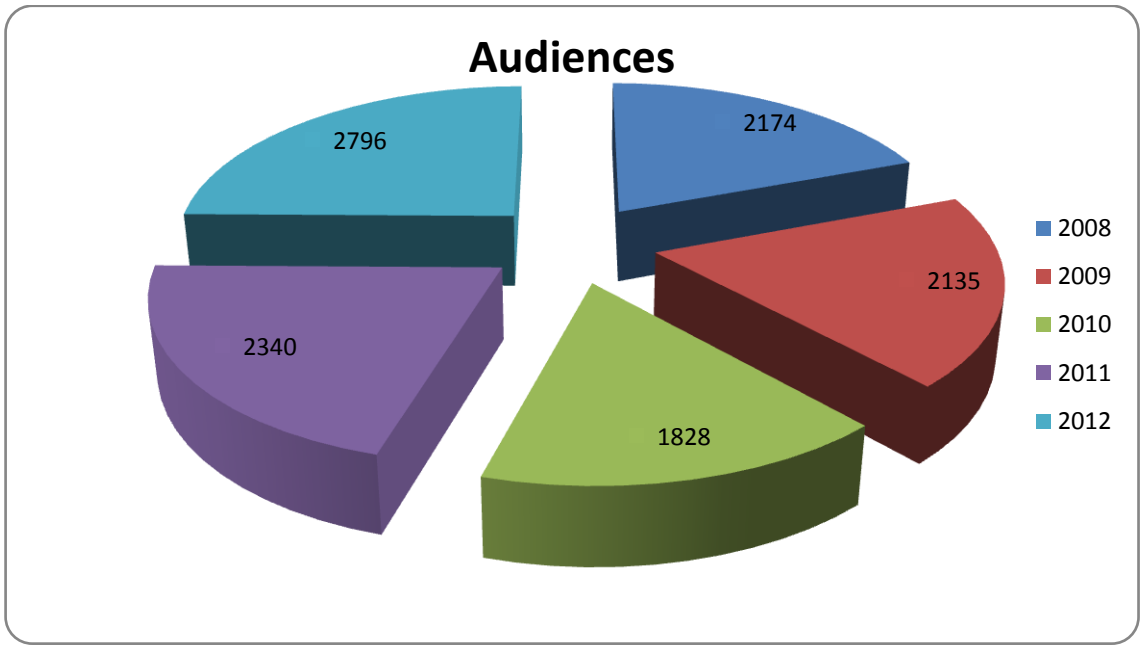
Citizens' complaints and the information received during receptions in audience remain the main source for the identification of the system problems and gaps in legislation for the ombudsmen.

The reception in audience of citizens takes place daily on the premises of the CHR Office and of its branches in Balti, Cahul, Comrat and Varnita.

Under article 40 of the Law on Ombudsmen, one of the tasks of the branches of this institution is to receive citizens in audience on the premises of the branch and submit data on the issues brought up by the citizens and if the alleged violation can be examined as provided by the Law on Ombudsmen to encourage the citizens to submit an application.

Each ombudsman has at least 3 receptions in audience monthly. On the other days, the petitioners are received in audience by the institution's employees.

During the 12 months of 2012, the CHR ombudsmen and employees received 2,796 citizens in audience, which shows an increase of approximately 456 persons as compared to 2011. The growing visibility of the institution's activity may be a plausible explanation for this increase.



Reaction acts

Having examined the received petitions, the following reaction acts on violation of citizens' constitutional rights were prepared and submitted to the competent authorities:

Type of reaction act/action	2012	2011	2010	2009	2008
Notices (under article 27 of Law No. 1349)	77	95	144	68	13
Requests for the initiation of criminal/disciplinary actions against the person in charge who committed offences that generated considerable violation of human rights and freedoms (art. 28, letter b) of Law No. 1349)	22	13	32	33	8
Notifications on cases of work ethics breaches, delays and bureaucracy (under art. 28, letter d) of Law No. 1349)	15	14	59	2	-
Notifications addressed to the Constitutional Court (under art. 31 of Law No. 1349)	6	7	10	-	2
Legal proceedings/requests to interfere in a process in order to submit conclusions (under art. 74 CCC)	15/44	6	6	-	-
Thematic reports	6	9	24	-	-
Conciliation agreements	4	8	1	-	-

Proposals to improve the management system (under art. 29, letter b) of Law No. 1349)	19	7	-	-	-
Proposals to improve the human rights legislation (submitted to the Parliament and the Government, under art. 29, letter a) of Law No. 1349)	11	11	28	5	10
Self-notifications	52	22	-	-	-
TOTAL	**230**	**192**	**304**	**108**	**33**

The data show an increase in the number of reaction acts, as compared to the previous year. This was due to the increase of the number of accepted petitions, as well as due to a more active involvement of the ombudsman in the issues raised by the citizens.

