



REPORT

ON THE OBSERVANCE OF HUMAN RIGHTS AND FREEDOMS IN THE REPUBLIC OF MOLDOVA IN 2020

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FOREWORD

The year 2020, marked by the Sars-Cov-2 pandemic, was a very difficult one for all mankind, not only for the Republic of Moldova. It was a time when the ability of countries around the world to deal with an unprecedented public health crisis was tested, while observing fundamental rights and freedoms.

This provided that international human rights law guarantees everyone the right to the highest attainable standard of health and obliges states to take measures to prevent threats to public health and to provide medical care to those in need. International human rights standards also provide that in situations of public danger that threaten the life of the nation, the restrictions on certain rights and freedoms are allowed if they are provided by law, are proportionate to the situation that caused it, they are certainly necessary and scientifically justified and also, if their application is not arbitrary or discriminatory, is limited in time and regularly subject to control.

The biggest challenges were to ensure the right of access to medical services, information of public interest, the right to work and to a decent life, free movement, freedom of expression and assembly. In an attempt to prevent the spread of the virus, authorities in several countries have imposed excessive restrictions on fundamental human rights and freedoms.

The Moldovan authorities also went through these trials and did not always face them in the spirit of international human rights values and standards.

Given the enormous adverse impact of the pandemic on the realization of fundamental human rights and freedoms, the situation regarding the observance of human rights in the Republic of Moldova in 2020 is assessed in this report specifically from this perspective.

The role of national human rights institutions in times of crisis, such as the COVID-19 pandemic, is crucial, as these institutions continue to fulfill, but with greater care and determination, the mandate to protect and promote fundamental human rights and freedoms, by performing the functions of monitoring and reporting, examining the complaints of beneficiaries, providing advice on human rights and assistance to the authorities, informing and promoting human rights.

Thus, last year the PAO made over 1000 approaches of different kinds on a spectrum of problems, which required operative interventions, revisions of normative acts, etc. The People's Advocates had several statements, takings of position regarding the signs of human rights violations, by which they pleaded for the authorities to take decisions in the spirit of human rights principles and values. The recommendations of the People's Advocates were based on

the principles and norms established in the international instruments to which the Republic of Moldova is a party, as well as on the recommendations advanced during the health crisis by international human rights organizations.

The basic finding of the People's Advocates is that in 2020, in the Republic of Moldova, there were multiple violations of human rights and exaggerated limitations were imposed that led to the violation of freedoms and democratic processes in our country. The COVID-19 crisis has led to deepening poverty, rising inequalities, structural and consolidated discrimination and a worsening of the human rights situation.

The pandemic highlighted the key areas of the human rights system in the Republic of Moldova and the authorities have not always been able to cope with the challenges posed due to mismanagement of the situation or system deficiencies which did not allow prompt and appropriate action to be taken.

Decision makers did not launch a single message that would have a beneficial effect on population behavior, the decisions of the authorities in managing the health crisis were influenced more by the political factor and less by the specialists in the field.

In several cases, situations have been attested in which dignitaries have treated citizens with defiance, regardless of whether they are doctors, patients, journalists or other categories of people. Some decisions have imposed excessive and unbalanced measures that have violated human rights. These and other factors influenced the behavior of the population and caused several people not to react properly to the danger presented by Sars-Cov-2.

In managing the COVID-19 pandemic, the authorities broadly ignored human rights-based approaches.

The lack of transparency, the ignorance of the recommendations from the People's Advocate and other entities or experts in various fields have determined the developments we are currently witnessing in terms of the epidemiological situation and its negative effects on citizens, the business environment, with long-lasting socio-economic impact.

In the activity carried out during the health crisis, the People's Advocates and the staff members of the institution also faced some difficulties. The basic challenge was the very reserved and in some cases even hostile attitude shown by the authorities towards the initiatives, proposals and recommendations launched by the People's Advocates. Some proposals were accepted after they were launched repeatedly, and others - supported after their takeover and promotion by other entities.

At the same time, we can say about the beneficial effect of the reactions and proposals of the People's Advocates, which, however, influenced to a certain extent the decision-making or determined their review by the responsible factors. Also, the efforts of the team of the

People's Advocate's Office were noticed by the beneficiaries and partners from the country and from abroad, who appreciated the proactive attitude, promptness and opportunity of the launched initiatives.

The year 2020 brought us many trials, difficulties, challenges, opportunities, but also great losses. The People's Advocate, Mihail Cotorobai, became the victim of the killer virus. It is an immeasurable loss for the National Human Rights Institution and for the Republic of Moldova. This Report also reflects the views of the late Mihail Cotorobai, as a People's Advocate, in the process of monitoring, protecting and promoting human rights in our country in the fifth and, unfortunately, the last year of office.

MAIA BANARESCU,
People's Advocate for Children's Rights

CHAPTER I.

OBSERVANCE OF HUMAN RIGHTS IN THE REPUBLIC OF MOLDOVA IN 2020

DEMOCRACY AND HUMAN RIGHTS

The observance of fundamental human rights and freedoms, freedom, democracy, the rule of law, equality and non-discrimination are interdependent and mutually reinforcing. A strong rule of law is vital to the protection of human rights, and the rule of law can only be fully achieved in an environment that protects human rights.

Supporting democracy is an essential element of efforts to ensure the fundamental human rights and freedoms, which is enshrined in Article 21 of the Universal Declaration of Human Rights: "The people's will shall constitute the basis of the State power" That is why for an exhaustive presentation of the state of affairs regarding the observance of human rights in the Republic of Moldova, an examination of the situation regarding the functioning of democratic institutions in our country is also needed.

In the 29 years since independence, the Republic of Moldova has failed to build strong democratic institutions, constantly maintaining in international ratings *the status of a country in transition or hybrid regime* and the status of partially free country with regard to respect for political rights and civil liberties¹.

In the conditions of the pandemic crisis of 2020, the state of affairs in this regard has deteriorated significantly, human rights and democracy being endangered. Thus, last year there were several events that contributed to the restriction of the democratic space in the Republic of Moldova. These include attacks and intimidation of the independent press and the associative sector; non-transparent and non-participatory decision-making process; the adoption in Parliament of a set of legislative acts without respecting the legislative procedure; the perpetuation and maintenance of hate speech in the public space; electoral process with many irregularities; maintaining selective justice and impunity for some human rights violations. All these had negative effects on the public trust in the democratic institutions in our country.

The modest results in the implementation of democratic reforms were one of the reasons for maintaining the conditionalities of the European Union for offering the Republic of Moldova the following tranches of financial assistance. In its Resolution of September 2020 **on**

¹ <https://freedomhouse.org/country/moldova/freedom-world/2020>
<https://emerging-europe.com/news/democracy-in-emerging-europe-remains-flawed-at-best/>

the implementation of the EU-Moldova Association Agreement, the EU Parliament called on the Moldovan authorities to strengthen democratic mechanisms, including the multi-party parliamentary system, to ensure a free, independent and pluralistic media, as well as fair access to funding and media; to implement measures to address the urgent need to solve the problem of buying votes, intimidation of election observers, electoral bribery and other corrupt practices, as well as the misuse of state resources, as these practices undermines and destroys all democratic efforts made by the political actors in the Republic of Moldova.²

In particular, in the first months of the epidemiological crisis, caused by the COVID-19 pandemic, there were **deviations from the standards in the field of freedom of expression**, such as some intimidation of journalists following the criticism of the authorities for their inadequate response to the health crisis, as well as the barriers established for the access to information of public interest. Pressure on journalists occurred while the international structures and experts in the field of freedom of expression reiterated in the context of the health crisis the importance of a free and independent press, saying that the free flow of information is essential in combating COVID-19.

The People's Advocate emphasized³ that attacks on the media are attacks on democracy and reaffirmed that freedom of expression and freedom of the media are crucial to the functioning of a democratic society and continue to be so during the pandemic of COVID-19.

In the first half of 2020, several cases of restriction of freedom of expression were witnessed, by intimidating people who publicly expressed their opinions on the epidemiological situation, that of hospitals, launched criticisms on the way the authorities have handled the pandemic crisis. Thus, patients who made public disclosures about the precarious condition in hospitals were blamed, ridiculed⁴, and medical staff were persecuted and even threatened with dismissal.

There are grounds to say that in 2020 in the Republic of Moldova the democratic space has been restricted due to **attacks on civil society**, with accusations of undermining the interests of the state. The harassment and intimidation of the most important and representative non-governmental organizations has had a negative impact on the activity of the associative sector, which has an important role in promoting democratic change, through their activity in various spheres in areas not covered by the state and through their ability to transform society.

² https://www.europarl.europa.eu/doceo/document/A-9-2020-0166_RO.html

³ <http://ombudsman.md/news/avocatul-poporului-atacurile-impotriva-mass-media-sunt-atacuri-impotriva-democratiei/>

⁴ <https://tv8.md/2020/04/06/premierul-ii-raspunde-femeii-din-soroca-care-s-a-plans-pe-conditiile-din-spital-nu-este-sens-acum-de-facut-live-uri-glamuroase/>

The People's Advocate strongly condemned these attempts to denigrate and intimidate the representatives of the associative sector in the Republic of Moldova. The Ombudsman emphasized that the representatives of civil society belong to the category of human rights defenders, who have a positive, important and legitimate role to play in contributing to the realization of human rights at local, national, regional and international level, including by engaging in dialogue with the authorities and supporting their efforts to implement the obligations and commitments of States in this regard⁵.

Last year, the **issue of decisional transparency** became increasingly felt. The decision-making process often becomes a formal act and does not offer the possibility of a wide exchange of views on the proposals put forward by the authorities. Moreover, the experience of 2020 has shown that the legislative acts of crucial importance to the general public can be adopted by neglecting the legislative process, the principles of transparency, the good governance and neglecting the opposition.

The People's Advocate described as inadmissible the neglect of the democratic rules and principles of law-making and the adoption of laws of a wide public interest, the impediment of the participation of the parliamentary opposition in making decisions of decisive significance for citizens.⁶

In 2020, no progress has been made in **increasing the independence and efficiency of the judiciary, in countering threats to the rule of law**. Access to justice is often limited for people living in poverty and for those with disabilities, for survivors of gender-based violence and for the elderly, according to a research conducted by the United Nations Development Program (UNDP) Innovation Laboratory (MiLab) Moldova. Study participants listed several difficulties in accessing justice.⁷ At the same time, great suspicions have remained regarding the correctness and objectivity of the investigation of resonance files in which former or current dignitaries or politicians are targeted.

The presidential election that took place in 2020, although recognized as free and democratic, had a very aggressive election campaign, particularly in the second round of elections, with hate speech and even a call for violence. *The Promo-LEX Observation Mission of the Presidential Election found "the use of administrative resources, the involvement of religious denominations in a candidate's election campaign, the use of undeclared financial*

⁵ <http://ombudsman.md/news/avocatul-poporului-condamna-ferm-atacurile-la-adresa-societatii-civile-din-republica-moldova-si-reafirma-rolul-acesteia-deosebit-de-important-intr-un-stat-democratic-si-de-drept/>

⁶ <http://ombudsman.md/news/avocatul-poporului-nerespectarea-principiilor-democratiei-parlamentare-representative-poate-conduce-la-degradarea-statului-de-drept-si-la-autoritarism/>

⁷ https://www.md.undp.org/content/moldova/ro/home/presscenter/pressreleases/2020/pnud-_i-suedia-susinimbuntirea-eficienei-i-accesului-la-justitie.html

*and material funds, but also the violation of restrictions set by the National Extraordinary Public Health Commission."*⁸.

The topic of the functioning of democratic institutions is addressed in this report given the **fundamental role of the People's Advocate Office as a National Human Rights Institution in strengthening democracy, the rule of law, good governance and human rights**. According to the Declaration of the Global Alliance of National Human Rights Institution (GANHRI) in Marrakesh, a National Human Rights Institution has the mission to intervene when human rights, democracy, the rule of law are in danger, the civic space is under threat.

This was emphasized by the Constitutional Court in Decision no. 22 of 16.07.2015, mentioning that the People's Advocate Institution "is the guarantor of democratic development", "can act as a mechanism of democratic accountability" and "can be considered an institution with horizontal accountability in democratic governments". However, "through his activism, the Ombudsman in a democratic society must fight to strengthen the accountability mechanisms of all actors involved in the protection of fundamental rights, thus facilitating the achievement of good governance in a state governed by the rule of law".

In order to strengthen democracy, the rule of law, good governance and human rights, the following are crucial:

- Unconditional respect for the principles of pluralist democracy and the rule of law, human rights and fundamental freedoms of all persons under the country's jurisdiction;
- Facilitating and accelerating the implementation of 2030 Agenda for Sustainable Development, including Goal 16 on the responsible institutions and inclusive and participatory decision-making process, as well as Goal 10 on reducing inequalities;
- Increasing efforts to enhance the independence and efficiency of the judiciary;
- Strengthening democratic governance by ensuring transparency and accountability in the legislative and political process;
- Harmonizing the electoral framework to international standards and increasing confidence in the electoral process;
- Improving the functioning of democratic governance institutions, as well as the trust of the population in them, by strengthening and depoliticizing them, in particular the national institutions empowered to implement the law;

⁸ <https://promolex.md/19118-misiunea-de-observare-promo-lex-constata-un-numar-ingrijorator-de-incidente/?lang=ro>

- Supporting and strengthening in all ways the independent press and the associative sector and not admitting any actions that would affect their activity;
- Ensuring punishment for illegal and undemocratic acts committed, including at a high level;
- Further strengthening the People's Advocate Office and the Council for Preventing and Eliminating Discrimination and Ensuring Equality.

THE RIGHT TO A FAIR TRIAL

The right to a fair trial is enshrined in the Constitution of the Republic of Moldova in Articles 20, 21 and 26. These Articles regulate free access to justice, the presumption of innocence and the right to defense.

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

The right to a fair trial is also found in the Sustainable Development Goals, in Goal 16 - Peace, justice and strong institutions.

This fundamental right is characterized by several specific elements that refer to the examination of the case fairly, within a reasonable time, by an independent and impartial court, established by law, respecting the right to privacy, the principle of presumption of innocence, the right to defense, including by providing free legal aid, as well as other procedural rights intended to contribute to the realization of this right.

Earlier, the People's Advocate reiterated his previous recommendations to the authorities on further efforts to reform the justice system, implement the recommendations of regional and international human rights bodies relating to the justice system and adopt comprehensive legislation to criminalize hate crimes, in accordance with the provisions of the UN Convention on the Elimination of All Forms of Racial Discrimination.

The recommendations of the international mechanisms for the protection of human rights also draw attention to the need to strengthen the capacity of the judiciary to respond to acts of

corruption and to ensure the effective protection of victims of corruption, their lawyers, anti-corruption activists, whistleblowers and witnesses.⁹

At the same time, the State is encouraged to ensure the right to a fair administration of justice¹⁰; sufficient remuneration of judges, ensuring a sufficiently long mandate to guarantee the independence and integrity of the court; ensuring de jure and de facto protection of judges from any sanctions or retaliation for unpopular judicial decisions.¹¹

Another important aspect found in international recommendations refers to combating hate speech. On the need to amend Article 346 of the Criminal Code¹², so that it fully complies with Article 4 of the UN Convention on the Elimination of All Forms of Racial Discrimination, and that this amended Article is properly implemented; to adopt comprehensive legislation criminalizing hate crimes and to ensure that such legislation complies with the Convention and that racial motivation is listed as an aggravating circumstance; to ensure that all incidents of hate crimes and hate speech are investigated and prosecuted and that the offenders are punished, regardless of their official status; to provide data on the number of hate crimes and hate speech cases reported, criminal prosecution, convictions and compensation offered to victims; to strengthen the role of prosecutors in supporting victims of racial discrimination in reporting violations.¹³

Low confidence in the justice system

The People's Advocate found that the level of trust of the citizens in justice remains very low. The petitioners have often requested the intervention of the People's Advocate in the context of achieving the right to a fair trial, citing a lack of confidence in the objectivity and impartiality of the representatives of the justice system. The People's Advocate has always had to explain that no one is entitled to intervene in the act of justice.

Delay in examining the cases

Delaying the examination of cases by the courts is a current problem that leads to the violation of access to justice, this phenomenon being exacerbated by the pandemic, which showed that the judiciary is even more vulnerable to crisis situations exacerbating the failure of mechanisms to ensure the right to information and effective redress.

In one of the cases examined by the People's Advocate, due to the late information of the parties, the terms of appeal are lost in the higher courts, which leads to the loss of the case due

⁹ UN Committee on Economic, Social and Cultural Rights;

¹⁰ In accordance with Article 14 of the Covenant and the general comment no. 32 (2007) on the right to equality before the courts and tribunals and to a fair trial;

¹¹ UN Committee on Civil and Political Rights;

¹² "Intentional actions aimed at incitement to hatred, national, ethnic, racial or religious division or differentiation.";

¹³ The UN Committee on Racial Discrimination, recalling its General Recommendation no. 35 (2013) on combating racist hate speech;

to lateness and even to the imposition of state tax payment, even if the first instance court ruled in favor of the petitioner.

At the same time, the petitioner in his requirements of defense and effective redress, as plaintiff, addressed an advisory opinion to the SCJ Plenum on the case, as well as a request to lift the exception of unconstitutionality of Art.94 CPC of the RM, which were also rejected on the same ground.

Considering that the late bringing to the attention of the petitioner, as a plaintiff, of the court documents contributed to the loss of the course of the civil case trial, which led to a misinterpretation and misapplication of the rules of material and procedural law, and as a result, the violation of the right of access to justice, the People's Advocate notified the Superior Council of Magistracy in this regard, while being aware of this individual case as a potential one to condemn the Republic of Moldova to the ECHR. Moreover, the rejection of the request to lift the exception of unconstitutionality in an ordinary trial is an interference in constitutionality, which clearly exceeds the jurisdiction of the courts, or this is the prerogative of the Constitutional Court of the Republic of Moldova.

Another case, concerning the violation of the right to a fair trial, was the request of a detainee, who, having the status of victim of torture and inhuman and degrading treatment in a criminal file, was not informed so much about the actions taken by the criminal prosecution body on the case, as well as on its results. Although, as an injured party, the petitioner is entitled to be informed by the prosecuting officer or, as the case may be by the prosecutor of all decisions adopted relating to his rights and interests, to receive, at his request, copies of those decisions free of charge¹⁴, he did not benefit from this right, for which the People's Advocate intervened to the General Prosecutor's Office, requesting the immediate claim of his rights. The People's Advocate positively appreciates the actions of the General Prosecutor's Office by which the criminal prosecution in the case was resumed, being assured the information of the plaintiff about the actions undertaken.

The Ombudsman notes that this situation has been reached not only because of the negligence of those responsible for managing the criminal prosecution, but also because of the poor quality of state guaranteed legal aid services, manifested by lack of responsibility and a positive attitude of the lawyer towards the victim, in the criminal case.

The requests received from places of detention and examined by the People's Advocate in the previous year, for the most part, refer to violations of the right to a fair trial, generally referring to the delay in the examination of cases by the courts, in particular the lengthy examination of approaches regarding the application of conditional release and / or the

¹⁴ Art.60 para. (1) pnt. (10) of the Criminal Procedure Code of the Republic of Moldova;

application of the compensatory mechanism for detention in inhuman conditions. Petitioners have often relied on the fact that they do not know whether the latter were received by the court and / or to which judge the case was distributed and / or examined.

Thus, the Ombudsman found that in a case under examination, from the moment of receiving the complaint (29.10.2019) until the pronouncement of the Conclusion (27.11.2020), 13 months have passed, which directly indicates a violation of the criminal provisions, or the maximum period for examining the complaint concerning the conditions of detention which seriously affect the rights of the convicted person or the accused shall be 3 months.¹⁵

According to the Statistical Reports on the number of cases under the investigative judge's procedure, which is the only one in the Soroca Court, for 2019 and 2020, *1320 files* were distributed and until 09.12.2020 - *798 files*, respectively, which makes the Ombudsman note that the court has difficulty meeting the deadlines for examining this category of complaints, given the huge number of requests and the complexity of cases, requiring longer preparation until the debates are set, as complaints are not accompanied by evidence, and the reports of the penitentiary institutions are presented with great delay. In order to examine the cases concerning the application of the compensatory mechanism for the conditions of detention, the investigative judge needs the criminal files in which the convictions were handed down, which are usually sent by post, thus determining the need for a longer time.

Such cases show us that the non-observance of the deadlines for the examination of cases by the courts, including on the grounds of a mismanagement of the courts, creates premises for possible convictions of Moldova to the ECHR, or the state is to ensure reliable conditions for a fair and reasonable process. In this regard, the Ombudsman considers it appropriate to optimize and strengthen the courts, in whose territorial area are the penitentiary institutions.

Ensuring the translation of the act / court sentence

Another subject approached in the requests of the persons who are detained in the custody of the state, ignorant of the Romanian language, is the exceeding of the reasonable term of the procedure of ensuring the translation of the court act / sentence. In the process of investigating a request addressed to the People's Advocate, it was found that the applicant's file had been translated for approximately 11 months. Unfortunately, although the petitioner also notified the SCM, which ordered the verification of the situation, but following the verifications performed, the Judicial Inspection did not find any violation.

Considering the term of about 11 months for translating a sentence into Russian, as an exaggerated one, the People's Advocate urges the responsible authorities to ensure reasonable deadlines to come up with optimal solutions to such problems, or the state has undertaken to

¹⁵ Paragraph (4) Art. 473³ of the Criminal Procedure Code of the Republic of Moldova;

comply with the provisions of Art.6 ECHR which states that “*everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, which shall rule either on the violation of his civil rights and obligations, or on the soundness of any accusation in criminal matters directed against him*”.

Quality of state guaranteed legal aid

Another issue invoked both in the applications and in the hearings was the manifestation of dissatisfaction with the qualified legal assistance provided both by lawyers appointed by the National Council for State Guaranteed Legal Aid, and by lawyers employed by contract, fact for which the persons request the appointment of a lawyer from the Office of the People's Advocate and / or the representation of their interests by the Ombudsman before the courts. Most respondents argue that in order to ensure that all materials necessary for the examination of their cases will be properly presented to the courts, they are placed in a position to prepare their legitimate means of defense individually in the judicial process, by formulating, completing all requests, approaches, appeals, etc.

Thus, the People's Advocate considers a possible inadequacy of the services provided by the appointed or contracted lawyers in relation to the standards guaranteed by the legislation on legal aid¹⁶, as well as possible unfounded promises of lawyers offered to clients, which imply the successful resolution of their problems in relation to the outcome of the process. At the same time, the Ombudsman notes that in some cases, persons defending in court proceedings, for unknown reasons, erroneously inform the clients about the duties, powers and in general the role of the lawyer's institution, which generates a mismatch of achievements in relation to their expectations.

Given that state guaranteed legal aid is provided on the principle of quality, efficiency and equal rights of all persons benefiting from it,¹⁷ it is a guarantee of the State for the positive realization of the right of free access to justice. Considering alarming the number of requests regarding the poor quality of state guaranteed legal aid services, the People's Advocate requested the National Council for State Guaranteed Legal Aid, one of whose responsibilities is to monitor the process of providing qualified legal aid and the process of evaluating the quality of state guaranteed legal aid¹⁸, to present information on the mechanism for monitoring the process of granting and evaluating the legal services provided, as well as the impediments that negatively influence their quality. In the Ombudsman's view, the CNAJGS's response is a formal one, or the process of forming the new composition of the Council is not a reasonable

¹⁶ Law on Advocacy No. 1260/2002 and Law on State Guaranteed Legal Aid No. 198 of 26.07.2007;

¹⁷ Art.4 of Law no.198 / 2007 on State Guaranteed Legal Aid;

¹⁸ Article 12 paragraph (2) letter m) of Law no. 198/2007 on State Guaranteed Legal Aid;

argument for not providing information on the mechanism in question, as it is an instrument developed and implemented at institution level, regardless of the composition of the Council.

The People's Advocate considers that the monitoring of the quality of state guaranteed legal aid should be carried out in strict accordance with existing indicators, or, if it is further found that the problems identified persist, to initiate a procedure for evaluating the methodology for monitoring those services, with a view to improving them in order to ensure quality services.

Online court hearings

A special subject invoked in the requests received from the places of detention is the defective conduct of the court hearings in *online* format, which, according to the petitioners, creates impediments to ensuring the confidentiality of the discussions with their defenders, or detainees are accompanied by the prison staff, and lawyers are usually in the courtroom. Moreover, due to poor internet connections, the thread of discussions is lost, which is why some detainees request to be present at the court, the final decision belonging to the judge examining the case, which usually refuses on the grounds of compliance with the measures to prevent the infection / spread of COVID-19 infection.

In order to ensure the right to health of detainees, as well as other actors involved in justice, the Ombudsman called on both the General Prosecutor's Office and the Superior Council of Magistracy to take the necessary measures, but at the same time, the People's Advocate urges the authorities to improve the existing mechanisms for conducting legal proceedings *online*, as well as combining efforts between the court, prosecutor, defender and the penitentiary institution that ensures the detention of persons.

Public policies and legislation

In the previous reports, the People's Advocate reiterated his recommendations for further efforts to reform the justice system, implement the recommendations of regional and international human rights bodies relating to the justice system and adopt comprehensive legislation to criminalize hate crimes, in accordance with the provisions of the UN Convention on the Elimination of All Forms of Racial Discrimination.

In this context, we mention that on November 26, 2020, the draft law for approving the Strategy for ensuring the independence and integrity in the justice sector for 2021-2024 and the Action Plan for its implementation were voted in the plenary session of the Parliament¹⁹. The Strategy aims to improve the justice sector, by creating the premises for an independent, impartial, accountable and efficient justice sector.

¹⁹ <http://www.justice.gov.md/libview.php?l=ro&idc=4&id=5137>

Next, there is required a combined effort, involvement and support from all actors in the judiciary, civil society, all development partners that have an important role in the process of implementing the Strategy for ensuring the independence and integrity in the justice sector in the Republic of Moldova, to ensure the accessibility, independence, efficiency, transparency and integrity of the justice system.

At the stage of public consultations, the People's Advocate pointed out that the policy document in this area should meet the real needs of right beneficiaries / holders with clear objectives, in order to streamline the process of evaluating the progress made following the implementation of the strategy.

At the same plenary session, on November 26, 2020, the Parliament voted the draft law on the institution of regression in the context of the condemnation of the Republic of Moldova by the European Court of Human Rights²⁰.

Analyzing the project from the perspective of the impact on the effective protection of human rights, which ultimately depends on the proper administration of justice, the People's Advocate drew attention to the unanimously recognized standards / principles that must be taken into account in this context, in particular, the principle of clarity and predictability of legal rules in compliance with the standards on the guarantees inherent to the independence of judges and prosecutors.

Even in 2020, no progress was registered in the process of finalizing the draft law no. 301 of 01.07.2016 for the amendment and completion of some legislative acts regarding the regulation of crimes motivated by prejudice. Following the public consultations organized in October 2019 by the Committee on Legal Affairs, Appointments and Immunities and the Committee on Human Rights and Inter-ethnic Relations of the Parliament of the Republic of Moldova¹, the draft law was to be finalized taking into account the recommendations made, including by civil society. On March 5, 2020, the Committee on Legal Affairs, Appointments and Immunities organized a new round of public consultations during which the proposals that were not introduced in the project in question were reiterated.

In 2020, the Constitutional Court ruled on issues related to the right to a fair trial.

The Constitutional Court²¹ examined the constitutionality of some provisions of the Criminal Procedure Code regarding the notion of "serious error of fact". The Court found that there was an inconsistency between the second sentence of Article 6 point 11¹ of the Criminal Procedure Code (according to which the "serious error of fact does not constitute a

²⁰ <http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/5149/language/ro-RO/Default.aspx>

²¹ <https://www.constcourt.md/libview.php?l=ro&idc=7&id=1767&t=/Media/Noutati/Curtea-a-examinat-constitutionalitatea-unor-prevederi-din-Codul-de-procedura-penala-referitoare-la-notiunea-de-eroare-grava-de-fapt>

misjudgment of evidence") and the first sentence of the same Article (according to which the serious error of fact means "the erroneous determination of the facts, in their existence or non-existence, by disregarding the evidence confirming them or by distorting their content"). This regulatory inconsistency creates a legal uncertainty and is likely to affect a person's right to a fair trial.

Following the declaration of a state of emergency on the entire territory of the Republic of Moldova, on March 17, 2020, there were adopted a series of measures that affected the justice system. Most of these were provided in the Order of the Commission for Exceptional Situations (CES) no. 1 of March 18, 2020. Through the subsequent provisions, concretizations / completions were made with reference to the activity of law and jurisdictional bodies.

The special measures instituted in court concerned the legal deadlines of (prescription, revocation, appeal, settlement of complaints, etc.), which were interrupted until the end of the state of emergency. The examination of both civil, criminal and contravention cases was suspended, and the examination of the cases which could not be postponed took place by teleconference. The examination of the appeals against the provisions of the CES was placed under the jurisdiction of the Chisinau Court of Appeal, and the term of appeal was set at 24 hours, without the possibility of rescheduling, without the right to appeal.

In the process of analyzing the provisions issued by the Commission from the perspective of respect for human rights, the People's Advocate had several reservations / concerns, for which reason he submitted a series of CES recommendations for reviewing / excluding certain restrictions to comply with the international human rights standards during the state of emergency. The People's Advocate considered that some rules imposed by the CES through Order no. 4 of March 24, 2020 violates the guarantees of a fair trial and recommended their review. In the addressing of the People's Advocate, it is recalled that according to Art. 54 paragraph (3) of the Constitution of the Republic of Moldova, the right to free access to justice cannot be restricted.

On May 25, 2020, the Ministry of Justice provided a response stating, *inter alia*, that the normative and individual provisions of the Commission for Exceptional Situations of the Republic of Moldova could be challenged directly in court (Chisinau Court of Appeal) within 24 hours from the moment of posting on the official page of the Government (point 4 and point 7 of the Order of the Commission for Exceptional Situations of the Republic of Moldova no. 4/2020).

In view of the information increasingly disseminated in various media sources²² on the practices established in the application of these provisions, the People's Advocate analyzed the provisions by which the Contravention Code was supplemented with Article 76¹, entitled "Non-compliance with measures for prophylaxis, prevention and control of epidemic diseases" by Law no. 52 of 12.03.2020 (in force since 14.03.2020).

On April 29, 2020, the People's Advocate addressed to the Ministry of Justice the Proposal to amend the Contravention Code, in which he pleaded for the revision of the provisions of Art. 76¹ of the Contravention Code no. 218/2008. The People's Advocate proposed reducing the minimum amount of fines applied to individuals (between 22,500 and 25,000 MDL) and establishing alternative sanctions, such as unpaid community work, for non-compliance with the restrictions imposed during the state of emergency. The Ministry of Justice rejected this initiative. At the same time, the People's Advocate addressed similar proposals and recommendations to the parliamentary commissions with attributions in the field.²³

The People's Advocate presented his opinions at the notifications under examination at the Constitutional Court regarding the control of the constitutionality of Article 76¹ of the Contravention Code.

With reference to the request regarding the suspension of the action of Article 76¹ para. (1) of the Contravention Code, as well as of points 4-11, 22-40 and 45 of Order no. 4 of March 24, 2020 of the Commission for Exceptional Situations of the Republic of Moldova on 30.04.2020., the Constitutional Court finds that it does not have the power to exercise control over the constitutionality of the acts of the Commission for Exceptional Situations, therefore can not decide on suspending their action.

It should be mentioned that the arguments brought by the People's Advocate can be found in the Decision of the Constitutional Court of 30.06.2020²⁴. The Court notes that not only the fixed punishment set by the legislature, but also the relatively small difference between the minimum and maximum limit of the sanction are likely to affect, depending on the harmful act and the multitude of factual ways of committing it, the right to a fair trial, by restricting the jurisdiction of the court to exercise full jurisdictional control over the individualization and appropriateness of the sanction.

²² <https://www.zdg.md/importante/video-o-amenda-cat-pensia-pentru-doi-ani-istoria-unei-pensionare-de-66-de-ani-amendata-pentru-ca-ar-fi-iesit-la-magazin-dupa-paine/>

²³ <https://tv8.md/2020/04/21/o-femeie-care-citea-intr-un-parc-din-capitala-amendata-cu-11-250-lei/>
<http://ombudsman.md/wp-content/uploads/2020/05/04-2-8-din-29.04.2020-Comisia-protoc%C8%9Bie-social%C4%83-s%C4%83n%C4%83tate-%C8%99i-familie.pdf>
<http://ombudsman.md/wp-content/uploads/2020/05/04-2-9-din-29.04.2020-Comisia-drepturile-omului-%C8%99i-rela%C8%9Bii-intere>

²⁴ http://www.constcourt.md/public/ccdoc/hotariri/h_18_2020_61a_2020_rou.pdf

Therefore, the Constitutional Court ruled that the minimum amount of 450 conventional units of the fine imposed on the natural person for non-compliance with the measures of prophylaxis, prevention and / or control of epidemic diseases, if this fact endangered public health is unconstitutional²⁵.

The Court held that the legislator cannot regulate a sanction in such a way as to deprive the court of the possibility of individualising it effectively and reasonably. The Court noted that limiting the role of the court lacks substance the guarantees of the right to a fair trial, guaranteed by Article 20 of the Constitution and Article 6 of the European Convention.

In this respect, the Court has established that not only the fixed punishment set by the legislator, but also the relatively small difference between the minimum and maximum limit of the sanction, depending on the harmful act and the multitude of factual ways of committing it, are likely to affect the right to a fair trial, by restricting the jurisdiction of the court to exercise full jurisdiction over the individualisation and appropriateness of the sanction.

Conclusions

The problems identified during 2020 in the area of respecting the right to a fair trial reflect similar problems to those of previous years, but the state of emergency has further highlighted these problems, and at the same time demonstrated the lack of flexibility of the justice system to adapt quickly to such situations so as to ensure the realization of the right to a fair trial.

These problems include delays in the examination of cases by courts, disagreement with court decisions / judgments, low level of legal services quality, including those of state guaranteed legal aid, violation of the deadline for informing the parties about the decisions issued by the courts, the impunity of the actors in the justice system that admit deviations, the low level of public confidence in the justice system and others.

The permanent nature of the problems is favored by the lack of firm and continuous actions. For example, an objective assessment of the burden on courts to determine where additional resources should be allocated to make them more efficient would help to avoid delaying the examination of cases. At the same time, an efficient management of the courts would contribute to the elimination of the delay of the translation of the cases under examination. The efficient evaluation of state guaranteed legal aid services would ensure higher quality services for beneficiaries. An objective examination of cases of misconduct in the justice system and the punishment of those who are guilty would help to increase public confidence in the justice system.

²⁵ <https://www.constcourt.md/libview.php?l=ro&idc=7&id=1884&t=/Media/Noutati/Cuatumul-minim-de-450-unitati-conventionale-al-amenzii-aplicate-persoanei-fizice-pentru-nerespectarea-masurilor-de-profilaxie-prevenire-sisau-combatere-a-bolilor-epidemice-daca-acest-fapt-a-pus-in-pericol-sanatatea-publica-neconstitucional-sesizarile-nr-61a2020-nr-62a2020-i-nr-67g20120>

Therefore, the sum of small but constant efforts would contribute to the gradual elimination of the problems that are currently registered in the justice system, and which have a direct negative impact on the observance, protection and realization of the right to a fair trial in the Republic of Moldova.

RECOMMENDATIONS:

- The People's Advocate reiterates his recommendations on the need to implement the international recommendations issued by the international mechanisms for the protection of human rights;
- The People's Advocate reiterates his previous recommendations on further efforts to reform the justice system, implement the recommendations of regional and international human rights bodies relating to the justice system and adopt comprehensive legislation to criminalize hate crimes, in accordance with the provisions of the UN Convention on the Elimination of All Forms of Racial Discrimination;
- The People's Advocate recommends to the authorities to ensure the assessment of the needs of each court and, depending on the findings, to provide the necessary financial and human resources to carry out the activity so as to ensure the proper realization of the right to a fair trial;
- The People's Advocate recommends to the judicial self-administration bodies to objectively examine any signals regarding the deviations from the judicial system and not to admit the impunity of those who are guilty of it, in order to contribute to regaining the citizens' trust in the justice system.

INDIVIDUAL FREEDOM AND SECURITY OF THE PERSON

The fundamental right to freedom and security of the person is regulated in Article 9 of the Universal Declaration of Human Rights, Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 9 of the Covenant on Civil and Political Rights, and Article 14 of the Convention on the rights of persons with disabilities.

The Constitution of the Republic of Moldova, in Article 25, establishes that “(1) *The individual freedom and security of the person are inviolable. (2) The search, detention or arrest of a person are allowed only in the cases and with the procedure provided by law. (3) Detention may not exceed 72 hours. (4) The arrest shall be made on the basis of a warrant,*

issued by the judge, for a maximum period of 30 days. An appeal may be lodged against the legality of the warrant, in accordance with the law, in a hierarchically superior court. The term of arrest may be extended only by the judge or by the court, in accordance with the law, up to a maximum of 12 months. (5) The detained or arrested person shall be immediately informed of the reasons for the detention or arrest, and the accusation - as soon as possible; the reasons for detention and accusation shall be made known only in the presence of a lawyer, chosen or appointed ex officio. (6) The release of the detained or arrested person shall be compulsory if the reasons for the detention or arrest have disappeared. "

The right to freedom and security of the person is also provided by the Sustainable Development Goal no.16: Peace, justice and strong institutions. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.

Goals include reducing all forms of violence; eradication of violence against children and child trafficking; promoting the rule of law and justice for all; reducing illicit financial and arms flows, corruption and bribery; developing efficient institutions; participation in decision making at all levels; legal identity for all.

Individual freedom and security of the person is a principle of the rule of law, which guarantees to all persons that search, detention or arrest may take place only in the cases provided by law and in accordance with the procedure provided by law. This guarantee is closely linked to the person's right to a fair trial.

The European Convention on Human Rights guarantees the freedom and physical security of the person, without prejudice to the presumption of innocence, recognizing that freedom **is not an absolute right**: the recourse to deprivation of individual liberty is possible only as an extreme measure and under strictly defined conditions. Thus, the State has no right to provide for reasons other than those strictly regulated by the Convention for the detention or arrest of a person.²⁶

The People's Advocate recalls that the international recommendations on individual freedom and security refer to: reducing the length of the pre-trial detention to 48 hours, which is considered a sufficient period of time for arrested persons to be brought to court²⁷, repealing legal provisions legitimizing forced hospitalization and non-consensual psychiatric treatment

²⁶ European Convention on Human Rights. Commentary on the decisions of the European Court of Human Rights versus the Republic of Moldova. *Conclusions and recommendations. page 82*

²⁷ The UN Committee on Civil and Political Rights argues that the State party should adapt its legislation and practice to Article 9 of the Covenant, taking into account the general comment of the Committee no. 35 (2014) on individual freedom and security;

due to deficiency, stopping the deprivation of liberty of persons with disabilities on the basis of a real or perceived deficiency²⁸ ...

The previous recommendations of the People's Advocate aimed at excluding from the prerogatives of the police the detention of persons in pre-trial detention facilities of over 72 hours and the application of pre-trial detention in accordance with international standards.

According to NAP data, on January 1, 2020, **983 detainees** were detained in the system of the national administration of penitentiaries, or 131 fewer than in the same period of 2019²⁹. We notice a slight decrease in the rate of application of the preventive measure in the form of deprivation of liberty, compared to the situation in 2019. Apparently, this decrease was caused by the pandemic situation in the country.

In order to ensure the measures to prevent the spread of COVID-19 infection in penitentiary institutions, by Law no. 69/2020, during the declared state of public health emergency, it was ordered that the examination of criminal cases, including the steps regarding the issuance and extension of arrest warrants, and the issues related to the execution of sentences for persons deprived of liberty be carried out only through the teleconferencing system or in the appropriate spaces at the premises of the penitentiary institutions, without the consent of the person deprived of liberty.

The same data published by NAP show that in 2020, 8909 sessions were held through the videoconferencing system (in 2019-2139 sessions).

In 2020, the People's Advocate identified a case of exceeding the legal term for persons in pre-trial detention. Thus, in order to prevent similar situations, the People's Advocate intervened to the Superior Council of Magistracy and the General Prosecutor's Office and drew attention to the importance and obligation to comply with the provisions of Article 11 of the Criminal Procedure Code when examining the approaches for the application of preventive measures in the form of pre-trial detention, including the ban on exceeding the 72-hour period for detained persons.

Following the recommendations made, both the Superior Council of Magistracy and the General Prosecutor's Office reported that, in order to prevent the situations described in the Ombudsman's recommendations, a series of internal regulations had been issued.

Several NGOs working in the field of human rights protection referred to the alarming situation in detention institutions. In the last statement of the associative sector from June 26, 2020, they mentioned: "... *The conditions of detention in the penitentiaries of the Republic of Moldova, especially in penitentiary no. 13, do not meet the minimum standards for preventing*

²⁸ UN Committee on the Rights of Persons with Disabilities;

²⁹ <http://anp.gov.md/rapoarte-de-bilant>

*and combating torture, inhuman or degrading treatment. A new penitentiary to replace Penitentiary no. 13 was to be built, but its construction work did not even begin. Moldovan penitentiaries are in a disastrous and overcrowded state, including **due to the excessive application of pre-trial detention**. The authorities of the Republic of Moldova have been warned several times that they do not apply alternative forms of prevention, in case of poor detention conditions ..."* ³⁰.

Regarding the situation of detainees, the European Court of Human Rights also called on the authorities to apply alternatives to detention and to reduce the rate of pre-trial detention - as the only effective measures to prevent the violation of Article 3 of the ECtHR.

Following its visit in February 2020, the European Committee for the Prevention of Torture (CPT) remained concerned that: (a) the persons suspected of having committed a crime could be detained in so-called "police isolators" for a period of 72 hours after arrest, before being brought before the court, and some people are held for up to two months; (b) ***the preventive arrest and pre-trial detention, in cases where persons are most vulnerable to torture and ill-treatment, apply excessively***, even in cases where the offense committed does not qualify for preventive arrest and pre-trial detention, that the number of persons placed in pre-trial detention increased by over 20 percent since 2013; and ***that the alternatives to detention are rarely used*** ³¹.

The CPT stated that the State party must: (a) Ensure that all persons arrested in criminal cases are brought before the court within **48 hours** and that no one is being held in pre-trial detention for a longer period than required by law, for offenses under the law, or in places of detention which are considered unfit for use; and provide remedies for victims of unjustified prolonged pre-trial detention; (b) Amend legislation and take all necessary measures to shorten the length of pre-trial detention, which should be applied as an exception, as a measure of last resort, for limited periods of time, in accordance with the international standards; and examine the possibility of replacing the pre-trial detention for minor offenses with non-custodial measures, including electronic monitoring.

Another identified problem is the existence of several sentences / conclusions of the national courts, by which an act establishes the concrete term of serving the sentence and the person's right to release, and another act provides another term for the same deed, namely the conflict of issued documents by various courts, violates the person's right to liberty. In this situation, the persons and institutions of detention are in different positions in terms of

³⁰ <https://amnesty.md/ro/media/apel-cu-ocazia-zilei-internationale-a-onu-pentru-sustinerea-victimelor-torturi/>

³¹ CPT Report /2020: <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-publishes-report-on-moldo-6>

calculating the actual term of serving the sentence and the possibility of release from serving the sentence before the term.

As required by international standards³², the People's Advocate considers that the pre-trial detention of persons suspected of committing the crime should be an exception rather than a norm. In separate cases, pre-trial detention should only be applied in strictly necessary cases, as a measure of last resort, and should not be applied as a punitive measure. In order to avoid the inappropriate application of pre-trial detention, the widest possible range of alternatives should be available, less restrictive measures related to the behavior of the person suspected of committing the crime. Thus, pre-trial detention must be an exception to the right to liberty and security and be applied in cases where clear evidence is presented, accompanied by arguments, which would certainly confirm the likelihood of the suspects taking action. Arrest is an exceptional measure. As a result, arrest may be ordered only in certain cases and only for certain reasons, which must be shown in a concrete and convincing manner in the decision of the body ordering it.

In the context of the above, we note that in the Republic of Moldova there are two problems that represent the violation of individual freedom and security, namely, the excessive application of the measure of pre-trial detention and detention in police custody of persons detained for more than 72 hours.

Thus, as mentioned in previous reports, these issues are directly related to the human factor, representatives of the state who must ensure compliance with the law properly.

RECOMMENDATIONS:

- The People's Advocate recommends that the authorities develop an effective mechanism to record compliance with the 72-hour term in police custody and to discourage the violation of this provision by punishing those who commit them;
- The People's Advocate reiterates his recommendation to the Superior Council of Magistracy to issue circulars to the courts for the warning regarding the application of pre-trial detention in accordance with international standards.

³² The rules for the application of pre-trial detention, the conditions under which they are carried out and the measures to protect against abuse can also be found in the Recommendation of the Committee of Ministers of the Council of Europe, Rec (2006) 13 on pre-trial detention.

THE RIGHT TO VOTE AND THE RIGHT TO BE ELECTED

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

The right to vote and the right to be elected are guaranteed by the Constitution of the Republic of Moldova through the provisions of Article 38. In accordance with the constitutional provisions *“(1) The will of the people is the basis of the State power. This will is expressed through free elections, which take place periodically by universal, equal, direct, secret and freely expressed suffrage. (2) The citizens of the Republic of Moldova have the right to vote from the age of 18, reached until the day of the elections inclusive, with the exception of those placed under interdiction in the manner established by law. (3) The right to be elected is guaranteed to the citizens of the Republic of Moldova with the right to vote, in accordance with the law.”*

The year 2020, in fact, like 2019 was an electoral one. The defining element that distinguished the 2020 election from the previous ones was the global epidemiological situation, projected at national level, with detrimental effects for the population. Respectively, the effort of the state representatives had to be double, focused not only on the democratic organization of the elections, but also on the adequate protection of the citizens from the risks associated with the COVID-19 virus.

Thus, the authorities have made efforts to provide the possibility for all those who have the right to vote to exercise this right in safe conditions. People who have already been confirmed as carriers of the Covid-19 virus, or who have shown certain symptoms, have had the opportunity to request on the election day to exercise their right to vote through mobile teams. Even those who were in self-isolation regime could benefit from the mobile voting units.

Also, the persons deprived of liberty, in the custody of the penitentiary administration system, exercised their right to vote, ensuring the observance of the anti-epidemiological conditions.

In the presidential elections in 2020, the citizens of the Republic of Moldova abroad were able to express their right to vote, including on the basis of an expired passport. This fact is due to the notification of the Constitutional Court by the People's Advocate regarding the provisions of the Electoral Code, which were amended by Law no. 113 of 15.08.2019, so that in the polling stations opened abroad it was allowed to vote with the identity card and with the expired passport.

At the same time, for the presidential elections of November 1, 2020, several polling stations were opened, 139 in number, more than in the parliamentary elections of February 24, 2019, which constituted 125 polling stations.

However, the number of polling stations was not enough and citizens living abroad had to travel very long distances and wait in huge queues to exercise their right to vote.

A positive aspect is the increase in the number of ballots at polling stations abroad from 5,000 to 10,000 ballots. However, there have been cases where the number of ballots has not been sufficient.

It remains a problem to ensure access for people with disabilities in the polling stations. In this context, we would like to remind you that in 2016 the UN Special Rapporteur on the rights of persons with disabilities visited the Republic of Moldova. In his findings, the Special Rapporteur mentions that, in accordance with Article 29 of the Convention, people with disabilities have the right to participate in political and public life, and governments are obliged to ensure the accessibility of all voting procedures, facilities and materials.

Public policies and legislation

With the launch of the election campaign for the presidential election, the People's Advocate came up with an address³³, in which he stressed the importance of complying with international norms and standards for organizing and conducting elections, in order to ensure a fair and democratic electoral process and the exercise of fundamental human rights, in particular civil and political rights.

