Centre for Human Rights from Moldova

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 in 2012

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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[1]). 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 figure does not include the number of military units.

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[2].

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.

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

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

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.

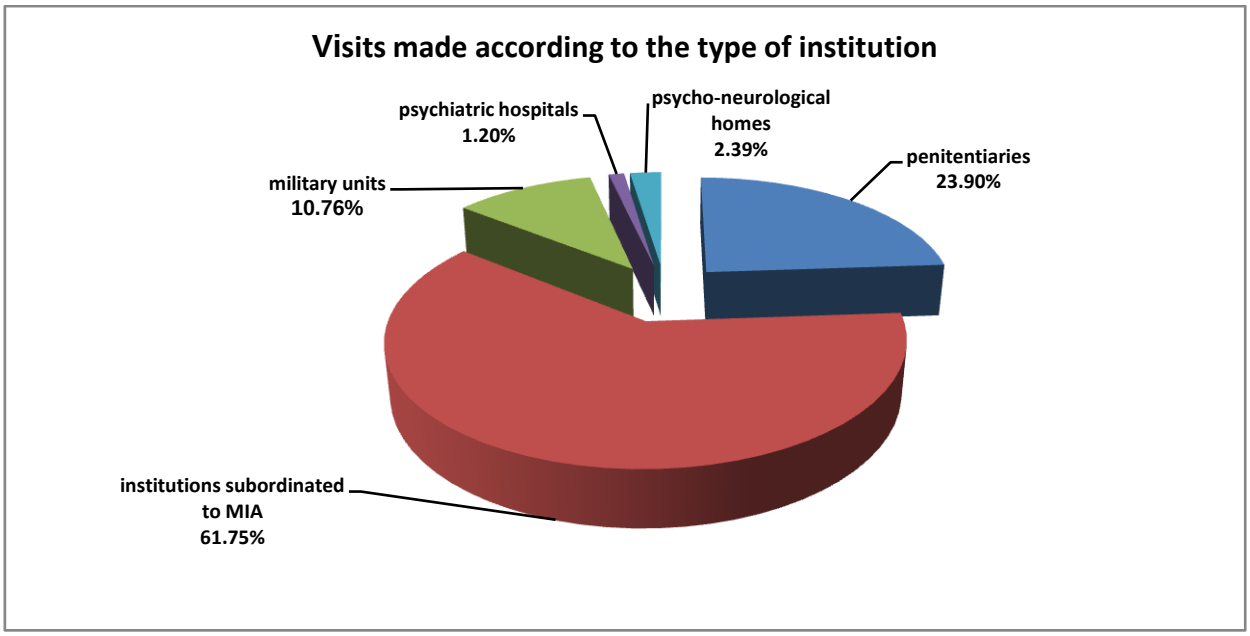
The report on the results of the visits includes information about the material conditions of detention and about the situation on observance of human rights related to distinct aspects such as catering, medical care, regime and activities, etc. The report contains the conclusions and recommendations 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 %).