Notices with recommendations (art. 27 of the Law on Ombudsman)

In the cases when the violation of petitioners' rights is confirmed, the ombudsmen submit notices to the institutions or the officials in charge whose decisions or actions (inactions) lead, in their opinion, to the violation of human constitutional rights and freedoms. These notices include recommendations on the measures to take for immediate restoration of the petitioner's violated rights.

In 2012, 77 notices with recommendations were issued and submitted to the central and local public authorities. For comparison, in 2011 95 notices with recommendations were issued and submitted to the following authorities:

Notified Institutions

Notified institution	**2012**	**2011**
Government and the Central Public Authorities	1	7
Ministry of Labour, Social Protection and Family, including subordinated institutions	13	18
Ministry of Education and subordinated institutions	7	11
Ministry of Internal Affairs, including subordinated subdivisions and decentralized services	16	18
Ministry of Justice, including subordinated institutions	16	23
The judiciary	-	1
General Prosecutor's Office and prosecution bodies	-	3
Local public authorities	11	5
City Hall/Council of Chisinau municipality	1	7
Legal persons	7	1
Ministry of Defence and subordinated institutions	3	1
Ministry of Finance	1	-
Total	**77**	**95**

Of the total number of notices, 29 were submitted following the visits carried out in the framework of the National Preventive Mechanism against Torture and were addressed to detention institutions (13 – to penitentiary institutions, 14 – to police stations, 2 – to subdivisions of the Carabineri Troops Department). The majority of these notices included recommendations on the improvement of the detention conditions: provision of standard housing conditions; lighting, ventilation, water and electricity supply; provision of linens and sufficient food. Most of ombudsmen's recommendations were implemented within the limits of state budget allocations to the respective institutions.

As shown in the table, the number of notices submitted to the local public authorities and legal persons increased in 2012.

Requests for initiation of disciplinary or criminal actions
(under art. 28, letter b) of the Law on Ombudsman)

In 2012, the ombudsmen were intervened in 22 cases with requests to competent bodies for the initiation of disciplinary or criminal actions against officials in charge who committed offences which generated considerable violation of human rights and freedoms, as follows:

- General Prosecutor's Office and District Prosecutor's Offices – 18
- Department of Penitentiary Institutions - 1
- Boarder Guard Service – 1
- Ministry of Internal Affairs – 1
- Zone station "Asistenta Medicala Urgenta" (Urgent Medical Aid) – 1.

As result of the submitted requests, criminal actions was initiated in 7 cases, orders of refusal to initiate criminal action were issued in 3 cases, and 6 other cases are still pending. Disciplinary action was initiated in one case, another case was discussed at the operative meeting and it was decided that such cases should be examined in emergency mode in the future, and in 3 cases initiation of disciplinary action was requested.

Of the 22 mentioned above requests, 13 were submitted in the framework of the National Preventive Mechanism against Torture (11 refer to torture, inhuman and degrading treatments, and 2 cases the initiation of disciplinary action was requested).

For example, at the request of the ombudsman, the Prosecutor's Office ordered the initiation of criminal action related to the maltreatment of convict C. G. by the staff of Penitentiary No. 13. Initiation of a criminal action related to maltreatment of convict V. C. was also ordered at CHR's initiative.

Another case of ombudsman's intervention on minor V. S.'s maltreatment by the staff of Briceni Police Commissariat resulted in the annulment of the order not to initiate criminal proceedings and in the initiation of criminal proceedings against the police officers.

Notifications (under article 28, letter d) of the Law on Ombudsmen

Under article 28, letter d) of the Law on Ombudsmen, 16 notifications were submitted to officials of all levels related to cases of negligence at workplace, breaches of work ethics, delays and bureaucracy. For comparison, in 2011, 14 such notifications were submitted as follows:

- Government General Secretary (administrative control of the acts issued by LPA) – 7
- Ministry of Labour, Social Protection and Family – 2
- Ministry of Education – 1
- Institutions subordinated to the Ministry of Health – 1
- Local public authorities – 4
- Bailiff – 1

The following system problems were highlighted:

- Failure to pay alimonies as established by court decisions;
- Inaction of tutelage authorities on children's rights protection;
- Unsatisfactory nutrition of children and poor quality of food served in pre-school institutions;
- Improper exercise of duties by school and kindergarten administrators.