The People's Advocate sent a Recommendation to the Central Electoral Commission³⁴ requesting the elaboration of very clear special measures, in consultation with the public health surveillance bodies, to ensure maximum safety conditions for citizens and protection against the spread of COVID-19 virus during the presidential elections of November 1, 2020. He also recommended conducting information campaigns for voters and electoral contestants, by means accessible to all, about the special measures imposed / recommendations developed in this context for both citizens and electoral contestants, their supporters to adjust their behavior to the requirements / rules imposed during the election campaign, but also on the election day.

During the last year before the elections, some amendments were made to the Electoral Code, mostly technical. No amendments were adopted that would respond to the addresses formulated by the Constitutional Court³⁵ to the Decision on the confirmation of the election results and the validation of the mandate of the President of the Republic of Moldova no. 34 of

³³ <http://ombudsman.md/news/adresarea-avocatului-poporului-mihail-cotorobai-in-legatura-cu-lansarea-oficiala-a-campaniei-pentru-alegerile-prezidentiale-din-1-noiembrie-2020/>

³⁴ <http://ombudsman.md/wp-content/uploads/2020/10/07-6-10-din-16.10.2020-recomandare-CEC.pdf>

³⁵ <http://www.constcourt.md/ccdocview.php?tip=hotariri&docid=602&l=ro>

13.12.2016, for solving the problems / deficiencies identified in the normative framework. Shortly before the beginning of the procedures for organizing the presidential elections, on June 19, 2020, the draft law no. 263³⁶ was registered for the modification of some normative acts, and on July 9, it was approved in the first reading. The People's Advocate noted that the drafting of the mentioned draft law, which provides for a series of amendments to the electoral legislation, did not fully ensure the principle of transparency: we can not talk about organizing effective public consultations, so that all recommendations / opinions advanced are discussed with the stakeholders. We remind you that, according to the Decision of the Constitutional Court no. 11 of 07.05.202016, regarding the legal provisions in electoral matters, there must be a broad social consensus. The authors of the draft law did not intervene significantly in improving the voting mechanism abroad, as requested by the Court in two of its addresses.

Moreover, the People's Advocate stressed the hesitation of the authors of the draft amendment to the Electoral Code to include some key elements / proposals from civil society: ensuring the organization of the electoral process, and, in particular, ensuring the right to vote of voters in current epidemiological conditions, alternative methods; provisions regarding the accessibility and adaptation to the needs of persons with disabilities of the electoral process. It was also mentioned the fact of ignoring the proposals of the Coalition for Free and Fair Elections and of media NGOs to establish clear and fair rules for media coverage of elections.

These, as well as other concerns of the People's Advocate were exposed during the discussions with the members of the Venice Commission, which at the request of the Ministry of Justice was called to present its Opinion on this project. Some of these concerns are reflected in the recommendations of the Venice Commission.

The People's Advocate recommends adjusting draft no. 263 to the recommendations of the Urgent Joint Opinion of the Venice Commission and the OSCE / ODIHR with the organization of public consultations to find a social consensus and bring this draft back to Parliament's agenda.

Another moment of concern is the hate speech that is increasingly used in the public space and in the media in the Republic of Moldova, and in the electoral context it is increasing in intensity. At the moment, there is no relevant legal framework or mechanisms to combat this phenomenon, and the authorities do not have a response to hate speech in the electoral context.

³⁶<http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/5118/language/ro-RO/Default.aspx>

Conclusions

In the context of the above, we note that the problem of ensuring the conditions for exercising the right to vote of persons with disabilities, as well as of citizens settled abroad, persists. Thus, we consider that the COVID-19 pandemic has further accentuated the need to identify and implement alternatives to the exercise of the right to vote, such as electronic voting or voting by mail.

RECOMMENDATIONS:

- The People's Advocate recommends to the authorities to examine the possibility of establishing alternatives for the exercise of the right to vote, which can be an effective solution for the exercise of the right to vote of the diaspora, people with disabilities, etc.
- The People's Advocate recommends to the authorities to adopt the necessary legal and institutional framework for combating hate speech, in which case we refer especially to hate speech in an electoral context.

THE RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

Through the content of Article 28 of the Constitution, the Republic of Moldova declared that it respects and protects intimate, family and private life. This involves approving the necessary mechanisms and taking legislative and administrative action in this regard.

Article 17 of the International Covenant on Civil and Political Rights states that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

According to Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, everyone has the right to respect for his private and family life, his home and his correspondence. The interference of a public authority in the exercise of this right is allowed only insofar as it is provided by law and constitutes, in a democratic society, a necessary measure for national security, public safety, economic well-being of the country, defense of order and prevention of criminal acts, protection of the health, morals, rights and freedoms of others.

The European Commission of Human Rights has brought the following interpretation of the notion of privacy: the right to respect for privacy is the right to intimacy, the right to live as you wish, protected by advertising.

The individual right to self-determination, as well as his right to the protection of his intimate, family and private life, have the most surprising and spectacular practical and legislative implications.³⁷

Also, intimate and private life is interconnected with other rights and freedoms of persons, and legal guarantees come to establish the limits of intimate, private, family life, etc. For example, the house or apartment represents the person's private property and the place that ensures the person's privacy, the place where family reunions take place, where people celebrate intimate family events, etc., and the interferences brought to the house also affect the right to property and the right to intimate and private life.

Although the state guarantees the respect and protection of privacy, most of the interference in this regard has been invoked by people in prisons.

In this regard, during 2020 in the requests was invoked the disagreement with the decisions of the penitentiary institutions to limit / ban short / long meetings with family members as a disciplinary sanction, conducting searches in cells with damage to personal property (photo and correspondence carried with family members and authorities), etc.

At the same time, in the context of the COVID-19 pandemic, at the recommendations of the WHO and the Commission for Exceptional Situations of the Republic of Moldova, the Ministry of Justice jointly with the National Administration of Penitentiaries restricted the access of persons to penitentiary institutions in order to prevent the detainees from being infected with COVID-19.³⁸

In order to prevent the rupture of ties with the family and close persons, it was elaborated the Order of the Ministry of Justice No. 53 of 18.03.2020, by which the prohibition of the entry of visitors and the reception of parcels in penitentiary institutions was extended; replacing long and short meetings with short meetings via teleconferencing or additional telephone calls; the prohibition of transfers at the request of detainees from one penitentiary institution to another, except for transfers to the penitentiary hospital for the purpose of providing qualified medical assistance.³⁹

However, some detainees and their relatives have invoked allegations of lack of physical meetings with family members, and consider the extension of the interdictions for entering the penitentiary institutions to be disproportionate.

³⁷ https://www.constcourt.md/public/files/file/informatie_utila/Comentariu_Constitutie.pdf

³⁸ <https://drive.google.com/file/d/1SdX1zYOHGP1xPK4-UY3mW1m1g-IxrLs/view>

³⁹ https://drive.google.com/file/d/14f0JVXLkYHsLnIpVtB7MUFzDERwA_1m/view

For these reasons, the People's Advocate requested from the National Administration of Penitentiaries ample information on the existing procedures, regarding the short-term meetings through teleconferences and additional telephone calls.

Thus, the Ombudsman was informed that based on the NAP Order no. 134 of 24.03.2020 "On some measures of the penitentiary administration system in the context of declaring a state of emergency on the territory of the Republic of Moldova" there has been created the internal mechanism to allow online meetings of detainees with their relatives or other close persons.

Between March and December 2020, the NAP subdivisions received 1659 video call requests, of which 1647 requests were met. Impediments in the process of video conversations between detainees and their relatives were not encountered, except for some technical problems. In all penitentiary institutions were arranged spaces equipped with technical equipment necessary for organizing online meetings of detainees with their relatives, which took place under the supervision of representatives of the institution's administration, according to the provisions of point 283, section 25 of the Statute of execution of the sentence by the convicts. Respectively, during the reference period, according to the legal provisions, the presence of the personnel of the penitentiary administration system was ensured in the process of video conversations of the detainees with their relatives or other close persons.

Regarding ensuring the access of detainees to calls through the fixed telephony system in penitentiary institutions, it was communicated that the process is ensured through public telephones set up and managed by S.A. Moldtelecom. If necessary, the number of public telephones can be supplemented.

Although the mechanism established to ensure the right to meetings is functional, which is to be appreciated, however, the presence of prison staff at family reunions through teleconferencing reduces the respect for privacy of individuals, which in the conditions of the pandemic feel much more accentuated this need.

At the same time, the physical presence of prison staff in the teleconference room could be disproportionate, because, according to the legal norm, short-term meetings of detainees with relatives or other persons take place under the supervision of representatives of the institution's administration or under the supervision of video systems, in specially arranged spaces.⁴⁰ Therefore, prison staff could monitor the behavior of persons through the video surveillance system or other methods that would allow the privacy of persons deprived of their

⁴⁰ Point 283 of the Decision of the Government of the Republic of Moldova No. 583 of 26.05.2006 "On the approval of the Statute of execution of the sentence by convicts";

liberty to be respected, or, otherwise, non-compliance with privacy during teleconferencing may be considered as an interference with privacy.

Another category of detainees claimed that during the planned and unannounced searches, the employees of the penitentiary institutions, trained in the searches, totally or partially damage the personal belongings of the detainees, including the correspondence with the family or the authorities. In order to verify the legality of the actions of the penitentiary employees, in respect of which several similar requests were received in a relatively short period of time, the Ombudsman requested the intervention of the Prosecutor's Office, which, following the investigations, did not find deviations from the executive-criminal legislation in the activity of the employees concerned.

In one case, the detainee invoked the disclosure of the personal data of minor children, by publishing this information (date, month and year of birth) on the billboard of the penitentiary institution. Following the investigation of the case, it was established that the information given was printed on a draft response to an authority, which had previously requested information on the composition of the family and social protection, from which the children benefit while the parent is in detention. This draft response was used as a draft, on which an announcement was printed, which was subsequently placed on the information panel of the penitentiary, therefore there was an inattention of the institution's staff in relation to the expenditure optimization programs of state institutions and reuse of used paper, without the purpose of disclosing personal data or discrediting the person / persons.

Another issue invoked from the perspective of violating the right to privacy is related to the disappearance of correspondence (requests) addressed to the administration of the penitentiary institution, correspondence with family, close persons, etc. Although in penitentiary institutions there is a system for transmitting correspondence by installing mailboxes in the housing sectors of detainees, the People's Advocate continues to receive a large number of requests on this subject.

In an extraordinary case, a request from the Penitentiary no.6 in Soroca invoked the reading of the correspondence of some detainees by the representatives of the penitentiary subculture although the requests were addressed to the penitentiary management, but because the person was afraid for his own life and security in detention, the person did not want to intervene, because the examination of the case involved the disclosure of this person's data.

Another problem identified during the pandemic was the disclosure by state officials of personal data of persons infected with COVID-19.

Also, in the press appeared several interviews with persons sanctioned with a fine for non-compliance with anti-epidemiological measures, which also contained photo images of the

persons concerned, and in the context in which part of the population reacted aggressively to potential patients who could transmit the infection, disclosing this information could endanger the lives and health of individuals, who could be identified by neighbors, or others.

From a legislative point of view, we would like to mention that the Parliament adopted Law no. 124/2020 for the amendment of Article 27 of Law no. 133/2011 on the protection of personal data⁴¹ in order to optimize and streamline the procedure and deadline for conducting by the National Center for Personal Data Protection investigations on compliance of personal data processing, as well as the responsibility of Center employees in the process of examining complaints⁴².

In the procedure for approving the draft law in question, the People's Advocate recommended extending the concept of the draft law proposed for approval to avoid the risk of information leakage, illegal access to personal data and not to create assumptions about the data subject on the existence of uncontrolled access on personal data concerning him⁴³ according to a previous recommendation made at that time by the State Chancellery⁴⁴. However, these changes have not been made so far.

Following the examination of the provisions of Decision no. 21 of 24.07.2020 of the National Extraordinary Public Health Commission (hereinafter Commission), some provisions / requirements established aroused the concern of the People's Advocate from the perspective of respecting the right to privacy and protection of personal data. Subsequently, in his address to the Prime Minister of the Republic of Moldova⁴⁵, the People's Advocate pointed out the establishment in the mentioned Decision of some provisions that require the excessive collection of personal data, without guaranteeing their confidentiality. Thus, point 6 of the decision provided for the model of epidemiological record, which had to include the categories of personal data: name, surname, IDNP, telephone number, email address, home address, in case of organizing mass meetings with a single character, with the participation of less than 50 people. The same personal data were to be collected in connection with the organization and conduct of festive events in public catering units, provided in point 8 of the Decision, the model being provided in point 11 of Annex no. 4 to the respective Decision.

⁴¹ https://www.legis.md/cautare/getResults?doc_id=122295&lang=ro

⁴² <http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/4847/language/ro-RO/Default.aspx>

⁴³ Report on the observance of human rights and freedoms in the Republic of Moldova in 2019, page 26; http://ombudsman.md/wp-content/uploads/2020/09/Avocatul-Poporului_Raport-_aprobare-pentru-tipar.pdf

⁴⁴ Letter of the State Chancellery no. 31-16-6075 from 13.09.2019

⁴⁵ <http://ombudsman.md/wp-content/uploads/2020/08/04-2-15-din-04.08.2020-CNESP-dlui-Ion-Chicu.pdf>

The People's Advocate requested the reasoned opinion of the Association for the Protection of Privacy⁴⁶ regarding the above-mentioned requirements, established by Commission Decision no. 21. The representatives of the organization, as well as the People's Advocate, were concerned about the situation created, in particular, regarding the way of collecting / processing personal data. They also found that, by the decision in question, it is claimed to collect the categories of personal data, but do not establish in any way the necessary aspects provided by Law no. 133/2011 on the protection of personal data.

In the light of the reasoning stated, for not admitting the violation of the right to privacy and the right to protection of personal data, but also other rights, the People's Advocate recommended revising the above provisions, including attracting / consulting in this process specialists / experts with competence in the field of personal data protection.

In this context, the Ombudsman recommended that all technical and organizational measures be taken as a matter of priority to implement the principles of personal data protection and to establish the purpose of data processing and their traceability, but also the modification of the data declaration model (epidemiological record list), by applying the principle of minimizing the disclosure of personal data.

Unfortunately, the recommendations in question remained unanswered.

In 2020, the European Court found a violation of Article 8 of the European Convention in *the cases of Bostan vs. the Republic of Moldova and PT vs. the Republic of Moldova*. The cases concern: illegal search and without subsequent effective judicial control and the implicit legal obligation to disclose sensitive medical information when obtaining official documents or when hiring⁴⁷.

In the context of the above, we find that the existing legislation on the right to intimate and private life is not respected, not even at the level of central authorities, which in other situations is much more specific for the authorities responsible for implementing the legal provisions.

RECOMMENDATIONS:

- The People's Advocate recommends to the National Administration of Penitentiaries to ensure the privacy of detainees during the conversations with families through their video monitoring. At the same time, it is necessary to review the practices regarding the performance of controls so as not to admit the

⁴⁶ Moldovan NGOs with nationally recognized experience in the field of personal data protection and privacy

⁴⁷ <https://crjm.org/wp-content/uploads/2021/01/Nota-analitica-CEDO-2021.pdf>

violation of the right to intimate and private life. Likewise, the NAP must take measures to ensure the confidentiality of detainees' correspondence;

- The People's Advocate recommends to all persons, regardless of the status and level of their functions in the state, to be informed about the right to intimate and private life and not to admit the violation of this right through the decisions, speeches and interventions they make in public.

THE RIGHT TO WORK AND LABOUR PROTECTION

According to Article 43 of the Constitution of the Republic of Moldova, “(1) *Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. (2) Employees have the right to labour protection. The protection measures concern the safety and hygiene of work, the work regime of women and young people, the establishment of a minimum wage on the economy, the weekly rest, the paid rest leave, the performance of work in difficult conditions, as well as other specific situations. (3) The duration of the working week is at most 40 hours. (4) The right to bargain in labour matters and the binding nature of collective agreements are guaranteed.*

At the same time, the right to work and labour protection is guaranteed by Article 23 of the Universal Declaration of Human Rights, Articles 6 and 7 of the Covenant on Economic, Social and Cultural Rights, Article 27 of the UN Convention on the Rights of Persons with Disabilities.

Government measures to combat the COVID-19 pandemic have had profound implications for the fundamental rights of all citizens, including the right to work and labour protection.

The requests received during 2020, regarding the right to work and labour protection, concerned several aspects such as: dismissal or suspension of the employment contract; obligation by the employer to sign an application for leave or even demission, etc.

During 2020, following the investigation of the applications, there were found situations in which the persons were put in a position to suspend the employment contract, to submit a resignation letter or even were fired. Due to protective measures against the spread of COVID-19 infection, some employees were forced to take leave on their own, which displeased them, as they reduced their livelihoods, given that many of them have dependent children. At the same time, it was not clear the principle according to which it was decided to send on leave on their own, the authorities being accused of lack of transparency and differential treatment, because some employees had the opportunity to work and be paid while others – had not.

In response to the Child Ombudsman's intervention, the public authority noted that *each of the institutional acts on the activity regime of the Agency during the pandemic period was issued in strict accordance with the decisions of the Commission for Emergency Situations, aiming to ensure the respect for the rights of all employees and their protection against COVID-19 contamination and in no way discriminatory treatment in employment.*

Although he expressed his diligence to act through special mechanisms for the protection of the petitioners' right to work, they refused the subsequent intervention of the People's Advocate, for the fear of losing their job.

At the same time, an impressive number of requests addressed to the People's Advocate came from employees in the medical system.

With the outbreak of the COVID 19 epidemic in our country, the People's Advocate was notified by representatives of several public medical institutions in the country. Medical workers who claimed lack of safety and security at work, namely the lack of protective equipment for doctors providing treatment and diagnosis to citizens infected or suspected of COVID-19.

It should be mentioned that, according to the provisions of Article 9 of the Law on safety and health at work no. 186 of 10.07.2008, the employees benefit from the general norms in the matter of labour protection, and the employer is obliged to ensure the safety and health of the workers under all aspects related to the activity carried out ”.

With reference to the employees of the medical system, the Ombudsman recalls that the Law on performing the medical profession no. 264 of 27.10.2005, in Article 18 ensures the right of the doctor to refuse to perform certain medical interventions, in the absence of the necessary technical-medical possibilities. This right is also stipulated in point 69 of Section 7 of Government Decision No. 192 of 24-03-2017 "On the approval of the Code of Ethics of the medical worker and pharmacist." ⁴⁸

Thus, due to the lack of technical-material equipment necessary for the protection of medical staff, several doctors could resign, and the employer will be put in a position to respect this right, guaranteed by the legislation of the Republic of Moldova. However, in the epidemiological conditions in the country, the mass layoffs of medical staff could lead to a collapse of the health system and serious problems related to ensuring public safety and health in the country.

⁴⁸The health worker may refuse to perform a medical act for sound professional reasons, which may be justified by lack of sufficient knowledge and specific qualification in the field or in case of limited technical and material possibilities to perform the requested assistance, except in cases of vital emergency.

In the created situation, the People's Advocate asked the President of the National Commission for Exceptional Situations, Prime Minister of the Republic of Moldova, to urgently identify additional funds to ensure adequate conditions for the protection of medical workers from COVID-19 contamination, both at hospital medical institutions, as well as at the level of primary health care.⁴⁹

Following the Ombudsman's request, the Commission for Exceptional Situations of the Republic of Moldova decided, by Order no. 1 of March 18, 2020, the financing from the prophylaxis fund of the National Health Insurance Company of the acquisition of means of protection (medical gloves and masks) in the amount of two million MDL.

Subsequently, the Government decided to allocate to the Ministry of Health, Labour and Social Protection, from the Government Reserve Fund, the amount of 36 million MDL, intended for the purchase of special protective equipment (protective screens and respirators) intended to prevent and combat the spread COVID-19 infection, and on March 28, 2020, the Commission for Exceptional Situations of the Republic of Moldova decided to allocate, for this purpose, from the Government intervention fund, an additional amount of 19.5 million MDL for the purchase of respirators.

Public policies and legislation

During the reference period, the Constitutional Court ruled on issues related to the right to work.

On March 10, 2020, the Constitutional Court declared unconstitutional⁵⁰ the exclusion from the payment of the salary difference of employees whose employment relationships were suspended on the date of entry into force of Law no. 270/2018 on the unitary salary system in the budgetary sector⁵¹. The People's Advocate submitted his opinion to the Constitutional Court.

Regarding this subject, the People's Advocate mentioned that by establishing the restrictions from Article 27 para. (5) of the Law on the unitary salary system in the budgetary sector, an interference with the right to a fair salary and equal remuneration for work of equal value was allowed in the case of persons whose individual employment contracts were

⁴⁹ http://ombudsman.md/news/avocatul-poporului-solicita-autoritatilor-identificarea-unor-fonduri-suplimentare-pentru-echiparea-adekvata-si-asigurarea-protectiei-medicilor-de-contaminare-cu-covid-19/?fbclid=IwAR38guNVVDELxseHxfEwYMfM3e8nFfIAIUqFf3_jyRVi8YcbZCzL3h1Gs9g

⁵⁰ <https://www.constcourt.md/libview.php?l=ro&idc=7&id=1795&t=/Media/Noutati/Excluderea-angajatilor-care-aveau-raporturile-de-munca-suspendate-la-data-intrarii-in-vigoare-a-Legii-nr-2702018-de-la-plata-diferentei-de-salariu-neconstitucionala-sesizarea-204g2019>

⁵¹ Decision no. 6 of 10.03.2020 on the exception of unconstitutionality of some provisions of Article 27 para. (5) of Law no. 270 of 23 November 2018 on the unitary salary system in the budgetary sector and of point 8 of Annex no. 6 to the Government Decision no. 1231 of December 12, 2018 for the implementation of the provisions of Law no. 270/2018 on the unitary salary system in the budgetary sector (salary guarantees in case of suspension of employment relationships);

suspended. The legislator also made a distinction in the remuneration of employees in the budgetary sector according to the criterion of effective employment at the time of entry into force of the law, artificially establishing a distinction from persons with suspended employment, without an objective and reasonable justification. In this context, the contested rule generates discrimination based on sex / gender in the exercise of the right to work. It creates a pay gap based on the suspension of the employment contract in connection with maternity or childcare leave. At the same time, the People's Advocate pointed out that the contested provisions analogously affect other categories of employees, such as people with disabilities. Therefore, the People's Advocate considered that the contested provisions exceed the margin of appreciation of the state, a fact incompatible with Articles 16 and 23 paragraph (2) of the Constitution, corroborated with Article 43 of the Constitution.

The Court noted that the purposes declared by the legislator for not applying guarantees to employees whose employment relationships were suspended upon the entry into force of the Law on the unitary salary system in the budgetary sector do not fall within any of the purposes provided by Article 54 para. (2) of the Constitution. The Court therefore concluded that the contested provisions were contrary to Articles 16 and 43 of the Constitution.

The Constitutional Court also examined the constitutionality of some provisions of the Labour Code and of the Law on Trade Unions regarding the binding nature of the agreement of the trade union bodies to dismiss the trade union officials⁵².

The Court found that the provisions criticized for prohibiting the dismissal of employees members and leaders of trade union bodies without the consent of trade union bodies, in cases where dismissal is not related to trade union activity, are contrary to the constitutional provisions of Articles 9, 46 and 126 of the Constitution.

Considering the epidemiological situation in the Republic of Moldova caused by the new type of Coronavirus infection (Covid 19), on 21.05.2020, the Parliament adopted Law no.69⁵³ by which it was provided a series of measures to avoid situations of eminent danger on public health, as well as for supporting certain activities or areas through administrative, economic, medical and social regulations. One of the main policy measures concerns the regulation of the organization of remote work, the modification of the daily working time for some categories of employees, the principles of organization of remote work, the conclusion, modification, content and termination of the individual employment contract which provides for remote work clauses.

⁵² Decision no. 3 of 04.02.2020 regarding the exception of unconstitutionality of Article 87 para. (2) and para. (3) of the Labour Code (obligation of the agreement of the trade union body to dismissal);

⁵³ Law no. 69 of 21.05.2020 regarding the establishment of measures during the state of emergency in public health and the amendment of some normative acts;

The Parliament voted the draft law on amending some normative acts⁵⁴, which aims to restore the control attributions of the State Labour Inspectorate in the field of occupational safety and health and the investigation of work accidents.

Therefore, from January 1, 2021, the institution will take over the control functions in the field of occupational safety and health, which were assigned by Law no. 185/2017 to 10 agencies. The amendments were drafted in the context of the recommendations of the experts of the International Labour Organization Office, who found in the existing inspection system a number of non-compliances of national legislation in the field of occupational safety and health control with the International Labour Organization Conventions.

The amendments adopted will ensure the functionality of the control system in the field of occupational safety and health and unblock the current situation regarding the conflict of competence between the authorities with control attributions in the field of occupational safety and health.

The Government approved⁵⁵, starting with January 1, 2021, the minimum guaranteed amount of salary in the real sector (enterprises, organizations, institutions with financial autonomy, regardless of the type of property and the form of legal organization) in the amount of 2935 MDL. At the same time, the People's Advocate reiterates⁵⁶ that the amount of the minimum wage in the country, amounting to 1000 MDL,⁵⁷ has not changed since October 1, 2014.

In connection with the restrictions imposed during the state of emergency, the introduction of quarantine, the transition to a special employment scheme for employees, as well as other necessary restrictions, many questions have arisen among the population regarding the application of legislation on pay for absence from work, sickness prevention allowance (quarantine), technical unemployment allowance. In this context, the People's Advocate came up with some proposals to improve the labour regulatory framework. Thus, one of the proposals⁵⁸ aimed at revising the provisions of Art. 76 of the Labour Code no. 154/2003, Art. 52 of Law no. 158/2008 regarding the civil service and the status of the civil servant, Art. 14 paragraph (4) of Law no. 289/2004 on the indemnity for temporary work disablement and other social insurance benefits and, respectively Art. 36 of the Government Decision no.

⁵⁴ Law no.191 of 19.11.2020 for the modification of some normative acts;

⁵⁵ Decision of the Government of the Republic of Moldova no. 165 of 09.03.2010 "On the amount of the minimum guaranteed wage in the real sector", point 1;

⁵⁶ Report on the observance of human rights and freedoms in the Republic of Moldova in 2017, page 47; <http://ombudsman.md/wp-content/uploads/2018/10/raport2017redfinal.pdf>

⁵⁷ Decision of the Government of the Republic of Moldova no. 550 of 09.07.2014 "On establishing the amount of the minimum wage in the country"

⁵⁸ <http://ombudsman.md/wp-content/uploads/2020/04/Propunere-de-modificare-a-legisla%C8%9Biei-04-2-5-din-02.04.2020.pdf>

108/2005 on the approval of the Regulation on the conditions for establishing, calculating and paying the indemnities for temporary work disablement to ensure the right to the quarantine allowance. Relating the provisions in question to the situations generated in the context of measures taken to prevent the spread of the COVID-19 pandemic, the People's Advocate considered that the mentioned norms are confusing and contradictory, because they do not establish exactly the conditions for granting the disease prevention allowance (quarantine). Given that quarantine can be instituted at the individual level as well as at the collective level (institution, locality or region) the current regulations do not offer clear solutions for all these situations.

Another proposal⁵⁹ submitted by the People's Advocate aimed at **eliminating the ambiguities in the legislation on how to grant the technical unemployment benefit**. The People's Advocate noted that although paragraph (4) of Art.80 of the Labour Code provides for employees an indemnity during the period of technical unemployment that can not be less than 50 percent of the basic salary, by the established exception, this guarantee is not valid in case of suspension of the individual employment contract. And according to the provisions of Art. 77 letter c) of the Labour Code, in case of technical unemployment, the individual employment contract is suspended by the agreement of the parties, expressed in writing.

The Ombudsman argues that in such circumstances there are ambiguities as to how the unemployment benefit is granted, which may lead to uneven and erroneous application of the provisions in question.

Obviously, the measures / restrictions imposed in order to protect public health, such as travel bans, quarantine, can have an adverse impact on people's rights at work. For these reasons, it is imperative to ensure the right to effective social protection services for people who are unable to work, in order to reduce the potential negative impact on the living standards of these people and their families. It should be noted that the provisions indicated above have not been revised.

Conclusions

Finally, it is important to note that according to the provisions of the International Covenant on Economic, Social and Cultural Rights, the State should guarantee people the opportunity to earn a living through work, which they freely choose or accept, and to protect them against unfair dismissal without discrimination on any grounds, including health status.

Any negative impact of COVID-19 responses on the employment and remuneration of workers should be mitigated. Abusive dismissals and layoffs, reduced working hours, changes

⁵⁹ <http://ombudsman.md/news/neclaritati-privind-modalitatea-de-acordare-a-indemnizatiei-de-somaj-tehnic/>

in the type of employment are examples of responses that can have a negative impact on the right to work.

Workers should have effective remedies to challenge the decisions that affect their right to work. Marginalized and disadvantaged people, including the unemployed, the self-employed, workers in non-traditional forms of employment (on their own, temporary, casual workers) and migrant workers should receive special attention from the state authorities. Any act of discrimination related to COVID-19 should be prohibited and prevented at work. Any labour market measures developed by states to address the economic effects of the COVID-19 pandemic should focus on ensuring compliance with the rights under the ICESCR.⁶⁰

RECOMMENDATIONS:

- The People's Advocate recommends that the authorities draw attention in the decision-making process to the non-admission of situations that could contribute to differential treatment, especially of vulnerable groups or those who may be most severely affected by these decisions, especially in the context of the COVID-19 pandemic crisis;
- The People's Advocate recommends to the authorities to ensure that workers have at their disposal an effective mechanism for filing and examining complaints regarding the violation of the right to work, without being subject to the risk of being sanctioned, dismissed, etc.

THE RIGHT TO SOCIAL ASSISTANCE AND PROTECTION

The right to social assistance and protection is guaranteed by the Constitution of the Republic of Moldova (Article 47), which stipulates that *the state is obliged to take measures so that everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services. Citizens have the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond their control.*"

The right to social protection is enshrined in the Universal Declaration of Human Rights (Articles 22 and 25), the International Covenant on Economic, Social and Cultural Rights (Articles 9 and 11), the UN Convention on the Rights of Persons with Disabilities (Article 28) and other UN human rights instruments, the revised European Social Charter and a number of conventions of the International Labour Organization, ratified by the Republic of Moldova⁶¹.

⁶⁰ <https://moldova.un.org/ro/44959-dreptul-lucratorilor-contextul-covid-19>

⁶¹ https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:10021027793778:::P11200_INSTRUMENT_SORT:2

Social protection is the fundamental element of state policies, the main mechanism by which society intervenes to reduce, prevent or eliminate poverty and vulnerability throughout the life cycle. Social protection has a central role to play in achieving development, promoting social justice and achieving the right to social security for all. Thus, social protection policies are central elements of the national development strategies to reduce poverty and vulnerability and support inclusive and sustainable growth by increasing household incomes, promoting human development, facilitating structural transformation of the economy, promoting decent work.

By adopting the 2030 Sustainable Development Agenda in 2015, the Republic of Moldova is committed, together with other UN member states, to promoting the eradication of extreme poverty and the reduction of absolute poverty by 2030 (target 1.1 and 1.2), combating inequalities and ensuring an adequate social protection system for all, including the poor and vulnerable (target 1.3), reducing the vulnerability of the poor and those in situations of vulnerability through increased access to goods, resources, services and information (target 1.4 and 1.5).

In the previous reports, the People's Advocate issued a number of recommendations to state authorities, many of which are repeated: to properly implement the recommendations of international mechanisms; to ensure a level of social security benefits such that their minimum amount is at least equivalent to the subsistence minimum; to examine the advisability of ratifying Article 23 on the right of older people to social protection and Article 30 on the right to protection against poverty and social exclusion in the (revised) European Social Charter; to revise the provisions of Article 6 and Article 28 para.(1) letter c) of Law no. 289/2004 so that any insured person can benefit from the right to social insurance; to examine the advisability of excluding the requirement to refuse the monthly care and supervision allowance, if the person with severe disabilities benefits from a personal assistant.

These recommendations of the People's Advocate converge with the recommendations of the committees of international and regional mechanisms: the UN Committee on Economic, Social and Cultural Rights, the UN Committee on the Protection of Persons with Disabilities, the European Committee of Social Rights of the Council of Europe. They relate in particular to: the significant increase in public spending on social protection; stepping up efforts to combat poverty with a stronger focus on vulnerable people; extending the social protection system to all vulnerable groups; increasing the value of social benefits to a level that ensures beneficiaries a decent living; reviewing eligibility criteria, including the list of assets, to ensure that all disadvantaged people benefit from the Social Assistance program.

In February 2020, the Republic of Moldova was evaluated by the UN Committee on the Elimination of Discrimination against Women with regard to the implementation of the Convention on the Elimination of All Forms of Discrimination against Women. In its recommendations⁶² the Committee urges the state:

- to ensure adequate access for victims to accessible shelters and care services, including medical treatment, psychosocial counseling and legal assistance in any part of the state;
- to speed up the ratification of the Istanbul Convention and to ratify the Convention on the minimum standards of social security of the International Labour Organization (ILO) No. 102/1952;
- to strengthen the social protection of self-employed women and to ensure equal access to maternity benefits as for employed women;
- to extend the coverage of existing social protection schemes for women belonging to disadvantaged groups, including Roma and rural women, as well as retired women in difficult economic situations, to strengthen funding for such schemes and to ensure that social protection schemes are gender sensitive.

The need for the urgent ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) in order to prevent and respond to the phenomenon of violence was also addressed by the Council of Europe Commissioner for Human Rights, Dunja Mijatovic, in his Report on visit to the Republic of Moldova from March 9-13, 2020⁶³. The official also urged the authorities to continue expanding the network of shelters and support services for victims of domestic violence.

Noting the general lack of social housing and limited access to water and sanitation, especially in rural areas, the Commissioner recommended that the authorities carry out a comprehensive needs assessment to develop specific housing interventions based on up-to-date information on people living in poor housing conditions and gradually allocate financial resources for the construction or renovation of social housing and at affordable prices. New housing projects and policies should be developed in close consultation with those in need of housing and all housing built or renovated should, as far as possible, be accessible to people with disabilities. Access to available housing options should be ensured on the basis of an equal treatment for all disadvantaged and marginalized groups. The Commissioner urged the authorities to accept the unaccepted provisions of the (revised) European Social Charter, in

⁶² CEDAW / C / MDA / CO / 6, 10 March 2020, para. 20 (c), para. 23 (b), (c) and (f), para. 33 (f), para. 37 (a) and (c).

⁶³ <https://rm.coe.int/report-on-the-visit-to-moldova-from-9-to-13-march-2020-by-dunja-mijato/16809ed0e4>

particular those on the right to housing and the 1995 Additional Protocol providing for a system of collective complaints.

Similar to previous years, the violation of the right to social assistance and protection continued to be invoked by citizens in the requests addressed to the People's Advocate. The problems addressed in them show that the situation in the field of social protection has not improved substantially. People continue to invoke the low value of pensions and social allowances, the limited access to social services, especially the "Personal Assistance" service, caused by the shortage of personal assistants.

The problem of people with disabilities has also not been solved. Beneficiaries of the maintenance allowance continue to be able to choose between the allowance or admission to social service with the pay of the person providing them with support, although they have funding from different budgets⁶⁴, different purposes and the final beneficiaries are different. More broadly, the issue was addressed in the Ombudsman's Report in 2019⁶⁵.

At the same time, it remains unresolved the issue regarding the provisions of Art. 6 of Law no. 289 of 22.07.2004 *on the indemnity for temporary work disablement and other social insurance benefits*, according to which the insured person can benefit from the right to social insurance benefits only if he confirms a contribution period of at least 9 months in the last 24 months prior to the date of occurrence of the insured risk.

The state of emergency, declared in connection with the COVID-19 pandemic, has diversified the spectrum of problems, resulting from the restrictive measures of the Commission for Exceptional Situations regarding the exercise of certain rights and freedoms of citizens, but also following the suspension of public institutions. The following problems required the intervention of the People's Advocate: the impossibility of raising the pension and other social benefits for beneficiaries who do not have bank cards, including pensioners from the left bank of the Dniester, pension beneficiaries from the Republic of Moldova (problem solved by the CES Decision); financial difficulties of socially vulnerable families with children; in the quarantined localities, the defective supply of medicines, products of first necessity was found; lack of access to quality drinking water and adequate nutrition in some health institutions, especially in rural areas; ambiguities regarding the granting of the quarantine allowance; the impossibility to complete the retirement file for the persons who during the state of emergency have reached the retirement age resulting in the impossibility to benefit from the

⁶⁴ The allowances established in accordance with Law no. 499 of 14.07.1999 on state social allowances for some categories of citizens are paid from the state budget, through the social insurance budget, and the financing of the social service "Personal assistance" is made from the budget of local public authorities.

⁶⁵ http://ombudsman.md/wp-content/uploads/2020/09/Avocatul-Poporului_Raport- aprobare-pentru-tipar.pdf

medical insurance policy as persons insured by the state; non-granting of unemployment benefits and subsidies to patent holders⁶⁶.

Under such conditions, the Government had to adopt a package of anti-crisis measures to support citizens and economic agents during the state of emergency, which should provide support measures for people suffering financial constraints, natural or legal persons, caused by the cessation or suspension of activity or the impossibility of carrying out the activity during the pandemic.

The People's Advocate considers as positive the measures adopted to support the population during the state of emergency:

- increasing the amount of unemployment benefits and extending the list of beneficiaries, ensuring the accessibility of all registered persons with unemployment status, including those returning from abroad, even if they do not meet the conditions for granting it. Respectively, the persons with unemployment status are insured by the state in the system of compulsory health insurance.
- increasing the minimum guaranteed monthly income from 1107 MDL to 1300 MDL and the minimum guaranteed monthly income for each child by 25%, which, respectively, led to the increase of the social aid for vulnerable families;
- extending the term of disability to persons whose degree of disability has expired during the state of emergency and continuing the payment of social rights (social assistance, disability pension), except for submitting the application and presenting confirmatory certificates;
- additional employment of 2600 personal assistants to support people with disabilities;
- establishing a subsidy mechanism for economic operators that have totally or partially ceased their activity, in order to support employees and employers in the conditions of the economic effects of the epidemiological situation.

In general, in 2020 the volume of social protection expenditures increased by 26,852,196 thousand MDL or approximately 12.27% compared to 2019. This is largely due to the increase in social benefits (pensions, by biannual indexation and re-examination of old-age pensions, survivors' pensions, temporary incapacity benefits, single financial support) and increasing the number of beneficiaries. The volume of transfers from the state budget to local budgets for social protection measures has also increased.

However, the amount of the minimum old-age pension covers only 64.7% of the subsistence minimum for pensioners (an increase of 5.95% compared to 2019), the amount of

⁶⁶ <http://ombudsman.md/despre/stiri-covid-19/>

the minimum pension in the event of a severe disability covers only 48.5% , and the size of the state social allowance is only 32.3% of the subsistence minimum for an elderly person.

Thus, it is certain that the impact of the measures adopted is insignificant for reducing poverty and increasing the well-being of the population. The state must continue to work to ensure the right to a decent life for all people.

Statistical data show that in 2019 the absolute poverty rate was 25.2% (increasing by 2.2% compared to 2018). At the same time, the extreme poverty rate was 10.7% (increasing by 2% compared to 2018)⁶⁷. According to World Bank estimates, in 2020 extreme poverty is expected to reach about 13% as households face the impact of the crisis, including job losses (estimated at 70,000 jobs) and gains, which will result in an increase in the unemployment rate by approx. 8%, the reduction of income from remittances and the return of the most vulnerable migrants who may have difficulties in finding employment. According to the Household Budget Survey of 2020 (CBGC), 17% of households reported a reduction or loss of income from work⁶⁸; 8.3% - a reduction or loss of remittances from abroad; and 3.6% - withholding of salaries, pensions and social benefits. In such conditions, strengthening the "Social Assistance" program is essential to reach the most vulnerable workers and households during this crisis⁶⁹.

In terms of legislative measures, we welcome the adoption of several regulations and public policy documents designed to increase the living standards of the population.

These include the legislative initiative of a group of Members proposing to set the amount of the minimum old-age pension no lower than the subsistence minimum⁷⁰. This measure is in line with the recommendations of several UN committees and the Council of Europe's European Committee of Social Rights, and its implementation will be an important step in achieving the goal of reducing poverty and vulnerability for the poor, as well as in realizing the right to a decent living.

Another appreciable measure is related to the amendments made to the Framework Regulation of the Home Social Care Service and the Minimum Quality Standards, approved by

⁶⁷ In 2019, the absolute poverty line was on average per month per person 2095.1 MDL and, respectively, the extreme poverty line was on average 1689.7 MDL per month per person;

<https://statistica.gov.md/newsview.php?l=ro&idc=168&id=6865>

⁶⁸ Data from the COVID-19 Pandemic Impact Assessment Report on Vulnerable Groups and the Economic Situation, conducted by UNDP in conjunction with UNFPA, show that 18% of the poor have lost their jobs, 67% of poor households have no income / sufficient savings to cover monthly expenses (83% in urban areas!), and 65% chose cheaper food;

https://www.md.undp.org/content/moldova/en/home/library/inclusive_growth/social-and-economic-impact-assessment-of-covid-19-in-the-republi.html

⁶⁹ <http://pubdocs.worldbank.org/en/453701608708692970/Moldova-Economic-Update-Special-Focus-Dec-22-Romanian.pdf>

⁷⁰ The draft law on the amendment of Art.12 of Law no.156 / 1998 on the public pension system, registered on 15.10.2020, no.422;

<http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/5279/language/RO/Default.aspx>

Government Decision no. 1034/2014, these being in accordance with the recommendations of the People's Advocate⁷¹. As a result of the changes, this service can also benefit people who live in the same locality with older children, able to work and obliged to maintain them, but who for some reason cannot exercise this obligation.

It is also worth noting the amendments to Article 33 of Law no. 156/1998 on the public pension system, operated by Law no. 158 of 20.07.2020 (in force since 01.01.2021), by which it was granted to persons who have worked or are working after the realization of the right to pension, the option to submit the application also electronically on the review of the old-age pension. This has facilitated the access to public services and will help to ensure the respect for people's rights to social protection, thus avoiding, to a certain extent, the congestion at the counters of territorial social security offices, especially in epidemiological situations.

At the same time, in order to facilitate the procedure of reviewing pensions in the case of persons who continue to work after the right to a pension, but also not to expose to the risk of infection the elderly in pandemic conditions, the People's Advocate proposed to the Ministry of Health, Labour and Social Protection to examine the opportunity to initiate the procedure for amending the provisions of Art. 33 (paragraphs (4¹) and (4²)) of Law 156/1998 on the public pension system. The proposed amendment consists in re-examining the old age pension *ex officio*, based on data held by the competent social insurance body⁷². The Ministry of Health, Labour and Social Protection has given assurances that after the completion of the process of scanning workbooks and systematization, the *ex officio* re-examination will be initiated⁷³.

The issue of pensions and social benefits on the left bank of the Dniester remains unresolved. Based on the received requests, the People's Advocate addressed to the Government of the Republic of Moldova several proposals for solving this system problem⁷⁴, namely: to identify financial resources and to initiate the process of amending Law no. 156/1998 on the public pension system, so that the period in which the persons who worked in the economic entities on the left bank of the Dniester, subordinated to the constitutional authorities, is included in the contribution period for the calculation and establishment of the pension; to identify an effective mechanism for ensuring the right to pensions for persons who have worked in the economic entities on the left bank of the Dniester; to identify the number of pension beneficiaries, established in the public social insurance system, domiciled in Bender

⁷¹ https://gov.md/sites/default/files/document/attachments/extras_51.pdf;

⁷² <http://ombudsman.md/wp-content/uploads/2020/10/04-2-19-din-01.10.2020-MSMPS-propunere-de-perfectare-a-legisla%C8%9Biei.pdf>

⁷³ No. 04-2 / 19 of October 1, 2020;

⁷⁴ No. 04-2 / 27 of December 7, 2020;

<http://ombudsman.md/wp-content/uploads/2020/12/04-2-27-din-07.12.2020-Guvernul-RM-propunere-de-perfec%C8%9Bionare-a-legisla%C8%9Biei.pdf>

municipality and the financial resources for examining the opportunity to introduce Bender municipality in the list of localities that fall under Law no. 1591/2002 on additional social protection of some receivers of pensions and some categories of the population.

On November 26, 2020, the Constitutional Court examined the complaint of the People's Advocate on the control of the constitutionality of the ban on the transfer of pensions abroad, provided for in Article 60 of the Law on pension insurance of the military and of the persons from the command corps and from the troops of the internal affairs bodies and within the General Inspectorate of Carabinieri no. 1544/1993⁷⁵. In its decision, the Constitutional Court declared unconstitutional the provisions that make the payment of the pension dependent on the place of residence of the persons.

An issue identified by the People's Advocate refers to the ambiguity in the legislation regarding the creation and activity of the commission for social issues at the level of local public authorities.

It was found that the legislative provisions governing the creation of such commissions were repealed in 2016, in the context of adjusting the legislation to the Convention on Preventing and Combating Violence against Women and Domestic Violence. In their absence, the provisions of Law no. 713/2001 on the control and prevention of abusive consumption of alcohol, illicit consumption of drugs and other psychotropic substances that empower the commission for social issues with the task of sending people to medical examination in the narcology commission⁷⁶, are non-functional.

The People's Advocate submitted the necessary proposals to the Ministry of Health, Labour and Social Protection, which confirmed the need to initiate an exhaustive analysis on the deficiencies in implementing the provisions of Law no. 713/2001, developing a necessary methodological framework and adjusting the provisions of Law no. 436/2006 on local public administration in order to operate and establish the clear competencies of the commission for social issues.

The issue of recognizing as victims of political repression children born in places of repression⁷⁷ was solved by the Constitutional Court which, in its Decision of 12.01.2021, declared unconstitutional the text “children of persons subjected to repression who were born in places of repression or on the way towards them are considered children from marriage concluded until repression” from Article 1 of Law no. 296 of November 23, 1994 for the

⁷⁵ http://ombudsman.md/news/curtea-constitutionala-a-luat-in-calcul-argumentele-avocatului-poporului-si-a-declarat-neconstitutionale-prevederile-care-fac-dependenta-plata-pensiei-de-locul-de-domiciliu-al-persoanelor/https://www.constcourt.md/public/ccdoc/sesizari/124a_2020.07.24.pdf

⁷⁶ Art. 14 paragraph (1) and Art. 15 paragraph (3) of Law no. 713/2007 on the control and prevention of abusive consumption of alcohol, illicit consumption of drugs and other psychotropic substances;

⁷⁷ Report on the observance of human rights and freedoms in the Republic of Moldova in 2019, page 41;

interpretation of some provisions of Law no. 1225 of December 8, 1992 on the rehabilitation of victims of political repression.⁷⁸

In his opinion presented to the Constitutional Court, the People's Advocate mentioned that the state benefits from a wide margin of appreciation in the field of social security and, therefore, can extend the social protection of several categories of persons. It is obliged to ensure an equal and fair treatment for all categories of people who have suffered as a result of political repression.

The necessary amendments were made in Art. 60 of Law no. 1544/1993 by Law no. 190 of 19.11.2020⁷⁹.

During the state of emergency, the People's Advocate was notified about the deficiencies related to the application of the legislation regarding the payment for the motivated absence from work as a result of the measures taken by employers to prevent the spread of the COVID-19 virus. Respectively, he recommended to the Ministry of Health, Labour and Social Protection the amendment of some provisions of Article 80 of the Labour Code regarding the indemnity for the period of technical unemployment, to ensure the right of social protection of employees during the technical unemployment.

In the proposal sent to the ministry, the People's Advocate notes that, although Art.80 paragraph (4) of the Labour Code provides for employees an indemnity during the period of technical unemployment which may not be less than 50 percent of the basic salary, by the established exception, this guarantee is not valid in case of suspension of the individual employment contract. According to the provisions of Art. 77 letter c) of the Labour Code, in case of technical unemployment, the individual employment contract is suspended by agreement of the parties, expressed in writing.