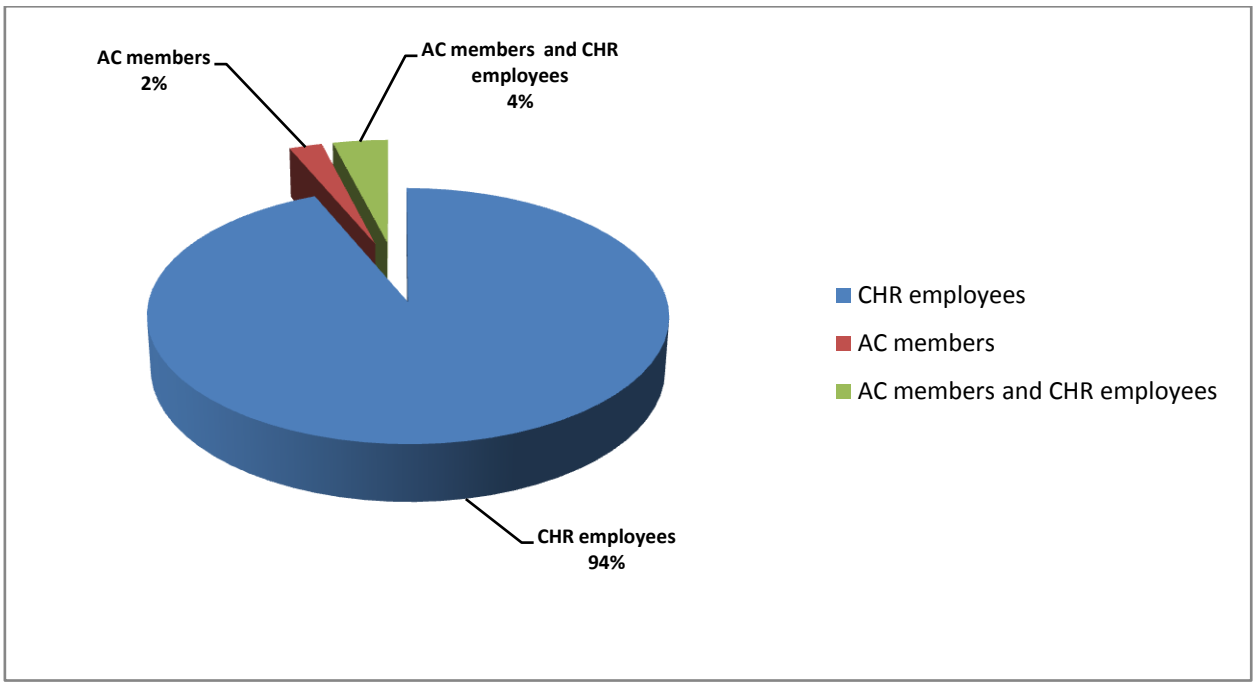


The table below gives an overview of all the visited places by NPMT in the period 2008 – 2012.

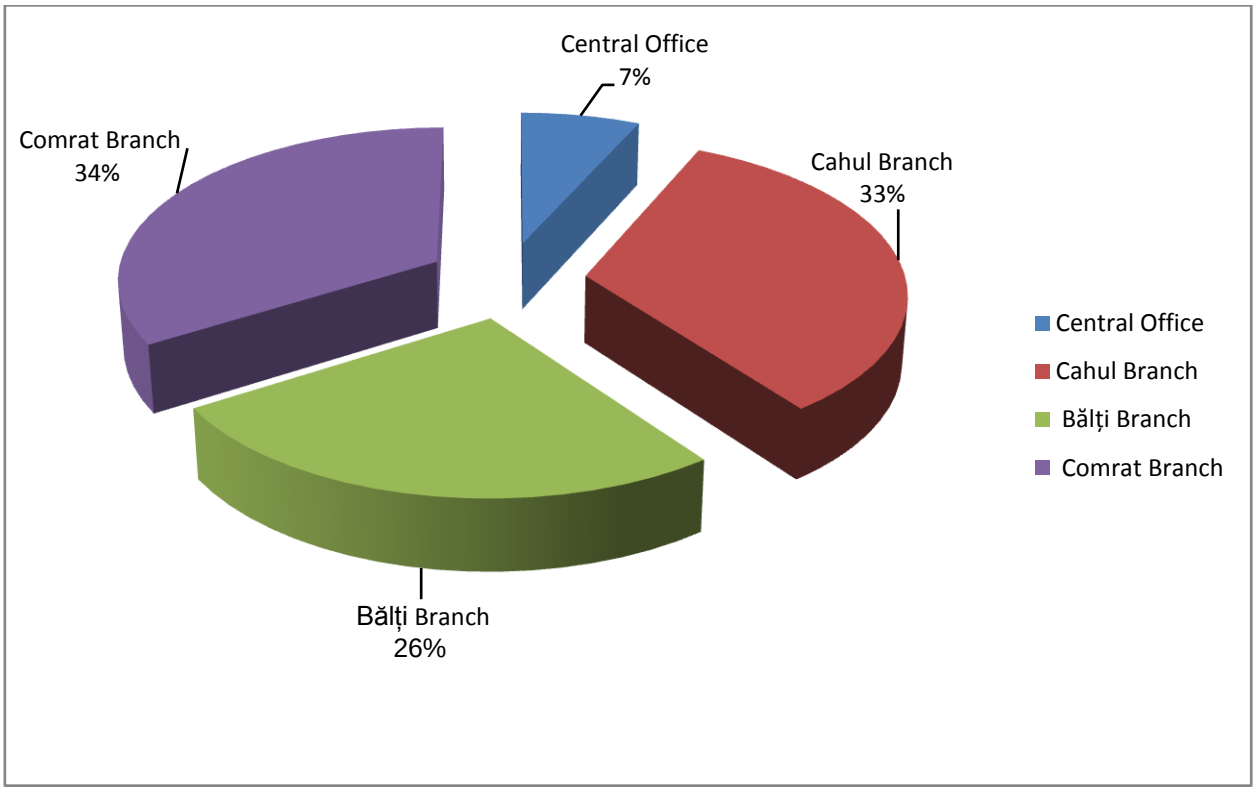
Type of visited institution	**2008**	**2009**	**2010**	**2011**	**2012**	**Total (2008-2012)**
institutions subordinated to the MIA	*	73	83	155	155	**466**
institutions subordinated to MJ	*	44	39	70	6	**213**
institutions subordinated to MH	*	6	2	4	3	**15**
institutions subordinated to MLSPF	*				6	**6**
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.