The conclusion that emerges is that negligence and irresponsibility of the administrative staff often lead to violations of human rights.

General objections and proposals to improve management (under art. 29, letter b) of the Law on Ombudsmen)

During the reporting period, the ombudsmen submitted objections and proposals for management improvement to central and local public authorities in 19 cases, as follows:

- Ministries and subordinated institutions – 6
- Local public authorities – 8
- Civil Status Service – 1
- Law enforcement bodies – 3
- Mass media – 1

The proposals submitted by the ombudsmen to the central and local public authorities touched upon the following issues:

- avoiding preventive detention of persons for a period exceeding 72 hours in temporary detention centres and police stations (this violation was identified during the visit of Cahul CHR employees to Vulcanesti Police Station);
- ensuring effective healthcare services to the persons in temporary custody in the Ministry of Internal Affairs subdivisions (this proposal was based on the notice of a detainee's relatives);
- reviewing and checking the accommodation conditions both the local and national levels to be carried out by the Ministry of Regional Development and Constructions, as well as ceasing the construction of lofts in residential buildings with an advanced exploitation degree; adopting a legislative framework that would impose strict rules regarding the remedy of the damages caused by loft construction (this violation was brought up by a group of citizens);
- staffing the emergency medical aid teams in conformity with the personnel norms – a doctor having postgraduate training in emergency medicine, specialization and professional development in the field, as well as equipping the team with devices, equipment and medications that would allow qualified emergency assistance on the site (this recommendation was elaborated following the ombudsman's self-notification on the abandonment of patient X by the medical assistance team).

The notified authorities shared their opinions regarding the ombudsmen's recommendations and provided information on the undertaken measures related to observance of the constitutional rights and freedoms of every citizen.

Conciliation of parties (under article 23 of the Law on Ombudsmen)

As mediators, the ombudsmen solved four complaints by reconciling the parties having found mutually acceptable solutions for all the involved. The conciliation in these cases ended with the signature of relevant agreements, which constituted ground for the termination of the complaint examination process. The following were the conciliation results:

- On 16.01.2012, the ombudsman approved the conciliation agreement signed between City Hall of Balti Municipality and citizen M. C., based on which the authority had to accept the petitioner's documentation for the privatization of his apartment;
- On 14.02.2012, the ombudsman recommended to the Employment Agency from Balti municipality to register citizen I. I. as unemployed;
- On 19.03.2012, based on the conciliation agreement approved by the ombudsman, Balti AUTO "Gospodaria Specializata" enterprise was recommended to issue a new contract for sanitation services with citizen E. C. within 3 days;
- On 29.08.2012, CHR recommended to SA "Basarabia Nord" to pay additional costs for medical, social and professional rehabilitation to citizen M. B., who suffered from an accident at his workplace and lost his sight.

Submission of civil actions (under art. 28 of the Law on Ombudsmen)

Having examined the petitions, the ombudsmen have the right to submit requests to court for the defence of the petitioners' interests. This mechanism is applied in cases of mass and serious violation of constitutional human rights and freedoms, in cases of particular social importance or in cases when it is necessary to defend the interests of persons who are not able to use the legal means to defend themselves.

During the reporting periods, 15 applications for court summons to defend the petitioners' interests and 44 applications regarding the intervention in a lawsuit to submit conclusions under article 74 of the Civil Procedure Code.

The above mentioned data indicate that the number of civil actions filed in court doubled in 2012, as compared to the years of 2010 - 2011.

For example, the ombudsman submitted an application for court summons in the interests of the legal representative of child L. D., related to material and moral compensation and

admittance by the Children's Republican Clinical Hospital "Emilian Cotaga" of the violation of the constitutional rights of the deceased child, L.D.;

- The ombudsman submitted a court summons application in the interests of citizen M. B. concerning the defence of the right to free access to justice and the compensation of additional costs for his medical, social and professional rehabilitation related to his health deterioration following an accident at the workplace;
- The ombudsman submitted a court summons application in the interests of pensioners A. A., V. B. and M. A., concerning the defence of the right to private property and the obligation of GAS „Fintina Recea" to reimburse the petitioners their due share value, based on the documentation confirming their ownership.