The Ombudsman argues that in such circumstances there are ambiguities regarding the manner in which the technical unemployment benefit is granted, which may lead to uneven and erroneous application of the provisions in question, which infringes the right to assistance and social protection of employees.⁸⁰ The proposal in question, however, was not supported by the ministry.

Conclusions

The year 2020, both in the Republic of Moldova and in countries around the world, was marked by an unprecedented global crisis, caused by the pandemic with COVID-19, which had

⁷⁸ <https://www.constcourt.md/libview.php?l=ro&idc=7&id=2061&t=/Media/Noutati/Curtea-a-examinat-constitutionalitatea-unui-text-din-articolul-1-din-Legea-nr-296-din-23-noiembrie-1994-pentru-interpretarea-unor-prevederi-ale-Legii-nr-1225-din-8-decembrie-1992-privind-reabilitarea-victimelor-represiunilor-politice>

⁷⁹ https://www.legis.md/cautare/getResults?doc_id=124464&lang=ro

⁸⁰ <http://ombudsman.md/news/neclaritati-privind-modalitatea-de-acordare-a-indemnizatiei-de-somaj-tehnic/>

a major impact on society. This has exacerbated the existing problems in the field of social protection and assistance, which, if not addressed in time by appropriate measures, have led to a deterioration of the human rights situation, increased inequality in society and further affected vulnerable people. Mitigating the negative economic and social effects of the pandemic crisis required the urgent adoption of a package of economic and social measures in response to the challenges caused by the pandemic.

It is worth mentioning that during 2020 the authorities partially implemented the recommendations of the previous years of the People's Advocate ⁸¹. The level of implementation of the recommendations of international and regional bodies continues to be low. Despite the effort made to improve the regulatory framework and increase benefits, the situation in the field of social protection has not changed substantially. The standard of living of the population remains low, with a declining trend, and, respectively, the right to a decent living not achieved to the appropriate extent. That is why it is important for the Government to react with appropriate positive measures and in due time in an effort to address the existing systemic problems in order to face the new economic and social challenges.

RECOMMENDATIONS:

- Development of public policies and the regulatory framework in accordance with the international recommendations, taking into account the needs of the vulnerable population;
- Identifying financial resources and significantly increasing public spending on social protection measures to ensure a decent living for all people;
- Adoption of the draft law, submitted as a legislative initiative, on establishing the amount of the minimum old-age pension at the level of the subsistence minimum;
- Review the "Social Assistance" Program and strengthen the social assistance so that it better targets vulnerable and disadvantaged people, in order to ensure a minimum standard of living;
- Adoption of amendments to Article 33, para. (4¹) and (4²) of Law 156/1998 on the public pension system, in order to amend the procedure for reviewing pensions (ex officio);
- Elimination of legislative ambiguities by adjusting the provisions of Law no. 436/2006 on local public administration, in order to establish clear competencies of the commission for social issues;

⁸¹ In terms of social protection, in proportion of 33% of the recommendations in the Report on the observance of human rights and freedoms in the Republic of Moldova in 2019 and less than 20% of the recommendations expressed in the Report on the observance of human rights and freedoms in Moldova in 2018;

- Amend the provisions of Article 80 of the Labour Code regarding the indemnity for the period of technical unemployment, for ensuring the right of social protection of employees during the period of technical unemployment.

THE RIGHTS OF PERSONS WITH DISABILITIES

The Constitution of the Republic of Moldova guarantees the protection of persons with disabilities through the provisions stipulated in Article 51:

(1) Persons with disabilities shall enjoy special protection from the whole of society. The State shall ensure for them normal conditions of treatment, rehabilitation, education, training and social integration.

(2) No one may be subjected to any forced medical treatment except in the cases provided by law.

At the international level, the rights of persons with disabilities are protected by the UN Convention on the Rights of Persons with Disabilities of 13.12.2006. In 2010, by Law No. 166 of 09.07.2010, the Republic of Moldova ratified the United Nations Convention on the Rights of Persons with Disabilities.

According to statistical data, on 01.01.2020, in the Republic of Moldova the total number of people with disabilities was 176100, including 10700 children, decreasing by 3500 people compared to 2017. Of the total people with disabilities, about 48.0% are women and 52.0% are men, 62% live in rural areas and 38% live in urban areas. People with disabilities represent 5.0% of the total population of the country, and children with disabilities represent 1.6% of the total number of children in the Republic of Moldova.⁸²

In 2020, in the Republic of Moldova the field of disability was severely affected by the COVID-19 pandemic.

With the onset of the state of emergency in the Republic of Moldova, in order to protect public health in the context of the spread of the COVID-19 pandemic, the state limited certain rights by imposing the quarantine regime.

Thus, people with disabilities in our country found themselves in the situation of being isolated from society, which led directly to the violation of certain rights of this vulnerable category.

⁸² <https://msmps.gov.md/wp-content/uploads/2020/08/RAPORT-implementare-Conventie-ONU-privind-drepturile-persoanelor-cu-dizabilitati.pdf>

The COVID-19 pandemic revealed the human and financial cost of low state investment in health and social protection services among the groups of people with disabilities.

Violations of the right to health have been identified, by reducing the access to health services, stopping programming for specialized health services and for medical examination in order to prolong the degree of disability; limited access to information; limitation of financial income due to job loss.

One of the aspects that the Ombudsman addressed to the responsible authorities was, respecting and ensuring the right to information of people with disabilities.

It was found that official information on the state of emergency, the epidemiological situation due to COVID-19 infection and other information of public interest was not provided in sign language / mimetic-gestural language, which is in itself the only format accessible to the deaf, which has led to an increase in the degree of vulnerability of people with hearing impairments in the exercise of fundamental human rights and freedoms.

The People's Advocates urgently called on the Commission for Exceptional Situations to establish for audiovisual media institutions (especially national television) the obligation to ensure the mimetic-gestural translation of official information on the epidemiological situation in the country, as well as on the decisions taken by the Commission for Exceptional Situations.⁸³

Public policies and legislation

In the *Report on the observance of human rights in the Republic of Moldova in 2019*⁸⁴, the Ombudsman recommended that the authorities make every effort to implement the policy documents that provide for the realization of the rights of persons with disabilities, including by providing financial and human resources.

The priorities of the National Action Plan in the field of human rights for the years 2018–2022 in the field of rights of persons with disabilities are focused on: deinstitutionalization and the creation of community social services; implementation of a legal framework that would guarantee the decision-making autonomy of persons with disabilities by providing support to the correct identification and interpretation of the will of the person under care; increasing the number of people with disabilities in employment.

In this context, some developments were reported by the Ministry of Health, Labour and Social Protection regarding the improvement of the regulations for the organization and functioning of social services "Sheltered housing", "Family placement for adults" and

⁸³ <http://ombudsman.md/news/avocatii-poporului-solicita-asigurarea-informarii-despre-starea-epidemiologica-masurile-de-protectie-de-covid-19-intr-un-limbaj-accesibil-pentru-persoanele-cu-dizabilitati-senzoriale/>

⁸⁴ http://ombudsman.md/wp-content/uploads/2020/09/Avocatul-Poporului_Raport- aprobare-pentru-tipar.pdf

"Community house", the adjustment to the needs of service providers and beneficiaries, including in the context of the deinstitutionalization process and the prevention of institutionalization⁸⁵. At the same time, the number of personal assistance units for people with disabilities was increased, by allocating additional financial means from the minimum package of social services. According to the information disseminated by the ministry, compared to 2019, the number of personal assistant units increased by 2468 units (from 3590 units of personal assistants to 6058 units)⁸⁶.

It is worth mentioning the amendments made to Law no. 105/2018 on the promotion of employment and unemployment insurance⁸⁷, in force since 07.02.2021, which regulated the "assisted employment"⁸⁸ service. Assisted employment services are provided to people with disabilities with unemployment status, directed by the territorial subdivision to the providers of assisted employment services. Providers of assisted employment services are private providers of social services, accredited according to law. These services are contracted by the National Employment Agency from the providers of assisted employment services.

The People's Advocate proposed to the Ministry of Health, Labour and Social Protection the elimination of discriminatory provisions on the way of establishing the compensation of persons with disabilities for transport services according to their place of residence. In this context, the Ombudsman supported the initiative of the Ministry of Health, Labour and Social Protection to amend the Regulation on the establishment and payment of compensation for transport services, approved by Government Decision no. 1413/2016, which provided for the elimination of discriminatory provisions from point 9 of Annex no. 1 regarding the amount of quarterly compensation for transport services granted to persons with disabilities.

At the same time, he requested the MHLSP to amend Art. 49 paragraph (4) of Law no. 60/2012 on social inclusion of persons with disabilities. Article 49 of Law no. 60/2012 guarantees the right of persons with disabilities to compensation for transport services, but through paragraph (4) it makes dependent the establishment of the compensation for transport of the place of residence (districts / municipalities). This phrase formed the basis for the differentiated determination of the amount of compensation for transport services in point 9 of the Regulation on how to establish and pay compensation, which was to be revised.

Following the proposal of the People's Advocate, the Ministry gave assurances⁸⁹ that it will initiate the amendment of the provisions of Law no. 60/2012 on social inclusion of persons

⁸⁵ Government Decision no. 19 of 15.01.2020 on the amendment of some Government decisions;

⁸⁶ <https://msmps.gov.md/wp-content/uploads/2020/12/RAPORT-MSMPS-2020.pdf>

⁸⁷ Law no. 137 of 16.07.2020 on amending some normative acts, in force from 07.02.2021;

⁸⁸ Law no. 105/2018 on the promotion of employment and unemployment insurance, Article 29¹

⁸⁹ The response of the Ministry of Health, Labour and Social Protection no. 13/6002 of 30.10.2020;

with disabilities, which will also include the amendment of Art. 49 para. (4), in the context of standardizing the amount of compensation for transport services to beneficiaries in the districts of the republic and Balti municipality, at the level / size of compensation enjoyed by the residents of Chisinau municipality, but these provisions have not been amended so far. Moreover, it was found that the amendments made to the Regulation on how to establish and pay compensation for transport services, approved by Government Decision no. 1413/2016, by Government Decision no. 862 of 09.12.2020 differs from those proposed in the initial wording of the ministry and remain discriminatory.

The People's Advocate notes that in order to implement the policy in the field of state social insurance, the legislator, within the limits of his attributions, is entitled to opt for various solutions to regulate and concretize the content of social rights, but respecting the principles of social equity and equality, enshrined in Article 16 of the Constitution.⁹⁰ The People's Advocate considers that the provisions establishing the differentiated amount of compensation for transport services provided to persons with disabilities, depending on the place of residence, are discriminatory and recommends the elimination of these provisions from Law no. 60 and the Regulation for the implementation of the provisions in question.

During the discussions held in the context of marking in 2020, 10 years since the ratification by the Republic of Moldova of the UN Convention on the Rights of Persons with Disabilities (CRPD), organized by the UN Office for Human Rights of Moldova (OHCHR), the Ombudsman recommended that the authorities ratify the Optional Protocol to the Convention on the Rights of Persons with Disabilities, which is an additional mechanism for claiming the rights of persons with disabilities and increases their chances of realizing their rights. Ratification of this mechanism fits harmoniously into the logic of implementing the obligations / commitments assumed by ratifying the Convention, the UN Committee on the Rights of Persons with Disabilities, which examines the complaints, being a mechanism for evaluating the level of implementation / compliance with the provisions of the Convention.

The People's Advocate urges the authorities to show consistency and determination in order to honor their commitments to international partners and citizens. By ratifying the Optional Protocol to the Convention on the Rights of Persons with Disabilities, the authorities will demonstrate that our state is responsible, open to cooperation with international human rights protection mechanisms, willing to respect and ensure the implementation of human rights commitments, the attachment to democratic values, which put the interests and well-being of the people first.

⁹⁰ <http://ombudsman.md/wp-content/uploads/2020/10/04-2-20-din-23.10.2020-MSMPS-propunere-de-perfec%C8%9Bionare-a-legisla%C8%9Biei.pdf>

With the establishment of a special work regime during the state of emergency, most public authorities have taken measures to prevent the spread of respiratory infection caused by the COVID-19 virus and to this end have requested that petitions and requests for information be sent only by e-mail to the authorities. In connection with this, the Ombudsman received signals from people with locomotor disabilities, who complained about the impossibility of submitting applications in electronic form without an electronic signature. Thus, since electronic addressing is the only means that people can use to exercise the right to petition and access information, the reported problem has become even more serious for people who did not have an electronic signature and / or who face barriers to travel.

In this context, the People's Advocate recommended to the Commission for Exceptional Situations the elaboration of special regulations for the period of emergency, offering the right of persons to submit petitions / applications / requests for information with any type of electronic signature, provided by Law no. 91/2014 regarding the electronic signature, and if there is no such signature - by indicating some identifiable data. The recommendations in question, however, were not supported.

Deficiencies in the realization of the right to petition in case of transmission of the petition / application in electronic form, in particular, by persons with disabilities were reported in a subsequent proposal of the People's Advocate to the Prime Minister of the Republic of Moldova.⁹¹ The problem is that, in order to submit the petition in electronic form, the public authorities require the use of only the qualified advanced electronic signature, which is issued against payment and for a certain period. In particular, the price of the qualified advanced electronic signature, which can be used in relations with public authorities, is 310 MDL for individuals.⁹²

According to the requests addressed to the People's Advocate, these conditionalities, in particular, affect people with locomotor disabilities, other vulnerable groups, which, due to barriers related to accessibility in all areas (physical environment infrastructure, transport, etc.), encounter difficulties in the realization of the right to petition, access to information, but also other rights.

Based on the information provided by the notified public authorities and analyzing the provisions of the normative framework enunciated from the perspective of the human rights approach, the People's Advocate draws attention to the identified problematic issues, which

⁹¹ <http://ombudsman.md/wp-content/uploads/2020/05/04-2-10-din-22.05.2020-Guvernul-RM-Propunere-de-perfec%C8%9Bionare-a-legisla%C8%9Biei.pdf>

⁹² <https://stisc.gov.mcl/ro/content/semnatura-elcctronica;>

require appropriate measures, including legislative and regulatory adjustments regarding the realization of the right to petition and access to information in electronic form.

Firstly, the provisions of the legislation in force do not take into account the groups at high risk of vulnerability, such as people with locomotor disabilities, for whom the electronic form is the most efficient and fastest option to address to public authorities in order to ensure the protection of their rights and legitimate interests. This given that electronic signatures are issued against payment without being provided certain facilities, exemptions for the vulnerable groups.

Secondly, there are confusions in the legal provisions regarding the types of electronic signatures that can be used by individuals in relation to public authorities, given the fact that public authorities offer different solutions in this regard.

The People's Advocate recommended the initiation of the procedure for amending the provisions of the Administrative Code, Law 982/2000 on access to information, which regulates the manner of addressing petitions, applications, requests for information in electronic form, so that they are sufficiently clear and predictable, but also to provide equal opportunities in the exercise of the right to petition and access to information for all categories of persons. In this context, any requirements imposed must comply with the minimum intrusion test in the exercise of these rights, but which must equally effectively achieve the legitimate aim of ensuring data security.

Findings of the Council of Europe Commissioner for Human Rights

In the report of the Council of Europe Commissioner for Human Rights, Dunja Mijatović, following his visit to the Republic of Moldova in March 2020, states that NGOs monitoring the situation in the country's institutions have reported cases of forced treatment without a legal mandate; administration of psychotropic drugs without consent; violence; abuse; involuntary confinement; forced labour; and humiliating and degrading treatment.

Most residential institutions suffer from a lack of medical staff, inadequate housing and sanitation units and a lack of adequate accommodation for people with reduced mobility. There have also been shortcomings in documenting, investigating and managing cases involving people with intellectual and psychosocial disabilities by police, prosecutors, judges and health care providers, according to a report by the Commissioner of the Council of Europe for Human Rights, Dunja Mijatović, following his visit in March 2020 to the Republic of Moldova.

The same report indicates problems with access to work. The law stipulates that 5% of the workforce in companies with 20 or more employees should be people with disabilities. People with disabilities have the legal right to two months of paid annual leave and a six-hour working day, benefits that make employers less willing to hire them. Although the National

Employment Strategy 2017-2021 contains important public policy measures focused on increasing the employment rate of people with disabilities, currently their employment rate is twice lower than that of the general population.

At the same time, the Commissioner mentioned that quality prevention and rehabilitation services for children with disabilities, especially those with rare diseases and those at risk of disabilities, are not sufficiently developed and are only available in large cities or urban areas. Medical personnel involved in identification and intervention therapies often use outdated methodologies for detecting developmental deficiencies. Moreover, a lack of coordination between the health, education and social services sectors often leads to delays, further affecting the intervention and continuity of support as children move from one residence to another and generally affecting the quality and continuity of healthcare for children with disabilities and those at risk of disabilities, especially for children living in remote rural settlements.

The Commissioner's recommendations on the disability segment

The Commissioner welcomes the beginning of the process of deinstitutionalization of people with intellectual and psychosocial disabilities. However, for this reform to be successful, the authorities should further expand and diversify Community services and assisted living facilities, while remaining careful that the latter do not become another form of institutionalization and segregation, although in a smaller setting. Authorities should also take steps to improve the accessibility of public spaces, transport and services and to ensure that universal design and reasonable accommodation are taken into account in the development of all sectoral policies. The Commissioner emphasizes that the isolation of people with disabilities in institutions or at home due to lack of accessibility and support services undermines their full and effective participation and integration into society. Authorities should also take further steps to address stigma and discrimination at work.

The Commissioner urges the authorities to undertake more ambitious mental health policy reforms in order to drastically reduce and phase out the use of coercive practices in psychiatry. Involuntary placements of persons with psychosocial disabilities due to their disability are, in principle, contrary to Article 19 of the UN Convention on the Rights of Persons with Disabilities. Those responsible for serious human rights violations committed against adults and children living in institutions should be brought to justice, in accordance with the 2011 Guidelines of the Committee of Ministers of the Council of Europe on the eradication of impunity for human rights violations. People living in institutions should have access to adequate legal support to effectively challenge any human rights violations.

The Commissioner welcomes the legal amendments aimed at introducing assisted decisions and calls on the authorities to ensure that the implementation of these provisions takes place with the close involvement of people with disabilities and their associations, who should be regularly consulted and informed. It is vital to ensure that decision-makers in this initial period are well informed about what their role entails and that there are strong safeguards to ensure that any support provided truly respects the will and preferences of the person receiving such support. The Commissioner considers that the long-term goal should be to reduce and, ultimately, gradually eliminate the use of guardianship and other forms of decision-making substituted by increasing the use of supported decisions. It is also important to ensure that legal professionals, including judges, prosecutors and defense lawyers, are continuously trained in the application of relevant legislation, in accordance with relevant international standards.

The Commissioner encourages the Moldovan authorities to ratify the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities, which provides for an individual complaint mechanism for alleged violations of the Convention.

Conclusions

Finally, we conclude that despite previous progress on the adoption of a national legal framework and the creation of support services for persons with disabilities, based on the obligations assumed by the state through the ratification of the UN Convention on the Rights of Persons with Disabilities, we find that people with disabilities still face problems in realizing their rights.

The situation regarding the observance of the rights of people with disabilities did not progress significantly during 2020, on the contrary, the barriers faced by people with disabilities became even more evident. Access to information, adaptation of public services to ensure access for people with disabilities, adaptation of social infrastructure are the issues that the authorities still need to identify solutions for the proper integration of people with disabilities in society, and their ability to realize their right to an independent living in the community.

RECOMMENDATIONS:

- The People's Advocate recommends the elimination of the discriminatory provisions from Law no. 60 and the Regulation on establishing the differentiated amount of compensation for transport services provided to persons with disabilities, depending on the place of residence;

- The People's Advocate recommends the ratification of the Optional Protocol to the Convention on the Rights of Persons with Disabilities regarding the receipt and examination of communications, including individual complaints;

THE RIGHT TO HEALTH CARE

Guaranteeing the right to health care, the Constitution establishes obligations for the state and imposes on the legislative authorities the mission to regulate the main areas and aspects of the realization of the right in question.

The right to health is addressed today in the light of international provisions, focusing on patient rights, which are stipulated in the European Charter of Patients' Rights, which includes 14 patient rights.

This right is also found in Article 12 of the Covenant on Economic, Social and Cultural Rights, Article 25 of the UN Convention on the Rights of Persons with Disabilities. The right to health protection and medical care is also stipulated in Articles 11 and 13 of the Revised European Social Charter.

At the same time, it is appropriate to recall the obligation of the state to ensure the right to the highest standard of health, which provides that all health services must be: *available, accessible, acceptable and qualitative*.

Thus, the state must ensure: a sufficient amount of medical services and medicines; *physical* accessibility (financial and non-discriminatory for all vulnerable groups), *informational* accessibility (the right to request, receive and disseminate health information, including for people with disabilities); acceptability - which would take into account the cultural specifics of the patient, medical ethics; quality services.

On March 11, 2020, the World Health Organization (*WHO*) declared, following the application of its own mechanisms for assessing and finding health risks to the world's

population, a global pandemic related to COVID-19 infection, triggered by the SARS-CoV-2 coronavirus.

Because the epidemic has crossed the borders of countries and spread rapidly in the world, including the population of the Republic of Moldova, the state was forced to act quickly, moving from finding the *Code Yellow* alert at national level regarding the epidemiological situation due to COVID-19 infection (February 24, 2020) to *Code Orange* (March 8, 2020), *Code Red* (March 13, 2020), culminating in the declaration of a *state of emergency* throughout the country on March 17, 2020.

Along with this situation, every citizen of the Republic of Moldova obtained the status of beneficiary of public health services in the context of the COVID 19 pandemic, and the state guarantees by Art. 36 of the Constitution, everyone's right to health protection, which is an inherent one.

It is relevant to mention that the right to health includes in itself 2 components:

- *Freedoms*, which include the right to the protection of the health of the person and his body, and the right to be free from interference by the State;
- *Rights*, which include the right to a health protection system that provides equal opportunities for people to enjoy the highest attainable standard of health.

Thus, the State is obliged to refrain from actions that limit the equal access for all persons, including for those from vulnerable and marginalized groups, to preventive and curative health services.

At the same time, the State has the obligation to ensure legislative, administrative, budgetary, judicial, informational and other adequate measures for the full realization of the right to health.

With the declaration of a state of emergency throughout the country, the People's Advocate closely monitored the work of national public institutions on the implementation of measures to prevent and protect the population by preventing the spread of COVID-19 virus in the country.

At the beginning of the COVID-19 epidemic in the Republic of Moldova, the People's Advocate was notified about various aspects of the violation of the patient's rights to health care.

Most often, the following were invoked:

- reduction or postponement of planned hospitalizations, which led to the aggravation of diseases;
- limited access to health services among patients with chronic diseases;
- violation of the patient's right to information;

- reduced accessibility to medicinal products on the pharmaceutical market in the country, for patients with rare diseases.

In order to manage the current crisis caused by the spread of the new type of Covid-19 virus in the Republic of Moldova, through point 2 of the Order of the Commission for Exceptional Situations no. 8 of March 28, 2020, it was ordered the cessation of the scheduled hospitalizations of patients during the period of action of the state of emergency, including, within the medical-sanitary institutions of any type of property

In this context, starting with March 29, 2020, the medical-sanitary institutions, including the private ones, suspended all the planned surgical activity, for all medical specialties.

At that stage, the People's Advocate notified the Ministry of Health, Labour and Social Protection, in view of the opportunity to review the provisions of point 2 of the CES Order no. 8 of March 28, 2020 and taking all the necessary measures to perform planar surgeries in cases that can not be postponed.

The Ombudsman was also informed of the violation of *the patient's right to information*, which was manifested at the time by the fact that patients were not provided with correct information in their mother tongue; the informed consent to the hospitalization was most often only in Romanian, and the results of the medical investigations were not brought to the patient's knowledge, unless he requested it.

The non-observance of the patient's right to correct information occurs most often due to a faulty communication between the doctor-patient, or due to the lack of knowledge by some doctors of the provisions of the medical legislation. We remind you that in his previous reports, the People's Advocate recommended to the Ministry of Health, Labour and Social Protection to ensure that medical institutions have developed institutional procedures for respecting patients' rights.

Although it is appreciated that in 2018 the MHLSP approved the *Guide on the application of the procedure of communication and counseling of patients*, in the reporting year, the aspect of poor communication between the doctor and patient continued to be invoked in the complaints received by the People's Advocate Office.

Another aspect invoked in the requests received by the People's Advocate during the pandemic period referred to *the limited access to medicinal preparations*. The Ombudsman was notified in particular by people diagnosed with rare diseases, who, once a state of emergency had been declared throughout the country, were left without the possibility of procuring the necessary medicines, which were not accessible on the national pharmaceutical market. These patients previously procured vital medicinal preparations for treatment from abroad, but by establishing a state of emergency by the Republic of Moldova and implementing a series of

safety measures by limiting the right to movement in order to reduce the COVID-19 transmission and minimize its impact on public health, this has become impossible. The situation is worrying, because the lack of drugs in the country endangers the lives of those patients.

Thus, the People's Advocates submitted the appropriate steps to the responsible authorities in the field. It should be mentioned that the right to health is one of the fundamental human rights, and its assurance is mandatory by guaranteeing access to health services, through equity and quality of these services to every citizen who requests them.

The lack of medicines on the pharmaceutical market in the Republic of Moldova leads to the violation of *the right to respect for patient time*, provided in the European Charter of Patients' Rights, which assumes that every citizen has the right to receive the treatment he needs, in a certain period of time, depending on the degree of urgency of the disease.

Health services must guarantee for every citizen access to the services he needs, or, in this case, the patients personally have found solutions to get vital medicines.

At the same time, complaints received during 2020 most often concerned limited access to medical services for patients with chronic diseases. It should be noted that in the Ombudsman's view, there have been cases when patients with renal impairment have had to reduce / suspend the number of dialysis procedures, on the grounds that state bodies have not taken any measures to prepare a hospital with a higher capacity to hospitalize dialysis-dependent and infected or suspected individuals with Covid-19.

Likewise, the People's Advocate examined the case of a patient who risked having her leg amputated due to the fact that the previously planned operation was postponed due to the establishment of the state of emergency and the restrictions imposed by the provisions of point 2 of Order no. 8 of the Commission for Exceptional Situations of 28.03.2020.

In this case, the Ombudsman urgently requested the assistance of the Ministry of Health, Labour and Social Protection, which immediately intervened to rectify the patient's situation, which was reinstated.⁹³

It is important to note that in a pandemic, protecting the right to health for all must be the main goal of all public policies and measures, as pandemics and states' responses to them can pose significant risks to many other social rights.

The right to health, guaranteed by the Universal Declaration of Human Rights, provides for the right of access to health care, the right of access to information, the prohibition of

⁹³ <http://ombudsman.md/news/problema-accesului-la-asistenta-medicala-a-pacientilor-cu-alte-maladii-in-perioada-starii-de-urgenta/>

discrimination in the provision of medical services, the freedom to abstain from non-consensual treatment and other important guarantees.

Public policies and legislation

During the last years, in the annual reports, in particular, in the thematic report made public in 2019⁹⁴ the People's Advocate submitted several recommendations for the consolidation of palliative care in the Republic of Moldova. A first step in this context is the amendments made at the end of November 2020 in Law no. 411/1995 on healthcare, through which palliative care services have become a component part of the health system, which will contribute to the distinct financing of this service from the means of the compulsory health insurance funds. The People's Advocate encourages the authorities to ensure the further implementation of the recommendations of the Report concerned, but also of the organizations providing such services, in order to ensure unlimited access to all patients with terminal or life-limiting diseases and their families to specialized palliative care services that meet the needs of patients.

The lack of an effective regulatory framework for investigating and resolving cases of medical errors and malpractice in the Republic of Moldova is another issue addressed for years in the Ombudsman's reports. It should be noted that on September 3, 2020, a draft law on medical malpractice⁹⁵, was registered in the Parliament, but it has not yet been examined by the deputies. The draft law proposes the creation of the Medical Malpractice Council (Commission), which will examine the patients' applications.

The global epidemiological situation caused by the spread of COVID-19 virus has necessitated urgent action to enable effective intervention and adequate means of crisis management.

Thus, some measures have been approved to motivate and stimulate employees in the health system directly involved in the fight against COVID-19, such as increasing the salary by 100% for workers in the high-risk sector and 50% for workers at medium risk of infection, establishing the allocation of a single allowance of 16,000 MDL for the staff in the medical system infected with COVID-19, etc.

However, the People's Advocate found several shortcomings with an impact on human rights during the state of emergency and the state of emergency in public health. In his addresses to the authorities responsible for managing the crisis generated by COVID-19, the People's Advocate stressed that during the state of emergency caused by the COVID-19

⁹⁴ http://ombudsman.md/wp-content/uploads/2020/01/RAPORT_PALIATIVE.pdf

⁹⁵ The draft law on medical malpractice, no. 371 of 03.09.2020;

<http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/5237/language/ro-RO/Default.aspx>

pandemic, in order to protect public health, the state may restrict certain rights and freedoms, but must take into account that these measures must not go beyond the general framework in the field of human rights. When imposed, these restrictions must comply with non-discriminatory, legitimate, necessary and proportionate principles to the least restrictive option available.

In an address⁹⁶ to the chairman of the Commission for Exceptional Situations, the People's Advocates recommended revising the provisions of points 23 and 24 of Order no. 10 of 31.03.2020 and offering viable and non-discriminatory solutions to Moldovan citizens returning to the country, to meet their obligations in the context of compulsory health insurance, regardless of the route they choose to return to the country (land or air). The Ombudsmen considered that the mechanism requiring the payment of the compulsory health insurance premium for the entry into the country within 72 hours for 2020 and the conditionality of returning to the country of existence were disproportionate requirements during the state of emergency.

As a result, on the same day, by Order no.13 of 03.04.2020, the contested provisions of Order no.10 of the Commission⁹⁷ were revised, establishing unique requirements for entry into the Republic of Moldova, both for persons crossing the state border by land, as well as by air, they having the obligation to complete and sign the Declaration on their own responsibility regarding the payment of the compulsory health insurance premium for the year 2020.

Another problem came to the attention of the People's Advocate, because more and more frequently in addresses to the Ombudsman, but also on social networks, people in the press expressed their dissatisfaction with the fact that home treatment, including post-COVID-19, quite expensive, it was not covered by compulsory health insurance. The Ministry of Health, Labour and Social Protection reported that during 2020 the List of reimbursed medicines from the compulsory health insurance funds was extended three times.⁹⁸

It was also reported that there is an acute shortage of medicines needed in pharmacies in the country for home treatment, including price increases. Subsequently, the People's Advocate recommended that the health authorities take urgent action to ensure that the right to health and

⁹⁶ <http://ombudsman.md/news/avocatii-poporului-mecanismul-impus-prin-care-se-obliga-achitarea-la-intrarea-in-tara-in-termen-de-72-ore-a-primei-de-asigurare-obligatorie-de-asistenta-medicala-pentru-anul-2020-si-conditionarea-r/>

⁹⁷ https://gov.md/sites/default/files/dispozitia_cse_nr.13.pdf

⁹⁸ <https://msmps.gov.md/wp-content/uploads/2020/12/RAPORT-MSMPS-2020.pdf>; page 17

life is respected for people who are treated at home for COVID-19 infection. In particular, he recommended⁹⁹:

- issuing as soon as possible a document (recommendations / clinical protocol) intended for family doctors for the standardization of home treatment for people with Covid-19 with different forms (medium and severe);
- developing an algorithm that would provide equitable access to the necessary investigations (laboratory and imaging) for people with Covid-19 in home treatment (covered by the Compulsory Health Insurance), in order to be indicated a quality treatment according to health needs; the inclusion of the medicines indicated in the home treatment of various forms of Covid-19 infection, as well as the medicines necessary for the rehabilitation treatment of post-Covid conditions in the List of reimbursed medicines from the single-payer compulsory social insurance plan;
- ensuring the access of the population to the necessary medicines, jointly with the Agency for Medicines and Medical Devices, to monitor and analyze the prices for the medicines indicated in the treatment of different forms of Covid-19, establishing limits in increasing them in pharmacies.

Including following the recommendations made by the People's Advocate, the Ministry of Health, Labour and Social Protection presented the 4th edition of the Standardized Clinical Protocol for Family Doctors "New type coronavirus infection (COVID-19)". The compensation for children is 100%, and for adults it is 70%. At the same time, full compensation of 100% is provided for at least one trade name from each International Common Name. These and other indications have been registered in the Order on some measures to improve the quality and continuity of home treatment of patients with COVID-19, including post-COVID-19 recovery treatment.¹⁰⁰

In the report of March 2020, the Council of Europe Commissioner for Human Rights Dunja Mijatović stresses that national healthcare policies should aim at ensuring equitable and accessible access to human rights-based and human-centered healthcare services and respect for the self-determination, dignity and privacy of users. While acknowledging the financial constraints, the Commissioner also recommends a gradual increase in public health spending, in order to make health services more accessible, improve the quality and availability of health

⁹⁹ <http://ombudsman.md/wp-content/uploads/2020/12/07-6-13-din-07.12.2020-MSMPS-recomandare-p-d-%C3%AEntreprinderea-unor-m%C4%83suri-urgente-p-u-asigurarea-respect%C4%83rii-dreptului-las%C4%83n%C4%83tate-%C8%99i-la-via%C8%9B%C4%83-1.pdf>

¹⁰⁰ The compensation for children is 100%, and for adults it is 70%. At the same time, full compensation of 100% is provided for at least one trade name from each International Common Name. These and other indications were recorded in the Order on Some Measures to Improve the Quality and Continuity of Home Treatment of Patients with COVID-19, including post-COVID-19 recovery treatment;

services and ensure adequate remuneration for health professionals. Specific measures should be taken to facilitate access to these services for people in rural areas, as well as disadvantaged groups, such as members of Roma communities and people with disabilities.

As informal payments are a major barrier to access to healthcare, the Commissioner calls on the authorities to implement policy measures aimed at addressing the phenomenon of informal payments and reducing healthcare costs for patients, as outlined in the relevant WHO policy (recommendations and guidelines).

The Commissioner urges the authorities to adopt a health code that effectively addresses the current challenges facing the healthcare system, to ensure that medical abuse is adequately regulated and to develop policies to improve the early diagnosis and treatment, as well as the rehabilitation of patients with rare diseases. She wants to point out that all patients have the right to diagnostic and treatment programs tailored to their individual needs, in which economic criteria should not prevail over the right to care.

The Commissioner welcomes the adoption of the National Program on Sexual and Reproductive Health and Rights and calls on the authorities to focus on the elimination of harmful practices in sexual and reproductive health care contexts. In this regard, the authorities are invited to be guided by the Reference Document on Women's Sexual and Reproductive Health and Rights in Europe.

Conclusions

Thus, as a result of the above, we find that the pandemic has hit hard the health system, highlighting the fact that the system does not have the necessary resources, both human and financial, to ensure an adequate level of quality of services in the medical system and for ensure access for all persons for whom the medical services are extremely important and vital. The health system was forced to switch to an activity regime that led to ignoring the health of people with chronic diseases. Basically, it was necessary to redistribute the existing resources to combat the effects of the COVID-19 pandemic, when in fact additional resources should have been allocated for this, without limiting the resources needed to other categories of patients.

At the same time, it has been demonstrated that there is no action plan for exceptional situations.

Likewise, the problem of medical malpractice remains unresolved for several years.

At the same time, patients who insured from their own resources medicines that are not available on the pharmaceutical market in the country, were left to fight alone for their lives, when free movement was blocked.

RECOMMENDATIONS:

- The People's Advocate recommends to the authorities to adopt the necessary framework regarding the medical malpractice;
- The People's Advocate recommends to the authorities to ensure the necessary investments in the medical system, in order to offer all patients modern, accessible, acceptable and quality health services and medical treatments.

FREEDOM OF ASSEMBLY

Freedom of assembly is a fundamental right, which guarantees everyone the opportunity to meet peacefully with other people, including in a public space such as the central square of the town, the streets of the town, parks, squares, etc.

Freedom of assembly is guaranteed by the International Covenant on Civil and Political Rights (Art. 21), by the European Convention on Human Rights (Art. 11), by the Constitution of the Republic of Moldova (Art. 40) and the Law on Assemblies no. 26 of 22.02.2008.

The International Covenant on Civil and Political Rights provides that the exercise of this right may be subject only to restrictions, in accordance with the law and necessary in a democratic society, in the interest of national security, public security, public order or to protect public health or morality or the rights and freedoms of others.

According to the constitutional provision, meetings, demonstrations, manifestations, processions or any other gatherings are free and can be organized and held only peacefully, without any weapons.

With the declaration of a state of emergency, the exercise of freedom of assembly was restricted in order to ensure protection against the Covid-19 virus.

Thus, by Order no.25 of 05 May 2020, the Commission for Exceptional Situations in point (9) ordered the admissibility of religious meetings provided that they will be held strictly in the open air (in the courtyards of churches, monasteries and other religious denominations) with the obligatory observance of the social distance of at least 2 meters and with the obligatory wearing of the protective masks by all participants, and the divine services must not be accompanied by religious rituals with a high degree of transmission of the infection.

The People's Advocate appreciated the measures taken by the state in order to achieve the freedom of religion by the citizens, or the restrictions adopted exist insofar as they are provided by law and are necessary for public safety, protection of order, health, public morality, all however, those provisions are discriminatory in relation to any other type of meeting, whereby citizens are entitled to express their views and ideas.

The Ombudsman considers that the admissibility of holding religious meetings is a preferential one, or the freedom of assembly of any kind is guaranteed by the state. Organized peacefully, the meetings have the right to exist, even in conditions involving exceptional situations, once they are conditioned by the *mandatory observance of the social distance of at least 2 meters, the mandatory wearing of protective masks by all participants and the prohibition of direct contact between persons and / or touching objects, which in the Commission's view would imply "an increased degree of transmission of the infection"*.

The People's Advocate considers that, in this case, the state has applied its protection to the right to religious assemblies by bringing an indirect and disproportionate restriction on the right to assemblies of any other kind, reiterating the opinion of UN experts which *directly indicates that the restrictions adopted on the state of emergency must be justifiable to the legal objectives of public health and should not be used simply to extinguish dissension*.

The People's Advocate requested the Commission for Exceptional Situations to revise point (9) of Order no. 25 of May 5, 2020 in the light of the principle of fairness and to adopt clear and proportionate measures regarding the realization of the right to meetings of any kind.

Although the Ministry of Health, Labour and Social Protection, in response to the Ombudsman's notifications, stated that *the meetings could not be accepted to be held in epidemiological conditions in public health*, however, they were subsequently admitted, with the participation of less than 50 people, in compliance with public health measures and with the

mandatory preparation by the organizers of the list of epidemiological record of the event. At the same time, it was forbidden to organize meetings in the vicinity of public institutions, schools, hospitals or other places at high risk of infection.

Recognizing the freedom of assembly as an essential right necessary for a democratic state, the People's Advocate considers that it is the duty of national authorities to take sufficient necessary measures to promote peaceful assembly and to find a proportionate balance to impose restrictions that limit its exercise.

During the year 2020 several manifestations took place, in general having a peaceful character. However, there have been situations in which special means have been applied.

In the case of the protest actions of the participants in the armed conflict on the Dniester, they degenerated into violence and resulted in bodily injuries of some people, which in the opinion of the People's Advocate is unfortunate. In this context, the competent authorities were requested to initiate transparent and objective internal investigations into the actions of employees involved in maintaining public order during the respective protests.

Conclusions

The People's Advocate recalls that the use of force can take place in conditions of legality, proportionality and necessity, respecting fundamental human rights, expressing the hope that the competent authorities will identify solutions to constructive and non-criminal dialogue with the group of veterans who have claimed certain rights in the protest action.

Freedom of expression and freedom of assembly and association are fundamental human rights, enshrined in the country's Constitution and international treaties to which the Republic of Moldova is a party, and the respect for these rights is an obligation of the state.

The participation of people in social life through various actions, including protest, access to various information of importance to the general public, is not only guaranteed rights, but also a state of normalcy in a democratic society.

At the same time, the Ombudsman points out that in exercising the right to assembly, people must respect public order and not allow violence and other actions that could affect peace and security in society.

RECOMMENDATIONS:

- The People's Advocate recommends that the authorities ensure that freedom of assembly is respected, even in the context of a pandemic that imposes specific rules to prevent the spread of COVID-19 virus;

- The People's Advocate recommends that the authorities ensure that they respect the freedom of assembly and do not apply force or special means except under the conditions provided by law and human rights standards.

FREEDOM OF EXPRESSION

In 2020, against the background of the pandemic, there was a continuous deterioration of the situation regarding the freedom of expression. The previously attested problems in the field remained unresolved, and in the context of the constraints imposed by the health crisis, some of them worsened.

The year 2020 was marked by several cases of pressure and intimidation against people who have publicly expressed their critical views on the situation in the country, in particular related to the management of the health crisis. There have been several cases in which freedom of opinion has been restricted by attempts by public officials to silence people who have dared to express their dissatisfaction in public with the conditions in medical institutions, lack of protective equipment, medical equipment¹⁰¹. Several medical staff have been threatened with revenge, dismissal and even criminal files for disclosures about the pandemic situation and in medical institutions.¹⁰²

The decline in media freedom in the last seven years has continued, with the Republic of Moldova falling within the World Press Freedom Index from 55th in 2013 to 91st in 2020.

In the Report on Freedom of the Press of 2020, which referred to the state of affairs in 2019, the International Organization "Reporters Without Borders" characterized the Moldovan media as diverse, but highly polarized, noting that the editorial policy of major media institutions it is influenced by the political and business interests of their owners. It was also appreciated that politically motivated owners limit the ability of journalists to produce balanced and impartial reports.

During the health crisis this state of affairs was felt significantly, manifested by the truncated and biased presentation of information to some media institutions. Media experts witnessed, mainly during the presidential campaign, monitored media topics that contained "attacks on people, gender discrimination, denigration and disparagement, attack on human

¹⁰¹ <https://tv8.md/2020/04/06/premierul-ii-raspunde-femeii-din-soroca-care-s-a-plans-pe-conditiile-din-spital-nu-este-sens-acum-de-facut-live-uri-glamuroase/>

¹⁰² <https://diez.md/2020/04/12/tanarul-care-a-vorbit-ieri-despre-echiparea-medicilor-pe-timp-de-pandemie-a-fost-presat-sa-stearga-videoul/>

dignity"¹⁰³, the favorable presentation of some candidates and the placement of others in disadvantaged context.

During the pandemic crisis, an attempt was made to establish censorship. **An order by the former president of the Audiovisual Council, forced, during the state of emergency, the moderators of the broadcasts to give up the "uninformed statement of their opinion" regarding the COVID-19 pandemic, and "the only safe, truthful, impartial and balanced sources being the competent public authorities in the country and abroad "**¹⁰⁴. *Following the reaction of civil society, this order was canceled.*

And in 2020, the Audiovisual Council applied old practices, obsolete in its activity in the conditions of the existence of a new legislation in the field. These are several decisions, some challenged in court by media institutions, which have raised reasonable suspicions about objectivity and reasonableness. This structure continued to be treated with reservations regarding the independence and fairness.

In 2020, there were no changes to the improvement of the media legislative framework. This is despite the fact that public debates on important draft laws have been organized repeatedly.

Attacks on the media and intimidation of journalists

During the state of emergency caused by the COVID-19 pandemic, there were deviations from the standards in the field of freedom of expression, such as some actions to intimidate journalists as a result of criticisms of the authorities' inadequate response to the health crisis.

Working on the front line of the pandemic and exposing themselves to potential health risks, journalists have faced verbal attacks and pressure, including from some politicians.¹⁰⁵

¹⁰³ http://api.md/upload/files/Raport_de_monitorizare_FINAL_15_septembrie_-_14_noiembrie_2020.pdf

¹⁰⁴ <http://www.audiovizual.md/news/n-aten-ia-furnizorilor-de-servicii-media-audiovizuale-din-jurisdic-ia-republicii-moldova>

¹⁰⁵ A journalist from Ceadir-Lunga was fined 2400 MDL for slander, on the grounds that she made public the messages of the workers of a private company signaling that it continues to operate after the establishment of the state of emergency, without ensuring the necessary sanitary measures, which would endanger the health of employees. The head of the company in question demanded the disclosure of the people who turned to the journalist and the denial of the information, and when the journalist refused to do so, she complained to the police, who fined her for defamation.

<https://www.zdg.md/stiri/stiri-sociale/o-jurnalista-a-fost-amendata-dupa-ce-a-scris-pe-facebook-despre-neregulile-semnalate-pe-timp-de-pandemie-de-catre-angajatii-unei-fabrice/>

Pressure on journalists occurred as international structures and experts in the field of freedom of expression reiterated in the context of the health crisis the importance of a free and independent press, saying that the free flow of information is essential in combating COVID-19.

UN High Commissioner for Human Rights Michelle Bachelet said "some states have used the outbreak of the new Coronavirus as a pretext to restrict information and suppress criticism." She recommended that the authorities of the Member States of the United Nations not blame the media. "Instead of threatening journalists or repressing criticism, states should encourage healthy debates about the pandemic and its consequences. People have the right to participate in decisions that affect their lives, and independent media is a vital environment for this. "¹⁰⁶

The UN Special Rapporteur on Freedom of Expression, David Kaye, said in a study during the health crisis that "during the pandemic, it is essential that government officials avoid denigrating those who will share information about the public health steps that people should take" ¹⁰⁷. David Kaye mentioned in particular that access to information, the operation of an independent media are essential to face the challenges of the pandemic. During the health crisis, the free flow of information, unhindered by threats and intimidation and sanctions, protects life and health and allows / promotes critical social, economic, political and other policy discussions and decision-making, the UN rapporteur stressed. He also recalled that in his resolution 39/6, the UN Human Rights Council called on political leaders, civil servants and / or authorities to refrain from denigrating, intimidating or threatening the press, including individual journalists, and thereby to undermine confidence in the credibility of journalists, as well as respect for the importance of independent journalism.

At the same time, experts from the Council of Europe warned in the Guide "Respect for democracy, the rule of law and human rights in the health crisis caused by COVID-19. Toolkit for Member States" ¹⁰⁸, that journalists, the media, healthcare professionals, civil society activists and the general public must be able to criticize the authorities and examine their response to the crisis.

¹⁰⁶ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25823&LangID=E>

¹⁰⁷ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of April 23, 2020 "Pandemic diseases and freedom of opinion and expression" (<https://rm.coe.int/-/disease-pandemics-and-the-freedom-of-opinion-and-expression/16809e41e9>)

¹⁰⁸ <http://ombudsman.md/wp-content/uploads/2020/04/SG2-1.pdf>

The People's Advocate reacted in the mentioned cases of intimidation of the press¹⁰⁹, emphasizing that the attacks against the media are attacks against democracy. The People's Advocate reaffirmed that the freedom of expression and freedom of the media are crucial to the functioning of a democratic society and continue to be so during the pandemic with COVID-19.

The People's Advocate said that the attempts to suppress critical voices are alarming and the fact that they come from high dignitaries in the state is even more alarming. It is equally worrying and dangerous that intimidating messages incite violence against journalists from some media institutions and generate hatred and division between people. The People's Advocate stressed that such behavior is unacceptable, contributes to a general atmosphere of intolerance, fear and can act as a stimulus for new cases of violence and harassment of the press.

Intensifying the hate speech in the public space

This was felt in the context of the pandemic, but also of last year's presidential election. The 2020 presidential election was characterized by the very frequent admission by politicians, even high dignitaries, of hate speech, knowingly exploiting stereotypes and prejudices in society. The problem could be solved by harmonizing the legislative framework with international standards and penalizing, discouraging hate speech.