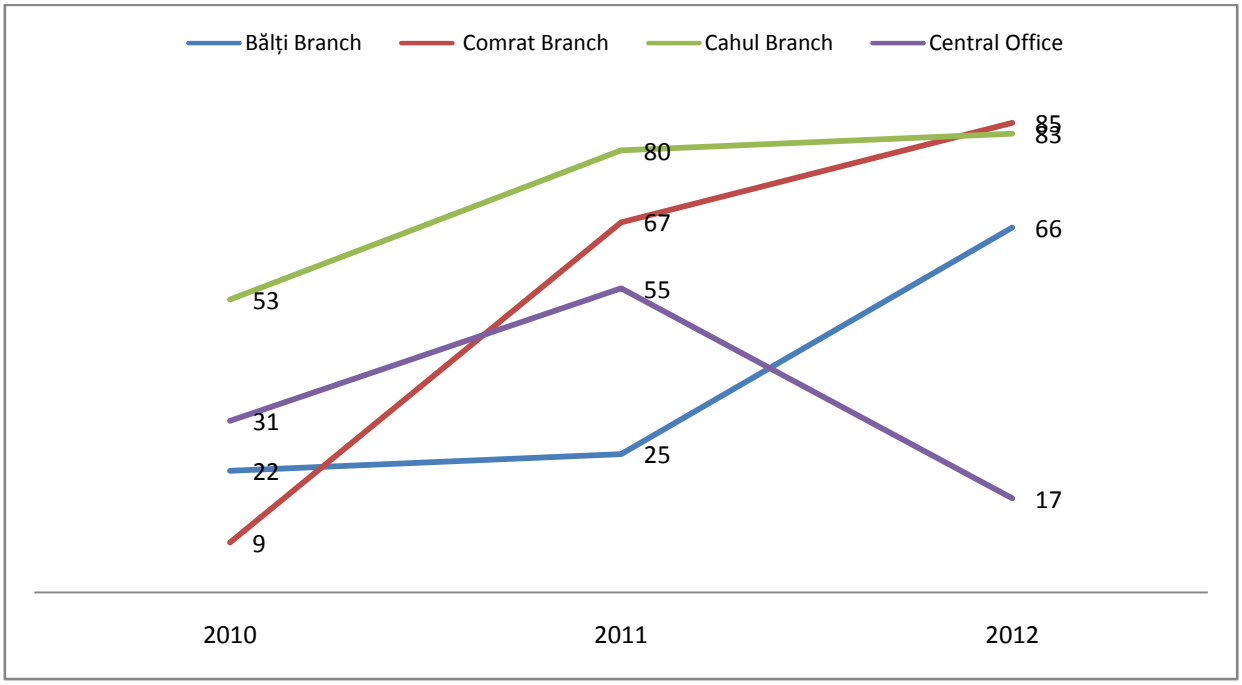
According to the provisions of section 45 of the Regulation on Human Rights Centre from Moldova[3], the representatives of the institution are in charge of making regular preventive visits to places, where there are, or may be persons deprived of liberty. Thus, they made a total of 234 visits: the employees of the branch in Balti – 66 visits, the branch in Comrat – 85 visits, the branch in Cahul – 83 visits, the central office – 17 visits.



[3] 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 Bălți 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[4], is welcomed. They read:

"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[5] under the provisions of article 313, paragraph 3 of the Enforcement Code[6]. 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[7] still happens in some police commissariats. Thus, this term exceeds 10 days in Chişinău, Soroca, Bălţi, and Comrat.

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

[5] 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

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

[7] 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[8], 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 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

[8]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

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), Telenești 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"*[9].

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.

[9]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

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 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[10].

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

[10]Corsacov vs. Moldova

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 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".[11]

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 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.

[11] 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.

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.