Investigations based on own initiative (art.21, letter a) of the Law on Ombudsmen)

On the basis of the action plan, on the information concerning serious or mass violation of citizens' constitutional rights and freedoms, as well as on the cases of particular social importance, taken from the media and other reliable sources, the ombudsmen started 52 investigations on their own initiative in 2012. The issues tackled in the self-initiated cases are as follows:

- Provision of a healthy environment;
- Ensuring the right to health care;
- Quality of commercials in terms of ensuring gender equality;
- Ensuring the right to social security;
- Ensuring the right to physical and mental integrity;
- Ensuring the rights of institutionalized children and of children without parental care;
- Ensuring the rights of persons with disabilities, etc.

2. Other aspects of the activity of Ombudsman Institution

Although the Centre for Human Rights is operating for 15 years[213], the issues that the Ombudsman Institution faces persist for years.

[213] Law on Ombudsmen no.1349 of 17.10.1997

The lack of adequate premises remains a key issue for CHR. The branches of the National Institution for Human Rights do not have adequate premises either. The Headquarters Office of the Centre for Human Rights is situated in a damaged building (16, Sfatul Tarii street, Chisinau municipality) with an almost absent degree of seismic resistance. The building does not meet the construction regulations and technical standards. This was confirmed by the ***Technical Expertise Act*** No. NDA - 67 of 26.03.1998, issued by the State Service on Building Inspection and Expertise of the Ministry of Construction and Regional Development. According to the conclusions of the above-mentioned act, the edifice was built with construction materials that are forbidden for use in seismic areas. It is recommended in this act that consideration be given to the possibility of demolishing the existing edifice and building another construction that will meet the modern requirements in the field. Thus, the employees of the Centre for Human Rights work in risky conditions, without having any level of protection or safety insurance in case of natural disasters. In this context, the overcrowded offices and the lack of open spaces make impossible the provision of decent working conditions and the hiring for the vacant positions.

The premises of the Balti, Cahul and Comrat Branches of the Centre for Human Rights do not meet the requirements and the minimum of conditions necessary for the good functioning of an independent public authority either. The current inconvenient location of CHR offices reduces the citizens' possibilities to request the ombudsmen's assistance. Thus, the Cahul Representation is situated on the fourth floor of the Cahul City Hall, which does not have an elevator. Therefore, the elderly or the persons with physical disabilities have practically no chance to meet the CHR's regional office staff for assistance or consultations. The placement of Balti Office in the building of the local public administration has, inevitably, a negative influence on its independence in relation with the property-owner, its ability to react promptly to the complaints against these authorities being thus limited. The Comrat Office is located in a room, which is part of a private household and it is not compatible with the premises of a public authority.

Lack of vehicles that would be sufficient for providing the activity of the ombudsmen and the National Preventive Mechanism against Torture is another impediment to fully carry out the mission of the National Institution for Human Rights Promotion and Protection. Currently, the four ombudsmen have two vehicles available to accomplish their mission:

1. Toyota HIACE (minivan) – manufactured in 1998 and received in 2001 in the framework of the UNDP project;

2. VAZ 2107 – manufactured in 2002 and received on the basis of Government Decision No. 1193 of October 13, 2006.

The two other vehicles, GAZ 2410 (y. m. 1991) and GAZ 3102 (y. m. 1993), which were received by the Centre for Human Rights based on the Parliament Decision No. 163 of May 18, 2008, are excessively worn out and have not been used due to their deplorable technical condition. To repair and use these vehicles, taking into consideration that their consumption is of nearly 16.5 l per 100 km, would be an irrational management and financially unfounded decision.

In 2011, the Centre's Branches were provided with 3 "DACIA LOGAN" cars, which were donated by UNDP Moldova in the framework of the Technical Assistance Project "Support for the consolidation of the National Preventive Mechanism against Torture".

A working group, in charge of the examination of financial, logistic and structural issues, was created on the basis of the following documents: the Report of the Centre for Human Rights on the observance of human rights in the Republic of Moldova in 2010, the Decision of the Human Rights and Interethnic Relations Commission of the Parliament of the Republic of Moldova, and Order No. 20 of May 30, 2011 of the Ministry of Justice. The aim of this working group is to optimize the activity of the institution.