To this end, with the contribution of civil society, it has been developed a draft law no. 301, which is a set of legislative amendments to the Criminal Code and the Contravention Code, which refers primarily to the definition of grounds for prejudice, review of basic offenses and aggravating circumstances related to acts of hatred and prejudice.

Thus, it is proposed to complete art. 70¹ of the Contravention Code with the following provision: Incitement to hatred, discrimination or violence, i.e. the dissemination to the public and the media of written messages, drawing or image, exhortations, threats and information motivated by prejudice, against a person or a group of persons, if the deed does not constitute a crime, is sanctioned with a fine from 20 to 40 conventional units or with unpaid community work from 20 to 40 hours.

Despite the numerous recommendations of the People's Advocate and the proposals of the civil society, the draft law has not yet been adopted in Parliament. This is despite the fact that the first version of the document was voted in the Legislature in the first reading since 2016.

¹⁰⁹ <http://ombudsman.md/news/avocaturile-poporului-atacurile-impotriva-mass-media-sunt-atacuri-impotriva-democratiei/>

Online threats: misinformation, manipulation and reduced access to objective information

The new type of Coronavirus pandemic has aroused a massive wave of false, misleading information or conspiracy theories. The danger of massive misinformation and its effects on the spread of the virus have not been assessed at fair value and have not been combated effectively and promptly. The experience of the Republic of Moldova during the health crisis has shown that misinformation can have dramatic effects, if not combated by mobilizing all relevant actors, from online platforms to public authorities.

Freedom House experts warn that “the Republic of Moldova does not have specific mechanisms for identifying hybrid threats, such as fake news, propaganda and misinformation, nor for the development of protection tools to respond to rapid changes in technology. Online platforms in the Republic of Moldova provide an environment conducive to the creation and spread of various forms of intolerance, including hate speech. Digital media, social media and video storage portals are spreading more hatred and discrimination than television and print media”¹¹⁰.

In the same study that emphasizes that freedom of expression and information security are affected "by the increased politicization of the digital media, the lack of independent media, the effects of increasing the importance of social networks and declining the quality of professional journalism and journalistic ethics." As a result, public access to objective information is limited.

The People's Advocate referred to these issues, but also to the need to promote quality journalism in the Report on the observance of fundamental human rights and freedoms in the Republic of Moldova in 2019.

The developments in 2020, especially in the context of the pandemic, confirm the correctness of the previous findings of the People's Advocate and require reaffirming concerns about the intensification of misinformation phenomena, manipulation in the virtual space, on the one hand, and the need to promote quality journalism, on the other hand.

Fake news during the pandemic further diminished citizens' trust in public institutions and the Government, created confusion / panic among citizens and institutions, because they spread information with contradictory content, the person being unsure which of the decisions / information is false and which is correct. ; have thwarted compliance with the laws and rules imposed during and after the state of emergency, given that the legal culture is still weak¹¹¹.

¹¹⁰ https://freedomhouse.org/sites/default/files/2020-02/1-Freedom_of_Expression_Geopolitical_Stalemate_FINAL_ROMANIAN.pdf

¹¹¹ From the materials of the Conference "Combating fake news given the security challenges - COVID-19", organized by ISS (<https://sis.md/sites/default/files/comunicate/fisiere/Materialele%20Mesei%20Rotunde.pdf>)

To counter misinformation and fake news, on March 19, 2020, the ISS blocked 52 sites that distributed fake news about the epidemic¹¹². Subsequently, the institution confirmed that the vast majority of "fake-news" sites were taken from the list published on the page www.stopfals.md, which is the result of the work of civil society.

During the health crisis, specialists and representatives of the MHLSP and NAPH participated in TV and radio shows, interviews and public events, in which they even denied the misinformation related to the pandemic, but their effort was not enough and according to the danger and the proportion of the massive wave of fakes.

And if the authorities did not use all available levers in a timely manner to combat misinformation and fakes, then some institutions or media organizations have consistently and firmly fought pandemic-related fakes. An effective platform to combat misinformation is the website www.stopfals.md¹¹⁴, which dismantled several fakes and myths related to COVID-19. The impact of the platform would have been much greater if the authorities had supported the journalists' efforts.

It should be noted that myths and fakes have found fertile ground in the Republic of Moldova and due to the reduced culture and media competence (media literacy) of the population. Media competence or literacy is the ability to access, share, critically evaluate, create media content, including digital. These competencies are considered key skills of the 21st century. However, despite the relatively large number of Internet users in the Republic of Moldova¹¹⁵ their ability to critically evaluate the information accessed, to verify the sources and to identify the alternative ones is limited. Therefore, one of the recommendations that are imposed on the authorities and civil society, media organizations is the realization of projects of media and information literacy of citizens, including critical thinking and digital skills.

Given the magnitude of recent alarming trends such as manipulation, misinformation, propaganda, fake news, selective use of information, unverified data or personal data, spreading hate speech messages, etc., the People's Advocate addressed the issue of the quality of journalism in the Republic of Moldova in a message made public in the context of the launch on May 5, 2020 of the Campaign "We sign the Code of Ethics of the journalist in the Republic

¹¹² <https://sis.md/ro/content/m%C4%83suri-executorii-privind-%C3%AEnl%C4%83turarea-cauzelor-%C8%99i-condi%C8%9Bilor-ce-contribuie-la-realizarea>

¹¹⁴ stopfals.md is a product of the Association of Independent Press (API), created to ensure the continuity of the Media Campaign against false and biased information STOP FAKE!, conducted between November 2015 and October 2017 by API, in partnership with the Center for Independent Journalism (CJI) and the Association of Independent Television Journalists of the Republic of Moldova (ATVJI), with the support of the project "Partnerships for a Sustainable Civil Society in Moldova", implemented by FHI 360.

¹¹⁵The National Regulatory Agency for Electronic Communications and Information Technology announced that in 2019, the total number of users who accessed the Internet based on mobile phones increased by 51.6% and was 1 million 546 thousand people, (<https://www.moldpres.md/news/2020/04/09/20003048>)

of Moldova", during the Press Freedom Days. The People's Advocate called on the representatives of the journalistic community to respect the norms of the Professional Code of Ethics, without which there can be no question of the quality of journalism. The People's Advocate mentioned that ethical journalism serves the public interest, is based on good faith and ethics of the profession, provides accurate and verified information that respects the principles of fairness, independence of transparency and public accountability.

RECOMMENDATIONS:

The People's Advocate recommends to the authorities:

- To reactivate the Working Group for the improvement of media legislation;
- To adopt the draft law elaborated by the civil society regarding the access to information, as well as the draft law no. 301 on the regulation of crimes motivated by prejudice;
- To create and ensure the functionality of an efficient mechanism of communication with the journalistic environment in the situation of the pandemic crisis, in order to inform the public operatively and adequately;
- To develop, adopt and implement effective strategies to combat misinformation, fake news and manipulation in the virtual space, to ensure access to accurate and objective information;
- To develop mechanisms to identify hybrid threats, such as fake news, propaganda and misinformation, and to develop protection tools to respond to rapid changes in technology;
- To support, including through financial and fiscal measures, implicitly on the distribution segment, independent media institutions and quality journalism;
- To ensure the application of the national legal framework on media activity, in order to create safe and optimal working conditions for journalists, sanctioning the acts of intimidation or pressure on media representatives.

THE RIGHT TO A HEALTHY ENVIRONMENT

By the provisions of Article 37, the Constitution of the Republic of Moldova expressly recognizes the fundamental right to a healthy environment: *"(1) Everyone has the right to an ecologically harmless environment for life and health, as well as to safe foodstuffs and household items. (2) The state guarantees to every person the right to free access and to the dissemination of truthful information regarding the state of the natural environment, the living*

and working conditions, the quality of foodstuffs and household items. (3) The concealment or falsification of information about the factors that are detrimental to human health is prohibited by law. (4) Natural and legal persons are liable for damages caused to the health and property of a person as a result of ecological contraventions. "

The Republic of Moldova was the first country to ratify the Aarhus Convention¹¹⁶, by Parliament Decision no. 346-IV of April 7, 1999, since which it gained legal force throughout the country, being an international regulation that has priority over any other domestic legal instruments, except those containing more favorable provisions.

The Aarhus Convention is based on the recognition of the right of every person of the present and future generation to enjoy an adequate environment for his or her well-being and health. In order to contribute to the protection of this right, the Aarhus Convention guarantees Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, and imposes certain obligations on the Parties and public authorities regarding these rights.

The People's Advocate considered alarming the information published in the media regarding the abuses and arbitrary actions of the authorities directly responsible for the management of the forestry sector¹¹⁷, especially during the pandemic period, notifying in this regard the Commission for Exceptional Situations.

According to the representatives of the „Moldsilva” Agency, on the one hand, the cuts of regeneration, conservation and ecological reconstruction were carried out in accordance with the legislation in force in the Republic of Moldova, but in the forests of the Republic of Moldova there are still illegal cuttings, which constitute illegalities, a scourge and a direct threat to sustainable forest management, especially on land covered with forest vegetation under the administration of local public authorities. The „Moldsilva” Agency considers that in order to rectify the situation it is important to approve a new Forest Code, which will boost the development of forests and the forest fund and be a guarantor of sustainable management in the field; adjusting the legal framework regarding the attributions in the field of the „Moldsilva” Agency, establishing new provisions in the Contravention Code of the Republic of Moldova by which the forest service personnel should be assigned the quality of ascertaining agent and be offered the right to examine forest contraventions, as well as equipping forestry personnel with the right to possess a weapon, because the security of the forest guard personnel is currently endangered; promoting the draft Government decision on the abrogation of Government Decision no.664 / 27.05.2016 on the temporary cessation of timber exports, which seeks to ban

¹¹⁶ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters

¹¹⁷ <http://ecopresa.md/infografic-zilnic-2018-moldova-pierdut-73-de-hectare-de-padure/>;

the export of wood-raw material, with the reopening of export of processed wood, which will contribute to the increase of the incomes obtained from the industrialization of the wood, the creation of new jobs, without affecting the quality and the protection functions of the forest fund.

Although he finds the recommendations set out above important, the People's Advocate considers that „Moldsilva” Agency focuses more on the control segment and its powers, but has not found solutions to work with local public authorities, where in the opinion of the agency the biggest illegal actions of deforestation are identified.

Likewise, the situation is not clear in terms of forest regeneration, planting of young forests and their management, or the emphasis is on the protection of existing forests. There is also no mechanism to promote actions for improvement, maintenance and protection through the involvement of civil society in the field of environmental protection.

In the context of environmental issues, the People's Advocate was notified by a public association about the lack of funding for scientific nature reserves, which mentioned that had notified the authorities directly responsible for drafting and approving the state budget, requesting the annual allocation of financial resources from the state budget for their management.

The People's Advocate considered the answer of the competent authorities presented by the petitioner in this respect, as an evasive one, or the financing of scientific nature reserves cannot be reduced only to projects for state programs, innovation projects, etc., only for the fact that one of their task is to carry out scientific research, especially when the legal framework primarily establishes that the financing of scientific reserves is made from the state budget, including from collected revenues and other means¹¹⁸. Referring to the Strategy on Biological Diversity for 2015-2020 and the Action Plan for its implementation¹¹⁹, as well as to the Decision of the Court of Accounts no. 26 of 24.07.2015, where it was highlighted that *"in case of scientific reserves under the „Moldsilva” Agency, only for the works of aerial control and forest regeneration, as well as for their maintenance, means in the amount of 18 million MDL are required, while annually only 0.2 million MDL is allocated from the state budget"*.

The People's Advocate asked the Government to establish on the basis of relevant estimates and to allocate annually financial sources from the state budget for scientific reserves, starting with 2021. Following the request, the Ministry of Agriculture, Regional Development and Environment assured the Ombudsman that it would submit to the Ministry of Finance

¹¹⁸ Article 90 of Law no. 1538 / 25.02.98 on State Protected Natural Areas Fund;

¹¹⁹ Government Decision no. 274 of 18.05.2015, “On the approval of the Strategy on Biological Diversity of the Republic of Moldova for 2015-2020 and of the Action Plan for its implementation” (hereinafter - Government Decision no. 274 of 18.05.2015) .

proposals with a clear and visible link with the existing governmental policies and strategies, so that the expenditures in the field of state protected natural areas are not financed on an ad hoc and unsystematic basis, but have a strictly continuous character determined starting with 2021.

The issue of providing quality drinking water also falls into the same context.

In 2020, the People's Advocate was notified by the inhabitants of Edinet municipality regarding the quality of drinking water delivered through the aqueduct. In this context, the Ombudsman reminded the responsible authorities of the importance of the State's observance of the provisions of the International Covenant on Economic, Social and Cultural Rights, which states that *every person has the right to sufficient, safe, acceptable water, physically and financially accessible, for personal consumption and in the household*. At the same time, there was mentioned the need to comply with the provisions of Art. 4 of Law no. 182/2019 on drinking water quality, where it is mentioned that drinking water must be sanogenic and clean, meeting the following conditions: be free of microorganisms, parasites or substances which, by number or concentration, constitutes a potential danger to human health; as well as not to affect human health.

In response to the above, the central authorities assured the Ombudsman that, according to the new concept of regional development, which will be implemented in 2021, the field of water supply and sewerage remains a priority for financing from the National Regional Development Fund, with the creation of opportunities for unfinished or unfunded projects to be transferred in the manner established in the new Single Programming Document for the period 2021-2023. Moreover, the Ministry of Agriculture, Regional Development and Environment in accordance with the action plan of the Water Supply and Sanitation Strategy (2014-2030) will organize information campaigns on the national development policy of the sector and the stages of implementation of this process, will develop a set of documents necessary for the regionalization process, will provide methodological assistance to local public authorities in the process of regionalization of the water supply and sewerage service and regional operators in order to strengthen institutional capacities.

At the same time, the People's Advocate recalls that in the Republic of Moldova the network of waste collection and processing remains poorly developed, as well as the sewerage network, especially in rural areas, which has a strong negative impact on the quality of the environment.

Conclusions

The People's Advocate considers that in recent years the issue of the right to a healthy environment has become more acute.

We are facing a serious problem in providing the population with quality drinking water. We consider that this problem is the direct impact of inefficient waste management¹²⁰, lack of sewerage systems and efficient wastewater treatment, especially in rural areas, the low percentage of afforestation in the country, etc.

In the Ombudsman's view, the right to a healthy environment must be ensured by the state through legal and organizational measures and means, such as planning and regulating the quality of the environment, the measures to prevent actions that may damage or harm the environment, and those of rehabilitation, prevention and combating the consequences of accidents, catastrophes and natural disasters, as well as by the recognition and assurance by the state of the legal frame of reference.

The Ombudsman considers that the issues of the right to a healthy environment that have been mentioned above represent an imminent threat that requires urgent and effective intervention by the authorities.

RECOMMENDATIONS:

The People's Advocate recommends that the authorities urgently take the necessary measures to achieve the right to a healthy environment by ensuring efficient waste management; progressively ensuring the localities with sewerage and wastewater treatment systems; progressively expanding forested areas.

LEGAL STATUS OF FOREIGN CITIZENS AND STATELESS PERSONS

In 2020, changes were made to the regulatory framework for the integration of foreigners in the Republic of Moldova¹²¹ in order to achieve the commitments assumed by the Republic of Moldova in the Association Agreement with the European Union, in the part related to the

¹²⁰ The People's Advocate reported extensively on these issues in his previous annual reports: Report on the observance of human rights and freedoms in the Republic of Moldova in 2017, page 37
<http://ombudsman.md/wp-content/uploads/2018/10/raport2017redfinal.pdf>

¹²¹ Law no. 139 of 16.07.2020 for amending some normative acts.

efficiency of the state policies in the field of integration of foreigners, but also to the reduction of the risk of social exclusion of immigrants. Thus, by the approved provisions the emphasis is on enhancement of the role of the state in promoting the integration process through diversified information, creating opportunities for self-maintenance, increasing the role of the employer in the integration process, promoting cultural diversity, ensuring respect for rights, etc.

We mention that the People's Advocate submitted to the Ministry of Internal Affairs and the Ministry of Health, Labour and Social Protection the proposal to initiate the procedure for completing Article 30 of Law no. 270 on Asylum in the Republic of Moldova and paragraph (4) of Article 4 of Law no. 1585 on Compulsory Health Insurance with the list of beneficiaries belonging to the vulnerable groups listed in Article 21 of EU Directive 2013/33 for the purpose of state health insurance. Article 21 of the Directive provides that in the *national law transposing this Directive, Member States shall take into account the special situation of vulnerable persons, such as minors, unaccompanied minors, disabled persons, the elderly, pregnant women, single parents with minor children, victims of human trafficking, people suffering from serious illnesses, people with mental illnesses and people who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation.*¹²²

At the same time, the People's Advocate recommended the completion of para. (1) letter k) of Article 31 of Law no. 270 on Asylum in the Republic of Moldova, so that the asylum seeker is obliged to undergo a medical examination free of charge, for public health reasons. The Ministry of Health, Labour and Social Protection did not support the Ombudsman's initiative. On the other hand, the Ministry of Internal Affairs has given assurances that it will initiate the elaboration of a draft law to amend some normative acts, including the provisions that would allow asylum seekers access to the compulsory health insurance system under the same conditions as for the citizens of the Republic of Moldova¹²³.

On November 13, 2020, the Constitutional Court¹²⁴ declared unconstitutional some provisions of Law no. 200/2010 on the regime of aliens in the Republic of Moldova regarding the expulsion, removal of persons declared undesirable, on grounds of national security. Previously, the People's Advocate (Ombudsman) presented to the Ministry of Internal Affairs a proposal to revise the provisions of Articles 55 para. (3), 56 para. (2) and 63 para. (4) of Law

¹²² <https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:32013L0033&from=ES>

¹²³ MIA answer no. 44 / 30-1481 from 07.05.2020

¹²⁴ <https://www.constcourt.md/libview.php?l=ro&idc=7&id=2005&t=/Media/Noutati/Curtea-a-examinat-constitutionalitatea-unor-prevederi-ale-Legii-privind-regimul-strainilor>

no. 200/2010 on the regime of aliens in the Republic of Moldova, but which remained unanswered.

Given the examination of this issue by the Constitutional Court, the People's Advocate considered it relevant to present his Opinion to the Court, in which he noted that the contested provisions did not provide the foreigner with minimum guarantees against the arbitrary, invoking the case law of the European Court of Human Rights, in particular the cases of *Ozdil and others v. the Republic of Moldova* of June 11, 2019, as well as the recent case of *Muhammad and Muhammad v. Romania* of October 15, 2020.

The Court found insufficient, in the relevant legislation of the Republic of Moldova some essential criteria for counterbalancing the limitation of the exercise of the alien's procedural rights under Articles 19, 20 and 26 of the Constitution. The alien cannot effectively challenge the reasons for his decision to declare himself an undesirable person, according to which he would pose a danger to national security.

Regarding the second end of the notification, on the provisions of Article 60 para. (4) and Article 63 para. (4) of the Law on the regime of aliens, according to which aliens who pose a danger to public order, national security or suffer from diseases that threaten public health and refuse to follow the treatment established by the medical authorities may be removed even if there are justified fears that their lives are endangered or they will be subjected to torture, inhuman or degrading treatment in the state to which they are to be returned, the People's Advocate stressed that they infringe Article 24 of the Constitution, which establishes an absolute ban on torture, inhuman and degrading treatment.

The Court held that the absolute nature of these aspects of Article 24 of the Constitution and Articles 2 and 3 of the European Convention was sufficient to declare the text unconstitutional "and e)" of Article 60 para. (4) and the text "(1) and" of Article 63 para. (4) of the Law on the regime of aliens.

RECOMMENDATIONS:

The People's Advocate recommends that the authorities respect the rights of foreigners, including by harmonizing the national legal framework in accordance with the provisions of international standards.

THE RIGHT TO INFORMATION

Article 34 of the Constitution of the Republic of Moldova provides: (1) *the right of a person to have access to any kind of information of public interest shall not be curtailed;* (2) *the public authorities, pursuant to their assigned competence, shall be compelled to ensure that citizens are correctly informed both on public affairs and issues of personal interest;* (3) *the right of*

access to information may not prejudice either the measures of citizens' protection or the national security; (4) the state and private mass - media means shall be bound to provide the correct information to the public opinion; (5) the public mass media means shall not be subject to censorship.

In the case of *Magyar Helsinki Bizottság v. Hungary* [MC], §158-170, of November 8, 2016, on the establishment of the scope of the right of access to information, as part of the right to free expression, the European Court of Human Rights establishes the "threshold criteria" for the right of access to information held by state authorities, as follows: a) The purpose of the request for information; (b) The nature of the information requested; (c) The role of the complainant; (d) Existence and availability of information.

The Constitutional Court of the Republic of Moldova in its Decision no. 19 of June 22, 2015 notes that according to their competences, public authorities are obliged to ensure the correct information of citizens on public affairs and issues of personal interest. The right of access to any information concerns the manner, means and conditions under which the administration of state affairs is carried out and the right to disseminate such information. In the said decision it is also said that the right to information is to request information from public authorities and institutions. This right has two aspects: the right to request and the right to receive information. To this end, any public authority and / or institution is obliged to provide the requested information, as long as there is no legitimate reason to refuse such requests.

The People's Advocate noted in the 2019 Report that he advocates the adoption of the draft amendment and completion of the package of laws containing the recommendations of the Center for Independent Journalism, the Association of Independent Press and other non-governmental media organizations on the operation of amendments, including the Law on access to information, Law on freedom of expression, Law on personal data protection. The amendments aim to improve the situation in the media and create better working conditions for journalists. The draft law provides for reducing the deadline for providing information of public interest to applicants, providing facilities for processing personal data for media institutions, defining the notion of information of public interest and expanding the list of providers of this information, changing some provisions regarding the state secret, the introduction of the public register of the media, etc.

The People's Advocate reiterated his call on members to examine and adopt the document in question, based on the updated draft of the media community on amending and

supplementing the package of laws mentioned¹²⁵, in the opinion sent to the Parliamentary Committee on Culture, Education, Research, Youth, Sports and the media in carrying out the ex-post impact assessment of Law no. 982/2000 on Access to Information to identify problems / gaps in its implementation process.¹²⁶

In the opinion sent to the Commission, the People's Advocate welcomed the initiative and insisted, in particular, on some key elements that he had noted in his work in recent years and which are also found in the proposals to amend / supplement the package of laws, developed by the media community.

Therefore, the People's Advocate recommends to define the notion of "information of public interest" that should be clearly formulated, in order to exclude any interpretations.

Another issue previously addressed by the People's Advocate refers to the rejection of requests for information sent in electronic format without an electronic signature. The People's Advocate finds confusion about the types of electronic signatures that can be used by people in relation to public authorities. This is because some authorities require the use of only the qualified advanced electronic signature, referring to paragraph (l) letter b) of Article 11 of Law 91/2014 **on electronic signature and electronic document**.

Although the examination of requests for access to information requires a simpler examination procedure, in many cases they are examined in accordance with the law on petitions, and the requirements for electronic signatures complicate the procedure for obtaining information. In addition, it should be noted that electronic signatures are issued against payment and for a certain period.

In the first two months after the outbreak, in order to minimize exposure to the infection, the authorities chose to communicate with the press and provide official information on the epidemiological situation on a daily basis through online briefings. During these briefings, the data on the number of infections, deaths, serious cases, the most affected districts and localities were announced. The press was not present and could not ask specific questions. And this while several newsrooms received signals from the medical staff about the critical state of affairs in some medical institutions.

In the statement made by several NGOs in the media on this subject, it is said among other things: "We report with regret and concern situations when various government officials and from the Ministry of Health, Labour and Social Protection, instead of responding operatively to requests for confirmation or refutation of information (example: the case of the

¹²⁵ „ The document in question was revised within the project "Support for solving the priority problems of the media field", implemented by the Association of Independent Press (API) in partnership with other media organizations and funded by the Soros Foundation-Moldova and submitted on 29.05.2020 for public consultations.

¹²⁶ <http://ombudsman.md/wp-content/uploads/2020/06/12-5-8-din-04.05.2020-Parlamentul-R.M.pdf>

doctor from the Republican Clinical Hospital, infected with COVID-19), refuses to provide information, and then unjustifiably accuses the press of trying to make sensations and of violating the right to privacy of medical staff. Such an approach is counterproductive and does not contribute to better information of the population ".

Following repeated requests from the media community to ensure transparency and unrestricted access to information of public interest related to the epidemiological situation in the country¹²⁷, the MHLSP agreed to hold press conferences with the participation of journalists. The first press conference offering journalists the opportunity to ask questions took place on May 1, a month and a half after the state of emergency was established.

On the other hand, a barrier to the timely provision of information of public interest has been established by the adoption by the Commission for Exceptional Situations of a provision ordering the tripling of the deadline for the submission of information by public institutions and authorities (from 15 to 45 days). Even in the period up to the pandemic, the authorities, civil servants under various pretexts, frequently did not respect the 15-day deadline, partially responded to requests for information, presented information that was irrelevant or did not relate to the content of the application, refused to provide information, referring to the state secrecy or personal data. Extending the deadline to 45 days has considerably limited the access of journalists and individuals to information of public interest.

The People's Advocate requested the Commission for Exceptional Situations to exclude the provisions by which the term for providing the answers to the requests for information of public interest during the state of emergency was tripled. The Ombudsman recalled that, in accordance with the provisions of Article 34 of the Constitution of the Republic of Moldova, the right of the person to have access to any information of public interest may not be restricted. At the same time, in its judgment interpreting Article 34 paragraph (3) of the Constitution, the Constitutional Court emphasizes that the right to information is a precondition for the exercise of other rights, namely political, economic and social rights; the right to privacy, the right to take part in public affairs, the right to a fair trial, etc.¹²⁸

¹²⁷ <http://media-azi.md/ro/stiri/25-de-organiza%C8%9Bii-%C8%99i-institu%C8%9Bii-media-solicit%C4%83-ministerului-s%C4%83n%C4%83t%C4%83%C8%9Bii-conferin%C8%9Be-de-pres%C4%83https://www.zdg.md/stiri/stiri-sociale/celula-de-criza-a-jurnalistilor-cere-in-continuare-ministerului-sanatatii-sa-organizeze-conferinte-online-cu-intrebari-live/>

¹²⁸ http://ombudsman.md/news/avocatul-poporului-libertatea-de-exprimare-inclusiv-fluxul-liber-si-la-timp-de-informatii-este-un-factor-esential-pentru-capacitatea-mass-mediei-de-a-raporta-problemele-legate-de-pandemie/#_ftn1

The recommendation of the People's Advocate was not taken into account, in the response received to this request¹²⁹ it is said "that the extension of the deadlines for resolving requests does not in itself restrict the right to access information of public interest, but it is a proportionate measure, determined by the circumstances of the exceptional situation, which comes to ensure, in fact, the effective exercise of this right. It should be noted that the extended deadline for resolving requests for information and petitions applies only to cases that are not related to issues related to the prevention and control of COVID-19 infection. "

On 01.12.2020, the Council of Europe Convention on Access to Official Documents entered into force for the Republic of Moldova. The Republic of Moldova ratified this Convention in 2013.

That Convention is the first binding international legal instrument recognizing the general right of access to official documents held by public authorities.

The treaty, also known as the Tromsø Convention, after the Norwegian city where it was opened for signature.

The right of access to official documents held by public authorities is essential for ensuring transparency, good governance, freedom of expression and participatory democracy and facilitates the exercise of other human rights and fundamental freedoms.

Access to official documents allows citizens to form an opinion on the state of society in which they live and on the governing authorities. At the same time, it allows citizens to be aware of public policies and their informed participation in decision-making processes.

It is also very important that free and independent media, journalists and other media actors have legal and guaranteed access to official information and documents to inform the public. The Tromsø Convention provides a framework of legal principles for all these democratic objectives and sets out a number of basic guarantees regarding the right of access to official documents.

Conclusions

In the context of the above, we note the lack of progress in respecting the right to access information.

RECOMMENDATIONS:

- The People's Advocate recommends the revision of the provisions of Article 15 paragraph (1) of Law no. 982/2000 which refer to the legislation on petitioning, but

¹²⁹ <http://ombudsman.md/wp-content/uploads/2020/05/Cancelaria-de-Stat-nr.-31-16-3445-din-21.04.20-r%C4%83spuns-la-nr.-12-4-23-din-16.04.20-OAP-nr.-1147-din-23.04.2020.pdf>

also the modification of the provisions regarding the procedure for addressing requests for information of public interest in order to bring clarity and simplify this procedure;

- The People's Advocate proposes the completion of Law no. 982/2000 with special provisions on media access to information of public interest and regulation of the role of media in the access to information and processing of personal data of public interest, to eliminate existing barriers for media activity in terms of access to information of public interest;
- The People's Advocate recommends speeding up the process of examining and adopting a draft law that would remove existing barriers to access to information of public interest and ensure the transparency of the governing act;
- The People's Advocate recommends that *appropriate parliamentary scrutiny be exercised* to ensure compliance with the Council of Europe Convention on Access to Official Documents (Tromsø Convention);
- The People's Advocate recommends taking measures to ensure the unrestricted access of journalists to events of public interest, in order to exercise the profession.

WHISTLEBLOWER PROTECTION

On November 12, 2018, entered into force Law no. 122 on whistleblowers, the purpose of which is to increase the cases of disclosure of illegal practices and other disclosures of public interest by: promoting the climate of integrity in the public and private sectors; ensuring the protection of whistleblowers against revenge in the context of examining the disclosures of public interest of illegal practices; preventing and sanctioning revenge against whistleblowers. The new law intervened with a much more detailed approach to the institution of whistleblowers and broadly complied with the standards of the United Nations and the Council of Europe.

Law no. 122/2018 establishes that the National Anticorruption Center is responsible for examining illegal practices, and the People's Advocate ensures the protection of whistleblowers in case of external and public disclosures of illegal practices. At the same time, the Law leaves room for the involvement of civil society in the field of protection of the rights of whistleblowers.

According to Law no. 122/2018, the People's Advocate ensures the protection of whistleblowers in accordance with the provisions of Law no. 52/2014 on the People's Advocate

(Ombudsman), applies its internal instruments and procedures which, if necessary, are adapted to the conditions and provisions of Law no. 122/2018.

In carrying out his duties of protection of whistleblowers, the People's Advocate:

- receives and examines the requests for the protection of whistleblowers, as well as examines the ex officio notifications regarding the protection of whistleblowers who have made public disclosures, provided that they express their express consent to benefit from the protection of the People's Advocate;

- contributes to the annulment of revenge measures and to the amicable settlement of conflicts between whistleblowers and public or private entities;

- elaborates recommendations regarding the measures to be taken for the immediate reinstatement of whistleblowers;

- ensures the bringing of actions in the courts and the intervention in lawsuits in order to submit conclusions in order to defend the rights and freedoms of whistleblowers.

As the institution of whistleblowers, in the version of Law 122/2018, contains several innovations, especially being the ability of the People's Advocate with powers to ensure the protection of whistleblowers, public authorities, including the People's Advocate Office, do not yet have a consolidated experience of effective implementation of this law. Moreover, the concept of whistleblower is not known to the general public in the Republic of Moldova, and potential whistleblowers still do not know very well the guarantees of protection, as well as the possibility of using this tool.

The People's Advocate shares the idea that whistleblowers are one of the best sources for uncovering illegal and unethical practices at the level of entities (public or private), they know best and can report these violations "directly from the source" . However, given that disclosures can significantly affect their professional lives, and even have repercussions on their personal security, it is very important that they be encouraged, informed, but also protected throughout the process. They need to be given easily accessible information on the procedures applied, the guarantees they can benefit from and assistance from the public sector actors and civil society, including the media.

At present, all this information infrastructure is almost non-existent and needs to be built in an efficient manner, so as to ensure the full implementation of the institution of whistleblowers in the Republic of Moldova.

In order to fully contribute to the implementation of information mechanisms, as well as the protection of whistleblowers, the People's Advocate Office has carried out / taken several actions.

In May-June, the People's Advocate Office in collaboration with UNDP Moldova and the National Anticorruption Center conducted an information campaign in support of whistleblowers among doctors, launching a video spot and several informative materials on the subject.

At the same time, on the website, the application "*Submit an online application for requesting protection by the whistleblower*" was developed and launched, intended for persons wishing to request protection: [http://ombudsman.md/avertizari-de-integritate /](http://ombudsman.md/avertizari-de-integritate/), ensuring the confidentiality and security of the information transmitted.

Also, the People's Advocate Office developed and launched, with the support of the UNDP project, an online training course on "Whistleblowers" integrated in the *E-LEARNING* application (<http://ombudsman.md/courses/>), launched by the PAO on the institution's website www.ombudsman.md. Through the "Whistleblowers" course, the institution aimed the online studying by users of the components and specifics of the institution of whistleblowers, as well as familiarizing users with the competencies of the People's Advocate Office in this field. The course provides information about whistleblowing, the conditions of action of the whistleblower and the protection offered to him/her. By taking the online course, users have the opportunity to test their knowledge on the same platform. The course is developed in Romanian and Russian.

During 2020, the People's Advocate examined two requests for protection from whistleblowers (civil servants) under Law no. 52 of 03.04.2014 on the People's Advocate, applying the procedures provided by this Law, the respective requests being still in the process of investigation and monitoring.

In the process of investigating these cases, the People's Advocate found that the situations described in the applications have the characteristics of revenge as a result of the disclosure of illegal domestic practices to the employer. Subsequently, as the employer did not take any action to investigate the illegal practices reflected in the disclosures, the whistleblowers appealed to the competent bodies: the General Prosecutor's Office and the National Anticorruption Center. In response to the external addresses, employers' revenge measures on whistleblowers have intensified and expanded.

Following the analysis of the situations described in the applications for protection, the causal link between the disclosure made and the revenge measures, the chronology of events, the duration of the periods between the disclosures and the revenge measures, the magnitude of the public interest in the disclosure made, the severity of the revenge measures (application of the sanction of dismissal from public office), the People's Advocate found that the petitioners meet the conditions provided by Law no. 122/2018 and are to benefit from the protection

offered under this Law, including the guarantees of protection from the People's Advocate, established in Article 14.

Thus, in both cases, the People's Advocate, finding violations of the rights and freedoms of whistleblowers, submitted to each employer, persons with positions of responsibility, pursuant to Article 24 paragraphs (1) and (3) of the Law on the People's Advocate (Ombudsman) an opinion containing recommendations on measures to be taken for the immediate reinstatement of whistleblowers: immediate cessation of any acts of strife, pressure, disadvantage, discrimination manifested by threats of dismissal, in one of cases even dismissal from public office, which are related to or result from whistleblowing. At the same time, in both cases, the Ombudsman recommended the cancellation of orders to sanction whistleblowers and to ensure compensation for pecuniary and non-pecuniary damage suffered as a result of revenge, as appropriate.

In one case, because the employer did not want to implement the recommendations of the People's Advocate, referring to labour law, namely, that the sanctioning order be challenged in court, the Ombudsman pursuant to Art. 25, paragraph (3) of Law no. 52 on the People's Advocate intervened in the trial¹³⁰ for submitting the conclusion. Thus, on June 26, 2020, the court examined the case of administrative litigation regarding the annulment of the unfavorable individual administrative act and the obligation to issue the favorable administrative act, and issued a decision annulling the order on disciplinary sanction of the civil servant by dismissal, with the obligation of the employer to issue the administrative act regarding the restoration of the person injured in rights in the position held before the dismissal. Subsequently, the employer challenged the decision of the first instance at the Chisinau Court of Appeal. On March 3, 2021, the Chisinau Court of Appeal, by its decision, upheld the decision of the first instance. On this case, the People's Advocate will continue to take other actions, including addressing to the employer for the undertaking of the actions for the prosecution of the person guilty of the application of revenge measures. In case of non-implementation of the recommendations of the People's Advocate, the institution reserves the right to address the court.

With reference to the second case under management, the People's Advocate is to be informed by the employer about the degree of implementation of the submitted recommendations. Simultaneously, because the whistleblower challenged the sanctioning order in the court, the People's Advocate intervened in this case as well with his conclusions in the court, making use of the applicable legal provisions. The case is pending, the court is to issue a decision in this regard.

¹³⁰ pursuant to Articles 7, 195, 204, 205 Administrative Code, corroborated with Art.74 CPC;

With reference to the same case, the People's Advocate submitted to the higher hierarchical body of the employer a general recommendation on the imperative nature of ensuring human rights and freedoms, improving the activity, as well as on the need to inform all heads of subordinate authorities / institutions about the provisions of Law no. 122 of 12.07.2018 on whistleblowers.

The Ombudsman also requested to be assessed the manner in which the subordinate authorities / institutions implement the provisions of Law no. 122 of 12.07.2018 on whistleblowers, especially the following aspects: ensuring the registration of disclosures of illegal practices in the Register of disclosures of illegal practices and whistleblowing; the transmission to the competent authorities of the information contained in the internal disclosure of the illegal practice containing the constituent elements of a contravention or offense; taking administrative action in order to cease revenge against the employee; ensuring the protection of the employee as a whistleblower.

The Ombudsman also called for an examination of all disciplinary sanctions imposed on employees during the last 6 months and for the repeal of acts of revenge issued by subordinate authorities / institutions in connection with the disclosure of illegal practices by employees as whistleblowers. The Ombudsman is currently monitoring the level of implementation of the recommendations submitted to the higher hierarchical body.

At the same time, during 2020, the People's Advocate closely monitored the observance of human rights and freedoms during the pandemic. Concerned about the information in the public space, according to which employees in the medical system who made disclosures about the quality and quantity of protective equipment, would be subjected to pressure from employers, the Ombudsman submitted a General Recommendation to the Ministry of Health, Labour and Social Protection regarding:

- the immediate cessation by the management staff of any form of revenge on the medical workers who have made disclosures regarding the quantity and quality of the equipment and devices for the protection of the medical staff;
- the operative and efficient investigation of disclosures regarding the quality of medical devices and taking measures to remedy and improve the measures and equipment for the protection of medical staff and to promote the climate of integrity in public and private medical institutions.

In the process of monitoring the implementation of this recommendation, the People's Advocate contacted the persons who made the disclosures and who communicated that any form of revenge against them ceased and the need for intervention and protection from the People's Advocate has fallen.

The Ministry of Health, Labour and Social Protection informed the People's Advocate that, upon approval by Government Decision nr.892 / 2018 of the *Sectoral Anti-corruption Action Plan in the Field of Health and Compulsory Health Insurance*, both the leaders and the employees of the medical institutions received training on the institution of whistleblowers with the support of the National Anticorruption Center.

The People's Advocate Office will continue to train and inform all citizens about the institution of the whistleblower and its impact on the prevention of illegal and unfair practices.

In order to adequately respond to the new competence assigned, as well as to strengthen partnerships with civil society and increase confidence in the mechanism of protection of potential whistleblowers, the representatives of the People's Advocate Office developed several joint actions with the Public Association "Centre for the Analysis and Prevention of Corruption"(CAPC).

The combination of efforts and the involvement of civil society in building the infrastructure for the institution of whistleblowers is an undeniable benefit, including the fact that the number of requests for protection registered by the People's Advocate Office is constantly and steadily increasing.

RECOMMENDATIONS:

The People's Advocate recommends that the authorities support the institution of the whistleblower by promoting it and providing appropriate protection, and by strengthening the institutions responsible for the protection of whistleblowers.

VIOLENCE AGAINST WOMEN

Incidence and prevalence of violence against women and domestic violence

Violence against women is a violation of women's fundamental rights and freedoms¹³¹. It affects the lives of thousands of women and girls in the Republic of Moldova, but also the lives of those close to them and has serious and long-term consequences for their health and well-being, as well as for their children, communities and society in general. More than three out of four women (76%) say that violence against women is widespread in our country and the statistics show the following figures:

- Almost three quarters (73%) were subjected to one or another form of violence by the intimate partner, the most common being psychological violence, felt by 71% of women in Moldova;
- Two out of five women (40%) say they have been subjected to physical and / or sexual violence by their partner or non-partner since the age of 15;
- From the age of 15, almost half of women (49%) indicate that they have been sexually harassed;
- More than one in five women (22%) say they have been subjected to some form of physical violence by an adult before the age of 15, usually by their parents.¹³²

According to the General Police Inspectorate, with reference to the category that threatens family values in 2020, 678/596 were registered, + 13.75% cases of domestic violence, of which, 267/231; + 15.58% met the constituent elements of the crime component, and 411/345; + 19.13% cases, met the constitutive elements of the contravention component (Art.78¹ Contravention Code)¹³³. For 2019, 79% of women are victims of gender-based violence and 94% of domestic violence offenses.

The number of telephone calls from women to the telephone helpline for victims of domestic violence and violence against women was 79% (first quarter of 2019) and 85%

¹³¹ Article 16 of the Constitution of the Republic of Moldova enshrines equality between women and men; The principle of gender equality is promoted by other laws such as Law no. 5-XVI of 09.02.2006 on ensuring equality between women and men, Law no. 121 of 25.05.2012 on ensuring equality, Law no. 45-XVI of 01.03.2007 on preventing and combating domestic violence;

By decision no. 259 of 28.04.2017, the Government approved the Strategy for ensuring equality between women and men in the Republic of Moldova for 2017-2021;

The National Action Plan for Human Rights, which was adopted by the Parliament in May 2018, contains as its main area of intervention the protection against discrimination, promotion of equality, preventing and combating domestic violence and ensuring gender equality;

¹³² OSCE-led Survey on the Well-being and Safety of Women, on a sample of 1,802 women between the ages of 18 and 74, in 2019;

¹³³ https://politia.md/sites/default/files/ni_violenta_in_familie_3_luni_2020_pentru_pagina_web-konvertitovan.pdf

(second quarter of 2019). In 10 years of hotline activity 15738 calls from 18683 were from women.¹³⁴

In 2020, during the emergency period installed in the country in the context of the COVID-19 pandemic, over 90.4% of victims of domestic violence were women.¹³⁵

Gender-based violence in the context of the COVID-19 pandemic

Given the state of emergency imposed by the coronavirus pandemic and, respectively, the restrictive measures, the situation of victims of domestic violence has worsened even more. On the one hand, isolation, social distancing, restrictions on freedom of movement are necessary conditions to avoid COVID-19 infection. On the other hand, in these conditions, the aggressors, being longer in the same space with the victim, control them even more. The stages of the cycle of violence are compressed - practically, the stage of increasing the tension and the “honeymoon” disappear, and the level of aggression increases. At the same time, during this period, women are more inclined to endure abuse due to the fear that they will not cope financially (many women have lost their jobs and income), due to limited access to services, especially medical services, etc.

Compared to the same period last year, this year the rate of domestic violence increased (+ 2.4%). Thus, in the first five months of 2020, 5,157 notifications / self-notifications regarding cases of domestic violence were registered compared to 5,032 notifications registered in the similar period of 2019. At the same time, the number of crimes decreased, in 2020 being registered 355 crimes compared to 391 in 2019. As for the protection measures, we must specify that in the analyzed period were issued with 160 *emergency restriction orders (ERO)*, more than in the similar period last year, being drawn up +70 minutes regarding the non-execution of EROs.¹³⁶

The HOTLINE data show an increase of approximately 30% in telephone calls in 2020, compared to the previous period of 2019.

The causes and consequences of violence

In Moldova, as in many other countries in the region and around the world, there are very strong cultural stereotypes and norms, historically formed, regarding the role of women and men in the family and society. These stereotypes are passed down from generation to generation, are rigid and limit the rights and freedoms of both women and men. If we refer to the family, then the collective stereotypes are about the fact that a woman's mission is to take

¹³⁴ According to the Public Association "La Strada" International Center. Journal "Hotline for women and girls. 10 years of trust. 10 years of help", 2020;

¹³⁵ The evaluation "The needs of women affected by domestic violence, gender-based violence and the systemic response to cases of domestic violence in the context of the Covid-19 crisis", carried out by the Public Association "La Strada" International Center, 2020;

¹³⁶ Idem;

care of her family and household (90.5% of men and 81.5% of women believe that for a woman the most important thing is to take care of the house and to cook for her family)¹³⁷, to be obedient, to know her place and to do everything in the family to be well, including to tolerate violence.

The collective perception is that when abuse occurs in the family, the woman has done something to make it happen, which is also confirmed by research¹³⁸ (in the opinion of 27.7% of men and 17.5% of women, women should tolerate violence to keep their family and 41.1 of men and 19.1% of women claim that there are times when the woman must be beaten), but also by the confessions of women who come to support centers *"I thought to endure to be in line with the world"*, *"I was ashamed of my parents and relatives"*, *"I thought I had to change for everything to go well in our family"*, etc. Violence from the intimate partner is considered normal, women are expected to be emotionally strong and to resist violence. Blaming women who are victims of violence and shifting responsibility from the aggressor to the victim is a common phenomenon even in cases of violence outside the family, such as rape. According to the OSCE study, almost half of women respondents (45%) agree that "violence against women is often caused by the victim. Similarly, two out of five women in Moldova (40%) agree that "women who say they have been abused often invent or exaggerate allegations of abuse or rape." About 40% of men believe that if a woman was raped, then she did something to cause rape.

Structural inequalities are visible in different areas: Moldovan women are under-represented in political decision-making positions, in the labour market in well-paid fields (financial, IT) and earn less than men, respectively, are more subject to various forms of discrimination (for example, women are the second most targeted group of hate speech).

The consequences of violence

The consequences and impact of violence on women can be severe, long-lasting and not always immediately visible. Survivors often remain with feelings of fear and anger - short-term (71%) and long-term (82%) psychological reactions such as self-doubt, inability to make important decisions, post-traumatic stress disorder, anxiety, depression, sleep and eating disorders; as well as physical and physiological consequences (one in five women who survived the violence caused by the previous partner reported suffering from concussion, fractures, internal bleeding, tooth loss, pregnancy loss / miscarriage, infertility, hormonal

¹³⁷ The study "Men and gender equality in the Republic of Moldova" conducted by the Center for Investigation and Consultation "SocioPolis" at the request of the Women's Law Center, conducted on a sample of 1515 men and 503 women, people aged 18-59 years, year 2015.

¹³⁸ Idem

disorders, etc.).¹³⁹ Children who have gone through violence in their families of origin are inclined to take over this behavior in future families, either as a victim or as an aggressor, but also suffer from a series of psychological consequences that mark the adult life (46.9% of men who have been victims of domestic violence have perpetuated this behavior).¹⁴⁰

Other consequences are the deaths of women as a result of violence, but also the commission by them of violent crimes. According to the GPI, in 2019, out of a total of 969 crimes of domestic violence committed, 21 serious cases resulted in death and 29 cases - of murder, according to Article 145.¹⁴¹ According to the Anthropological Study "Domestic Violence and Women from Rusca Prison"¹⁴², 43% of the women interviewed admitted that they were subjected to domestic violence by their spouse / cohabitant, parents. Of these 43% of women victims of domestic violence, 84.5% of women were convicted of violent crimes. Thus, domestic violence is a very important factor that contributes to female delinquency, which is often nothing more than a response to long-term violence.

The level of reporting the cases of violence

The traditional notion that women subjected to violence are responsible for what happens to them and the cultural context that places the responsibility on the victim, not on the aggressor, the fear and distrust of the justice system, a bureaucratic service and justice system, the lack of psycho-emotional support, etc., contributes to a low level of reporting rates to the police or organizations. Respectively, very few women reported cases of violence, almost three quarters (73%) of victims of violence from their current partner did not contact any organization to seek assistance. The number of women who report cases of violence to the police from their current partner is low (11%), and the response is divided, with 42% of respondents being satisfied and 58% being dissatisfied with the contact they had.¹⁴³

Women in Moldova consider that their boyfriends *disagree* rather than agree that "if a man abuses his wife, those outside the family should intervene" (47% disagree compared to 41% who agree). Similarly, more than half of women (55%) agree that domestic violence is a private matter and needs to be addressed within the family.

¹³⁹ OSCE-led Survey on the Well-being and Safety of Women on a sample of 1,802 women aged 18 to 74 in 2019;

¹⁴⁰ The study "Men and gender equality in the Republic of Moldova" conducted by the Center for Investigation and Consultation "SocioPolis" at the request of the Women's Law Center, conducted on a sample of 1515 men and 503 women, people aged 18-59 years, year 2015.