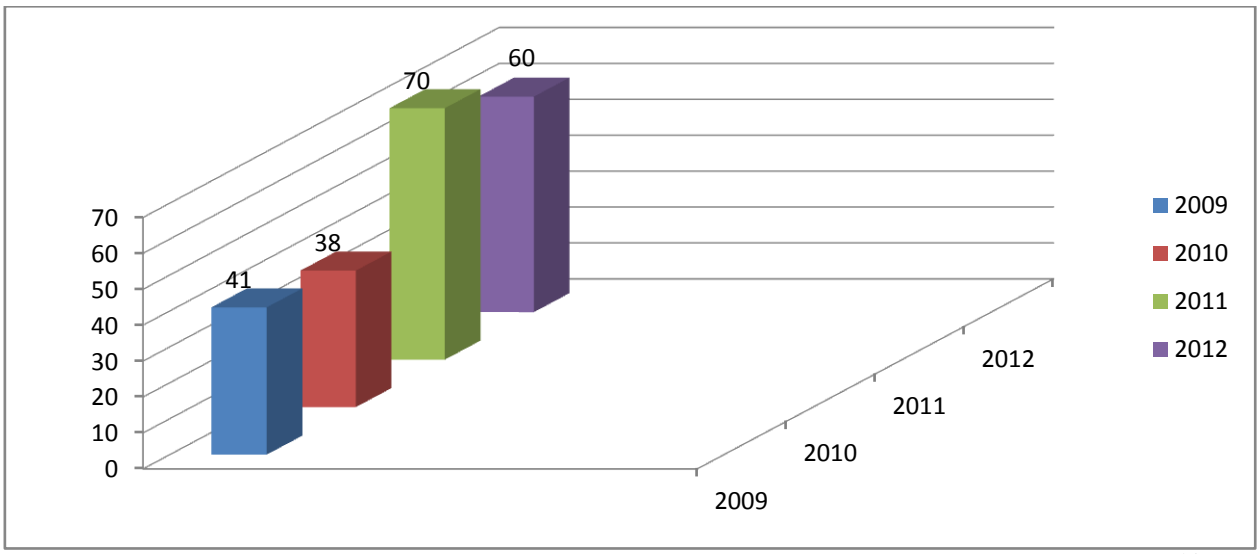
The society needs prisons, social institutions, which help reduce criminal behaviour. From this perspective, it can be deduced the meaning of developing the penitentiary institution, as a public service specialising in the recovery of those with serious or very serious criminal behaviour. Its function 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[12]. The ombudsmen expressed their opinion on the effectiveness of implementing this mechanism in a thematic report made in the period 2011-2012[13].

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.

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

[13] 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[14] and a recommendation on improving the work of the administration [15] 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.

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

[14]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.

[15] 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.

Detention conditions have repeatedly been described in the previous reports on the activity of ombudsman as NPMT[16], 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[17]. 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[18].

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 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[19]. 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

[16] www.ombudsman.md

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

[18] 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.

[19] CHR report for 2011

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[20] 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 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

[20] The payment of debts in goods (cigarettes, sugar, SIM card, mobile phones)

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[21]. 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[22]

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" [23], 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

[21]Art.205, par..(3) of Enforcement Code „Separate detention of convicts in prison must not have a discriminatory character or offend human dignity".

[22]Standard Minimum Rules for the Treatment of Prisoners and Related Recommendations, Resolution adopted on August 30, 1955 at the First United Nations Congress.

[23]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*

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 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*)[24]. 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*)[25].

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*[26] with reference to the case *Hurtado vs. Switzerland*[27]. 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*[28] , 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

[24]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).
[25]Rivičrevs. France, application No. 33834/03, ECHR decision of 11.07.2006.[On-line]: http://cmiskp.echr.coe.int. (retrieved on 03.03.2012).
[26]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.
[27]Hurtado vs. Switzerland , application No. 17549/90, ECHR decision of 28.01.1994. [On-line]: http://www.humanrights.is. (retrieved on 03.03.2012).
[28]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[29] 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.

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

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

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.[30] 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[31], 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

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

[31] 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.

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 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[32], 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 Ministry of Labour, Social Protection and Family. The situation was assessed and evaluated

[32] http://ms.gov.md/_files/10855-Indicatori%2520preliminari%2520%2520anii%25202010-2011.pdf

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[33] 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[34]. 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.

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

[33] 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.

[34] http://www.ombudsman.md/md/tematice/;http://www.ombudsman.md/md/rapoarte%20mnpt/;http://www.ombudsman.md/file/RAPOARTE%20PDF/CpDOM_Raport_2011ANEXE.pdf

mechanism on the quality of services provided by public health facilities through evaluation and accreditation"[35] 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[36] 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 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

[35]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.

[36] Government Decision No. 663 of 23.07.2010 on the approval of the Regulations on hygienic conditions in medical-sanitary institutions

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[37] does not fully ensure the coherence of the basic legal 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.

[37] 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 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.

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 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.[38]

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[39]. 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[40]. 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.

[38] Continuous professional development training Plan for the 1st rem of the year 2012,http://www.inj.md/files/u1/PDFOnline.pdf
[39]Law on mental health, article 7 (3)
[40]Law on mental health, article 38, letter c)

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 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[41]. 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

[41]Law on mental health, article 5 (2), letter b

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[42]. At present, enforcement of rulings on admission to a psychiatric institution is performed under article 490 of the Criminal 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[43]. 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;

[42] "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".

[43] Article 99 of the Criminal Code

- 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;
- 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*[44]". 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.

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

[44]From the answer of the MLSPF No. 01-3828 of 25/10/2012.

persons of reproductive age, which are an integral part of human rights[45] 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 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.

[45] Law on reproductive healthcare and family planning No. 185 of 24.05.2001.

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.