However, the creation of this working group did not bring any positive results. The National Institution for Human Rights Promotion and Protection continues to deal with the same issues in its work.

Budget for 2012

Under the provisions of the Law on Budget Law for 2012 No. 282 of 27.12.2011, the Centre for Human Rights from Moldova was approved financial resources for t basic budgetary expenses in the amount of 4594.80 thousand lei.

According to Law on the budget system and the budgetary process No. 847-XIII of 24.05.1996, and Order No. 91 on budgetary classification of the Ministry of Finance of 20.10.2008, the Centre for Human Rights distributed its financial resources as follows:

1. Labour remuneration – 3403.4 thousand lei (including: 590.8 thousand lei for obligatory contributions to the social assistance state fund; and 88.8 thousand lei for mandatory medical insurance), which constitutes 74% of the total allocation.

2. Expenses for the operation of the institution and ombudsmen's activity - 1090.30 thousand lei (including: 265.2 thousand lei for rent and utilities; 200.3 thousand lei for interdepartmental security services; 201.0 thousand lei for the maintenance of vehicles; 62.9 thousand lei for printing services; and 360.9 thousand lei for office supplies, telecommunications and post services, computer services, etc.), which constitute 2.4% of the total allocation.

3. Membership fees to specialized international organizations - 33.8 thousand lei.

4. Business travel expenses - 61.4 thousand lei.

5. Allowances for sick leaves paid by the employer - 5.9 thousand lei.

The budget was executed in a proportion of 99.9% in 2012.

Internal environment

At the date of the report, the Centre for Human Rights from Moldova consisted of the following employed staff: 4 ombudsmen; 34 civil servants that provide organizational, informational, scientific and analytical assistance to the ombudsmen, including 9 from the regional Branches; as well as 8 positions of technical personnel. The total number of the CHR personnel includes 47 persons, as opposed to the 55 positions as required by the staffing scheme. During 2012, 4 persons resigned and 4 persons were hired by CHR.

All the civil servants hired by CHR degrees in the field of the held position; 3 civil servants have postgraduate degrees in their field, and 3 are graduates of two faculties.

The structure of the Institution, the positions, the funding, based on the Regulations of the Centre for Human Rights approved by Parliament Decision No. 57 20.03.2008, and the completion of positions are represented in Annex II.

Annex I

Budget items	Econ. classifier		Planned in 2012	Spent in 2012
	Art.	Paragr.		
Labour remuneration	111	00	2723.80	2723.80
Contributions to the social assistance state fund	112	00	590.80	590.80
Contributions to the medical insurance	116	00	88.80	88.80
Total spent on labour remuneration	111 112 116		3403.40	3403.40
Office supplies, household items and materials	113	03	71.6	71.6
Books and newspapers	113	06	0.8	0.8
Telecommunication and post services	113	11	91.6	91.6
Vehicle rental and maintenance of own vehicles	113	13	201.0	201.0
Building and premises current repair	113	17	7.2	7.2
Equipment and inventory current repair	113	18	5.5	5.5
Venues rent	113	19	274.8	265.2
Printing services	113	22	62.9	62.9
Ceremonial expenses	113	23	0.8	0.8
Interdepartmental security services	113	29	200.3	200.3
Computer services	113	30	39.6	39.6
Cleaning services	113	35	2.2	2.2
Goods and services non-attributed to other paragraphs	113	45	133.0	133.0
Total spent on goods and services	113	00	1090.3	1081.7
Business trips within the country	114	01	0.40	0.30
Business trips abroad	114	02	61.0	61.0

Total spent on business trips	114	00	61.4	61.3
Other international transfers (membership fees to international organizations)	136	03	33.7	33.7
Total spent on international transfers, membership fees to specialized international organizations	136	00	33.7	33.7
Allowances for sick leaves paid from the financial resources of the employer	135	33	6.0	5.9
TOTAL			**4594.80**	**4586.0**

Annex 2

	According to the staffing scheme	Actually employed as of 31.12.2012
Ombudsmen	4	4
Ombudsmen's Apparatus	8	6
Training Programs and Public Relations Service	3	3
Children's Rights Protection Service	3	3
Petitions and Reception in Audience Service	3	2
Investigations and Monitoring Service	14	12
Secretariat	2	2
Administrative Service	5	5
Branches	13	12
TOTAL	55	49