¹⁴¹ Informative note on the state of crime in the field of crimes that threaten the life and health of the person, as well as those committed in the field of family relations during 12 months of 2019, General Directorate of Public Security of the GPI;

¹⁴² Eudochia Saharneau, Tatiana Margarint, "Anthropological Study: Domestic Violence and Women from Rusca Prison": Past, Present, Future";

¹⁴³ OSCE-led Survey on the Well-being and Safety of Women;

Conclusions

In the field of preventing and combating violence, Moldova has made important achievements, especially in the legislative framework. At the same time, civil society organizations and authorities mention a number of shortcomings and gaps, included in the alternative national and international reports. In this regard, the Report of the UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) addresses a number of recommendations for the Republic of Moldova in the field of gender equality and preventing and combating violence.

The People's Advocate unreservedly supports the above recommendations and urges the authorities to make every effort to implement them properly. The People's Advocate Office submitted an alternative report to the UN Committee on the Elimination of All Forms of Discrimination against Women and participated in the evaluation session of the Republic of Moldova, where it held the above.

RECOMMENDATIONS:

The People's Advocate recommends to the authorities:

- To provide adequate human, technical and financial resources to the People's Advocate Office, in order to enable it to effectively fulfill its mandate to promote and protect women's rights and gender equality;
- To accelerate the ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention);
- To amend Article 78 of the Contravention Code, in order to eliminate the provisions exempting perpetrators of violence against women from criminal responsibility and to encourage women to report cases of gender-based violence to the competent authorities, without fear of stigmatization, ensuring their access to criminal justice;
- To raise awareness among women, including those belonging to ethnic minority groups, women with disabilities, migrant women, older women and lesbian, bisexual and transgender women about their rights and available remedies to claim these rights;
- To provide adequate human, technical and financial resources for the provision of state-guaranteed legal aid;
- To introduce a minimum quota of 40% representation of women and men in the Government;

- To take special temporary measures to accelerate equal access to public office, education and employment for women from underrepresented groups, such as Roma women, women from national minorities, rural women, older women and women with disabilities.
- To raise public awareness to eliminate gender-based discriminatory stereotypes regarding the roles and responsibilities of women and men in the family and society;
- To eliminate the barriers and stigma that discourage women from reporting cases of gender-based violence to competent authorities, including by raising awareness and training of justice or police representatives;
- To allocate sufficient resources to provide financial compensation to victims of domestic violence under Law No. 196/2016 and victims of other crimes of gender-based violence, under Law No. 137/2016 on the rehabilitation of victims of crime;
- To allocate adequate human, technical and financial resources for the effective implementation of the *National Strategy for Preventing and Combating Violence against Women and Domestic Violence (2018-2023)* and the related Action Plan, to ensure that victims of violence have access to shelters and support services, including medical treatment, psychosocial counseling and legal assistance in any part of the country.

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

In the Report on Human Rights in the Transnistrian Region of the Republic of Moldova ¹⁴⁴, the UN human rights expert Thomas Hammarberg mentioned that the Transnistrian “constitution” contains a list of internationally recognized human rights. In addition to the customary international law that obliges *de facto* authorities to uphold fundamental human rights norms, *de facto* authorities have committed themselves unilaterally to respecting some of the international treaties, including: the International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; European Convention on Human Rights and the Convention on the Rights of the Child.

Even if the Transnistrian region is not internationally recognized as a state, and cannot be a party to international human rights treaties, this does not relieve *de facto* authorities of their obligations under international human rights law and international humanitarian law, to apply standards that are in line with important international norms, and the coercion applied by the Tiraspol entities must not invalidate human rights, must respect the principles of proportionality and temporality and must not imply any derogation from human rights standards.

On March 12, 2020, the *de facto* Transnistrian authorities adopted the first quarantine decision in the region which provided for:

- prohibiting the holding of any public meetings;
- establishing the obligation regarding all institutions to carry out disinfection measures;
- suspension of the educational process starting with March 16, 2020;
- ensuring the isolation and medical supervision for a period of 14 calendar days of persons holding identity documents issued by Tiraspol and returning to the Transnistrian region from states where cases of COVID-19 have been detected;
- carrying out prophylaxis and disinfection measures in public transport;
- prohibition of meetings with persons deprived of liberty, the meeting being authorized only in exceptional cases with the mandatory verification of symptoms;
- other prophylaxis and disinfection measures.

Subsequently, on March 18, 2020, the so-called Supreme Soviet of Tiraspol approved the Order of Vadim Krasnoselski of March 16, 2020, on the establishment of a state of emergency

¹⁴⁴https://www.undp.org/content/dam/unct/moldova/docs/pub/Expert_Superior_Hammarberg_Raport_TN_Dreptur_ileOmului.pdf

in the Transnistrian region for a period of 19 days, i.e. until April 5, 2020. With the entry into force of these acts, it was ordered:

- banning the entry into the Transnistrian region of foreign citizens and stateless persons, except for persons residing in the region, diplomats, members of international organizations, persons transporting food and other basic necessities;
- mandatory self-isolation for 14 days of all persons entering the Transnistrian region and living in this territory;
- strengthening control over persons who evade medical examination and treatment, compliance with the quarantine situation and taking appropriate measures;
- prohibition of the exit from the Transnistrian region of persons holding the alleged citizenship of the region, except in exceptional cases (medical treatment, burial, transportation of goods and products strictly necessary);
- application of other measures to prevent the spread of the virus.¹⁴⁵

On March 25, 2020, in the context of the situation created by the spread of COVID-19 in the Republic of Moldova, in his address to the Transnistrian human rights representative, the People's Advocate (Ombudsman) expressed his concern about the unilateral and disproportionate actions of the structures in Tiraspol undertaken in the context of the establishment of a state of emergency from March 18, 2020, and the call to help resolve the problems that have arisen in the context of actions to prevent and combat the new type of Coronavirus related, in particular, to ensuring access to work, place of residence, banking institutions on both banks of the Dniester, as well as family doctor centers. On April 8, 2020, in an appeal to the Deputy Prime Minister for reintegration, the representatives of the mediators and observers in the 5 + 2 format, the People's Advocate expressed his concern about the implementation by the *de facto* authorities in Tiraspol of the mechanisms for managing the state of emergency, which in the opinion of the People's Advocate, are disproportionate and contrary to international standards in the field of human rights.

In his appeal, the People's Advocate urged the state authorities, the representatives of mediators and observers in the 5 + 2 format to apply diplomatic, legal or other measures, which are in force and are in accordance with international law, in order to ensure the realization of human rights and freedoms in the administrative-territorial localities on the left bank of the Dniester and in the municipality of Bender (Transnistria) under the conditions of the state of emergency, so that the restrictions on human rights are proportional to the situation that determines them. Unfortunately, the situation has not changed.

¹⁴⁵ Report: human rights situation in the Transnistrian region during the Covid-19 pandemic, Promo-Lex, 2020

The right to free movement

On April 30, 2020, the OSCE Permanent Council met - the main decision-making body for regular political consultations. During this session, the Head of the OSCE Mission to Moldova, Claus Neukirch, also addressed the human rights issue in the Transnistrian region during the pandemic. In particular, the issue of the unilateral installation of checkpoints in the Security Zone by the *de facto* administration of the Transnistrian region and their impact on the freedom of movement was highlighted. The Head of the Mission reiterated the need for Tiraspol to rethink its current approach and ensure that people can move to their workplace, have access to healthcare, ATMs and other necessities.

Thus, if until March 16, 2020, 24 unauthorized posts and 15 posts of the Peacekeeping Forces were located at the administrative border, then in March-July 2020, another 37 posts were unilaterally placed by Tiraspol around the localities under the jurisdiction of the constitutional authorities.

Unilaterally located posts, despite all the agreements signed in the negotiation process, are an instrument that limits the right to free movement of individuals, economic agents, services and prevents the effective realization of the right to health, the right to work, the right to property, the right to education and have contributed to a significant setback in the implementation of a number of files in the so-called "Berlin plus" package which provides for free access to agricultural land for farmers in Dubasari district, ensuring the passage of students and teachers / employees of educational institutions on the basis of student cards / service cards, exclusion of prior written notifications regarding the movement through the Transnistrian region of persons with positions of public dignity and leading civil servants in the Republic of Moldova.

Protection of personal data

The People's Advocate expressed his concern about the accumulation / storage by the "special services" subordinated to the *de facto* authorities on the left bank of the Dniester of personal data that citizens are required to disclose when applying for permission to leave the region for treatment, studies, etc.¹⁴⁶

Thus, in order to obtain a permit to leave the region, the inhabitants were put in a position to submit an application in the "crisis centers" subordinated to the "Ministry of Internal

¹⁴⁶ <http://dnestr.tv/10740-kak-poluchit-razreshenie-na-vyezd-po-medicinskim-pokazaniyam-i-dlya-prodolzheniya-obucheniya.html>
<https://www.mvdpmr.org/vazhnaya-informatsiya/31914-kak-poluchit-razreshenie-na-vyezd-v-territorialnom-krizisnom-tsentre.html>

Affairs"¹⁴⁷ of the region, where they must indicate information and attach confirmatory documents such as: the name; the reason for the need to leave the region; the name and legal address of the institution to which the person is to be addressed; vehicle data; complete details of the person to be treated and the accompanying person; copies of medical documents; copies of study diplomas in case of travel to study outside the region, etc. This phenomenon takes place over the years, thus violating the right to privacy by processing personal data outside a legal framework.

The issue of disclosure by personal institutions / organizations in Chisinau of personal data was raised by the People's Advocate in the Reports on the observance of human rights in the Republic of Moldova in 2016¹⁴⁸ and 2017¹⁴⁹. On February 19, 2018, Cristina Lesnic, Deputy Prime Minister for reintegration, by notification letter no. 23-05-1328, requested the state authorities to avoid processing personal data to entities on the left bank of the Dniester.

Despite decisions on the suspension of personal data processing operations and their transmission to the *de facto* authorities on the left bank of the Dniester, some institutions continued to exchange information, including information on COVID-19 cases indicating the identity of persons infected among the employees of the national police in the security zone, without the consent of the citizen¹⁵⁰.

In the reference case *Z. v. Finland*¹⁵¹, the European Court of Human Rights noted that the protection of personal data, including information on a person's state of health, is of paramount importance for the respect of the individual's rights to the protection of private and family life guaranteed by Art. 8 ECHR.

In the opinion of the People's Advocate, the exchange of information between entities during a pandemic is vitally important in the collective interest, of a solidarity, not only within the state but also on an international scale. In relations with entities on the left bank of the Dniester, the exchange of information can be possible only after the integration of the state's domestic law in the Transnistrian region.

Forced incorporation into the "PMR army"

The Tiraspol entities continue to forcibly incorporate young people for long-term service into the so-called "Transnistrian armed forces". Unfortunately, the constitutional authorities react late, only after the young people are placed in the barracks in Tiraspol.

¹⁴⁷ <https://mvdpmr.org/novosti/resheniya-opershtaba.html>

¹⁴⁸ https://ombudsman.md/wp-content/uploads/2018/10/raport-ombudsman_2016.pdf

¹⁴⁹ <https://ombudsman.md/wp-content/uploads/2018/10/raport2017redfinal.pdf>

¹⁵⁰ Application no. 11-8 / 20-4 from 09.10.2020;

¹⁵¹ <http://hudoc.echr.coe.int/eng?i=001-58033>

In the opinion of the People's Advocate, in order to prevent the forced incorporation of young people in the "Transnistrian armed forces", there are to be excluded the mentions / entries in the military booklets issued by the Territorial Military Centers of the Ministry of Defence of Moldova which allow the identification by the *de facto* authorities on the left bank of the Dniester of young people who have completed short-term military service, students in military educational institutions, young people who have undergone preliminary training and training in military departments, citizens trained in civil protection formations and voluntary Red Cross health teams, people who passed the training in the training centers of the Armed Forces Reserve.

At the same time, it is necessary to adopt protection measures for young people who evade record and forced incorporation into the "Transnistrian armed forces" and can no longer return to the region controlled by the *de facto* Tiraspol authorities.

Individual freedom and security of the person

Also in 2020, there were registered arbitrary detention and arrest actions of persons on the left bank of the Dniester, actions registered in recent years, which demonstrate that these processes are systemic.

A relevant case in this regard is the case of two residents of the village of Molovata Noua, Dubasari district, who while being in Dubasari (security area under the control of the *de facto* bodies), were detained by the representatives of Dubasari police, on the morning of April 3, 2020. Both persons worked as ambulance drivers at the Dubasari Central District Hospital, Emergency Service Department. On April 9, 2020, with the effort of the constitutional authorities, the two ambulance drivers were released from illegal detention.

Freedom of expression in the Transnistrian region

Under the pretext of ensuring information security and preventing extremism, in order to restrict the right of the inhabitants of the Transnistrian region to alternative information and to prevent any criticism brought to the *de facto* authorities on the left bank of the Dniester, by "decree" no.121 of March 26, 2020, the Tiraspol leader Vadim Krasnoselsky approved the "PMR information security doctrine for 2020-2026"¹⁵², which endangers civil society representatives, human rights defenders, freedom of expression, freedom of the press, freedom of assembly, legalization of censorship, etc.

Residents of the Transnistrian region are restricted in their freedom to express alternative or free opinions, to criticize the *de facto* authorities in the region. The local "Criminal Code"¹⁵³

¹⁵² <http://president.gospmr.org/pravovye-akty/ukazi/ob-utverjdenii-doktrini-informatsionnoy-bezopasnosti-pridnestrovskoy-moldavskoy-respubliki-na-2020-2026-godi.html>

¹⁵³ <http://www.vspmr.org/legislation/laws/zakonodatelnie-akti-v-sfere-ugolovnogo-tamojennogo-administrativnogo-prava/ugolovniy-kodeks-pridnestrovskoy-moldavskoy-respubliki.html>

contains a series of articles that provide harsh penalties for expressing alternative opinions that are interpreted by the *de facto* authorities as an offense or slander.

Thus, in 2020, through a series of detentions, arrests, intimidations, abusive actions continued that threaten the freedom of opinion, to receive or communicate information or ideas without the interference of those who manage the uncontrolled territory on the left bank of the Dniester.

In this regard, several individual cases are relevant that confirm the state of affairs in the region. We refer to the case of Kalik Larisa¹⁵⁴, the case of Ermurachi Mihail¹⁵⁵ and others.

Freedom of thought, conscience and religion

The *de facto* authorities have not taken action on the recommendations in the Follow-up Report of UN Human Rights Expert Thomas Hammarberg on the implementation of human rights in the Transnistrian region, which refers to the review of procedures for registering religious organizations in order to make them fast, non-bureaucratic and non-discriminatory in practice.

On the contrary, the authorities continue to reject applications for registration of local groups of Jehovah's Witnesses in the Transnistrian region on the grounds that the activity of the organization "Jehovah's Witnesses" is recognized as a destructive organization, whose activity "contradicts" the Transnistrian "constitution". The *de facto* authorities in Tiraspol continue to use a textbook with negative and defamatory content about Jehovah's Witnesses in the teaching process in schools in the region.¹⁵⁶

The issue of persons requesting alternative civilian service in civilian institutions / organizations and refusing to perform alternative service as civilian personnel in military formations for religious grounds remains unresolved. Thomas Hammarberg, a UN human rights expert, also drew attention to this issue in the follow-up report on the implementation of human rights in the Transnistrian region.

In the present case it is relevant the case of *Bayatyan v. Armenia*, where the Grand Chamber of the European Court of Human Rights ruled on the violation of the right to freedom of thought, conscience and religion by convicting the applicant as a result of refusing to

¹⁵⁴ The person was forced to leave the Transnistrian region because he published the book "Год молодости" in which there were written testimonies about the inhuman treatment, but also other problems faced by 12 young people from the "Transnistrian army". Following the deployment of a "criminal case" by the *de facto* structures in Tiraspol for acts of "extremism". <https://bloknot-moldova.md/news/na-moloduyu-tiraspolchanku-zavedeno-ugolovnoe-delo-1232766>

¹⁵⁵ A pensioner aged 70 years from the city of Tiraspol, which in a private discussion commented negatively on the so-called authorities in the Transnistrian region. <https://promolex.md/17493-promo-lex-indeamna-reprezentantii-formatului-de-negocieri-52-sa-asigure-libertatea-de-exprimare-in-regiunea-transnistreana/?lang=ru>

¹⁵⁶ Pridnestrovian State University named after T.G. Shevchenko, Scientific - research laboratory of the history of Transnistria "History of the Pridnestrovian Moldavian Republic, Second Part", Tiraspol: Editorial and Publishing Department of the Transnistrian State University 2001.

perform military service on religious grounds, the applicant being a follower of Jehovah's Witnesses.

The right to health care

Citizens in the territorial administrative localities on the left bank of the Dniester and the municipality of Bender who need high-quality medical care outside the region have become even more vulnerable during the period of self-isolation of the region.

Restrictions unilaterally implemented by the *de facto* authorities on the left bank of the Dniester¹⁵⁷, which restricted the free movement of the population, limit the access of more than 19,000 inhabitants of the Transnistrian region to the compulsory health insurance system that covers the costs of treating the diseases caused by the occurrence of insured events in which the Government of the Republic of Moldova acts as insured.

In the most frequent cases, these are people with cardiovascular diseases, diseases of the respiratory system (chronic obstructive pulmonary disease, bronchial asthma), osteoarticular diseases (osteoarthritis, rheumatoid arthritis), diseases of the endocrine system, which today can not move freely in neighboring localities to receive medicines reimbursed from the compulsory medical insurance fund, necessary for outpatient (long-term) treatment / support.

To move to the right bank of the Dniester, people must obtain a permit from the *de facto* authorities, a bureaucratic and cumbersome procedure.

At the same time, due to the imposition of restrictions by the *de facto* authorities, the medical institutions from the neighboring localities were left without family doctors, nurses, other medical staff, who normally commuted between the two banks of the Dniester.

According to the Reintegration Policy Bureau, approximately 95 medical staff did not have access to their workplace and medical institutions, including family doctors' centers in neighboring localities, were left without specialists and staff. It should be noted that the state authorities have taken temporary measures for 44 doctors from the Transnistrian region who have been temporarily accommodated in the neighboring localities on the right bank.¹⁵⁸

After several interventions by the Reintegration Policy Bureau, doctors were allowed to move through illegally installed posts only with the permission of the "crisis centers" in the region.

¹⁵⁷ <http://president.gospmr.org/pravovye-akty/ukazi/o-vnesenii-izmeneniy-i-dopolneniy-v-ukaz-prezidenta-pridnestrovskoy-moldavskoy-respubliki-ot-16-marta-2020-goda-98-o-vvedenii-chrezvichaynogo-polojeniya-na-territorii-pridnestrovskoy-moldavskoy-respubliki-.html>

¹⁵⁸ https://cancelaria.gov.md/sites/default/files/document/attachments/raportul_anual_2020_cs_final_4.pdf

The right to social assistance and protection

The problem of pensions and social benefits in the administrative-territorial localities on the left bank of the Dniester and in the municipality of Bender remains unresolved.

The failure to realize the right to social assistance and protection remains largely due to the lack of legal local public authorities in the eastern districts of the country¹⁵⁹. For this reason, local public authorities of both levels provide social assistance and protection to persons in difficulty, only if they have a residence visa in the localities that are under the jurisdiction of the constitutional bodies of the Republic of Moldova, except for persons falling under Law no. 190 of 08.05.2003 "On veterans" and Government Decision no. 906 of 24.09.2010 on the creation and activity of commissions for examining the addresses of citizens of the Republic of Moldova, domiciled in the localities on the left bank of the Dniester (Transnistria) and their neighboring localities of the categories for which the Government has the quality of insured. Thus, the citizens of the Republic of Moldova who benefit from pensions established by the National Social Insurance House of the Republic of Moldova, domiciled in the localities under the control of Tiraspol entities, do not have full and equal access to social assistance, benefits and social assistance services.

Based on the received requests, the People's Advocate addressed to the Government of the Republic of Moldova several proposals¹⁶⁰, namely: to identify financial resources and to initiate the process of amending Law no. 156/1998 on state social insurance pensions, so that the period in which the persons who worked in the economic entities on the left bank of the Dniester, subordinated to the constitutional authorities, to be included in the contribution period when calculating and establishing the pension; to identify an effective mechanism for ensuring the right to pensions for persons who have worked in the economic entities on the left bank of the Dniester; identification of the number of pension beneficiaries, established in the public social insurance system, domiciled in Bender municipality and of financial resources for examining the opportunity to introduce Bender municipality in the list of localities falling under Law 1591/2002 on additional social protection of pension beneficiaries and certain categories of the population.

The right to education

¹⁵⁹ Law on the basic provisions of the special legal status of the localities on the left bank of the Dniester (Transnistria) no. 173 of 22.07.2005.

¹⁶⁰ No. 04-2 / 27 of December 7, 2020

<http://ombudsman.md/wp-content/uploads/2020/12/04-2-27-din-07.12.2020-Guvernul-RM-propunere-de-perfec%C8%9Bionare-a-legisla%C8%9Biei.pdf>

The People's Advocate for Children's Rights through various platforms permanently communicates with children studying in Moldovan schools with teaching in Romanian, which is subordinated to the Ministry of Education, Culture and Research of the Republic of Moldova.

Unfortunately, even in 2020, the problems of the 8 high schools and gymnasiums related to the endowment of these educational institutions with offices that correspond to the requirements in the teaching and educational process were not solved.

Between March 16 and September 1, as a result of the emergency management mechanisms implemented by the Tiraspol entities, the right to free movement was restricted for both students and teachers and staff of educational institutions in the region.

From September 1, the entities from Tiraspol started to respect the mechanism of movement of students, teachers and staff of educational institutions based on student cards and service cards.

The People's Advocate for Children's Rights appreciates the efforts of the Reintegration Policy Bureau to solve the problem of raising salaries from ATMs located in neighboring localities, moving the administrations of educational institutions through illegally installed posts by Tiraspol entities, but also providing Moldovan schools with teaching in Romanian with didactic materials.

Conclusions

The People's Advocates consider that the external dialogue platforms to which the position of Chisinau is ensured, the recognized international partners, the international organizations to which the Republic of Moldova is a party, as well as the 5 + 2 negotiation format can become cooperation platforms between national authorities, relevant external actors, representatives of mediators and observers who can contribute to mitigating the effects of unjustified restrictions on human rights and freedoms by decision-makers in the Transnistrian region under the conditions of the state of emergency.

RECOMMENDATIONS:

In the context of the above and in the absence of any progress, the People's Advocate reiterates his previous **recommendations**, namely:

- Using all available mechanisms in the Transnistrian conflict settlement process, to boost the activity of Sectoral Working Groups;
- Implementation of the human rights-based approach in the negotiation process by the Sectoral Working Groups, in order to identify efficient solutions to the problems faced by the inhabitants of the Transnistrian region;

- Undertaking all measures by the Government to implement international recommendations on the protection of human rights in the Transnistrian region.

CHAPTER II. OBSERVANCE OF CHILD RIGHTS IN THE REPUBLIC OF MOLDOVA IN 2020

The year 2020 was full of challenges and obstacles for the national system for the protection of children's rights in the Republic of Moldova, in the context of the unfavorable health situation caused by the Covid-19 pandemic and emergency measures taken by national authorities to reduce / stop the spread of infection and increasing the number of infected people. The People's Advocate for Children's Rights monitored the respect for the rights of the child in the context of the actions of public authorities at all levels, including those created specifically for the management of the pandemic crisis.

This chapter will represent a general foray into the child protection system from 2020 during the pandemic period and presents the analysis of actions taken by government authorities responsible for managing the health crisis, actions which, although adopted in order to protect the life and health of people, in some cases, they overlapped the principle of simultaneous application of rights, pre-established by Art. 4 of the UN Convention on the Rights of the Child, which states that “*States Parties undertake to take all necessary legislative, administrative and other measures to implement the rights recognized in this Convention.*”¹⁶¹”

The impact on the realization of children's rights and on the national protection system began with the outbreak of the pandemic in Moldova, the adoption of Parliament Decision no. 55 of March 17, 2020 on declaring a state of emergency¹⁶² and establishing the National Extraordinary Public Health Commission were the most important measures adopted by the national authorities in the context of the pandemic situation caused by coronavirus. The action aimed to establish exceptional measures that were mandatory and enforceable for the heads of central and local public administration authorities, economic agents, public institutions, as well as for citizens and other persons on the territory of the Republic of Moldova.

In this context, the People's Advocates proposed to the Commission for Exceptional Situations the establishment of a cooperation mechanism, in order to avoid possible derogations from the international standards in the field of human rights in the conditions of the state of emergency. At the same time, the People's Advocate for Children's Rights sent to the Commission for Exceptional Situations his Opinion *on the compliance of emergency measures with the principle of the best interests of the child.*¹⁶³

¹⁶¹ https://drepturilecopilului.md/files/publications/CDC_2005_final.pdf

¹⁶² https://www.legis.md/cautare/getResults?doc_id=120817&lang=ro

Also, in the context of the international situation created by the Covid-19 pandemic virus and the negative impact on the respect for children's rights, the People's Advocate for Children's Rights launched *an appeal to his fellow Ombudsmen, members of the European Network of Ombudspersons for Children (ENOC)* to draw up a Position Statement of Child Defenders on compliance with the obligation of States to ensure the effective protection of all children in their jurisdiction, without discrimination. At the same time, it is necessary to remind Governments of the role of Children's Ombudsmen in their capacity as national human rights institutions to ensure the unconditional observance of children's fundamental rights and freedoms and to intervene promptly in the event of a deviation from international standards and the immediate restoration of children's rights¹⁶⁴.

Thus, following the decisions adopted by the competent authorities for managing the pandemic crisis, in the children's segment, it was forbidden for students to attend educational institutions and organize all mass events involving the attraction of more than 3 people, if they are not first or second degree relatives. Social distance being the most effective measure to avoid the spread of coronavirus infection. All these measures taken cumulatively aimed at protecting the life and health of people / children.

It is necessary to remember that some human rights (such as the prohibition of torture and slavery) are absolute and do not allow any limitation, balancing with other rights or freedoms. However, most human / child rights are not absolute and may be restricted, although within certain limits. Limitations / restrictions of non-absolute rights are permitted when prescribed by law, in accordance with a legitimate aim and when such limitation is necessary in a democratic society and proportionate to the identified legitimate aim. The limitations allow for the balancing of individual and collective interests and are incorporated in several provisions of the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR), to which the Republic of Moldova is a party. These types of limitations are also set out in the text of the UN Convention on the Rights of the Child, which stipulates that respect for the rights of the child is imperative, and the limitation of the exercise of certain rights can be allowed only by law, respecting the proportionality ratio between the cause and the effect of the limitation.¹⁶⁵

¹⁶³ <http://ombudsman.md/news/avocatul-poporului-pentru-drepturile-copilului-a-prezentat-comisiei-pentru-situatii-exceptionale-opinia-privind-concordanta-masurilor-de-urgenta-cu-principiul-prioritatii-interesului-superior-al-copi/>

¹⁶⁴ <http://ombudsman.md/news/declaratia-retelei-europene-a-ombudsmanilor-copiiilor-enoc-expediata-comisiei-pentru-situatii-exceptionale-si-guvernului-republicii-moldova-de-catre-avocatul-poporului-pentru-drepturile-copilului-as/>

¹⁶⁵ https://drepturilecopilului.md/files/publications/CDC_2005_final.pdf

Although drafted in slightly different ways, both the ECHR, the CDC and the ICCPR identify legitimate objectives, including national security, public safety, public order, public health or morals, as grounds for limitation - by law and when necessary and in proportion to such identified objectives - of the following rights: the right to respect for private and family life (Art. 8 ECHR and Art. 9 and 16 CDC), the freedom to manifest one's religion or belief (Art. 9 ECHR, Art. 18 ICCPR and 14 CDC), freedom of expression (Art. 10 ECHR and Art. 19 ICCPR, Art. 15 CDC), freedom of assembly and association (Art. 11 ECHR, Art. 21-22 ICCPR and Art. 15 CDC) , freedom of movement (Art. 2 ECHR Protocol no. 4, Art. 12 ICCPR and Art. 10 CDC).

The measures of social isolation of persons pre-established in the decisions adopted during 2020 by the Government of the Republic of Moldova seem to be fully in line with the rigors imposed by the CDC, the ECHR and the ICCPR to benefit from these fundamental rights. In particular, they have been adopted by law for the legitimate purpose of protecting public health against an epidemic and are both necessary and proportionate. In fact, measures to limit social contact were not simply appropriate, but proved to be the only ones effective in limiting the spread of the new coronavirus, provided that such measures taken by the national authorities are strictly limited to the requirements of the situation.

However, the People's Advocate for Children's Rights has repeatedly noted that in the field of human rights protection, in terms of respect for the rights of the child, it is not enough for the Government to state on the basis of exceptions in international treaties that it does only what is necessary or effective for the collective interest. The essence of children's rights and democracy itself is that the governing authority is obliged to inform and raise awareness of the views of even the younger ones and most vulnerable representatives of society.¹⁶⁶ ***Children should not be seen as passive targets of the virus of this period or the future, nor of government programs designed to save lives.*** Thus, the issue presented by the Children's Ombudsman does not lie in the measures taken, ***but in how those measures were taken.*** The government must be able to provide an adequate and transparent justification for the measures taken (and those that are not) to combat the virus and to protect public health. Contrary to popular belief that the active participation of adults / children would slow down command and control decisions about the virus, every past experience around the world demonstrates that significant (not abusive) effort and engagement of individuals and the community at large is essential for the effective management of the crisis situation.

¹⁶⁶ <https://www.hhrjournal.org/2020/03/human-rights-and-coronavirus-whats-at-stake-for-truth-trust-and-democracy/>

Also, "the general public, including children" are not all the same; the gender, race, age, disability, ethnicity and other axes of identity determine our inclusion in society and, by extension, our vulnerability to epidemics¹⁶⁷. Even when measures may seem neutral at first glance, public health - especially when controlling infectious diseases - tends to inexorably follow a utilitarian logic, which can often lead to discrimination. *For example, children who stay at home on their own* or are forced by the situation to take care of younger siblings, they are not sufficiently prepared for these tasks; lack of access to online education for children from socially vulnerable families, minority groups, rural localities where children are still attracted to agricultural work to the detriment of education and last but not least the situation of children with special needs who remain outside the educational process and they lack the necessary care services.

Another problem, at the time of the closure of educational institutions, *was depriving some children the only meal they receive each day*. In this context, the People's Advocate for Children's Rights states that in order to respect the *best interests of the child* in crisis situations, which involves limiting services, it must simultaneously mean providing *alternative measures*, which may provide equivalent protection to children during that period.

Another issue, related to the UN Convention on the Rights of the Child, which cannot be limited even in crisis situations is the child's *right to an opinion* on decisions taken that concern him directly or tangentially. Thus, the Children's Ombudsman notes that in the situation created, in none of the matters adopted so far in the field of child protection has the procedure for attracting and involving children in the decision-making process been arranged, without the need for physical presence.

Another problem in that situation is the *children who are in detention*. Thus, as the United Nations High Commissioner for Human Rights¹⁶⁸ noted, "this situation is an exercise of great vigilance for the national authorities, a devotion to ensure the health of people and to reduce the violation of other related rights, for this category of persons." The People's Advocate for Children's Rights notes that in the Republic of Moldova there are children who are being held in solitary confinement, prisons, psychiatric institutions and placement centers. In this regard, it is necessary for the state to ensure that every action that is taken in order to ensure the life and health of children in detention, to minimize the related rights guaranteed by the CDC. Referring to the standards set by the UN Committee on the Rights of the Child on children in one of the forms of detention¹⁶⁹, *the Children's Ombudsman reminds national authorities*

¹⁶⁷ <https://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>

¹⁶⁸ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E>

¹⁶⁹ <https://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIntro.aspx>

that the only effective restricted right for this category of children is the right to free movement, so that other rights are not affected as much as possible.

The People's Advocate for Children's Rights also notes that in the pandemic situation the authorities in whose custody are children must make a double effort to ensure on the one hand the right to health of children by not admitting the infection of children in detention and on the other hand not to unfoundedly and abusively limit the rights of children to maintain contact with the world around them, especially this being the element of re-education and resocialization of the minor. At the same time, the Children's Ombudsman recommends to the extraordinary authorities jointly with the Ministry of Justice, the Superior Council of Magistracy and the Supreme Court of Justice to consider the possibility of *release from the execution of the criminal sentence or suspension of the execution of the criminal sentence for children suffering from heart disease, asthma, tuberculosis, diabetes mellitus*, because these diseases pose a particular risk in combination with the new pandemic virus Covid-19. The Children's Ombudsman also encourages the state authorities that in the event of the crisis created the *measure of pre-trial detention for children who commit crimes during this period be limited as an action of last resort and be applied only after the other forms of protection have been analyzed / applied.*

The Children's Ombudsman also draws attention to the need to respect the best interests of the child, including for *children who are in street situation*. Due to the street way of life, the poor level of hygiene, the rules on social distance are neglected so that these children live together in groups and are always in contact with many people on the street, they can be both a risk to those around, as well as for themselves. And in this context, the People's Advocate for Children's Rights encourages the line authorities to take all possible (not abusive) measures in order to protect this group of children. The Children's Ombudsman brought the subject on the agenda of parliamentary discussions, central and local public authorities, but in the current situation children who lead a street way of life remain the most vulnerable in the system of protection of children's rights¹⁷⁰.

The People's Advocate for Children's Rights recalls that the state must take all appropriate legislative and administrative measures to provide the child with the protection and care necessary for his or her well-being. The procedures undertaken in situations related to the state of emergency must fully comply with the provisions stipulated in Article 3 of the UN Convention on the Rights of the Child, reflected also at the national level by the provisions of

¹⁷⁰ <http://ombudsman.md/news/dezbateri-parlamentare-organizate-la-initiativa-ombudsmanului-copilului-la-subiectul-combaterea-fenomenului-copilor-in-situatii-de-strada/>

Law no. 140 of June 14, 2013 on the special protection of children at risk and of children separated from their parents and Government Decision no. 143 of February 12, 2011 for the approval of the Instruction on the mechanism of intersectoral cooperation.

The Children's Ombudsman draws attention to poor practices in the implementation of national legislation, policies and strategies, the inefficiency and ineffectiveness of intersectoral cooperation mechanisms in the field of child rights protection, as established in the conclusions of the *Thematic Report "Assessing the Effectiveness and Efficiency of Intersectoral Cooperation Mechanisms in the Field of Child Protection"* ¹⁷¹.

It is also necessary to revise national legislation by linking national standards to the international acquis relevant to child protection, in particular the UN Convention on the Rights of the Child and the signing / ratification of the Third Optional Protocol to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), as well as international standards in the field of online child safety.

Consequently, the People's Advocate for Children's Rights submitted to the Parliament the proposal to amend Law no. 338 of December 15, 1994 on children's rights or the adoption of a new law that would be close to the text of the UN Convention, which would allow for prompt and appropriate responses to current challenges related to guaranteeing the rights of the child ¹⁷².

The People's Advocate for Children's Rights supported the initiative to develop a public policy document for national adaptation and implementation of the Sustainable Development Goals and appreciated the efforts to integrate the principles of the human rights-based approach into this public policy document, people-centered - rights holders.

At the same time, following the analysis of the project proposed for public consultation, he came up with some suggestions to improve the document from the perspective of integrating the principles of the Human Rights-Based Approach (ABDO) and ensuring respect for children's rights. In this context, several recommendations were made, especially regarding the use of notions targeting children belonging to vulnerable groups, the inclusion of children at risk in the list of vulnerable groups, etc.

The vision and major strategic goals of the NDS "Moldova 2030" is focused on quality of life, which implies a clear definition of its dimensions, identification of the main

¹⁷¹ <http://ombudsman.md/news/mecanisme-de-cooperare-intersectoriala-in-domeniul-protectiei-drepturilor-copilului-sunt-implementate-partial-sau-deloc-este-una-dintre-constatarile-din-raportul-tematic-elaborat-de-catre/>

¹⁷² <http://ombudsman.md/news/ombudsmanul-copilului-propune-modificarea-sau-adoptarea-unei-legi-noi-privind-drepturile-copilului-pentru-racordarea-ei-la-standardele-internationale-in-domeniu/>

determinants and actors of change and assignment of a set of statistical indicators to measure recent trends, the current situation, development perspectives and targets relevant for strategic interventions.

NDS "Moldova 2030" includes 4 pillars of sustainable development, structured in 10 long-term goals. For each of the ten objectives the current situation was analyzed, the most vulnerable groups in society were highlighted, the basic factors of human vulnerability were analyzed, the strategic vision was formulated, which presents its connection with the targets of the Sustainable Development Goals, the specific objectives were set and the priority actions were formulated, the expected impact was described and, last but not least, the monitoring and evaluation indicators and targets have been set.

At the same time, the People's Advocate for Children's Rights warns that the lack of financial resources must not be grounds for refusal to develop necessary services for children, to support children and their families or to create friendly and appropriate conditions for each child needs. The UN Convention on the Rights of the Child obliges states to take the necessary measures without sparing the resources at their disposal.

The relevant evidence of non-compliance is the rejection of the Children's Ombudsman's proposal to plan financial resources in the national budget for 2021 to: - support families with children affected by the unfavorable epidemiological situation caused by the SARS-CoV-2 virus, especially single-parent families; - completion of the action point 2 Ensuring children's access to improved water sources in kindergartens and schools - 100% of institutions, by 2020 within the National Programme for the implementation of the Protocol on Water and Health in the Republic of Moldova for 2016-2025, approved by Government Decision no. 1063 of 16.09.2016, goal 3, domain III, Art. 6; - the salary of the specialist in the protection of children's rights, civil servant within the mayor's office who performs support activities for fulfilling the attributions of the local guardianship authority¹⁷³.

The People's Advocate for Children's Rights ***concludes that either in 2020 no progress has been made in the field of respect for the rights of the child***, an obligation assumed following the ratification of the UN Convention on the Rights of the Child and other ratified international acts. Moreover, this year's challenges posed by the SARS-CoV-2 pandemic crisis have emphasized the existing gaps and highlighted the new ones.

Obviously, during the reported period, other problems were identified that generate impediments for the observance of children's rights and the proper functioning of the child protection system, other than those caused by the covid pandemic.

¹⁷³ <http://ombudsman.md/news/avocatul-poporului-pentru-drepturile-copilului-la-conferinta-on-line-copiii-migranti-in-tarile-csi-ce-urmeaza-dupa-acordul-de-la-chisinau/>

Of course, there are many actions taken by state authorities that need to be considered as achievements, but they have had a sectoral and / or temporal impact and have not been far-reaching to remedy the situation in the field of children's rights.

In the circumstances recorded, the People's Advocate for Children's Rights reminds the authorities of the obligation to implement his Recommendations as well as the Recommendations (Concluding Observations) of the UN Committee on the Rights of the Child issued during the examination of the combined fourth and fifth periodic reports on the implementation of the UN Convention on the Rights of the Child.

In the opinion of the Children's Ombudsman, it is necessary to rethink our actions to advance the 2030 Agenda for Sustainable Development, as well as to implement the "leave no one behind" principle.

The right of future generations must be the priority of the state and be on the agenda of the authorities.

The family must regain its role in educating and raising children, we need parents trained with the necessary skills. It is necessary to strengthen the community's responsibility for raising and educating a responsible generation to assume the responsibilities of living in a free society, in the spirit of respect for parents, national values, human rights and freedoms, peace and tolerance.

THE CHILD'S RIGHT TO HEALTH

The observance for the right to health enshrined in Art. 24 of the UN Convention on the Rights of the Child, was the basic dilemma of all public authorities during the year 2020. Thus, the emergency situation created forced the authorities to react promptly to ensure the health and treatment of people infected with Covid-19.

The unfavorable epidemiological situation caused by the SarsCov2 virus and the imposition of restrictions on the normal way of life of the population, have led to several questions regarding the management of Covid-19 infection, both from a medical and social point of view and regarding the respect for human / child rights.

Contributing, including ex officio, to the defense of the fundamental rights and freedoms of the child by monitoring their observance, the People's Advocate for Children's Rights followed with great interest the actions of the authorities responsible for managing the

pandemic situation, intervening when actions and / or restrictive measures taken to ensure public health, may have affected children's rights in one way or another.

Based on the concerns and disagreement of parents to impose on children the *mandatory wearing of masks in open and closed public spaces*, as well as the presumption that the child protection margin allowed by local authorities in public health would be one that could exceed positive reasoning, the People's Advocate for Children's Rights considered it appropriate to seek the views of the Academy of Sciences of Moldova, the Municipal Clinical Hospital of Contagious Diseases for Children, international organizations UNICEF and WHO in Moldova. The institutions concerned were to expose themselves in the light of scientific and medical opinions on the obligation of children to wear protective masks for a long period of time, as well as on the positive and negative effects on their health.

At the same time, the People's Advocate for Children's Rights also requested the National Extraordinary Public Health Commission of Chisinau to comment on the reasons for adopting restrictive measures on the wearing of protective masks by children under the conditions mentioned.

In this regard, the Children's Ombudsman recalls that the National Agency for Public Health has previously replied that the reasoning for wearing masks in relation to age categories until reaching adulthood is not determined, and the inopportuneness of wearing masks by children in closed public spaces, especially those up to the age of 7-8, is also confirmed by the Director of the Agency.

Subsequently, the National Extraordinary Public Health Commission of Chisinau imposed the wearing of protective masks inside and on the territory of general secondary education institutions, including extracurricular, for students of grades V-XII and students in technical vocational education institutions, secondary technical, post-secondary and higher technical vocational education institutions, including within lessons "as well as" protective masks inside and on the territory of educational institutions, of all levels, for employees of educational institutions and for foreigners who have the right of access in these institutions".

According to the information provided, the decisions of state authorities regarding the wearing of masks in the context of the pandemic, especially for children, must take into account a number of factors, including the psychosocial needs of children and the stages of development. In this context, WHO and UNICEF highlighted the lack of need for children up to the age of 5 to wear a mask, and the wearing of masks by children aged 6 to 11 requires a risk-based approach, which would involve: intensity of virus transmission; the child's ability to comply with the proper use of masks; availability of adult supervision; access to masks, as well as washing and replacing masks in certain places, such as schools and childcare services; local

social and cultural environment. At the same time, the decisions of public authorities regarding the wearing of masks for children aged 6-7 must be based on the potential impact of wearing masks on their psychosocial development and educational process, taking into account the opinion of teachers, parents / carers and / or medical service providers. The use of masks in children and adolescents aged 12 years and over should follow the same principles as in adults, especially when they cannot provide at least 1m distance from each other and there is intense transmission of the virus in their area.

Welcoming the stated recommendations, the People's Advocate for Children's Rights concludes that, in addition to the general rule of wearing masks enunciated internationally and addressed to all states, specific approaches are mentioned in particular with regard to children, or the recommendation clearly states that in every social environment where children are a priority, the decision of the local authority must be based on the impact of this process related to the psychosocial development and education of children, where the opinion of teachers, parents, etc. should be taken into account; equitable access to masks, as well as the availability of adult supervision.

In turn, drawing attention to the recommendations of international organizations, the Academy of Sciences of Moldova mentioned that wearing protective masks is not contraindicated for children, masks should be safe, do not suffocate children, do not inhibit their oxygen supply and do not cause an excessive intake of carbon dioxide, does not cause negative consequences. At the same time, attention is drawn to the fact that children must be provided with conditions for washing their hands with soap and water and / or disinfecting their hands with alcohol-based disinfectant, and the protective cotton and / or medicinal mask should be changed every 4 hours or once it has become wet or damaged. It is also recommended to avoid sick people and to administer the necessary vaccines, including against the flu.

In the same context, the Hospital of Contagious Diseases for Children mentioned that children are those who have asymptomatic infections or mild forms of disease, often not identified in time, or not at all, which is a very high epidemiological danger, there is a risk of transmitting the infection to receptive people in their community. Masks are recommended as a simple barrier to reduce the chances of getting and spreading Covid-19 when someone coughs, sneezes, sings, speaks. Several studies have documented the asymptomatic and pre-symptomatic transmission of Sars-Cov-2, which means that people with Covid-19, including children, who never develop symptoms and those who do not yet have symptoms (pre-symptomatic) can transmit the virus to other people. Masks provide protection to the wearer, but are also meant to protect other people if the wearer is unknowingly infected. It is also pointed out that the obligation of gymnasium and high school classes students to wear

protective masks is supported by scientific evidence, is absolutely necessary and argued by the massive community spread of Covid-19 infection, does not limit children's rights to life, health, dignity, but it also contributes to educating a generation with a sense of responsibility, solidarity and compassion for those at risk of developing severe forms and dying.

Although it was asked to argue the obligation for students to wear masks, as well as to review decisions in this regard, the Extraordinary Public Health Commission of Chisinau mentioned that any decision is made based on scientific data and evidence-based information of international organizations, and the adoption of its decisions is driven by the supreme interest in the sustainable health of the population, including measures to prevent and control coronavirus infection, and they do not require revision.

Following the statements made by the institutions concerned, the People's Advocate for Children's Rights ***concludes that the protective mask is not contraindicated, if the conditions for wearing it are observed, except for the presence of medical contraindications.*** However, the Ombudsman remains skeptical about the arguments that permanent wearing of masks does not have a negative effect on children's psycho-emotional state, as they are not based on the findings of studies on the impact of wearing masks by children, especially those aged 6-11 years. Moreover, no arguments were made regarding the impact of wearing masks by children, relative to seasonal temperatures.

The People's Advocate for Children's Rights reminds that decisions on the imposition of restrictions in unfavorable epidemiological conditions, including the wearing of masks in educational institutions, must be based on the principle of causality and proportionality and the best interests of the child. At the same time, to take into account the opinions of teachers / managers of educational institutions, parents and children, or international recommendations consider important the availability of adult supervision and equitable access to masks, given that they are to be changed every 4 hours.

The People's Advocate for Children's Rights also ***warns against failing to mimic compliance with sanitary-epidemiological rules*** imposed by public bodies responsible for managing the epidemiological crisis caused by the Sars-cov-2 virus, a situation observed in many educational institutions: lack of conditions for hand washing and disinfectants; the refusal of students to wear masks and the lack of control over their change once every 4 hours; lack of access to masks for children from low-income families.

It should be noted that since the beginning of the pandemic, the ***treatment of children infected with the new virus*** has been based on the provisional National Clinical Protocol¹⁷⁴ "Infection with the new type corona virus (Covid-19)", approved by Order of the Ministry of

¹⁷⁴ <https://msmps.gov.md/>

Health, Labour and Social Protection (MHLSP) no. 336 of March 30, 2020, with subsequent amendments (edition II and III). Thus, according to statistics presented by the Ministry of Health, Labour and Social Protection¹⁷⁵, from the beginning of the pandemic until January 1, 2021, 8092 children were infected throughout the country, including 1843 on the left bank of the Dniester. Of the 6248 cases registered in children 0-18 years old within the territory controlled by the official authorities, 2073 children were aged from 15 to 18 years old, which is about 1/3 of the total number of children affected by this infection. Most cases of Covid-19 were registered in Chisinau - 3102 and Balti - 267, as well as in the districts: Edinet - 248, Cahul - 246, Anenii-Noi - 214, Ialoveni - 162, Straseni - 123 and Orhei - 107. All children diagnosed with the new-type coronavirus infection (Covid-19) received treatment in accordance with the provisional National Clinical Protocol. Out of the total number of infected children, there is a case of death of a 16-year-old child, against the background of a rare disease.

Also, the MHLSP communicates the fact that once the state of emergency was triggered in the republic, for the stationary treatment of children with Covid-19, by the Order of the Ministry of Health, Labour and Social Protection no. 385/2020 "On the provision of medical care to persons who meet the criteria of the Covid-19 case definition at the stage of community transmission of the infection", beds were reshaped in two public medical institutions: for children with severe and extremely severe forms, 25 beds were predestined within the Clinic „Em. Cotaga ”, PMSI Institute of Mother and Child (level III), and for those with severe, medium and mild forms - 100 beds in the PMSI Municipal Clinical Hospital of contagious diseases for children (level II), and children with surgical medical emergencies related to Covid-19 (probable case, confirmed or contact) are served within the PMSI Municipal Clinical Hospital for Children "Valentin Ignatenco"¹⁷⁶.

Subsequently, for the treatment of premature infants and newborns with somatic diseases and medical-surgical emergencies related to Covid-19, another 9 beds were established within the PMSI Institute of Mother and Child. For the treatment of children infected with Covid-19 from the north of the country, beds were reshaped within the PMSI Balti Clinical Hospital and for those from ATU Gagauzia in the Ceadir-Lunga District Hospital.

Although the People's Advocate for Children's Rights points out that, in the crisis created by the new virus, health professionals have focused primarily on the segment of the right to life and the right to health, which is understood and accepted, however, there are shortcomings that have generally affected Art. 24 guaranteed by the UN Convention. The

¹⁷⁵ <https://msmps.gov.md/>

¹⁷⁶ From the MHLSP Answer no. 27/191 of January 19, 2021;

People's Advocate for Children's Rights considers the cause of these omissions aside the state of emergency in which the Republic of Moldova was in line with other states during 2020, but also the non-fulfillment of the Ombudsman's Recommendations from the previous reports indicating on the shortcomings in the health system, recommendations that were largely neglected by the central and local authorities.

In these circumstances, the People's Advocate for Children's Rights denotes the violation of children's rights in the segment of treatment of the Covid-19 virus in children, ***lack of information and lack of access to information***. Thus, from several complaints and phone calls to the People's Advocate Office, especially at the beginning of the pandemic, it is attested that children were forced and transported to medical institutions without accompanying parents / legal representatives, even in the case of infection of all family members, children were separated from their parents and treated in different medical institutions, according to the Protocol cited above. Worse, children were not provided with the necessary information about their health and that of their parents, the conditions of hospitalization and treatment, which created anxiety in children and affected them psycho-emotionally.

Here are some statements of the children, which described the situation they went through and which demonstrates their psycho-emotional state:

- *I was very scared, I had never seen such suits (doctors' protective suits).*
- *Nobody told me where I was going, from the beginning I was with my mother and then for a few weeks I was alone.*
- *Suddenly after receiving the positive test from the triage center, I was told that I would go alone, with the ambulance to the hospital, because I am already 14 years old.*
- *I forgot my charger at home and after the first 2 days I had no contact with any of my parents or relatives until someone brought me a charger.*
- *There were also children under 6-7 years old who kept crying, being scared that they were left alone.*

Although at first glance these situations seem to be secondary to the ultimate goal of saving the life and health of a person / child, these two situations still represent the dichotomy of a system. Although the situation in which a considerable primacy is offered to the right to health is accepted, the total neglect of the other rights enshrined in international treaties and national acts cannot be admitted. Thus, the People's Advocate for Children's Rights denotes that in that situation a violation of the child's right to opinion and access to information in relation to the right to health was admitted. And these circumstances demonstrate the imperative need

to periodically change clinical protocols to suit international standards identified as being violated.

At the same time, in the context of compliance with the provisions of the UN Convention on the Rights of the Child, the Ombudsman also refers to the requirements of Art. 39 of the Convention or, in that case, it is necessary for the State to undertake *measures for the psychological rehabilitation* of children who have gone through the stress caused by the pandemic and the time spent in medical institutions. Neglecting the processes of psychological rehabilitation of children who have gone through the trauma of separation from parents and treatment of such a severe disease, may lead in the future to the creation of sequelae that will severely affect the child's development, guaranteed by Art. 3 of the Convention.

The People's Advocate for Children's Rights has asked the line authorities to do their utmost to provide children with services and medical care and rehabilitation of the highest quality, adequate conditions and adequate nutrition for the children and mothers with whom they are hospitalized, psychological assistance, etc. He also drew attention to the level of endowment of medical institutions with medicines, medical equipment and necessary devices, including ventilators, about the conditions of children during treatment, their nutrition in medical institutions and the endowment with protective equipment of the medical staff from these institutions. He also alerted the responsible authorities and asked health workers, social workers, community police, guardianship authorities to monitor the situation of socially vulnerable families and / or other families with children who are in a difficult situation during the pandemic and to intervene with the necessary support, including information on compliance with the rules to prevent the spread of the virus and avoiding getting sick with the COVID-19 virus¹⁷⁷.

In accordance with the provisions of the General Comment no. 15 (2013)¹⁷⁸, of the UN Committee on the Rights of the Child, on the right of the child to the highest standard of health, although the paramount importance of this right is highlighted especially in crisis situations, it cannot completely neglect the effect of other related rights. Furthermore, the Committee notes that in order to achieve the highest standard of health, it is imperative to respect the principle of the cumulative effect of the application of rights. In this perspective, the Children's Ombudsman reiterated during the year the importance that in addition to their training in the medical field, employees of medical institutions must be prepared to respond to the special

¹⁷⁷ <http://ombudsman.md/news/avocatul-poporului-pentru-drepturile-copilului-este-ingrijorat-de-numarul-mare-de-copii-infectati-cu-virusul-covid-19-si-solicita-responsabilizarea-adultilor-care-au-in-supraveghere-copii-si-atentio/>

¹⁷⁸ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11

needs and necessities of children who have arrived in medical institutions unaccompanied by parents or legal representatives.

Another issue, analyzed by the People's Advocate for Children's Rights in terms of respect for the right to health during 2020, *was the observance of the right to health care for children suffering from rare diseases*. A rare disease is considered any disease that affects less than 1 in 2,000 people. Currently, about 6,000 rare diseases are recognized, and about 350 million people worldwide suffer from it¹⁷⁹. About 75% of people diagnosed with rare diseases are children. According to the World Health Organization, there are 36 million people in the European Union who suffer from rare diseases. Also, according to official information provided by the Ministry of Health, Labour and Social Protection¹⁸⁰, in the Republic of Moldova there is developed a List of rare diseases, being managed by the Center for Reproductive Health and Medical Genetics within the Institute of Mother and Child¹⁸¹, being completed according to casuistry. The total number of patients included in the List of rare diseases in the records of the Center, is 800 patients, with over 20 clinical conditions.

In response to the Ministry of Health, Labour and Social Protection regarding the *treatment of children suffering from rare diseases abroad*, it is reported that currently the selection of patients for partial compensation for expensive treatment and / or investigations, including abroad, is carried out according to Commission Regulation on the selection of patients for expensive treatment and / or investigations, approved by the Order of the Ministry of Health, Labour and Social Protection no. 979/2016 "On the selection of patients for expensive treatment and / or investigations" with subsequent additions and amendments.

According to the mentioned Regulation, the financial support for treatment abroad can benefit the citizens of the Republic of Moldova, in case of impossibility to ensure the treatment and / or investigations within the medical institutions in the country. The respective commission examines the files, the final decision being based on the Conclusion of the Specialized Commission of the Ministry of Health, Labour and Social Protection by fields, regarding the diagnosis and conduct of investigations and / or treatment, indicating the possibility / impossibility of their implementation in the country. Thus, within the Commission, the cases are examined based on the request of the patient or his family members, to which are attached: Extract-referral (Form no. 027 / e) from the outpatient and / or inpatient medical record, indicating the clinical diagnosis of the patient; The conclusion of the Specialized Commission of the Ministry of Health, Labour and Social Protection in the respective field,

¹⁷⁹ <http://www.euro.who.int/en/countries/republic-of-moldova>

¹⁸⁰ <https://msmps.gov.md/>

¹⁸¹ <https://www.mama-copilul.md/>

regarding the possibility / impossibility of the expensive treatment and / or investigations in the country, arguing the need for treatment and / or investigations abroad, indicating the medical institution where they can be performed; copy of identity card / birth certificate, if applicable.

The Children's Ombudsman is concerned about the situation and the excessive bureaucracy and mentions that children with rare diseases have the right to equitable access to high-quality diagnostic, treatment and healthcare services.

Thus, although positive changes have been observed in the social and medical system, they are not sufficient and able to meet the needs of children diagnosed with rare diseases and their families; *interventions in this segment are delayed and the legislation in this regard is imperfect. National legislation does not contain the notion of "rare disease", and at national level there is no national program for the control of rare diseases. There is also no clinical laboratory equipped with modern devices for prenatal or early diagnosis and prophylaxis of rare diseases, there are no clear protocols and specialists trained in their treatment. Lack of early diagnosis and appropriate treatment aggravates the situation of children with rare diseases. In addition, parents have to go abroad to make a diagnosis. There is no disaggregated database on the type of disability that would facilitate the planning of positive intervention actions, in order to develop and implement policies in the field of treatment and prophylaxis of rare diseases.*

A serious problem faced by children affected by rare diseases is their *social inclusion and integration in the education system*. The Ombudsman draws attention to the respect for the right to education, emphasizing that educational inclusion must be adapted to the needs of each child in accordance with the educational needs.

There are no specialized services that meet the requirements of these children. At the national level, specialized services for the rehabilitation of children with rare diseases provided by the state practically do not exist. Those covered by non-governmental organizations are insufficient, which is why rehabilitation in them is short-lived, does not meet quality standards, is not adapted to the needs of each child, and some specialists do not have the necessary training. For these reasons, the People's Advocate for Children's Rights advocated the development of rehabilitation services, with the provision of free services for children with severe disabilities, adapted to each child, and with the application of special and complementary therapies.

Also, important aspects to mention are that the parents of these children do not receive the necessary support from a financial, informational, psychological, etc. point of view. Likewise, there is a lack of respite services for parents with children with disabilities.

Also, the necessary medications to treat some diseases or at least to alleviate the suffering of children are not found in the Republic of Moldova, parents having to look for solutions to get the necessary medicines abroad. The problems in question worsened with the imposition of restrictions caused by the Covid-19 pandemic, especially as it became even more difficult to procure the necessary medicines. Respectively, with the declaration of the global pandemic state, most states, including the Republic of Moldova, closed their borders to stop the spread of the virus, but also created a risk situation for the lives of children which depended on medicines from outside the country.

The Children's Ombudsman's attention during the year was on monitoring the right to health of *children with Rett syndrome*. We specify that the incidence of people suffering from Rett syndrome, which is part of the category of rare diseases, is established one in 10000-15000 female newborns and are totally dependent on those around them throughout life. There are currently 8 girls in the country diagnosed with this disease. Although there is no substantial improvement in the state of affairs and in children with this syndrome, it is worth noting that the identification and determination of children with Rett syndrome can be done in recent years in specialized laboratories in the Republic of Moldova.

The People's Advocate for Children's Rights continues to insist on the implementation of the Recommendations previously addressed to the line authorities or, the severity of the situation in relation to ensuring the respect of the rights of children with rare diseases was demonstrated once again by the negative experience experienced by the parents of children suffering from rare diseases. The Children's Ombudsman reminds central and local authorities that, in accordance with the provisions of the UN Convention on the Rights of the Child, the right to health of the child has a progressive connotation of implementation, which implies from the state the permanent undertaking of measures to ensure the highest standard of health, without discriminating on the basis of the disease from which the child suffers.

In conclusion, the Children's Ombudsman considers that the above-mentioned omissions do not fully honor the obligations assumed by the ratification of the UN Convention on the Rights of the Child, as well as the ratification of the Convention on Human Rights and Biomedicine, through which the Republic of Moldova has once again assumed its commitment *"to take appropriate measures to ensure equitable access to good quality health services"*.

In the context of the above, the People's Advocate for Children's Rights presents the following **RECOMMENDATIONS** to the Ministry of Health, Labour and Social Protection:

- Modification of the legal framework in the field of health by supplementing with the notion of “rare disease;

- Elaboration and implementation of the National Program on the control of rare diseases;
- Creation of a clinical laboratory adapted to the standards of modern medicine for the early diagnosis of rare diseases and their prophylaxis (prenatal screening and other forms of diagnosis);
- Training of specialists in biomedicine, genetics, molecular medicine and other related fields for diagnosis, prophylaxis and development of treatments for rare diseases;
- Creation of the database on people with rare diseases, disaggregated by type of disability, gender, age, etc.;
- Development at national level of rehabilitation services for children, focused on disability and respite type services for parents, as well as training and support for parents in providing therapy and care for children according to their disability;
- Development of a handbook / guide for health professionals on the management of cases of hospitalization of children without legal representation in child-friendly conditions (age of the child to be admitted alone, communication and providing necessary assistance of any kind, including psychological);
- Ensuring the elaboration of institutional policies and procedures within medical institutions regarding the promotion of a healthy and adequate climate for the observance of the rights of the minor patient and, respectively, the fulfillment of the employees' obligations through thematic training.

THE CHILD'S RIGHT TO EDUCATION

Within Art. 28 and 29 of the UN Convention on the Rights of the Child is enshrined the child's right to education and obligation of the state to ensure the education of children based on criteria of quality, equality and accessibility. The provisions of the UN Convention also establish the obligation of the state to ensure that education is directed towards the development of the child's personality and talents, preparing the child for active life as an adult, cultivating respect for fundamental human rights and own cultural and national values of the child and others.

At national level, the right to education is guaranteed by Art. 35 of the Constitution of the Republic of Moldova, the Education Code and Art. 9 and 10 of Law no. 338 of December 15, 1994 on the rights of the child. Analyzing the compatibility report between the national norms in the field of guaranteeing the child's right to education with the international mirror

standards, a partial correspondence of the listed national norms is found. At the same time, the People's Advocate for Children's Rights finds that the Recommendations stipulated in the Annual Report on the observance of children's rights in the Republic of Moldova in 2019¹⁸² were partially implemented, so the situation regarding the observance of the child's right to education on the segments addressed in the 2019 report did not significantly change.

At the same time, during 2020, the national education system faced a series of problems generated by the situation created by the COVID-19 virus, which put the public authorities in the education system in a total impasse. We mention the fact that once the first cases of infection with the new virus were detected, the Ministry of Education, Culture and Research issued the Order no. 292 of March 10, 2020¹⁸³, by which it was ordered the suspension of the educational process for the period March 11 - 23. Subsequently, the epidemiological situation advancing practically in geometric progression, the competent authorities issued the Order no. 355 of March 19, 2020¹⁸⁴, on the continuation of the distance learning process, by which it was approved the Methodology on the continuation of the distance learning process in quarantine conditions for primary, secondary and high school institutions.

In the context of the realities that occurred during that period, the Children's Ombudsman positively assessed the *prima facie* measures adopted by the MECR and its subordinate institutions or, in the circumstances created, the primary obligation of the authorities was to ensure the life and health of children. However, we must point out that the measures subsequently adopted did not fully meet the standards set by the UN Convention, in Art. 28, 29. Adopting the Methodology on the continuation of the distance learning process, the Government in the person of the competent institutions aimed at protecting the lives of children and at the same time the continuation of the educational process in the circumstances created by the crisis situation.

Subsequently, the People's Advocate for the Rights of the Child warned about the need for *supervision of children at home by adults*, which implies the granting of medical leave for parents / legal representatives. It also emphasized the role of teachers, parents and medical staff in informing children about measures to prevent infection with the new type of Coronavirus, the actions to be taken in case of symptoms of the disease, but also in public health surveillance in educational institutions in the country¹⁸⁵.

¹⁸² http://ombudsman.md/wp-content/uploads/2020/01/RAPORT_APDC_2019.pdf

¹⁸³ <https://mecc.gov.md/ro/content/atenia-organelor-locale-de-specialitate-domeniul-invatamantului-si-managerii-institutiilor>

¹⁸⁴ https://mecc.gov.md/sites/default/files/ordin_mecc_invatamant_la_distanta_1.pdf

¹⁸⁵ <http://ombudsman.md/news/ombudsmanul-copilului-sustine-decizia-autoritatilor-de-a-suspenda-procesul-de-invatamant-in-institutiile-prescolare-gimnaziale-si-liceale-pentru-evitarea-contaminarii-copilor-cu-infectia-covid-19/>

The Children's Ombudsman conducted an opinion poll on the effectiveness of the educational process¹⁸⁶, which represents the child's opinion on distance learning. It is important to specify that **17% of respondents mentioned that they cannot fit into the educational process** and **over 77% of children said that the tool for accessing the online school is the mobile phone**. In this regard, the Children's Ombudsman notes that in all similar surveys conducted, children invoke similar issues.

Here are some of the children's opinions about the educational process:

- We usually do the lessons by zoom;
- It is good to have the video camera disconnected because you can stay in bed;
- I do not have access to the internet and the teacher calls me on the phone and dictates my exercises;
- Teachers do not know the computer and cannot use it;
- My neighbors do not have a computer or high-performance phones to learn online;
- Today I had to share the computer with my brother, because we both had lessons at the same time.

Thus, in the context of the opinion of children exposed in the surveys and the ones reported, the People's Advocate for Children's Rights concludes that the distance education system lacks the credibility that it could satisfy the educational needs of the students.

It should be noted that the authorities were not prepared for the implementation of such an educational process, which is why a number of problems arose that led to the violation of children's rights. Thus, one of the major problems of the distance education process was the fact that **over 30% of children enrolled in the education system did not have the opportunity to participate in online classes** organized by educational institutions. In order to be able to be present in the distance classes, children needed computer technology or at least a telephone with internet connection, which proved to be a real problem for children from families with more children or for children from poor families. That situation led from the very beginning to the fact that children in March were practically excluded from the education system. Moreover, the problem was aggravated in rural localities where children were attracted to various activities, being attracted to seasonal spring agricultural work, in the situation where parents could not ensure their presence at classes via the Internet.

The Children's Ombudsman referred the matter to the central and local public authorities in order to take concrete measures to provide children with the necessary equipment in order to ensure the presence of children in virtual classes. As a result, MECR announced

¹⁸⁶ <http://ombudsman.md/wp-content/uploads/2020/07/Rezultatele-Formularului-proces-educa%C8%9Bional-la-distan%C8%9B%C4%83.pdf>

several times that procurement procedures have been initiated to replace the batches of computers,¹⁸⁷ the problem has not been solved even today. We emphasize that, although the right to education is not part of the category of absolute rights and may be subject to limitations in specific situations, it is nevertheless inadmissible for the authorities to allow discrimination against children in accessibility to the educational process. The state cannot argue for lack of financial resources to ensure children's access to the educational process or, in accordance with the provisions of international standards such as the UN Convention on the Rights of the Child and the European Convention on Human Rights, the state is obliged to progressively implement rights, including the right to education guaranteed by both treaties indicated above.

Another issue reported by the People's Advocate for Children's Rights on the distance education process, lies in the fact of *insufficient training or in general the lack of necessary training of teachers to provide teaching activities in the distance education process*. With the transition to distance education, it was found that this is a challenge not only for pupils and students, but also for teachers in educational institutions. As in the previous situation, a problem for teachers was that not all of them had the necessary technique or in some cases the teachers themselves had children who were involved in the educational process. Respectively, there were cases in which a family of pedagogues needed two or even three computers, to ensure the access of all family members to the educational process. It was also established that most teachers, especially those in rural areas, where on average (60%) teachers are over 55 years old, they do not have the necessary knowledge to access online course platforms or even in cases where they access them, they use only the basic functions of these platforms: to contact the person and turn on the camera, without using the advanced functions of these programs, which is indispensable for the teaching process.

Thus, a special problem was invoked by teachers who teach real subjects, such as mathematics, physics or chemistry. Respectively, if the subjects with humanistic profile were limited to simple discussion and analysis on a text or to the exposition of the studied ones, within the real disciplines such a method could not be applied, or here activities with applicative aspect were required, by demonstrating formulas and theorems, problem solving or even conducting experiments, actions that have proven to be inaccessible to children and teachers in the conditions of online education. In this situation, MECR organized several professional training courses in the IT field, but unfortunately the situation did not change significantly even at the current stage. Between March and November 2020, the Children's Ombudsman received several requests from children and teachers, requesting the assistance of

¹⁸⁷ <https://mecc.gov.md/ro/content/asigurarea-cu-tehnica-de-calcul-cadrelor-didactice-si-elevilor-prioritate-ministerului>

the People's Advocate for Children's Rights, to intervene with the central authorities in order to remedy the situation.

The Children's Ombudsman raised the issue several times before the Ministry of Education, Culture and Research and the Government of the Republic of Moldova, but the situation remains a challenge for our state.

In the conditions of distance learning and the unfavorable epidemiological situation, questions were raised by students and parents / legal representatives regarding the passing of the graduation exams of the gymnasium and high school cycle. In this sense, the People's Advocate for Children's Rights came with recommendations to the Ministry of Education, Culture and Research to revise the Order of the Ministry of Education, Culture and Research no. 376 of March 25, 2020 on the conduct of testing of candidates for national graduation exams, the 2020 exam session in the context of observations on the development of tests for students in grades IX and XII only based on the material taught by March 2, 2020.¹⁸⁸

Another problem reported by the Children's Ombudsman, during the restrictions on the unfavorable situation with the Sars-Cov-2 virus, is the impossibility of monitoring and **reporting acts of violence against children** or committed by children, an action that was carried out by teachers under the multisectoral intervention mechanism. We note that, as in previous years, violence against children in the education system remains at the top of the issue of respect for children's rights. According to data presented by the MECR¹⁸⁹, violence against children or committed by children has a growing trend.

		physical abuse	emotional abuse	neglect	labour exploitation	sexual abuse	Total
2017	January - June	2350	1276	1242	60	24	5110
	September - December	2316	1141	1260	60	17	4794
2018	January - June	2231	1351	1123	62	35	4802
	September - December	2156	1163	1128	46	22	4515
2019	January - June	2358	1368	1353	65	26	5170

¹⁸⁸ <http://ombudsman.md/news/ombudsmanul-copilului-propune-elaborarea-testelor-pentru-examenele-de-absolvire-pentru-elevii-din-clasele-a-ix-a-si-a-xii-a-doar-in-baza-materialului-predat-pana-la-data-de-2-martie-2020/>

¹⁸⁹ <https://mecc.gov.md/ro/content/ministerul-educatiei-culturii-si-cercetarii-incurajeaza-cadrede-didactice-elevii-si>

	September - December	2171	1194	1316	40	17	4728
2020	January - June	1333	929	1064	27	10	3363
	September - December	1442	1008	1090	30	17	358

Source: Ministry of Education, Culture and Research.

The relatively low figures for 2020 is due to the fact that a good part of the school year children were included in the distance learning program. Although the MECR has organized several online public lessons on psychological security and the prevention of online violence, their effect is currently insignificant.

Also in 2020, the General Police¹⁹⁰ Inspectorate registered 79 cases of violence related to the education system, compared to 66 in 2019. In these circumstances, it is found that the national system for the protection of children's rights, in the education segment, is ineffective in the conditions created by the pandemic.

The Children's Ombudsman also notes that the number of cases of *temporary school drop-out* has increased in pandemic and distance education conditions, as well as in cases of child labour, especially during the agricultural season.

A special situation was observed by the Children's Ombudsman in the *pre-school education system*. In this segment, it was found that the situation regarding the implementation of distance learning had the weakest effect. This was largely due to the young age of children 3-6 years, which requires increased attention from educators and direct physical contact. Respectively, their parents announced that the distance learning process lasted in some cases only in the first weeks of March, after which both children and parents were left alone to cope with the educational needs of their children. In general, the educational process was largely limited only to the transmission through the Viber application, of the homework, and the parents, after completing it together with the children, transmitted them to the educator. The People's Advocate considers that the public authorities did not ensure sufficient attention to the preschool education system during the quarantine period March - December 2020.

It also highlighted the violation of the right to education of *children with special needs* who study in specialized educational institutions or ancillary schools, whose activity has been completely stopped. In these circumstances, children with special needs found themselves outside the educational process. The Children's Ombudsman was notified by several parents of

¹⁹⁰https://politia.md/sites/default/files/nota_informativa_privind_starea_delincventei_juvenile_si_activitatea_pe_domeniul_siguranta_copii_pe_parcurusul_a_12_luni_ale_anului_2020_.pdf

children with special needs who lamented the passivity and indifference of the education system in relation to their problems. In such a situation, the educational process, between March and May 2020, for children with special needs, was provided exclusively by their parents.

Another issue, analyzed by the People's Advocate for Children's Rights, occurred starting with September, with the beginning of the 2020-2021 academic year and the *partial return to education with the presence of students in the classrooms*. In order to ensure the attendance of the educational institutions by the students, the profile minister elaborated a set of regulations through which 7 scenarios were proposed according to which the educational institutions could carry out their activity.

Subsequently, we note that the public authorities and the leaders of the educational institutions did not ensure the participation of children in the process of consultation and elaboration of these study programs, being questioned, for the most part, only the parents of the students. At the same time, although MECR issued a *Regulation on ensuring security in the educational process during a pandemic*,¹⁹¹ through which a series of measures were ordered to reduce and prevent the process of cross-transmission of the Covid-19 virus, these measures have largely been attributed to the institutions' budgets. Worse is the fact that protective products such as masks and medical gloves, teachers and students had to provide themselves from their own funds. Thus, forcing children and teachers to independently provide protective equipment is, in the opinion of the Children's Ombudsman, an impediment to ensuring the right to education and health of the child in pandemic crisis, as well as an element that favors early school leaving.

Another area, examined by the People's Advocate for Children's Rights in relation to ensuring the right to education of the child, was *the provision of educational institutions with medical staff, drinking water and sanitation*.

Communication with children in the Republic of Moldova, children's opinion, numerous complaints received by the People's Advocate for Children's Rights from managers of institutions and parents regarding the violation of the right to health and education in educational institutions due to lack of necessary conditions of sanitation and quality medical services have served as the basis for conducting an evaluation of the given field.

The purpose of the evaluation was to identify the deficiencies that generate the violation of the right to health and the right to education, the elaboration of the necessary recommendations, in order to improve the situation in this segment.

¹⁹¹ <https://mecc.gov.md/ro/content/relansarea-procesului-educational-2020-2021>

Analyzing the information received, we found that the main cause of the lack of connection to the centralized water system is the lack of aqueduct and sewerage system in the locality, as well as the lack of financial resources to carry out projects to connect them, due to the fact that such projects are quite expensive and in most cases, the communities, through the local public administration, do not have the necessary financial resources. This problem is particularly characteristic of rural communities.

Also, the difficulty that appears on the segment "providing children with quality drinking water in secondary education institutions" is largely related to several causes. The main cause is the lack of financial resources. Another impediment found is that in some districts, the decision of local elected officials or representatives of district councils, negatively influences the decision to allocate financial sources for the budgets of secondary education institutions.

Problems were also highlighted in the sanitation segment such as: for the provision / maintenance of sanitation in the bathroom (soap, disposable wipes, toilet paper, electric dryers) large financial sources are required, or as some managers mentioned, it is necessary triple the amount of funding; state funding allocated to educational institutions is insufficient; the location of educational institutions in old buildings, which prevents the reconstruction of sanitary blocks; the sanitary blocks inside some schools need capital renovations; the toilets are not provided with the appropriate number of washbasins and dishes, according to WHO requirements; the lack of hot water in the bathroom.

An extremely serious situation was also found regarding the construction / renovation of the sanitary blocks inside the schools. According to data presented by the Ministry of Education, Culture and Research in a recent monitoring conducted in 2020 by the People's Advocate for Children's Rights, *nationwide 351 schools (30.9%) have toilets outside the institution building and require the improvement of hygienic-sanitary conditions*¹⁹². Children, especially those from rural areas, face a lack of hygiene, privacy and safety when they go to the toilet in the school yard. This situation is not recent, it has existed for decades.

Although the Republic of Moldova received several recommendations from the World Health Organization regarding school sanitation, the de facto situation in this segment remained far behind. A first cause of insecurity and functioning of the bathroom in this regard is the lack of finance, but also the lack of cooperation of decision makers, as well as the fact that the issue of providing decent toilets in Moldovan schools is the responsibility of local public authorities and administration of educational institutions. The People's Advocate for Children's Rights

¹⁹² Letter of the Ministry of Education, Culture and Research no. 03 / 1-09 / 3973 from 28.07.2020;

considers that this problem can be solved by undertaking joint efforts of both local and central authorities, within a single program for the whole country.

The People's Advocate for Children's Rights welcomes the positive experience of the Swiss Water and Sanitation Project in Moldova (ApaSan). ApaSan has strengthened the capabilities of design and construction companies and worked with health authorities to resolve legal issues regarding the acceptance of ecosan toilets for school sanitation. Through the project, **68 sanitary blocks in 63 educational institutions** were carried out in the period 2008-2019 with the execution of construction works¹⁹³. Thus, in the rural area of Moldova (for example: Congaz village, Slobozia-Rascov village, Oliscani village) toilets were built that correspond to the current sanitary norms, being found the solution for the localities without aqueduct. Within the project, in collaboration with MECR and MHLSP, a ***Guide for managers of educational institutions "Options of health systems for schools and preschools in rural areas of the Republic of Moldova"*** was developed.¹⁹⁴ That support provides information on the sanitation options available and the conditions under which they can be used. The purpose of the guide is for the managers of educational institutions, LPA officials to be better informed and to take measures to improve the sanitary and hygienic conditions in institutions by offering better and more sustainable sanitation solutions.

The People's Advocate for Children's Rights also supports the efforts of the media and civil society¹⁹⁵ to discuss and raise public awareness on sanitary conditions in toilets in Moldovan schools and joins them in making recommendations to public authorities on school sanitation.

The monitoring allowed us to find that there is a problem in providing educational institutions with space for the allocation or construction of medical offices. The number of 113 schools that lack medical workers was highlighted. The questionnaire shows the reasons why some educational institutions do not have nurses. One reason that imposes such a crisis is the inadequate pay of medical workers, the lack of specialists in localities. In most educational institutions, as well as in small schools up to 90 children, medical workers are employed on

¹⁹³ [Sanitatiea școlară | ApaSan \(skat.ch\)](http://skat.ch/Sanitatiea_scolara_ApaSan)

¹⁹⁴ [Guide-for-the-school-managers-ro.pdf \(skat.ch\)](http://skat.ch/Guide-for-the-school-managers-ro.pdf)

¹⁹⁵ <https://amnesty.md/ro/media/scoli-cu-toalete-curate-si-sigure-un-drept-nu-un-privilegiu/>
<https://www.caritate.md/donations/sa-cream-conditii-pentru-copii?fbclid=IwAR3oOarkMpkIJWjvwRPhCFqdeSyV2CEXJTUxah5QWzC92Z9meHzCWSvruuQ>
<https://www.facebook.com/ToaletaScoala/>
<https://oamenisikilometri.md/oda-wc-ului-scolar/?fbclid=IwAR0HEBxsJlhZ02ISQmLVBGNftR6aBOScv719v3Nrra-IDZkJyIImx9PVmb0>
<https://oamenisikilometri.md/oda-wc-ului-scolar/?fbclid=IwAR34taPpyRhjj2EEWmgIn6oCSAk2MkrJHvv5WfupcAIfRFoC2zeBdbWfXCk>

0.25 or 0.5 salary units. Therefore, in such conditions, as well as the large volume of work, the needs of medical service are not fully met. 49 educational institutions lack medicines and consumables, which indicates that even when procuring what is needed, especially during the pandemic, there is a lack of financial sources. This presupposes the conclusion that the efforts made by the relevant authorities have not fully satisfied the provision of health care for children in public educational institutions, including during the pandemic.

In conclusion, we attest to a solid legislative basis at international and national level that provides and ensures the child's right to health and the right to education. The Republic of Moldova at the level of legislative provisions has no shortcomings in principle that would prevent the realization of these rights.

However, the underlying causes of these problems are the economic and financial crisis in the country, which has also left its mark on the health of schools.

In this context, the People's Advocate for Children's Rights concluded on the urgent need to take urgent and concrete measures in order to ensure the child's right to health within the education system.

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

- The Ministry of Education, Culture and Research is to provide with the necessary technique children / teachers who do not have access to distance education;
- The Ministry of Education, Culture and Research will ensure the continuous training of teachers in the IT field;
- The Ministry of Education, Culture and Research is to strengthen the mechanism for monitoring and intervening in cases of violence and abuse against children, in situations when children are studying online.
- The Ministry of Education, Culture and Research is to review the educational process within the auxiliary educational institutions, in order to adapt it to the needs of children with special needs in the online study regime;
- The Ministry of Education, Culture and Research will take the necessary actions to ensure the child's right to health in the educational process.

ENSURING CIVIL RIGHTS AND LIBERTIES

The right of all children to express their views and to be taken into account is one of the fundamental values of the UN Convention on the Rights of the Child. The UN Committee on the Rights of the Child has identified Art. 12 as one of the four general principles of the Convention, the others being the right to non-discrimination, the right to life and development and the priority of the best interests of the child, which shows that this article establishes not only a right in itself, but should also be taken into account in the interpretation and implementation of all other rights. The Committee also states that the right of the child to be heard imposes an obligation on States parties to review or amend their legislation in order to introduce mechanisms to provide children with access to appropriate information, appropriate support and, if necessary, feedback on the weight given to their opinions and procedures for referrals, complaints or mediation.

With reference to the issue of ensuring the rights enshrined in Art. 12 - 15 of the UN Convention on the Rights of the Child, it is highlighted that they were quite restricted during 2020, due to the pandemic situation created by the COVID-19 virus. Also, the People's Advocate for Children's Rights stated that in most cases and in solving several issues related to the field of children's rights, their opinion was neglected.

The People's Advocate for Children's Rights indicates that although the rights of the child to freedom of expression, association, conscience and religion may be limited in strictly predetermined cases, this cannot in any way imply total neglect by public authorities in relation to these rights. In this context, the Children's Ombudsman in 2020, repeatedly asked for the opinion of children in order to analyze the level of respect for these rights. Below are some of the children's views on respect for civil rights and liberties during the reporting year:

- I was not consulted on how I would like the online study process to run;
- I could not attend the school senate meeting;
- I did not have the opportunity to participate in national and international forums.

Similarly, in 2020, the People's Advocate for Children's Rights undertook several actions in order to consult the children's opinion on the most important issues that children face. In this regard, there was organized the online survey on children's perceptions of distance learning and the survey on how to take the final exams for high school and baccalaureate in the summer of 2020¹⁹⁶.

¹⁹⁶ <http://ombudsman.md/news/rezultatele-cestionarului-lansat-de-ombudsmanul-copilului-in-vederea-consultarii-opinieii-elevilor-in-legatura-cu-procesul-educational-la-distanta/>

At the same time, during 2020, in order to ensure one of the four principles of the UN Convention on the Rights of the Child, namely the principle of participation of the child, the traditional Annual Forum for the Consultation of the Opinion of the Child was organized¹⁹⁷. Thus, during the Forum, the Children's Ombudsman reiterated the importance of the Convention, the principles underlying it - non-discrimination; the right to survival and development; the best interests of the child, the right to freely express his opinion, depending on his age and degree of maturity.

The People's Advocate for Children's Rights mentioned that respecting the rights of the child means ensuring their well-being in all aspects - socially, spiritually, morally, as well as physical and mental health, and states that have ratified the Convention have the responsibility to ensure the realization of the rights of the child as a human being. The forum was attended by over 50 children from Chisinau, Tiraspol, Anenii Noi, Criuleni, Cimislia, Cahul, Comrat, Falesti, Grigoriopol, Falesti and other localities, who accessed the online forum, asked questions and sent messages to the People's Advocate for Children's Rights, spoke about the issue of health in schools, access for children with special needs, impediments to involvement in decision-making, bullying and the problems they faced in the educational process and free time during the pandemic.

One of the problems identified by the People's Advocate for Children's Rights, with reference to ensuring the principle of child participation, during 2020, was the ***social isolation of children who do not have access to the Internet***. According to the latest surveys presented by several organizations, including public authorities, over 3,000 children from all over the Republic of Moldova remain isolated from the social and educational environment, because they do not have an internet connection. In this situation it has been demonstrated that children, who do not have the necessary technique, remain isolated from their peers and from society in general. In this context, the Children's Ombudsman refers to the General Commentary of the UN Committee on the Rights of the Child no. 12 (2009)¹⁹⁸ and opines on the fact that the rights incorporated in Art. 12-15 of the Convention, does not cease in crisis situations or following them. There is a growing body of evidence of the significant contribution that children are able to make in situations of conflict, post-conflict resolution and post-emergency reconstruction processes. Thus, the Children's Ombudsman emphasized several times in his recommendations that children affected by emergencies should be encouraged and empowered to participate in the analysis of their situation and future prospects. Children's participation helps them regain

¹⁹⁷ <http://ombudsman.md/news/ombudsmanul-copilului-in-dialog-cu-elevii-din-mai-multe-institutii-de-invataman-din-tara-in-ziua-in-care-acum-31-de-ani-a-fost-adoptata-conventia-onu-pentru-drepturile-copilului/>

¹⁹⁸ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11

control of their lives, contribute to the rehabilitation and development of organizational skills, and this strengthens the sense of identity. At the same time, it is necessary to mention that in the process of realizing these rights and freedoms, care must be taken to protect children from exposure to situations that may be traumatic or harmful.

Consequently, the Children's Ombudsman encourages central and local public authorities to create opportunities and support mechanisms that enable children, especially adolescents, to play an active role in both post-emergency reconstruction and conflict resolution processes. Their opinions should be supported in the design, implementation, monitoring and evaluation of programs. For example, children in Covid-19 hospitals and centers can be encouraged to contribute to their own safety and well-being by creating forums for children. Support should be provided to enable children to set up such forums, while ensuring that their functioning is in line with the best interests of children and their right to protection from harmful experiences.

Another issue reported by the People's Advocate for Children's Rights to this department is the *lack of a mechanism for involving children in the decision-making process*. Thus, between June and December 2020, the People's Advocate for Children's Rights participated in a series of training workshops for the representatives of the associative sector, educational institutions and public institutions, which were intended to create a habit for participants to train children in decision-making processes at local and national level¹⁹⁹.

However, from the meetings held with representatives of NGOs but also with representatives of public institutions, the People's Advocate for Children's Rights deduces that bondholders (adults) do not have the necessary knowledge to train correctly and effectively in decision-making, there are no effective mechanisms at national level to involve children in decision-making and the state is not interested in developing such mechanisms. The Ombudsman points out that most non-governmental organizations and public institutions undertake segmental measures to attract children in the consultation process or, in most cases, involve children in information activities in areas managed by the non-governmental organization or public institution.

There is also a doubling of the information activities that organizations carry out, so there are situations where the same children can participate in activities within different organizations but with the same theme. Moreover, the respective activities, although involving the element of the child's participation, do not focus on the formation of the child's skills to get involved in the decision-making process and do not correspond to the standards established by

¹⁹⁹ <http://ombudsman.md/news/angajatii-directiei-drepturile-copilului-au-participat-la-atelierul-de-lucru-privind-participarea-transparenta-si-informativa-a-copilului/>

the General Comment no. 12 (2009)²⁰⁰. Thus, according to the Comment, all actions involving children, organized and conducted in order to have their opinion heard, must be transparent and informative, children's participation must be voluntary, actions must be organized and carried out with respect to children, be relevant, child-friendly, inclusive, supported by training and informative materials, safe to risk and explainable.

The Children's Ombudsman notes that since the monitoring of the participants in the training sessions, no organization or institution has been able to present a policy plan that would meet all the standards set out above. The People's Advocate for Children's Rights also considers the issue to be a national one rather than private. Thus, it is necessary to develop a viable mechanism that will be able to meet the standards and needs of children in the segment of inclusion in the decision-making process.

Another issue reported by the Children's Ombudsman during the reporting year is the *inefficiency of children's councils at local and national level*. This problem took on a harsher configuration, especially during the spread of the new Covid-19 virus, when children had to stay at home and communication was done exclusively online. It is noteworthy that the efficiency of local councils was unsatisfactory even in the pre-pandemic period, when communication was physically carried out. In this section, it was found that the activity of local children's councils, especially those created in educational institutions was formal and did not correspond to the needs of children. Most of the councils were involved in organizing festive events of various kinds or raising funds for charity. At the same time, it raises questions in most cases and the way in which children were elected in the respective councils or, in none of the more than 20 councils monitored by the People's Advocate for Children's Rights was there a total coverage of children from different categories and social stratification. It was found that children in the primary cycle were usually not represented in the respective councils either directly or through a representative, nor were there children with special needs or children from socially vulnerable groups. In those circumstances, the Children's Ombudsman cannot consider these councils to be in line with international standards in the field of the protection of the rights of the child.

The situation described above worsened with the introduction of restrictions related to the pandemic, the isolation regime that required the distance communication of children. In such situations, children who were marginalized under normal conditions of cooperation, in the situation of distance communication, generally lost the opportunity to get involved in the life of

²⁰⁰ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11

their community or to participate in solving problems that may affect them directly or tangentially.

The People's Advocate for Children's Rights has addressed the issue at various meetings at national level, but for now the issue remains unresolved. In these circumstances, the Ministry of Education, Culture and Research needs to launch a comprehensive consultation process on the child's opinion, which will be in line with the requirements of the UN Convention and the Comments of the UN Committee on the Rights of the Child and which will aim to respond to the needs of children to be actively involved in the decision-making process and respectively to be able to effectively achieve the rights guaranteed in Art. 12-15 of the UN Convention on the Rights of the Child.

Another issue examined by the People's Advocate regarding the child's right to opinion and related rights is the **amendment of the Family Code of July 9, 2020**. Thus, by Law no. 112 of July 9, 2020 for the amendment of some normative acts, among other provisions, an amendment was made which, at first sight, aims to ensure the best interests of the child, however, a more detailed analysis shows that things are diametrically opposed.

Respectively, in the version of the Family Code until the amendments of July 2020, Article 54 of the respective Code had the following content , *''The child has the right to express his / her opinion when resolving issues that affect his / her interests in the family and to be heard during judicial or administrative debates. The **opinion of the child who has reached the age of 10** will be mandatorily taken into account if it does not contradict his interests'', and with the changes made the same article is presented as follows '' The child has the right to express his / her opinion when resolving issues that affect his / her interests in the family and to be heard during judicial or administrative debates. The **child's opinion must be mandatorily taken into account, in accordance with his/her age and degree of maturity, if this does not run counter to the interests of the child.** ''*

As highlighted above, at first sight, these amendments, by eliminating the age threshold, are intended to ensure that the child will express his or her opinion freely, in particular, before the judicial authorities, when his or her interests are affected. However, a broader analysis shows that setting such an age threshold does not in fact refer to the child's right to an opinion, but is contrary to the generally accepted opinion. The spirit of the Convention does not preclude the establishment of such an age threshold to protect young children from the psychological trauma they may experience when they are required to appear before a court to comment on the case being examined and which affects their interests.

In this order of ideas, it is highlighted that most states have obtained the provision stipulated in Art. 12 of the UN Convention on the Rights of the Child , *''for this purpose the*

child shall be given, in particular, the opportunity to be heard in any judicial or administrative proceedings concerning him or her, either directly or through a representative or competent body, in accordance with the rules of procedure of national law” and established the age census, as a condition for the child to be brought and heard before the court or tribunal.

It should be noted that the UN Committee on the Rights of the Child has not objected to such a practice, based on the argument of preventing the child from trauma during the hearings, which may cause him/her suffering, especially in cases where he or she is forced to choose with whom of the parents he/she would like to reside. Thus, since the signing of the UN Convention on the Rights of the Child, most states of the world have established the age limit at which the child can appear before the court to express his/her opinions directly, it ranging from 8 to 12 years.

Moreover, although the Children's Ombudsman supported the authorities' initiative to exclude the age limit, they have so far not introduced any viable mechanism for assessing the child's maturity and for assessing the negative impact that information may have on the child at the time of such situations. Also, with the exclusion of the age of 10 years and the inclusion of such a general wording as “... *in accordance with the age or degree of maturity* ...”, it will give bondholders a far too wide margin of interpretation, respectively, there will be situations in which the authorized person will decide if the child is not ready to provide information even at the age of 12 or 16, or, on the contrary, we may be in a situation when children aged 1-10 will be brought before the courts, which can be a risk for their further training.

In support of the position contrary to that adopted by the national legislator by Law no. 112/2020 is also the case law of the ECHR, which in the *Sahin v. Germany case* notes the following: “With regard to the issue of hearing a child in court, the Court notes that it is usually for national courts to assess evidence before them, including the means used to establish the relevant facts (see *Vidal v. Belgium*, judgment of April 22, 1992, Series A no. 235-B, p. 32-33, § 33). It would be too far to say that domestic courts are always required to hear a child in court on the issue of access to a non-custodial parent, but this issue depends on the specific circumstances of each case, taking into account the age and maturity of the child concerned. In this respect, the Court finds that the child was approximately three years and ten months old at the start of the appeal proceedings and five years and two months old at the date of the Regional Court's decision. The expert came to her conclusion, namely that a right of access without prior contact to overcome conflicts between parents was not in the best interests of the child, after several meetings with the child, the mother and the requesting father. Asked about the issue of hearing the child in court, she plausibly explained that the interrogation process itself poses a risk to the child. Such a risk cannot be avoided by special court agreements. In

view of the methods applied by the expert in meeting the child and its prudent approach in analyzing the child's attitude towards his parents, the Court considers that the Regional Court did not exceed the margin of appreciation when relying on its findings, even in the absence of direct questions about the child's relationship with the applicant "²⁰¹.

Another issue examined by the People's Advocate for Children's Rights during 2020 was the *involvement of children in the political activity*. This issue appeared to the attention of Children's Ombudsman, as in any of the previous years in which elections were held. This highlights the fact that children have the right to opinion, information, association, privacy, the right to participate in public and political activities, but can not be exposed and used by parents, legal representatives, other persons responsible for their upbringing and care and public or private institutions in order to obtain benefits. "It is unacceptable to use the image of a minor as electoral material or to involve them in activities that could bring electoral benefits."

The child is an active subject and has the right to exercise his rights. Any limitation should be made in strict accordance with international standards and applicable law. "Children should not be unfamiliar with electoral issues. Even the general comments of the UN Committee on the Rights of the Child provide for the possibility for children to participate in electoral debates, to ask questions, to be interested in the programs of electoral contestants and even to join any movement if they sympathize with someone "²⁰².

Thus, the authorities that monitor the electoral process, such as the CEC, but also the electoral contestants are responsible for respecting the international standards in the field of protection of children's rights. Although in the Law on the Rights of the Child, Art. 13, we have a provision that prohibits the involvement of children in political and electoral activity, this means only the prohibition of bondholders to attract children. The legislation of the Republic of Moldova does not provide definitions as "political activity"; "propaganda / political agitation", does not provide rules for sanctioning those dignitaries, civil servants, electoral actors who use children and images with them, in violation of the enunciated norms, state the representatives of the People's Advocate Office, stating that they will propose amendments to this effect in the legislation.

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

to the Ministry of Education, Culture and Research:

- Development of a mechanism for consultation and involvement of the child in the

²⁰¹ <https://hudoc.echr.coe.int/eng#%7B%22documentcollectionid%22%3A%5B%22GRANDCHAMBER%22%2C%22CHAMBER%22%5D%7D>

²⁰² <http://ombudsman.md/news/14883/>

decision-making process related to the standards of the UN Convention on the Rights of the Child;

- Modification of the national educational curriculum in terms of strengthening general education in the electoral field (general notions, rights and obligations);
- Development of a mechanism for involving children in local councils or councils within educational institutions;
- Ensuring the widest possible representation of all groups of children in local and school councils;
- Ensuring children from socially vulnerable families with computer technology that will allow them to be involved in the remote decision-making process;

to the Ministry of Health, Labour and Social Protection:

- Creating a viable and equidistant mechanism for assessing the child's maturity and the psycho-emotional impact that participation in the judicial process may have on the child;
- Amendment of the Electoral Code and the Contravention Code in the sense of tightening the sanctions for candidates who use children as material to promote their own election campaigns.

THE RIGHT TO SOCIAL SECURITY OF THE CHILD

In accordance with Art. 26 of the UN Convention on the Rights of the Child "States Parties recognize the right of every child to social assistance, including social security, and shall take steps to ensure that this right is fully exercised in accordance with their national law."²⁰³ At national level, social security is guaranteed by Art. 47 of the Constitution of the Republic of Moldova and its subsidiary laws. The Children's Ombudsman also notes that national public authorities have largely succeeded in linking the national legislative framework to the international one in the field of child social protection.

²⁰³ http://artico.md/wp-content/uploads/2017/01/CRC_RO.pdf

The major problem notified by the People's Advocate for Children's Rights during 2020, in the field of social security was the *cessation of the activity of social institutions*. Respectively, with the adoption of the Parliament Decision no. 55 of March 17, 2020 on declaring a state of emergency²⁰⁴, exceptional, binding and enforceable measures are established for the heads of central and local public administration authorities, heads of public institutions, economic agents, as well as for citizens, and other persons on the territory of the Republic of Moldova. Thus, in those circumstances, restrictions were imposed, including in the activity of social assistance institutions, which are meant to fulfill major tasks in the segment of social security of the child.

One of the major shortcomings identified by the Children's Ombudsman between March and July was the fact that most social welfare institutions, including community social workers, were not fully performing their duties. From the requests addressed to the People's Advocate Office and from the calls taken from the Child's Trust Phone, it was deduced that there were situations in which the social worker did not visit the families registered by the guardianship authority for long periods, in which they needed to be supported and helped. In these circumstances, some children were at risk, especially in families where parents abused alcohol or neglected parental responsibilities for raising and caring for children.

The People's Advocate for Children's Rights notes in this regard that the social worker, the specialist in the field of child rights protection are the people who are meant to provide the fastest interventions in risk situations in which the child is. The lack of monitoring even during a week, not to mention long periods, of the child's situation can pose a risk to his life and health. In conclusion, the Children's Ombudsman considers that the interruption of the activity of social workers, specialists in the field of child rights protection, in the situation of health crisis, represented a violation of children's rights and a risk to children's safety. In this regard, the Children's Ombudsman recalls the provisions of the Declaration of the Committee of Ministers of the Council of Europe (CM CoE) on Strengthening children's rights as a key to Europe's future, adopted at its meeting on March 11, 2020, reaffirming the State's commitment to the protection of the rights of the child, especially in times of crisis, when there is a major risk of ignoring or compromising the rights of children, especially children in vulnerable situations "²⁰⁵.

Also in this segment, the People's Advocate for Children's Rights was notified regarding

²⁰⁴ https://www.legis.md/cautare/getResults?doc_id=120817&lang=ro

²⁰⁵ Declaration by the Committee of Ministers on "strengthening the rights of the child as the key to a "future-proof4 Europe" (Adopted by the Committee of Ministers on 11 March 2020 at the 1370th meeting of the Ministers' Deputies);

the *cessation of the activity of the community day centers*. Thus, the Children's Ombudsman notes that the need for cessation is, as in previous cases, the need to avoid and reduce the contamination of children and people working in these centers. However, it should be noted that with the cessation of the activity of these centers, the situation of children in the social insurance segment has deteriorated considerably. The Children's Ombudsman draws attention to the fact that the beneficiaries of these centers are usually children from socially vulnerable families or families at risk. Thus, for these children, the community day centers represented a haven of peace and security where they could spend the day and return home in the evening.

In this regard, the People's Advocate for Children's Rights notes that central and local public authorities were obliged even in a crisis situation to provide those children with an *alternative form of protection or an alternative form of social services*. According to international standards, the total deprivation of children in social services is not allowed, without offering them an alternative, at least temporary, that could support them at least partially. Thus, the UN Committee on the Rights of the Child notes that children from socially vulnerable families are most likely to be affected by situations of risk, and in situations where they are also abandoned by the relevant authorities during the crisis, such circumstances can be fatal for them. For these reasons, the People's Advocate for Children's Rights considers that the central and local public authorities have failed to effectively manage the field of social assistance for children.

Another aspect analyzed by the Children's Ombudsman during the reported period is the *social protection of children who are placed in residential institutions during a pandemic*. This chapter highlights the fact that the residential institutions subordinated to MHLSP, have adopted measures to ensure the safety of children and to avoid the contamination of the beneficiaries with the new Covid-19 virus. However, it should be noted that in most residential institutions, the necessary measures have not been taken to maintain children's ties with biological families outside the placement centers or other people the children trusted.

In those circumstances, the Children's Ombudsman has repeatedly recommended that residential institutions of all types take steps to establish alternative measures that would help maintain the links of children in placement centers with the outside world. Thus, it was recommended to implement online communication through advanced technologies and social networks to which children and their contact persons are connected. The Children's Ombudsman also recommended that the list of contacts that the child can contact include all the people he or she wants to interact with, regardless of the degree of kinship (friends, buddies, schoolmates, colleagues of extra-curricular activities). The need for such measures is necessary to minimize the child's loss of contact with the world outside the residential center, or children

placed in foster care are more vulnerable to social isolation and, respectively, may face greater difficulties on social integration in times of crisis.

During the reporting period, the People's Advocate for Children's Rights also analyzed the protection of children's rights in the segment of *respecting the rights of children from tuberculosis outbreaks*. In this regard, the People's Advocate for Children's Rights collaborated with the School of Management in Public Health of the State University of Medicine and Pharmacy "Nicolae Testemitanu" and developed the *master's thesis "Respecting the Rights of Children Institutionalized in Tuberculosis Outbreaks"*²⁰⁶. In the Republic of Moldova, tuberculosis control is carried out through the National Tuberculosis Control Program of the Republic of Moldova, approved by Government Decision no. 1160 of 20.10.2016²⁰⁷, being the fifth PCNT in number. According to the provisions of the above-mentioned Government Decision, the primary responsibility for the control of tuberculosis in the country belongs to the Ministry of Health, Labour and Social Protection.

During the implementation of national programs, the Republic of Moldova has taken important actions in the control of tuberculosis by establishing international standards on control and treatment measures for this disease. According to the Annual Social Report for 2018²⁰⁸, in recent years, there is a tendency to stabilize the epidemiological situation through tuberculosis. Statistical data show an improvement in epidemiological indicators, as a result of providing care services in TB (prevention, detection, treatment) focused on people's needs. Thus, as a result of providing TB care services (prevention, detection, treatment) focused on people's needs, TB mortality for 2018 was 7.6 per 100 thousand population (304 cases), compared to 2017 - 7.9 (320 cases) and 2016 - 9.1 (372 cases).

The Children's Ombudsman mentions that in our country children from families whose members are affected by this disease are institutionalized for the purpose of preventive treatment in two phthisiopneumological rehabilitation centers for a period of 3 to 6 months (Phthisiopulmonological rehabilitation center for children from Tirnova village, Donduseni district and Phthisiopulmonological rehabilitation center for children from Cornesti village, Ungheni district). The institutionalization of these children, however, is not always based on the best interests of the child, frequently during this period certain rights are limited to them. These are, in particular, the rights to *health, education, family and opinion*.

In the Study it was established that the violation of children's right to health in these institutions is manifested by the reduced access of children to alternative health services, the

²⁰⁶ <http://ombudsman.md/news/maia-banarescu-copiilor-institutionalizati-din-focarele-cu-tuberculoza-le-sunt-lezate-drepturile-la-sanatate-educatie-familie-si-opinie/>

²⁰⁷ <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=367268&lang=1>

²⁰⁸ https://msmps.gov.md/sites/default/files/raport_social_anual_2018_final.pdf

prolonged stay of the child for rehabilitation in the institution, the insufficiency of medical staff. The insufficiency of teachers, the limited access of children to different types of educational activities under the same conditions as other children, the lack of textbooks necessary for the study process are grounds to consider that the minor beneficiaries of the centers have their right to education violated.

The right to opinion of children institutionalized in both centers is violated by the lack of institutional procedures for rehabilitation and consultation of the child's opinion, poor or no facilitation of children's access to information about their rights, including the right to information, right to opinion, complaint or grievance. In both centers, the children's contact with the biological family or relatives is low, which is an obvious indication of the violation of the child's right to family. The research further demonstrates that children from socially vulnerable families or with parents who have gone abroad due to the lack of other forms of protection for minors in the community are placed in the assessed residential institutions. In this way, the results of the Study show that the institutionalization of children from tuberculosis outbreaks, as a form of their protection, is not a measure based on respect for children's rights and does not comply with the provisions of the UN Convention on the Rights of the Child.

The People's Advocate for Children's Rights advocates that the state intervene immediately to restore the situation in this area, stating that in the absence of real efforts to ensure an adequate system of protection of children from tuberculosis outbreaks, international standards are violated. To assess the degree of respect for the rights of these institutionalized children, there were analyzed data on the national system of protection of children at risk and data obtained through the application of research tools, prepared on the basis of the provisions of the Convention on the Rights of the Child (UN, 1989) and national normative acts on children's rights.

Thus, the People's Advocate for Children's Rights denotes a strict violation of the rights of children placed in phthisiopneumological centers, which is manifested primarily by the excessive exceeding of the placement term (cases of placement from 6 months to 10 years), limiting contacts with the world from the outside even if these children no longer pose a risk and violation of the right to education by providing educational services clearly below the level of pre-established standards.

Another area examined by the Children's Ombudsman during the reporting period was the *evaluation of the effectiveness of intersectoral mechanisms in the field of child rights protection*. To this end, during the previous year, the Thematic Report on "Assessing the effectiveness and efficiency of intersectoral cooperation mechanisms in the field of child rights

protection" was prepared²⁰⁹. According to the terms of reference, three main mechanisms were considered, including the intersectoral collaboration Mechanism in the medical and social field in order to prevent and reduce the maternal and infant mortality rate of children up to 5 years at home, the intersectoral cooperation Mechanism for the identification, assessment, referral, assistance and monitoring of child victims and potential victims of violence, neglect, exploitation and trafficking, as well as the intersectoral cooperation Mechanism for the primary prevention of child welfare risks. Also, other mechanisms were partially considered, such as the National Referral System for the protection and assistance of victims and potential victims of trafficking in human beings, but also the provisions of Law no. 299/2018 on measures and services for children with deviant behavior, which establish the creation of an intersectoral cooperation Mechanism on the implementation of measures for children with deviant behavior.

The evaluation was based on the provisions of the UN Convention on the Rights of the Child, analyzing three mechanisms: the intersectoral collaboration Mechanism in the medical and social field in order to prevent and reduce the maternal and infant mortality rate of children up to 5 years at home; the intersectoral cooperation Mechanism for the identification, assessment, referral, assistance and monitoring of child victims and potential victims of violence, neglect, exploitation and trafficking; as well as the intersectoral cooperation Mechanism for the primary prevention of child welfare risks.

Among the basic findings of the Report there were highlighted the poor or no local and national capitalization of intersectoral cooperation mechanisms in the field of child protection, large workload for social workers, lack of a unified database, regulatory framework (guides, instructions) on the application of mechanisms. They overlap at different stages of the proceedings, in particular in the case of the same beneficiary, in exceptional circumstances (for example in the situation caused by the Sars-Cov-2 pandemic) there are no procedures for filing available and child-friendly complaints under the intersectoral cooperation Mechanisms, and the most vulnerable children have a limited right to an opinion.

The main recommendations made following the findings relate to the reconceptualization of mechanisms to prevent and intervene in cases of violence and abuse; clear delimitation of the limits of intervention on each mechanism separately for each actor with attributions within these mechanisms; elaboration and urgent adoption of all documents necessary for the proper functioning of the evaluated mechanisms, strict monitoring by the central public authorities and the establishment of unified intersectoral mechanisms for monitoring the implementation. The Children's Ombudsman also on this occasion reiterates the urgent need to hire a child protection specialist in each town hall, with a clear delimitation of

²⁰⁹ http://ombudsman.md/wp-content/uploads/2020/12/2724_Raport-tematic2-1.pdf

his / her duties in relation to those of the community social worker. Those recommendations will be forwarded to the line authorities and their implementation monitored.

Another aspect analyzed by the People's Advocate for Children's Rights during 2020, was the *observance of the rights of children left without parental protection*. Thus, according to the data collected, currently in the country there are 1310 registered children with temporary status left without parental care. Of these, 617 girls and 693 boys. Children from rural areas predominate (approximately 75%) compared to those from urban areas (25%). About 79% of these children (1030 children) are of school age (7-18 years).

The Report notes the lack of effective legal mechanisms and instruments, the existence of a large number of cases reported by the authorities regarding parents who do not comply with their obligations, the insufficient forms of protection for the child left without parental care, small allowances that do not cover the necessary expenses for a child, that the procedure applied in court is difficult and lengthy. It has also been established the insufficient involvement or even the avoidance of many local public authorities, the reduced activity of multidisciplinary teams and the insufficiency of qualified specialists, that there is no permanent and centralized record of children left without parental care, there are no possibilities for adequate care and placement of children with severe disabilities, and when leaving the child protection system when they reach the age of majority, they are not provided with housing, a problem reached by the Children's Ombudsman in previous reports as well.

The Children's Ombudsman recommended that the public authorities draw up a plan of measures to be taken to protect the rights of children in these categories; tightening the legislative provisions in the field of child protection; creating a mechanism to oblige and hold accountable parents who go abroad for long periods at work; elaboration and approval of the Framework Regulation on the organization and functioning of the Guardianship-Curatorship Service; reviewing the provisions for the application procedure and analysis in court of the file for establishing the status of the child at risk; making the district councils responsible for allocating resources and possibilities for extending the forms of social protection of children left without parental care, including insurance with housing space at the exit from the child protection system. It is recommended to create an integrated care service for children left without parental care; developing a unified database for the centralized record of these children; increasing salaries and child support allowances in family-type social services; developing support for out-of-placement children and young people; creation of day centers or temporary centers for children from vulnerable families, emergency placement services, respite service, etc.

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

To the Ministry of Health, Labour and Social Protection:

- Reconceptualizing the mechanisms meant to prevent and intervene in cases of violence and abuse, in order to prevent possible duplication by sectors, but also intersectorally; clear delimitation of the limits of intervention on each mechanism separately for each actor with attributions within these mechanisms;
- Periodic evaluation of the impact of the implementation of GD no.1182 / 2010, GD no.270 / 2014, GD no.143 / 2018 and their revision whenever necessary to prevent possible omissions, especially related to the most vulnerable groups, but also doubles;
- Hiring in each town hall the specialist in child protection with a clear delimitation of his/her attributions in relation to those of the community social worker;
- The Ministry of Health, Labour and Social Protection will develop a working mechanism for social workers that will ensure their security and proper execution of obligations;
- The Ministry of Health, Labour and Social Protection will re-evaluate the procedures for placing children in the Cornesti and Tirnova placement centers;
- The Ministry of Education, Culture and Research will re-evaluate the observance and compliance of the implementation of the child's right to education in accordance with international standards in the field.

OBSERVANCE OF THE RIGHTS OF STREET CHILDREN

The issue of *protection of the rights of street children* in this report is also analyzed in the chapter of social security with the description of other rights or, in the case of street children we can not make a delimitation based on a single right.

During his term, the People's Advocate for Children's Rights had among his priorities on his agenda the issue of respecting the rights of children at risk, including street children, and given that in the pandemic situation this group of children has become particularly vulnerable, the People's Advocate for Children's Rights monitored the actions of the authorities regarding these children during the pandemic.

With the establishment of the state of emergency by the Parliament of the Republic of Moldova, due to the Covid-19 virus, the Government intervened with several protection measures that were meant to stop or reduce the spread of the virus. Thus, hand washing, disinfection of surfaces and objects, social distancing, wearing masks and protective gloves have proven to be some of the most effective measures to control and stop the spread of the disease. However, the People's Advocate for Children's Rights notes that although these measures are effective and welcome for the protection of human health, they do not achieve their purpose in the case of children who lead a street life or, for the implementation of these measures it is necessary at least water and soap, a daily personal hygiene, hygiene that in street conditions is missing, not to mention disinfectants, masks or gloves. At the same time, the Children's Ombudsman argues that it is necessary to explain to these children, clearly and understandably, the need to follow these protection measures.

Moreover, the Children's Ombudsman notes that, despite the fact that since the beginning of the pandemic, several complaints have been drawn up and forwarded to local and central public bodies²¹⁰, they have not achieved their purpose. The People's Advocate for Children's Rights also drew the attention of the authorities, by transmitting the recommendations in numerous online meetings with representatives of the competent institutions, but these recommendations were not taken into account.

Thus, the Children's Ombudsman mentions that isolation measures are necessary, and in that case the limitation of certain rights (economic and social), is possible and can be considered in accordance with international standards in the field of protection of the rights of the child. At the same time, it is necessary to mention once again to the national authorities that these limitations *cannot be discriminatory and must be necessary*,²¹¹ or, the situation is quite ambiguous when on the one hand the authorities have allowed the reopening of public and leisure venues and commercial markets, and on the other hand it was ordered to carry out raids, in order to pick up the children from the street and place them in the respective placement centers. Thus, the People's Advocate for Children's Rights points out that these actions do not fall within the general rules for the protection of children's rights, "mass collection" of children and their centered placement in foster care may be more dangerous than the street life itself which the children are currently carrying.

The Children's Ombudsman points out that with the passing of the cold period of the year and the rising temperature of the environment, the number of street children only for

²¹⁰ http://ombudsman.md/wp-content/uploads/2020/03/APDC_MMSPS.pdf

²¹¹ <https://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>

March-June has reached 38²¹² children who spend time on the street. Under these conditions, the state does not currently have sufficient centers or services in which these children can be placed, in compliance with the rules of distance and protection rules to avoid simple contamination or cross-contamination between children. Also, the People's Advocate for Children's Rights does not support the raids to collect children that lead to the forced placement of children and do nothing but change their place of residence and then establishing contacts with them, which will be more difficult.

Another aspect that the People's Advocate for Children's Rights draws attention to in the segment of street children is the **proportionality of the measures taken** in relation to their current situation, which means that the least restrictive alternative must be adopted where several types of limitations are available. However, the Ombudsman argues that in the current pandemic, it is difficult to say what the least restrictive measures are necessary, as public authorities with weaker health systems may need to take extension measures to limit the burden on the health system as a whole as much as possible.

At the same time, in terms of the proportionality of the measures taken by the relevant authorities, the Children's Ombudsman argues that it is necessary to carry out a multiaspective analysis in relation to the limitations of the rights and freedoms of children leading a street life. Thus, the People's Advocate for Children's Rights considers that the national authorities have **failed to ensure effective protection based on the best interests of the street children during a pandemic**. It is necessary to mention - even in pandemic conditions the best interests of the child in a street situation cannot but coincide with those of the rest of the population, and the authorities must identify the specific needs of these children and adapt the measures / actions to these needs, facilitating reintegration into the household habitat in which they were or another habitat that the child can accept. Thus, in the opinion of the People's Advocate for Children's Rights, the demolition of temporary shelters by local public authorities has led to a considerable worsening of the situation of street children, making it problematic to establish further contacts with children and their further monitoring. The Children's Ombudsman argues that during the pandemic, as a precondition for further action, it was one of the possible short-term solutions to leave the children's usual habitat intact, to know at least about where they spend their time and to provide them with at least the minimum necessary for protection against the virus (masks, gloves, disinfectant).

Another aspect is the right to **life and development**, here the People's Advocate for Children's Rights points out that the state failed to ensure the full realization of these rights in the family, and for street children the results are well below expectations. The monitoring

²¹² <http://dmpdc.md/comunicat-de-pres-a-vizand-evaluarea-copiiilor-aflati-in-situatii-de-strada-probleme-si-solutii/>

showed children who were involved in begging, illegal trade, crime and children who were subjected to abuse and violence during the pandemic, which poses a significant risk to the lives and development of these children. The situation worsened even more at the beginning of the declaration of total quarantine when the public authorities either did not work at all or had a special activity regime, and the children were left for a period of practice of 2 months without proper supervision and protection.

The right to education is another right that is not implemented by the authorities in relation to street children even in times of emergency, but even more so in the situation of pandemic and chaos, the education of children who lead a street life has been abandoned almost completely. Moreover, due to quarantine and the launch of distance learning, children who had recently approached the risk of starting to lead a street lifestyle, due to poverty and lack of distance learning equipment were practically thrown out of the education system in the middle of the school year and were put in a position to start life on the streets faster than it was in similar periods in previous years.

In the epidemiological situation created, the Children's Ombudsman draws special attention to the **right to health** of street children and argues the need for education adapted to the specific needs of this group of children and the provision of health services for these children, including measures to prevent contagious diseases. Such education and services should be friendly and supportive, comprehensive, accessible, free, confidential, without judgment, and without discrimination, respecting the autonomous decision of children and without the need for parental consent. Health services should be accessible, regardless of physical location or social status. Public authorities should increase the availability of substance abuse prevention, treatment and rehabilitation services, including harm reduction services and trauma therapies, and mental health services for street children. The above are illustrated by the facts described in a media material about the case of street children, tested for the Covid-19 virus at the insistence of a civic activist working in this field²¹³. The People's Advocate for Children's Rights considers that in this way it has been demonstrated the failure of the authorities in managing this situation and it was reached the situation when a civic activist, although with good intentions, put 11 children in a car at the same time, which was a potential danger for contaminating children and moved with them to the Covid Triage Center. The Children's Ombudsman is also concerned that a private person has closer contact with street children than the staff of the competent authorities. In this regard, the People's Advocate for Children's Rights urges public authorities to strengthen collaboration with non-

²¹³ <https://tv8.md/2020/05/20/video-au-fost-testati-negativ-cu-covid-apoi-au-ajuns-din-nou-in-strada-este-experienta-crunta-traita-de-zece-copii-ai-strazii/>

governmental organizations and to monitor more closely the actions and intentions of any person who comes into contact with street children.

The Children's Ombudsman is also concerned about the way the children were treated at the Covid Triage Center (Moldexpo). The report shows that children were left to fend for themselves in the territory where there is an outbreak of infections and during the analysis and results, no qualified person approached them to offer them any information or offer them help, children staying for about 6 hours at high temperatures without food and water and respectively children left without waiting for the results. The People's Advocate for Children's Rights condemns the attitude of the representatives of the relevant institutions in the respective situation and urges the state to strengthen the intervention actions on the street children segment, especially during the pandemics.

Another aspect analyzed by the People's Advocate for Children's Rights is ensuring the **right to opinion and participation of street children during emergencies**. From the observations made, the Ombudsman notes that no measures have been taken to consult the child's opinion on the measures to protect against the spread of the virus, moreover, children have not at least been properly trained / informed how to use the protective equipment and what should be the steps in case of suspicion of infection. The People's Advocate for Children's Rights points out that in accordance with the standards set by the UN Committee on the Rights of the Child²¹⁴, the opinion of the child cannot be neglected under any circumstances, especially in crisis situations such consultations should be strengthened.

Also, following the actions stipulated above and the issues identified, the People's Advocate for Children's Rights initiated on July 28, 2020 a working session within the Parliamentary Committee on Culture, Education, Research, Youth, Sports and Mass Media entitled "Combating the phenomenon of street children". The Children's Ombudsman reiterated the need to harmonize the legal framework with international standards, to create 24/24 social accommodation services for children in Chisinau, all beneficiaries being children regardless of where they come from. The Children's Ombudsman also reiterates the need to train people working with children on the streets, stepping up actions to prevent the phenomenon, identifying families where children may be at risk, for early intervention in order to avoid the abandonment of domicile, through the necessary support for families and children.

In the conclusion of those mentioned, the Children's Ombudsman presents the following

RECOMMENDATIONS:

To the Ministry of Health, Labour and Social Protection

²¹⁴ https://www.ohchr.org/EN/HR_Bodies/CRC/Pages/CRCIndex.aspx

- Urgent elaboration of a protocol / regulation for intervention in working with street children regarding their testing / placement / treatment, who may be victims of Covid-19;
- Intensification of the activity / multisectoral cooperation of the line institutions on the segment of street children in case of epidemics / pandemics / emergency situations;
- The Ministry of Health, Labour and Social Protection jointly with the Chisinau town hall is to adopt a plan for periodic testing and monitoring of street children in relation to the Covid-19 virus;

To the local public authorities of level I and II

- Local public authorities are to strengthen efforts in order to speed up the creation of the Roadside Assistance Service which could provide multiaspectve assistance (health, social assistance, psychological assistance, education, etc.) in a 24/24 regime;
- The local public authorities will order the allocation of necessary funds for the sustainability of the created service and will extend the respective service on a national scale.

JUVENILE JUSTICE

In the context of drafting the chapter on juvenile justice in the annual report on respect for human rights, the People's Advocate for Children's Rights focused on two key issues: respect for the rights of child witnesses / victims of crime in the context of their hearing under Article 110¹ of the Criminal Procedure Code and respect for the rights of children in penitentiary detention institutions.

I. Hearing of children witnesses / victims of crimes under special conditions:

Thus, under the provisions of Article 19 of the United Nations Convention on the Rights of the Child, the state is responsible for taking all appropriate measures to ensure the right of the child to be protected against any form of violence, harm or abuse, physical or mental, abandonment or neglect, ill-treatment or exploitation, including sexual abuse.

Both the international and national legal framework emphasize the importance of applying the essential principle of respecting the best interests of the child in all decisions concerning him or her, guaranteeing him or her the protection and care necessary to ensure his or her well-being.

Strengthening child protection mechanisms, including those in contact with the justice system, continues to need to be a priority at national level and is enshrined in policy documents at national and sectoral level. Although some measures have been taken, the given sector does not fully meet the needs and standards, which requires further regulatory and operational measures.

In this regard, for a qualitative hearing of the juvenile victim / witness of the crime, the juvenile justice system has the task to ensure, in the case of criminal proceedings, an environment that inspires safety, these being essential, key elements in providing the necessary sense of protection to the child in relations with the law enforcement agencies.

The special hearing of the child victim / witness of the crime is an important step, at which all measures must be taken to protect children from the risk of repeated trauma. The principles of international standards, established in several normative acts, must be observed in the process of hearing the child victim of abuse: the UN Convention on the Rights of the Child; UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules); Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (Lanzarote Convention).

On February 9, 2021, during the monitoring visit to the Buiucani headquarters of Chisinau Court, carried out by the members of the Council for the Prevention of Torture, together with the representative of the People's Advocate's Office, discussions were held on how to hear in special conditions the child victims or witnesses of the crime, which may be requested in the examination of a criminal case.

According to the information provided by the Chisinau Court²¹⁵, until 2016, the room regarding the hearing of children under special conditions was located in the Botanica Court, Chisinau municipality, and subsequently, after the reorganization of the courts, ordered under Law no. 76 on the reorganization of courts, namely since January 1, 2017, it was located in the headquarters of Chisinau Court.

After the reorganization of the courts, the courts of Centru, Buiucani, Riscani, Botanica and Ciocana in Chisinau municipality merged, forming the Chisinau Court. By Decision no. 555/25 of November 27, 2018 of the Superior Council of Magistracy, it was decided to specialize the headquarters of the Chisinau Court, starting with January 1, 2019, as follows: Botanica headquarters - in matters of insolvency; Buiucani headquarters - in criminal matters;

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<file:///C:/Users/User/Desktop/Tamara/RAPORT%202020/Camerile%20de%20audieri/jud.%20Ciocana,%20Buiucani/r%C4%83spunsul,%20jud.%20Buiucani,%20nr.5.14-1282%20din%2017.02.2021.pdf>

Centru headquarters - in civil matters; Ciocana headquarters - in contravention matters and the activity of the investigating judge; Riscani headquarters - in matters of administrative litigation.

When asked for clarifications, addressed during the examination of a criminal case, about the place where the court conducts the hearing in special conditions of child victims or witnesses of the crime, it was explained that in such cases they resort to Ciocana headquarters or various non-governmental organizations such as would be the National Center for Child Abuse Prevention (CNPAC) or La Strada.

Thus, according to the statements of the Chisinau Court, from January 1, 2019, the technique and equipment necessary for the operation of the special room for hearing children under special conditions, were transferred to the Ciocana headquarters of the Chisinau Court, where that special room was created, which still works today. At the time of the visit, at the Ciocana headquarters of Chisinau Court it was found that the hearing room is located on the ground floor, immediately at the entrance to the courthouse, and according to the court's management, until July 1, 2020, it was on another floor of the building.

The juvenile hearing room is a separate room, being intended only for the hearing of the minor with the status of victim / witness of the crime under the conditions of Art.110¹ CPC.

Equipping with the necessary technique and equipment for the operation of the room regarding the hearing in special conditions of the children, are procured from the court budget. Ensuring the presence of the child and specialists as well as other persons at the hearing of minors, is the responsibility of the prosecutor, who requests the hearing of the minor victim / witness of the crime under the conditions of Art. 110¹ CPC, and the investigating judge, being responsible for the observance of the procedure and the legal framework, in order to avoid the production of any negative effect on the child's mental state.

The legal framework regulating the activity of the special room, arranged in the Chisinau Court, is directly governed by the provisions of Art. 6 pt. 41 and Art. 110¹ of the Criminal Procedure Code of the Republic of Moldova, by the Methodological Guide on investigating cases with children victims / witnesses of crimes, approved by the Order of the General Prosecutor no. 25/25 of August 3, 2015, as well as by the recommendations of the interviewers who participate directly in the hearing in special conditions of the children.

Monitoring the field of justice for children remains a priority on the agenda of the People's Advocate for Children's Rights, which is very important and sensitive when discussing the observance of the specific rights of the child. These field-specific characteristics are generated by the fact that minors who come into contact with the justice system, regardless of their procedural status - witnesses, victims or even perpetrators of crimes, need a distinct, consistent, complex and professional support, connected to the good international practices in the field and

in accordance with the provisions of the most important international documents in the field of children's rights to which the Republic of Moldova is a party.

In this context, the Children's Ombudsman closely monitors the implementation of compliance with national standards on the conditions of hearing of minors, the arrangement of special spaces for hearing children near to police inspectorates, prosecutors and judges.

The legislative and procedural shortcomings identified in the process of hearing in special conditions the child victims or witnesses of the crimes were mentioned by the People's Advocate for Children's Rights and in the Thematic Report prepared in 2015: "Analysis of the activity of special rooms for the hearing of minor victims / witnesses under the conditions of Article 110¹ of the Criminal Procedure Code"²¹⁶.

Likewise, the respective recommendations regarding the hearing of children under special conditions, the People's Advocate for Children's Rights reiterates them in the Annual Reports on the observance of children's rights in the Republic of Moldova²¹⁷, but also in the Alternative Report presented by the People's Advocate for Children's Rights.²¹⁸

The main purpose of the special conditions for the hearing of child victims or witnesses of crimes is to avoid trauma or re-victimization of the child both in the criminal prosecution phase and in the trial phase of the criminal case, which is to take place in a child-friendly justice process.

Analyzing the legal procedures in terms of Art.110¹ of the CPC regarding the hearing of children in special conditions, but also from the discussions with the representatives of the institutions concerned, the following legislative and procedural shortcomings are found:

- Art.110¹ paragraph (1) of the CPC regulates the hearing in special conditions of children up to 14 years old, despite the fact that, in accordance with the international and national legal framework, a child is considered a person who has not reached the age of 18 years;
- participants in the process, who interact with the child, do not always show adequate training on the needs of child victims, as they do not receive training and their skills are not assessed;
- there is no procedure for selecting interviewers in the hearing of children under special conditions;

²¹⁶ http://ombudsman.md/wp-content/uploads/2018/10/analiza_camere_de_audiere_redactata2.pdf

²¹⁷ http://ombudsman.md/wp-content/uploads/2018/10/raport_2015_final.pdf
http://ombudsman.md/wp-content/uploads/2018/10/raport_anual_copii_2016.pdf
http://ombudsman.md/wp-content/uploads/2019/05/Raport_2018_INTEGRAL-1.pdf

²¹⁸ http://ombudsman.md/wp-content/uploads/2018/10/justitia_pentru_copii_1.pdf

- the regulation of the legal status of the interviewer regarding his professional training, evaluation, accreditation and certification is missing.
- the mechanism for monitoring the activity of the interviewers is missing;
- there are no rules governing the operation of hearing rooms under special conditions, - the procedure and the evaluation mechanism regarding the compliance of the standards of the rooms regarding the hearing in special conditions of the children are missing.

II. Children detained in penitentiary institutions:

In the context of the exceptional situation created by the Covid-19 pandemic, the People's Advocate for Children's Rights monitored the observance of the rights of the child in detention institutions in the context of serving a criminal sentence or as a preventive measure (pre-trial detention). During this period, the People's Advocate for Children's Rights had a close collaboration with the National Administration of Penitentiaries (NAP) submitting recommendations on reducing the negative impact on children following the restrictions imposed by the penitentiary administrations in part. It should be noted that the Children's Ombudsman appreciates the actions taken in the penitentiary administration system, which strives to take all necessary measures to prevent and reduce the risk situations associated with the Covid-19 pandemic virus, so that the health, bodily integrity and lives of persons deprived of their liberty and prison officials are key priorities.

However, the Children's Ombudsman drew attention to the fact that the actions taken must avoid as much as possible the interference of their effects, in the application of other rights guaranteed by the Convention. The state, having the obligation to ensure the application of the principle of the ideal competition of rights, i.e. the simultaneous application of all the rights guaranteed by an international treaty regardless of the child's place of residence.

The People's Advocate for Children's Rights, addressing the National Administration of Penitentiaries and other institutions, mentioned that, although in the current situation it is obvious that all actions are focused on the need to reduce / stop the epidemiological situation, it is necessary for the responsible authorities to lay down specific requirements for respect for the rights of women detained, in particular those who are pregnant or are with their children, up to the age of 3, in detention, as well as of minor detainees, especially those with disabilities.

In this regard, the People's Advocate for Children's Rights came up with a set of recommendations to be taken by the NAP. Thus, the Children's Ombudsman pointed out that although **restrictions on the visits of relatives of juvenile detainees and detainees with**

children aged 0-3 in prisons²¹⁹ were necessary to prevent outbreaks of Covid-19, however, these restrictions had to be introduced in a transparent way and clearly communicated to those affected. The sudden cessation of contact with the outside world risked aggravating what could be called tense, stressful, difficult and potentially dangerous situations. At the same time, limiting contact with relatives, although a necessary element in the given situation, was certainly a huge emotional stress for children and disrupted the well-being and health of juvenile detainees and children aged 0-3 who are with their mothers in prisons.

The People's Advocate for Children's Rights recommended as a measure of reward, increasing the number of telephone calls insured from the NAP account and ensuring, as far as possible, calls through Viber, Skype or Messenger networks of juvenile detainees with their relatives abroad. The Ombudsman pointed out that although these actions are not provided for in national legislation, these actions are in line with the United Nations recommendations on the observance of the rights of detainees during the Covid-19 epidemic²²⁰. The People's Advocate for Children's Rights also reminded the National Administration of Penitentiaries of the rules stipulated in the UN Convention on the Rights of the Child (in force for the Republic of Moldova of February 25, 1993), the Standard Minimum Rules for the Administration of Juvenile Justice of December 18, 2002 and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which make it imperative to respect the rights of detained children **regardless of the exceptional situations that may arise**.

Another problematic aspect in the field of observing children's rights in the respective situation is the **inclusion of children detained in the distance education system**²²¹, approved by the Order of the Ministry of Education, Culture and Research no. 351 of March 19, 2020 on the remote continuation of the educational process. The Children's Ombudsman was aware of the minimum capacities of the NAP institution to organize the distance education process and yet, he urged the administration to take positive measures to ensure the right to education of children in detention. The People's Advocate for Children's Rights recommended the establishment of an online group, on one of the existing communication applications (Viber, Skype, WhatsApp), between the administration of the penitentiaries where the children are and the teachers who spend their academic courses in detention institutions. Thus, they will later be able to send the children the new homework, which will be taught and the exercises for individual work, and the penitentiary employees will photograph the solved exercises and will send them to the teachers through the already pre-established communication channel to be

²¹⁹ <https://ombudsman.md/wp-content/uploads/2020/03/r%C4%83spuns-la-nr.-12-8-23-din-08.04.2020.pdf>

²²⁰ <https://www.ohchr.org/EN/NewsEvents/Pages/COVID-19.aspx>

²²¹ <https://ombudsman.md/wp-content/uploads/2020/03/P.-10-File.pdf>

verified. The Children's Ombudsman noted that in order to facilitate and improve the distance learning process, in the created situation it is essential to intensify / strengthen the collaboration with the representatives of the educational institutions, assigned with powers to assist the educational process in the detention institution where the children are.

Another important issue that the People's Advocate for Children's Rights has drawn attention to is the **reduction and non-admission of acts of violence**²²² among children or directed against children. Periods of crisis or periods in which children can not be included in socio-educational activities, are a positive factor for increasing the number of altercations between children or raising the level of aggression in some of them. In order to reduce the situations presented, it was requested to intensify the psychological assistance activities by providing permanent psychological counselors in compliance with the protection measures in epidemiological situations.

The Children's Ombudsman also drew attention to **the respect of the rights of children aged 0-3** who are in prisons with their mothers. The epidemiological situation can affect their health and can lead to serious consequences that will represent violations of Art. 6 and 24 of the UN Convention on the Rights of the Child. In the circumstances presented, the People's Advocate for Children's Rights urged the officials from the Penitentiary no.7 Rusca and the Penitentiary no.16 Pruncul, where this category of children are, to strengthen security measures and prevent the illness of children during a pandemic. Also, in the context of the pandemic situation and by derogation from Art. 256 of the Enforcement Code of the Republic of Moldova the People's Advocate for Children's Rights **recommended the continuation of the placement of children who have reached the age of 3 until the end of the exceptional situation**²²³.

The People's Advocate also addressed the issue of the **release of detained children who have committed minor or less serious crimes**²²⁴, in order to reduce the number of detainees in detention institutions, but the competent authorities did not take these recommendations into account.

In conclusion, the People's Advocate for Children's Rights considers that the National Administration of Penitentiaries has partially managed to respect the rights of children in times of crisis and comes with the following **RECOMMENDATIONS:**

- The Ministry of Justice will initiate the procedure for amending the Criminal Procedure Code, by which it was intervened with amendments to Article 110¹ in

²²² https://ombudsman.md/wp-content/uploads/2020/03/2020_04_10_12_40_46.pdf

²²³ <https://ombudsman.md/wp-content/uploads/2020/03/Raspuns-Rusca-2.pdf>

²²⁴ <https://ombudsman.md/wp-content/uploads/2020/03/12-8-28-din-21.04.2020-ANP.pdf>

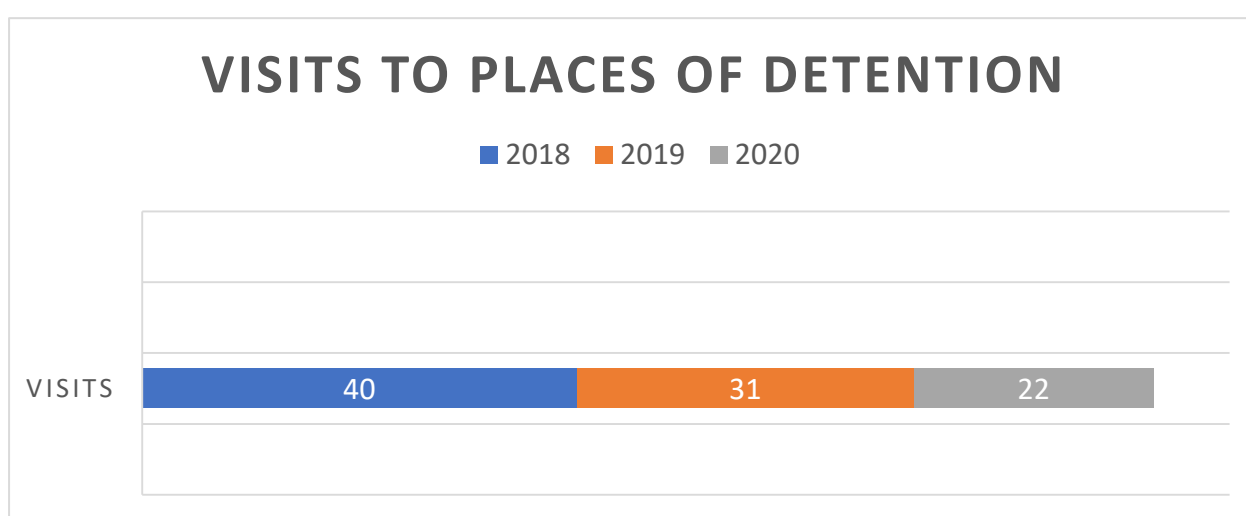
order to increase the age of hearing the child in special conditions, from 14 to 18 years;

- The Ministry of Justice jointly with the Superior Council of Magistracy and the Superior Council of Prosecutors will elaborate a Regulation on establishing the standards regarding the arrangement of the hearing spaces in special conditions for children;
- The Ministry of Justice will establish clear mechanisms and procedures for the implementation of Government Decision no. 708/2019 for the approval of the Framework Regulation on the organization and functioning of the Regional Center for Integrated Assistance of Children Victims / Witnesses of Crimes and Minimum Quality Standards;
- The Ministry of Justice will develop a national training program for professionals (police officers, prosecutors, interviewers, judges), who interact with children;
- Strengthening the technical base with computers and internet connection, in order to fully provide distance learning in similar situations;
- Identifying opportunities and increasing the number of conversations of detained children with persons / relatives outside the institution, in such situations;
- Exclusion of the 15 MDL fee charged at the time of receipt of parcels through the "Post of Moldova" services;
- Development and diversification of psychological activities for detained children;
- The Ministry of Justice jointly with the Ministry of Finance and the National Administration of Penitentiaries will identify urgent solutions in order to finalize the construction of the block for prevented children (under criminal prosecution), within the Penitentiary no. 10 Goian.

CHAPTER III. TORTURE PREVENTION

3.1 SUMMARY OF TORTURE PREVENTION ACTIVITIES

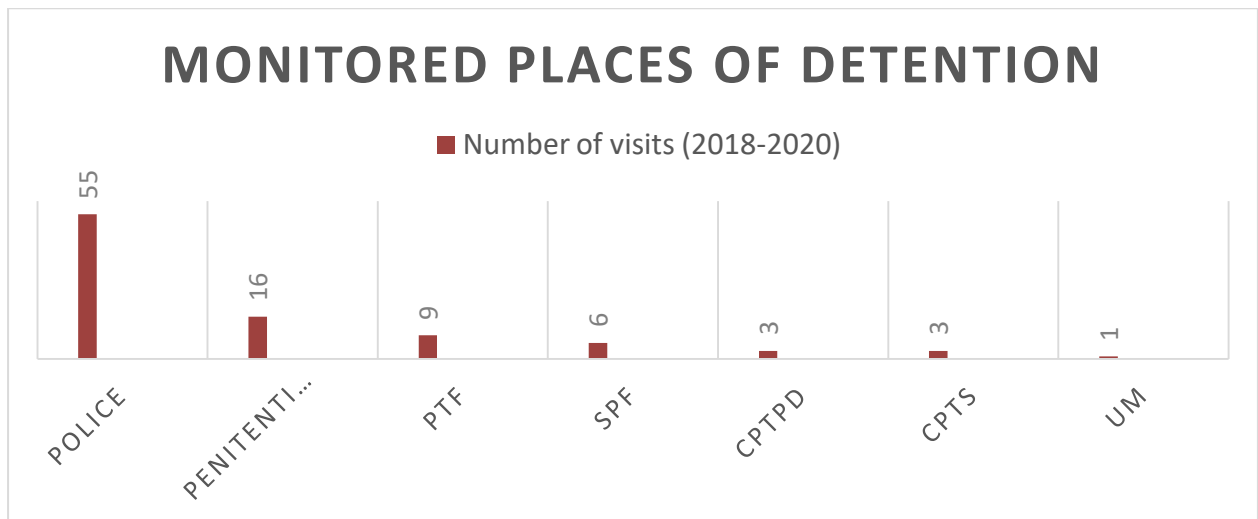
The state of emergency in public health generated by the SARS-COV-2 virus has undoubtedly affected the implementation of torture prevention activities planned for 2020²²⁵. Despite these difficulties, the Directorate for the Prevention of Torture of the PAO carried out **22 preventive visits** to places of deprivation of liberty (14 police inspectorates, 1 penitentiary institution, 4 border crossing points and 3 sectors of the border police)²²⁶. The rate of visits is decreasing compared to previous years (2018 - 40 visits, 2019 - 31 visits):



In particular, in the period 2018-2020 the Ombudsman subdivision made **55 visits to the territorial police inspectorates; 16 visits to penitentiary institutions; 3 visits to Temporary Placement Centers for people with disabilities; 9 visits to border crossing points; 6 visits to border police sectors; 3 visits to Temporary Placement Center for Aliens and 1 visit to a military unit:**

²²⁵ http://ombudsman.md/wp-content/uploads/2020/06/RAPORT_Covid-19.pdf

²²⁶ Another 11 visits were made by the Council for the Prevention of Torture during the same period.



Following the visits made in 2020, **17 visit reports** with recommendations and **2 thematic reports** were prepared and submitted to the authorities²²⁷. The General Police Inspectorate (GPI) and the Territorial Police Inspectorates received **189 recommendations** to improve the situation regarding the provision of detention rights and the prevention of torture²²⁸. Likewise, the GPI received **3 notices of cessation of the activity of three police isolators**. At the same time, the General Inspectorate of Border Police received **21 recommendations** to improve the situation of detainees at the border and to ensure the rights of asylum seekers²²⁹. Another **10 general recommendations** were submitted to the authorities following the launch of the **Thematic Report** "The situation of Covid-19 in places of detention". Most of the recommendations were accepted by the responsible authorities. In general, the implementation rate of the medium-term recommendations remains at 60%, and in the long term (*resources and policies*) at 10%. We appreciate that the executive authorities are open and determined in implementing the Ombudsman's recommendations regarding their competence.

On May 25, 2020, the PAO contracted a grant project funded by the European Union and the Soros Foundation Moldova in the amount of 24,910 Eur for 7 months. The **"Defenders against Torture"** project aimed at 2 major objectives. The first objective was to contribute to reducing situations of violation of the rights of detainees in police custody, by conducting preventive visits to 13 police inspectorates, by preparing 5 visit reports and an integrated thematic report, following information obtained in the field and standard monitoring questionnaires completed by lawyers providing state-guaranteed legal aid, proposing

²²⁷ <http://ombudsman.md/rapoarte/tematice/>

²²⁸ http://ombudsman.md/wp-content/uploads/2020/12/Raport_Retinere_2020_OAP_FSM_FINAL-proiect_pe-site.pdf

²²⁹ <http://ombudsman.md/rapoarte/prevenirea-torturii/in-baza-vizitelor/page/2/>

recommendations for improvement to the responsible authorities or response measures. The last objective involved strengthening the capacities of 12 public lawyers (northern, central and southern regions) in preventing acts of ill-treatment of persons detained and held by the police, including through monitoring tools developed by the Soros Foundation Moldova.

Thanks to that project, the Ombudsman's team was able to monitor the work of the police inspectorates in the field of ensuring basic guarantees of detention and pre-trial detention in 14 police inspectorates in the country under emergency conditions. We mention that the activity of prevention of torture in the monitored isolators took place for the last time in 2018. Therefore, the project covered the need to carry out monitoring visits in the places of detention mentioned *above*. The visits included not only the de facto monitoring of the activity of detention facilities, but also the analysis of the data obtained from the questioning of employees and detainees, as well as the direct observation of the processes on ensuring *de facto* detention rights.

For the first time, the People's Advocate develops a close cooperation with 12 lawyers, who provide state-guaranteed legal aid within the CNAJGS in the field of prevention of torture and respect for the rights of persons to detention and pre-trial detention. Previously, the People's Advocate received only requests from some defenders regarding the intervention in the defense of clients' rights on the level of his functional attributions. Thanks to the activities carried out in that project, the Directorate for the Prevention of Torture within the People's Advocate Office obtained alternative information from the first source on the process of detaining people in the territory, which allowed advancing the monitoring and addressing issues with decision makers.

Following the activities carried out within the “Defenders against Torture” Project, the People's Advocate Office managed to (a) carry out 14 visits (out of 13 planned) in the territorial police inspectorates during the pandemic period; (b) to prepare and submit to the GPI and IP 14 visit reports (compared to 5 planned) with findings and recommendations to ensure the rights to detention and pre-trial detention; (c) to collect 120 standard monitoring questionnaires from 10 lawyers providing state-guaranteed legal aid; (d) to conduct 2 workshops for monitoring lawyers; (e) to question 138 police officers regarding detention; (f) to discuss confidentially with 4 detainees the perception of the detention process, as well as other necessary actions. The conclusions of the monitoring effort were reflected in the ***Thematic Report "Compliance with the fundamental guarantees of detention and pre-trial detention in police inspectorates"***²³⁰.

²³⁰ http://ombudsman.md/wp-content/uploads/2020/12/Raport_Retinere_2020_OAP_FSM_FINAL-proiect_pe-site.pdf

Between June 25-30, 2020, it was carried out the second stage of the „**EuNUaplic166/1-EuRespect Demnitatea UMANĂ**” Campaign. All police inspectorates, penitentiary institutions and, for the first time, placement centers for people with disabilities were involved²³¹. The aim of the campaign is to promote zero tolerance for acts of torture by people in the occupational risk group on International Day for the Support of Victims of Torture.

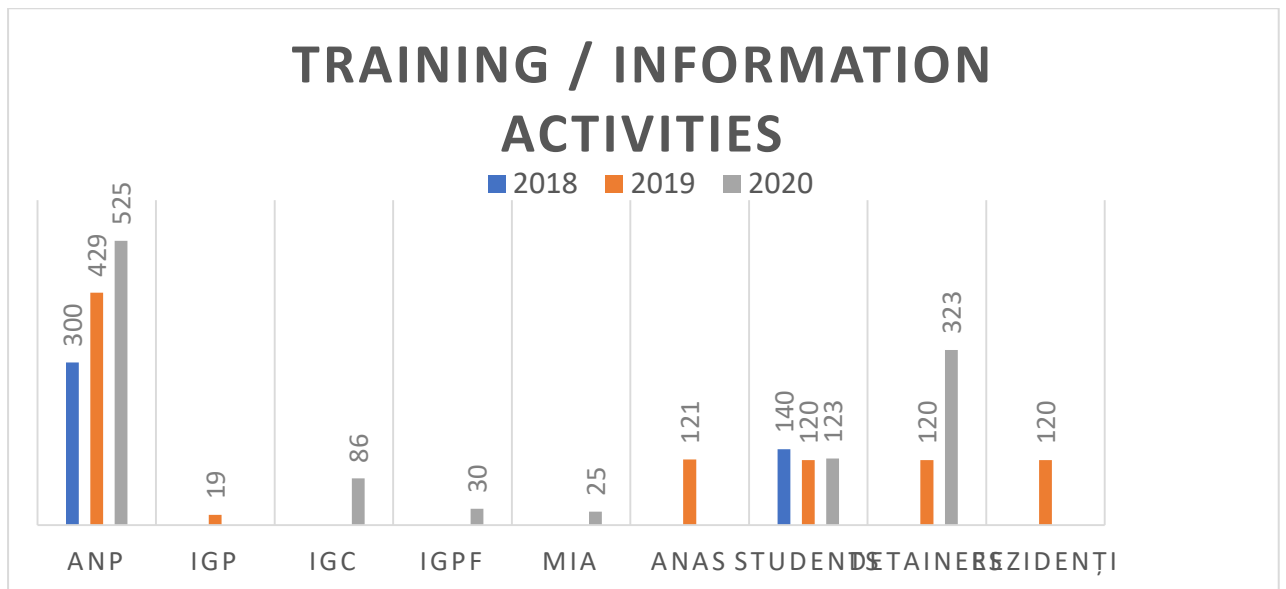
Regarding the torture prevention activity by training bondholders and rights holders, the employees of the Directorate of Torture Prevention of the People's Advocate Office carried out **30 training activities and 37 information activities** for 525 employees of the National Penitentiary Administration, 323 detainees, 123 students; 86 employees of the General Inspectorate of Carabinieri; 30 employees of the General Inspectorate of Border Police and 25 employees of the Ministry of Internal Affairs in the field of responsibility²³².

We are witnessing a significant increase in the number of trainings and persons trained by the PAO in the field of torture prevention. For example, in 2018, 300 employees of the penitentiary system and 140 students were trained; in 2019 - 429 employees of the penitentiary system, 236 students, 19 employees of the police, 121 employees and 120 residents of the Centers for the Temporary Placement of Persons with Disabilities and 120 detainees; in 2020 - 525 employees of the penitentiary system, 123 students, 25 employees of the Ministry of Interior, 323 detainees, 86 carabinieri and 30 employees of the border police. Also here, we appreciate the positive tendency of the penitentiary system to request the carrying out of training activities for the penitentiary staff within the NAP Training Center. Likewise, we mention the opening of the General Inspectorate of Carabinieri to the PAO in contributing to the professional training of employees in the field of torture prevention, human rights and fundamental freedoms, etc.

We remind you that, according to Article 10 of the UN Convention against Torture, each State Party shall ensure that data and information on the prohibition of torture are an integral part of the training program for civilian or military personnel in charge of law enforcement, medical personnel, law enforcement officials and other persons who may intervene in the guarding, interrogation or treatment of any individual detained, arrested or imprisoned in any form:

²³¹ <http://ombudsman.md/news/campania-eunuaplic166-1-eurespectdemnitateaumana/>

²³² <http://ombudsman.md/activitate/prevenirea-torturii/prevenirea-torturii/>



In 2020, the members of the Council for the Prevention of Torture created under the People's Advocate Office made **11 preventive visits** (Penitentiary no. 18 Branesti, the criminal prosecution isolator of the National Anticorruption Center, the Provisional Detention Isolator of the Chisinau Police Department, Penitentiary no.11 Balti, Penitentiary no. 7 Rusca, Temporary Placement Center for Foreigners, Temporary Placement Centers for persons with minor disabilities from Orhei and Hincesti, Command of the Chisinau Military Garrison and Penitentiary no.9 Pruncul).

Following the visits, the Council prepared **9 visit reports** that include 157 recommendations to the authorities: National Agency for Social Assistance - 9; Temporary placement center for people with minor disabilities Orhei - 6; Temporary placement center for people with minor disabilities Hincesti - 6; National Anticorruption Center - 17; Ministry of Justice of the Republic of Moldova - 7; National Administration of Penitentiaries - 20; Penitentiary no.9-Pruncul - 13; Penitentiary no.7-Rusca - 9; Penitentiary no.11 Balti - 6; Penitentiary no. 18-Branesti - 15; General Police Inspectorate - 9; Chisinau Police Department - 10; Ministry of Internal Affairs of the Republic of Moldova - 3; Migration and Asylum Office - 6; General Inspectorate of Border Police - 6; Temporary placement center for foreigners - 3; Ministry of Defense of the Republic of Moldova - 5 and Commanding the Military Garrison - 7 recommendations²³³. Likewise, members of the Council for the Prevention of Torture met in 16 meetings.

This year, no actions were registered to obstruct the access of PAO employees and members of the Council for the Prevention of Torture in the monitored institutions. There were no overlapping or parallel visits within the mandate of the Council for the Prevention of Torture and the Directorate for the Prevention of Torture of PAO.

²³³ <http://ombudsman.md/consiliul-pentru-prevenirea-torturii/rapoarte/>

3.2 HUMAN RIGHTS IN DETENTION DURING THE PANDEMIC CRISIS

Under international human rights law, everyone has the right to the highest standard of physical and mental health. When a state deprives a person of his or her liberty, he or she shall be responsible for providing medical care and for protecting and promoting his or her physical and mental health and well-being, as set out in the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules). This responsibility for care is crucial, as detainees have no choice but to depend on the authorities for the protection and promotion of their own health. Detainees are largely dependent on public authorities for exercising their right to health (in case of reference to the pandemic situation).

In Moldova there are over 115 places of deprivation of liberty that ensure the custody of over 15 thousand people²³⁴. According to data presented and published by public authorities, over 10% of residents (from about 1960) fell ill with COVID-19; over 300 patients admitted to psychiatric hospitals, of which 7 died; 87 detainees with mild and moderate symptoms treated; 524 soldiers, 6 detained out of 50 tested. At the same time, the data show that the number of employees affected by the pandemic virus is relatively high: 299 employees of the penitentiary system, one of whom died; over 30 employees of psychiatric hospitals; about 100 employees of residential institutions and over 80 employees of the police fell ill during the monitoring period, the numbers continuing to increase²³⁵. The Ombudsman also received information on the illnesses of residents, patients and detainees in places of deprivation of liberty in the Transnistrian region.

The right to respect for private and family life:

International standards stipulate that any limitation of contact with the outside world must be proportionate, including the time limit and non-discrimination. While detainees' restrictions on personal visits may be justified in the context of preventing the COVID-19 epidemic in prisons, the authorities who imposed such measures require a comprehensive and transparent decision-making policy. In the case of restrictions, they must be proportionate in order to prevent (or respond to) the epidemic. Personal visits must be replaced by other means or possibilities of contact with the outside world, such as by telephone, e-mail or video calls.

Therefore, all institutions that provide custody of persons have resorted to limiting contact with family members during the state of emergency. Initially, some residential

²³⁴ Except for the Transnistrian region, where there are over 40 private places, to which the People's Advocate does not have access.

²³⁵ http://ombudsman.md/wp-content/uploads/2020/06/RAPORT_Covid-19.pdf

institutions "closed" the residents in their own salons, not being allowed to go out in the yard. Subsequently, from August 2020, the placement centers allowed the residents to leave their territory. At the same time, penitentiaries have limited the access of relatives, family or children to short or long-term meetings. These measures continue today. Thus, for about 300 days the detainees / residents did not have physical contacts with family members / children, etc. For the most part, the prison system has compensated physical meetings with online ones, or increased the number of phone calls. The Ombudsman received notifications regarding the lack of meetings and the violation of the right to privacy during this period. Packages were only allowed in the form packed by the manufacturer. Respectively, some detainees were affected by this decision. The number of parcels has dropped significantly for some detainees. In the meantime, the Ombudsman received information that detainees in the informal group had received parcels and other goods without hindrance. Transfers between institutions have been limited, except in cases of illness.

In the event of the cessation of the state of emergency, the institutions that ensure the detention of persons, especially penitentiaries will feel an enormous flow of requests to ensure conjugal meetings, which can lead to certain impediments in the activity of institutions, as well as increasing the number of cases of use of force for acts of dissatisfaction. Meetings through limiting windows are not the best solution. On the contrary, they can create dissatisfaction reactions and traumatic psychological effects on family members / children, who will not be able to physically approach the detainee.

The right to appropriate medical care and assistance:

In cases suspected or confirmed by COVID-19, detainees should have access to urgent, specialized medical care without unjustified complications. The prison administration must form close links with community health services and other health care providers. Such links are also important in order to ensure equal opportunities for care, as stipulated in the Nelson Mandela Rules. Priority programs for conditional release should be developed for elderly or sick detainees, given the high risk of infection with COVID-19.

Initially, in the first phase of the pandemic, the penitentiary system was excluded from public health services. This omission was subsequently remedied. Residential institutions were assigned to psychiatric hospitals for the treatment of sick residents, which in some places created confusion regarding the specifics of patients. The staff of psychiatric institutions had to learn to work on their own with another category of patients, who did not present most of them, mental disorders. Informing residents and patients about the effects and consequences of the virus has been a major challenge. Likewise, their urge to respect hygiene and preventive

measures. From the beginning, the custodial authorities did not have sufficient means and equipment of protection. Subsequently, thanks to donations, the stocks were filled. The Ombudsman received several complaints from both detainees and relatives about: *concerns about the risk of infection, lack of protection measures; refusal to perform tests; failure to provide medical assistance to asymptomatic patients; distribution of a single mask as a means of protection; lack of information on means of protection; the cells are not disinfected; the existence of Covid-19 symptoms; the doctor refused the examination on the grounds that it was impossible to prove that the detainee had lost his taste or smell; placement in deplorable conditions; continuing to carry out work activities in conditions of high humidity, employees do not comply with anti-pandemic measures, do not wear a mask properly, do not respect the social distance, searches are carried out without compliance with protection measures, etc.* After several reactions in the press and protests of the detainees, the National Administration of Penitentiaries published some data on the infection in Penitentiary Institutions no.13 and no.17. All the detainees tested positive were placed for treatment at the penitentiary hospital, being with light and medium forms.

Previous problems on the underfunding of medical services as well as the quality of healthcare have continued. At the Ombudsman's approach²³⁶, the Ministry of Justice refused to conditionally release certain categories of detainees as being inappropriate²³⁷. Subsequently, in August 2020, the National Administration of Penitentiaries initiated an amnesty project, which was not promoted in the Government / Legislature during the monitoring period.

International rules say that quarantine measures should only be imposed if the prison administration cannot take an alternative protective measure to prevent or respond to the spread of infection. Despite these, the prison system adopted radical measures from the outset in response to information about the pandemic, or, through these measures, the system has shown that it is unable to prevent infection. On the other hand, the Ministry of Justice and the National Administration of Penitentiaries did **not** order measures to depopulate penitentiaries due to the state of emergency, and the number of detainees increased.

Individual freedom and security of the person:

²³⁶ <http://ombudsman.md/news/avocatii-poporului-recomanda-autoritatilor-intreprinderea-masurilor-de-urgenta-pentru-eliberarea-din-detentie-a-anumitor-categorii-de-detinuti-inclusiv-minori-prin-aplicarea-celor-mai-potrivite-solu-2/>

²³⁷ <https://www.zdg.md/stiri/comunicate/ministerul-justitiei-considera-inoportuna-promovarea-amnistiei-sau-a-gratierii-in-contextul-covid-19/>

The detention of the person cannot exceed 72 hours (3 days), and the individual freedom and safety of the person are guaranteed. However, with the adoption of the decision on the emergency regime, the measure of pre-trial detention of detainees was extended to 7 days. Although, the term of pre-trial detention cannot exceed 72 hours.

For example, in the first half of 2020, 1124 people were detained, of which **811 people** were held in solitary confinement for **up to 7 days** (quarantine period), including after May 15, 2020. These include persons convicted or remanded in custody, who, according to national regulations, were to be detained only in prisons. At the same time, the NAP reported that its criminal prosecution isolators are crowded and there is insufficient space for quarantine. Therefore, the GPI had to maintain the mentioned categories of persons, contrary to the status of police isolators, including beyond the legal term. The GPI informed the Ombudsman that it admitted violating the constitutional provisions and asked for his opinion.

In the preventive visits carried out in 14 police inspectorates between June and December 2020, the PAO employees noticed that some isolators faced the problem of *overcrowding; remedying the flow of detainees; escorting and their separate distribution, etc.*²³⁸ Beyond that, the provision of anti-pandemic equipment and means, on a case-by-case basis, is minimal. For example: *lack of masks for detainees, whenever they leave and enter the cell, etc.* PAO officials were informed about the reluctance of the criminal prosecution isolators no. 5, 11, 13 and no. 17 to receive the arrested only after the expiration of the period of 7 days / or more, including due to the lack of quarantine spaces in penitentiaries. At the same time, the flow of escorts performed by the police is extremely high, compared to 2019. At the time of writing the report, the NAP / GPI did not reach a compromise in this regard.

Prohibition of torture and other forms of punishment:

Subsequently, more than 4200 detainees out of about 6500 were detained in overcrowded conditions in penitentiary institutions. Material conditions remain below the allowable limit, deplorable and / or inhuman. During the quarantine period, the penitentiary institutions adjusted some cells, housing sectors (changing their regime from open to closed / semi-closed type) or meeting rooms, in order to keep in isolation the newly-placed or escorted persons from other institutions. The Ombudsman received complaints that the quarantine detention took place in unworthy and inhuman conditions (*for example: detainees are locked sideways 24/24 hours in a small, narrow space that is, in fact, the corridor of the housing sector, with no windows, no adequate ventilation, no natural light, with the only permanently locked access, a toilet at the end of the corridor in disgusting hygienic conditions (a real*

²³⁸ <http://ombudsman.md/rapoarte/prevenirea-torturii/in-baza-vizitelor/>

source of infection), and with only a small "so-called" walking backyard available of a few square meters, where everyone piles up, the quarantine space is small, with 2 rows of bars, on a level with the ground, the daylight barely penetrates, there is humidity, the toilet door is missing, there are no stools, the socket is damaged, there is no drinking water, from the tap flows water with a specific smell, impossible to drink, the bathroom lacked heat due to failure, and the boiler with a capacity of 30l failed to heat the water, lack of walking and isolation in the cell on suspicion of infection; distribution of food in their own dishes and not in containers; garbage was not picked up by employees; no garbage bags were offered; lack of adequate ventilation and the presence of the toilet in the housing sector with a pungent odor, etc.).

The firearm as a warning sign was used in only one case of attempted escape in the Penitentiary Institution no.9. Likewise, during the monitoring period, 5 cases of attack on employees by detainees during unannounced searches were reported, as well as by surprise, a series of acts of critical self-harm (*swallowing foreign bodies, suturing the eyes and oral cavity, ingestion of drugs, the introduction of the kitchen knife in the abdomen, wounds to the forearm and veins, the introduction of metal wires into the body, swallowing blades, self-immolation, etc.*), as well as 56 deaths without signs of violence (no deaths from Covid-19 infection). In 6 cases, the employees resorted to the application of tear gas to the detainees. The rate of acts of violence among detainees remains the same as last year. Furthermore, employees quite often resort to the use of force and special means to restore internal order, and the documenting of facts is not always objective.

The General Police Inspectorate has established 3 special isolators for the placement of patients with infection. These are the Floresti isolator, the Calarasi isolator and the Ceadir-Lunga isolator. According to the decision, in these three isolators, the persons detained during the isolation period (from 7 to 14 days) were to be placed. In our opinion, the placement of persons detained as having infection in these isolators constitutes in itself a violation of Article 3 of the ECHR. All three deprivation spaces do not meet the minimum standards of detention, which the Ombudsman and the Council for the Prevention of Torture have repeatedly mentioned in his reports and recommendations. For example, *in the isolator from Floresti the toilets in the cells are missing; in the isolator from Calarasi and Ceadir-Lunga, there is dampness and anti-sanitation.* In the Falesti isolator in the first semester of 2020, 141 people were placed and will continue to be placed until the Balti isolator is put into operation; 87 people have been placed in the Floresti isolator and will continue to be placed until the Soroca isolator is put into operation. Respectively, the placement of suspects with respiratory diseases in those conditions is contraindicated. The Ombudsman recommended that the General Police

Inspectorate review his decision immediately²³⁹. Subsequently, the PAO was informed about the separation of isolators of the Sangerei and Cimislia Police Inspectorates for the placement of SARS-COV-19 infected detainees.

The situation in residential institutions remained in principle constant. Accommodation spaces remain unsuitable for the specific requirements and needs of residents. 80% of residents continue to experience pain due to dental problems and other illnesses, not included in the single healthcare program. At the same time, the occupancy rate of residents is relatively low (about 7%). The acts of violence between residents are constant. These are reported to the police bodies, who apply contravention sanctions, usually to both parties. The People's Advocate Office was informed about 5 cases of employee abuse on residents, 4 cases of death due to SARS-COV-2 infection and another 5 deaths of natural death.

The right to defense and a fair trial:

Measures restricting access to prisons and quarantines can prevent detainees from attending their own court hearings, meetings with the parole board or meetings with their lawyers, which is extremely important for pre-trial detainees. No health measure can justify restrictions on meetings with a lawyer. If the prison administration considers that lawyers should not have access to prisons, it should at least ensure free communication between lawyers and clients online or by telephone. The interruption of criminal proceedings during the pandemic could directly affect detainees in the process of parole, sentence reduction, etc., which would affect not only their interests, but also directly contribute to prison overcrowding, individual protests, conflicts, etc.

Protective measures must allow people to attend the trial and benefit from a lawyer. Law enforcement, prisons, parole boards and courts must take all appropriate measures to protect anyone from COVID-19 infection. In order to ensure the continuous functioning of criminal justice bodies, measures should be taken, such as hearings or remote scheduling and / or the provision of protective equipment for face-to-face trials. Any restrictive measures - if any - must be personalized and based on independent medical conclusions. Global restrictive measures run counter to the principles of a fair trial and the right to a lawyer.

Despite these rules, lawyers' access to detained clients has been largely restricted. At the same time, law enforcement officials and prosecutors had physical access to detainees and convicts. The People's Advocate has received more concerns from lawyers regarding the disproportionate access of lawyers compared to prosecutors in prisons. Also here, some lawyers mentioned that they were subjected to searches and intimidation under the pretext of complying

²³⁹ Order of the GPI head no. 34 / 16-569 / 2020;

with protection commitments before and after the meetings with the detained clients. Several detainees complained of *a series of violations of the trial and that they were unable to attend and initially speak with the lawyer (some did not even understand the reasons for the accusation or who their defense counsel was); that they could not examine the file and the indictment, object or appeal, etc.* While the detainees were physically escorted to the judge, only because they had the status of detainee, the convicts were not escorted, although both categories of detainees were in the same penitentiary institution (we refer to the criminal prosecution isolators). The detainees invoked the unjustified refusal of the court in Hincesti to examine the requests for parole.

Health of staff in the deprivation of liberty system:

The prison administration must support prison staff in emergency situations. The prison administration must be proactive in planning the work of staff members in the context of the COVID-19 pandemic, must share the emergency preparedness plan and provide support to relatives of prison staff. The staff must be strengthened, and the staff must benefit from professional support, protection of health and safety, but also the necessary training in order to be able to continue to perform their duties in places of deprivation of liberty.

The data presented in that report show that the rate of illness on the part of employees is quite high compared to those in custody. There were at least 4 deaths among employees of the penitentiary and psychiatric system. It is certain that the authorities have encountered enormous difficulties in fulfilling their commitments to protect front-line staff. And the lessons learned are only going to strengthen the employee protection system. In practice, each institution faced the challenge at its own risk. Some institutions have minimized the number of employees, others have ensured the exercise of work in shifts (of 7 days each), etc. Penitentiary institutions operated on a regular basis. Employees who had symptoms of fever were released from service.

Other places of deprivation of liberty:

Following the response to the increase in the number of infected people, the authorities decided to create, establish specialized medical institutions in the treatment of the disease. These have been abbreviated as "COVID-19 Centers". In the field of torture prevention, the question arose as to whether these institutions can be places of deprivation of liberty in the light of the Optional Protocol to the UN Convention against Torture, including whether the form of treatment of patients is voluntary or forced.

At the same time, in the press, more information appeared that some patients had "escaped" from these Centers, and the police returned them to treatment. Despite these, there were no complaints regarding the hospitalization or forced anti-covid treatment.

The regulations for the establishment and / or designation of triage and treatment institutions did not provide for the establishment of institutions for the forced treatment of the disease. Rather, these Centers have been set up to facilitate the identification of the virus in safe places. The hospitalization in the medical institutions takes place on the basis of the information / ordinary treatment agreement of the patient, i.e. on the basis of the individual decision of the latter, not being any administrative decision in this respect. This agreement contains provisions that warn the patient tested positive about the consequences of non-compliance with the quarantine regime ordered by the National Commission for Exceptional Situations and the fine to which he/she may be subject.

From this perspective, we can say that the treatment undertaken in the institution seems to be partially voluntary, once the patient is notified of the contravention liability if he/she will spread the epidemic by leaving the medical institution.

3.3 SITUATION OF PERSONS DETAINED IN PENITENTIARY INSTITUTIONS

Findings of the European Committee against Torture

From January 28 to February 7, 2020, the Republic of Moldova was visited by the members of the European Committee for the Prevention of Torture (CPT). The delegation visited the Penitentiary Institution no.1-Taraclia, the Penitentiary Institution no.5 Cahul, the Penitentiary Institution no.13 Chisinau and the Penitentiary no.10 for minors (evaluation visit).

According to the CPT²⁴⁰ in all units visited, most of the detainees interviewed by the delegation did not make any allegations of ill-treatment by staff. However, at the Chisinau prison, the delegation received several allegations of physical treatment (for example, *punches and sticks*) from prison staff. Moreover, in all three adult prisons visited, several allegations were made of **excessive use of force** by staff against agitated detainees and, in prisons in Chisinau and Taraclia, of excessive handcuffing (*handcuffs applied to the back in a squat position to a fixed object*). In its report, the CPT sends a strong message that the ill-treatment of prisoners is illegal and unacceptable and will be punished accordingly. Likewise, no more force should be used than is strictly necessary to control violent and / or recalcitrant prisoners. If it is

²⁴⁰ <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-publishes-report-on-moldo-6>;

considered essential to handcuff a particular detainee, handcuffs should in no case be excessively tight and prisoners should not be immobilized by fixed objects.

The results of the Committee's visit showed that the issue of **violence and intimidation** among male adults has remained as acute as in the past, largely linked to well-established **informal hierarchies** in the country's prison system. Although detainees were regularly found with injuries indicating violence between detainees, these cases remained undeclared due to the climate of fear and intimidation created by detainees at the head of the informal hierarchy of prisons, as well as the general lack of confidence in staff capacity to ensure the safety of prisoners. According to the CPT, the continued failure of the Moldovan authorities to ensure a safe environment for detainees is directly linked to a number of factors, in particular the chronic lack of custodial staff, reliance on informal detainee leaders to maintain control over the detainee population, and the existence of large capacity accommodation (barrack). At the same time, there is no adequate assessment of the risks and needs of detainees on admission and no classification of detainees to identify in which prisons, blocks or cells they should be placed. As for the prisoners considered "humiliated" by the informal hierarchy, they continued to live in a state of constant fear and humiliation. As has been pointed out in the past, the CPT considers that their situation could be considered as a continuing violation of Article 3 of the ECHR. In the light of these findings, the CPT made a number of recommendations and called on the Moldovan authorities to take decisive action, without further delay, to prevent violence and intimidation among detainees throughout the prison system.

Despite improvements in the **material conditions of the Chisinau prison**, in general, the conditions of detention in the unit remained unsatisfactory, including in terms of repair, hygiene, ventilation and access to natural light, as well as overcrowding in some cells. On a more positive note, the **material conditions in the Cahul and Taraclia prisons** were generally satisfactory. However, in all three prisons, the delegation found cases of **unequal distribution of detainees** between cells. Indeed, this was an indicator of a strong informal hierarchy of prisons in the units visited. The CPT recommends, inter alia, that detainees be evenly distributed in cells, with the aim of providing at least 4 m² of living space per detainee in multi-occupancy cells.

Regarding the **regime offered to detainees**, despite efforts in Taraclia and Cahul prisons to provide organized activities to convicted detainees, a significant proportion of them were not involved in any intentional activity. The situation was even less favorable for adult pre-trial detainees from prisons in Cahul and Chisinau. Most of them spent **22 or 23 hours locked** in their cells without being offered anything, which is like a program of meaningful

activities. The Committee recommended that the Moldovan authorities redouble their efforts to increase the number of convicts detained, who participate in organized activities and implement a program of activities for pre-trial detainees. The aim should be for all detainees (regardless of their legal status) to be able to spend a reasonable part of their day outside their cells and to be engaged in various activities.

The **staff resources** in all three visited prisons were insufficient, and the CPT recommends that the vacancies be filled and that the number of medical staff at the Chisinau prison be increased. Likewise, recommendations are made regarding the **correct registration** of injuries and the confidentiality of medical examinations. In the prisons in Chisinau and Taraclia, the delegation met a number of prisoners who appeared to have mental health problems or self-harm, including suicide, and who had been held in solitary confinement for months or even years in a row. The Committee recommends that all detainees with **mental health** problems detained in Chisinau and Taraclia prisons be fully evaluated by a psychiatrist. Where appropriate, they should be transferred, cared for and treated in an appropriate environment, with sufficient qualified staff to provide them with the necessary assistance.

In addition, the CPT remains concerned that the **acts** of deliberate **physical self-harm** are still considered a disciplinary offense. The Committee reiterated the recommendation that the Moldovan authorities review the approach to these prisoners. With regard to **isolation** as a disciplinary measure, it may continue to be imposed on certain categories of prisoners for up to 20 days and up to three days for convicted minors. The Committee reiterates its recommendation that the Moldovan authorities reduce the maximum period of disciplinary isolation for a given offense to 14 days (and preferably less) and **abolish full disciplinary isolation for minors**. The CPT makes a number of other recommendations on various additional issues related to imprisonment, such as developing a specific admission procedure for **women detainees**, increasing the right to visit for convicted prisoners and ensuring that pre-trial detainees have the right to receive visits as a matter of principle, as well as to allow more frequent telephone calls for all detainees.

Dynamics of persons deprived of liberty

Between January 1, 2020 and January 1, 2021, on a detention ceiling in the 17 penitentiary institutions of 6735 persons **6716** detainees were detained, out of which 2527 arrested. The data published by NAP per detention institution reveal that the detention ceiling is exceeded in Penitentiary no. 2 Lipcani (with 36 detainees); in Penitentiary no.3-Leova (with 42 detainees); in Penitentiary no. 4-Cricova (with 39 detainees); in Penitentiary no.6-Soroca (with 62 detainees); in Penitentiary no. 7-Rusca (with 70 detainees); in Penitentiary

no.9-Pruncul (with 35 detainees); in Penitentiary no.11 Balti (with 135 detainees); in Penitentiary no.13 Chisinau (with 272 detainees); in Penitentiary no.15 (with 25 detainees) and in Penitentiary no.18 (with 16 detainees). However, 732 detainees had to be in overcrowded conditions:

P1	P2	P3	P4	P5	P6	P7	P8	P9	P10	P11	P12	P13	P15	P17	P18
336	286	307	713	170	693	231	279	467	64	258	261	570	470	516	652
316	322	349	752	160	755	301	160	502	32	393	131	842	495	316	668
0	0	0	0	225	0	0	0	0	0	595	0	1526	0	174	0

At the same time, in the Hospital-Penitentiary no. 16-Pruncul on a capacity of 462 beds were placed 222 detainees-patients. Additionally, in the Penitentiary Institutions no.5, no.11, no.13 and no.17 that have a criminal prosecution isolator, 2527 persons were placed for the period of pre-trial detention.

We can easily notice the constant overloading and overcrowding of these pre-trial detention institutions²⁴¹. Over the last three years, the prison population has been declining slightly, from 6990 detainees in 2018 to 6429 in 2020. **However, the problem of overcrowding persists, including due to the fact that some prisons cannot physically secure the minimum detention ceiling, established by the CPT rules. At the same time, state policies are focused more on maintaining the prison population than on depopulating or reducing placement in detention.**

Penitentiary human resources

As of December 31, 2020, the prison staff was 2951 units (1107 officers, 1616 prison officers and 228 contract staff). 2739.75 units represent the filled positions and 211.25 units are vacant positions. There is a positive dynamic of filling vacancies by about 61.5% compared to the critical situation in 2019. The number of penitentiary agents and employed officers has increased. On the reporting day, 138 staff units within the National Administration of Penitentiaries continue to be under moratorium. Despite this, the ratio between the number of detainees and employees who are directly in prisons is 1 employee - 4/6 detainees during the day, and at night this ratio can reach from 1 employee to 10/30 detainees. This state creates not only impediments in the performance of security activities and penitentiary regime, but also of effective impossibility to prevent acts of violence / other forms of ill-treatment in detention institutions. Even though the number of units has increased

²⁴¹ <http://anp.gov.md/rapoarte-de-bilant>

by 31 compared to the situation in 2015, it is certain that the penitentiary system needs more staff (especially professionals) to face all the challenges and accomplish the legal tasks.

In 2020, 35.5 medical staff units were filled by hiring from 40 vacancies. Therefore, out of 252 units per state, only 5 positions remain vacant for 2021. One of the factors that stimulated the increase in the number of jobs is the improvement of the salary situation. We remind that in 2019 the People's Advocate mentioned about the crisis of employees in the penitentiary system and recommended to the executive to take radical measures in this regard, in order not to admit harmful consequences.

The People's Advocate encourages the Government / National Administration of Penitentiaries to provide competent, professional and well-motivated staff in the penitentiary system. The implementation of human resources policy must become a priority objective as a precondition for preventing the phenomenon of torture in the punitive system.

Renovation of the penitentiary infrastructure

In the current year, budgetary financial resources continued to be allocated for the capital real estates under construction for 4-8 years. Thus, 22711.0 thousand MDL were planned for the construction of the Balti Detention House and 20137.6 thousand MDL were spent (74% degree of accomplishment); for the reconstruction of Penitentiary no. 10 Goian, 1000.0 thousand MDL were planned, but 572.5 thousand MDL were spent, and for the reconstruction of Penitentiary no. 7 Rusca, 4289.0 thousand MDL were planned and 4267.5 thousand MDL were spent.

In 2019, the Balti Detention House is only at 55% level of achievement, being spent 39 million MDL. Respectively, in 2020 the level of realization of the construction of the detention house increased by 19%, being necessary other investments, amounting to over 20137 thousand MDL. The real cost of this detention institution is advancing year by year, compared to the planned cost. The long duration of the construction of this institution directly affects the situation of the penitentiary population at the Penitentiary Institution no.11 and no.17. Both are suffocated by the large number of detainees.

Regarding the situation of the new block within Penitentiary no. 10, in 2019 the degree of construction was 99%. There were some statements that it was going to be put into operation. However, it seems that another 1000.0 thousand MDL was needed for constructions, which in no way can constitute 1% of the achievement level. Finally, in 2020 the new block in Goian was not put into operation. One of the reasons for the delay in this process was the pandemic

situation. The National Administration of Penitentiaries has planned to place the detainees infected with Covid-19 in the new block in the event of an acute illness crisis.

During the monitoring period, the capital investments initiated in 2019 within the Penitentiary no.3 Leova and no.9 Pruncul continued. Thus, at Penitentiary no. 3 Leova, the second block of detention was renovated from a barrack-type sector to a residential sector with 4-6 cell-type places. The cells were equipped with separate technical and sanitary spaces completely separated from the living rooms, natural and forced ventilation system, furniture, linen and new inventory. The cost of renovation reached the figure of 385 thousand MDL (34 places of detention and 2 isolators). We remind you that in 2019, following the preventive visit made to the penitentiary institution no. 3-Leova, the People's Advocate ordered the immediate improvement of the situation in the barrack-type housing block, the cessation of the activity of the public toilet, the renovation of the disciplinary isolator, etc. All the Ombudsman's recommendations were made by the penitentiary institution no. 3 according to the commitments assumed²⁴².

Likewise, the capital repair works of a detention sector inside the Penitentiary no. 9-Pruncul were completed. The repair consisted of dividing the large "barrack" type rooms into smaller cells, 4-6-8 places each. The detainees will benefit from cells with technical-sanitary blocks totally separated from the living rooms, natural and forced ventilation system, separate kitchens, video surveillance and control system, and the living spaces are equipped with new furniture, linen and inventory.

Another 250 housing spaces within the penitentiary institutions, of which: 95 spaces with small capacity (up to 5 people); 109 medium-capacity spaces (up to 15 people) and 46 high-capacity spaces (over 15 people) were renovated in 2020 from budgetary sources.

The situation regarding the new Chisinau Penitentiary is quite uncertain. The procurement procedures announced in 2020 have failed. However, according to the provisions of the Framework Loan Agreement, the construction works were to be completed on December 31, 2017, and the commissioning of the penitentiary was scheduled for June 30, 2018. Subsequently, the Council of Europe Development Bank (CEB) extended the project implementation deadline until December 31, 2022.

At the same time, a report of the Court of Accounts of the Republic of Moldova, presented on July 21, 2020, shows that the implementation of the project was 54 months late compared to the established deadlines, with no capital of over 153 million MDL. At the same time, the expenses for the salary of UIM staff in the period 2014-2019 exceeded 11.4 million

²⁴² http://ombudsman.md/wp-content/uploads/2019/08/Raport_P3_03.07.19.pdf

MDL²⁴³. In reply, the UIM manager explained that the process of selecting construction companies is too difficult and expensive (*for example: a Dutch company requested the amount of 70-80 million EUR*) in the context in which the budget limit is 44 million EUR. He assured the members of the Court of Accounts that the new deadline for the reconstruction of the penitentiary is a real one, and that in 2022 it will be put into operation²⁴⁴.

In 2019, at the request of the Ministry of Justice, the amount of the loan from BDCE was increased by 10 million EUR, the total value being 49 million EUR. Likewise, the Government is going to increase its contribution by 6.8 million EUR²⁴⁵. In total, the amount for the construction of the penitentiary institution starts from **55.8 million EUR**.

In the meeting of September 3, 2020, the Cabinet of Ministers approved amendments to the State Budget Law for 2020, which provide for the exclusion of expenditures amounting to over 182 million MDL for the "Chisinau Penitentiary", of which 157.9 million provided from external sources²⁴⁶. According to the Law on the state budget for 2021 for the project "Construction of the Penitentiary in Chisinau municipality" were estimated 79428.0 thousand MDL from the national budget. However, according to the report on the implementation of the CPT's recommendations, the NAP claimed that the commissioning of the new penitentiary is expected for **December 2022**²⁴⁷.

For 2021, investments of 30,000.0 thousand MDL were planned from the state budget for the construction of the Balti detention house; 10000.0 thousand MDL for the reconstruction of Penitentiary no.5 Cahul; 5000.0 thousand MDL for the reconstruction of the security perimeter of Penitentiary no.7-Rusca; 5000.0 thousand MDL for the reconstruction of the security perimeter of the Penitentiary no. 10 Goian and 79428.0 thousand MDL for the project "Construction of the Penitentiary in Chisinau municipality".

The People's Advocate recalls the need to implement Recommendation No. R (99) 22 of the Committee of Ministers on the overcrowding of prisons and the inflation of the prison population. According to her, investing considerable sums in the prison infrastructure is not a solution. Rather, existing legislation and practices on pre-trial detention, sentencing and the multitude of available non-custodial sanctions should be reviewed.

²⁴³ https://www.youtube.com/watch?v=wKW6q8VTjEU&ab_channel=CurteadeConturi

²⁴⁴ <https://newsmaker.md/ro/noul-penitenciar-din-mun-chisinau-ramane-doar-pe-hartie-lucrarile-nici-nu-au-inceput-desi-urmasa-se-incheie-in-2019/>

²⁴⁵ <https://unimedia.info/ro/news/486005c6def4680f/cand-scapan-de-nr-13-trei-companii-lupta-pentru-a-construi-o-puscarie-noua-49-de-milioane-de-euro-sunt-alocati-iar-lucrarile-de-constructie-ar-urma-sa-inceapa-in-toamna.html>

²⁴⁶ <https://www.bizlaw.md/soarta-noului-penitenciar-din-chisinau-incerta-guvernul-a-taiat-cheltuielile-prevazute-pentru-acest-an>

²⁴⁷ <http://anp.gov.md/cpt-realizare>

Material conditions of detention

In 2020, the employees of the People's Advocate Office did not carry out monitoring visits in penitentiary institutions due to the pandemic and the state of emergency. At the same time, the members of the Council for the Prevention of Torture visited the Penitentiary Institutions no. 18, no. 11, no. 7 and no. 9. The findings of the Council for the Prevention of Torture on the Material Conditions of Detention remain worrying. At the same time, the Ombudsman received more than 445 requests from detainees containing allegations of inhuman and degrading treatment due to improper detention conditions: *inadequate detention conditions; overpopulation; poor and insufficient quality food; lack of effective medical care (lack of medicines, lack of doctors, medical equipment), dental pain; unsanitary hygiene (parasitic insects, presence of dirt, lack of beds, presence of rodents, lack of adequate ventilation, access to daylight, deplorable condition of toilets, dirty conditions in bathrooms; lack of privacy in toilets and bathrooms; (some lead to TB disease), insufficient winter warming, relations between detainees, discriminatory treatment, intimidation and harassment by the administration, etc.* Even if the state has instituted a compensatory remedy for detention in poor conditions, this does not mean that prison authorities must give up their provision of at least minimum standards of detention.

In this order of ideas, we repeatedly mention that in its jurisprudence the ECtHR noted that Art. 3 requires the state to ensure that the person is detained in conditions that are compatible with respect for human dignity, so that the manner and methods of execution of the imposed measures or punishment do not cause the person suffering or pain of an intensity exceeding the inevitable level of suffering inherent in detention and, given the demands of detention, the health and integrity of the person to be adequately ensured, inter alia, by providing the necessary medical care²⁴⁸.

The Executive Code of the Republic of Moldova regulates the manner and conditions of execution of the sentence, determines the means of correcting convicts, establishes the manner of execution of security and preventive measures, aimed at protecting the rights, freedoms and legitimate interests of the person, and providing assistance to convicts to their social adaptation²⁴⁹. Likewise, the legislator established that the executive-criminal legislation is applied in accordance with the Constitution of the Republic of Moldova and with the international treaties to which the Republic of Moldova is a party. If there are inconsistencies between the regulations of international treaties in the field of fundamental human rights and freedoms to which the Republic of Moldova is a party and the provisions of this Code, the

²⁴⁸ Case of Kudla v. Poland [MC], Decision of 26/10/2000, § 94; Paladi v. Republic of Moldova [MC], id., §71;

²⁴⁹ Para. 2, Art.165 Executive Code of the Republic of Moldova;

regulations of international treaties have priority. Thus, the provisions of Article 167¹ of the Executive Code expressly provides that it is prohibited to subject any person serving a sentence to torture, cruel, inhuman or degrading treatment or other ill-treatment.

Among the rights stipulated in the provisions of Art. 169 of the Executive Code at letter b) of para.1) it is stipulated the right to defense and observance by the institution or body that ensures the execution of the punishment of the dignity, rights and freedoms it has, including not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

In her previous remarks, the Ombudsman mentioned that all the penitentiaries in the country are of an old architecture and an organization not adapted to human detention as such. Large spaces (barrack-type) influence both the observance of the detention regime by detainees, their health and their ability to participate in resocialization programs. More than 80% of convicts spend time inside institutions due to lack of jobs and other forms of employment. In fact, penitentiaries do not have / have limited occupational areas specific and useful to detainees. The aspect of "resocialization" is maintained in the process of recording written documentation, rather than a succession of actions in this field. And the effort of the penitentiary authorities in this regard is still minimal.

At present, the detention of persons can easily be qualified as detention contrary to Art. 3 of the European Convention and case-law. These findings have been repeatedly drawn by the UN Committee Against Torture (2014, 2017), the European Committee for the Prevention of Torture (2015-2020), the People's Advocate (2002-2020) and the Council for the Prevention of Torture (2017-2020).

We also reiterate that the content of the *Concluding Observations on the third periodic report of the Republic of Moldova*, adopted at the 1600 and 1602 meetings of November 27 and 28, 2017 by the Committee Against Torture, emphasizes that "the Republic of Moldova must step up efforts to bring conditions in places of detention to international standards, such as the United Nations Standard Minimum Rules for the Treatment of Prisoners (*Nelson Mandela Rules*), including by ensuring adequate material and hygienic conditions for detainees, including sufficient natural and artificial lighting, adequate sewerage systems and sanitation, including toilets and showers, cell heating, sufficient ventilation, adequate quality and quantity of food, bedding, beds and personal hygiene items, medical care, outdoor activities and family visits".²⁵⁰

The Ombudsman reaffirms the Government's commitment to ensuring decent conditions in enclosed spaces and urges the Executive to decide on a comprehensive assessment of the situation. The fragmented and insufficient allocation of financial resources each year may not be the optimal solution. Respectively, it is necessary to revise

²⁵⁰ Point 18 (c) of the Concluding Observations on the third periodic report of the Republic of Moldova, adopted by the Committee Against Torture at its 62nd Session (November 6 - December 6, 2017);

the concept of execution of custodial measures, taking into account the annual austerity of the public budget.

The compensatory mechanism for detention in inhuman conditions

As of December 31, 2020, 5242 complaints were registered in court for detention in poor conditions as a result of the application of the preventive and compensatory mechanism. Of the total number of complaints, 4053 applications were examined by judges. Thus, the courts admitted 1603 claims; another 385 were partially admitted; 954 complaints were rejected; 122 - ceased; 672 - declined by competence.

The penitentiary institutions appealed against the positive solution for the detainee adopted by the first courts in 1481 applications. Of that number - 813 were examined, of which 358 were admitted and 497 rejected. In total, **only 200 detainees** were released from detention by combining the reduction of sentence with parole (in 2019 - only 53 detainees released). And, the amount of monetary compensations allocated to the detainees is over 2124504 MDL. The large number of complaints registered for the application of the compensatory appeal shows its value for each detainee. However, the low rate of positive solutions, or the high rate of rejection of actions, shows reservations on the part of public authorities about the poor situation in detention.

In his 2019 report, the People's Advocate reiterated certain legal and practical concerns regarding the application of the compensatory remedy. In 2020, they came true. A few months after testing the compensatory appeal, the company was disturbed by several court decisions regarding the release from custody of controversial persons. The apple of discord was the decisions of the courts to minimize the terms of punishment through the compensatory effect. Some experts appreciated the judges' exaggerated decisions, and the political actors wanted to mention about the corruption of judges, etc.²⁵¹ Under public pressure, the Ministry of Justice and the National Administration of Penitentiaries were forced to appeal against the decision to release V. Filat, but they were rejected.

Subsequently, the members of the Parliamentary Committee on Security, after several meetings, decided on the need to improve the legal framework. They accepted the proposal of the Ministry of Justice and the National Administration of Penitentiaries to suspend the application of the "compensatory mechanism"²⁵². On February 12, 2020, a moratorium was

²⁵¹ <https://moldova.europalibera.org/a/inten%C8%9Bia-guvernului-de-a-pune-moratoriu-asupra-mecanismului-compensatoriu--criticat%C4%83-de-exper%C8%9Bi/30434358.html>

²⁵² <http://www.parlament.md/Actualitate/Comunicatedepresa/tabid/90/ContentId/5967/language/ro-RO/Default.aspx>

applied on the application of the compensatory appeal. The moratorium lasted until June 1, 2020. In the meantime, a working group formed by order of the Ministry of Justice proposed some changes to the legal framework. However, they did not reach the table of the Government or the Parliament during the appointed period. Before the moratorium was approved, the Minister of Justice, Fadei Nagacevschi, declared that “... *it is an emergency. We currently have 6,700 people deprived of their liberty, and over 5,000 have applied for early release due to poor detention conditions. About 1000 detainees have already benefited from the compensatory punishment. I want to tell you that some people are being released who really represent a danger for the state security, etc.*”²⁵³ The subjective message of the dignitary, but also the intention of the Government to resort to the suspension of a solution against detention in inhuman conditions aroused various public reactions. For his part, the Ombudsman, in a public statement, condemned the Government's intention to suspend the compensation mechanism. According to the People's Advocate, the decision will have a strong impact on human rights, or people deprived of their liberty will still have to endure degrading conditions because the state is not able to provide them with adequate conditions.

The Ombudsman recalled that at the meeting of the Committee of Ministers of the Council of Europe in March 2018, in the context of discussions on the enforcement of judgments of the European Court of Human Rights on conditions of detention in the Republic of Moldova, it was noted that the adoption of legislation establishing a new internal remedy represents a positive development. The Committee noted earlier that this law appeared to comply with the main requirements of the case law of the European Court and the recommendations on preventive and compensatory measures in the SHISANOV case. He also added that the right not to be subjected to torture, inhuman and degrading treatment is an intangible right, **not being allowed to be limited even in circumstances that may jeopardize national sovereignty**, which differentiates it from most of the rights protected by the Convention. Referring to the statement of the Minister of Justice, Fadei Nagacevschi, that “*criminals, recidivists are released from detention*” is a false and misleading public opinion given that among the detainees who fall under the compensatory mechanism are persons who have committed less serious crimes, such as economic ones, involvement in road accidents. The Ombudsman went on to express his perplexity about the fact that PAO, as a national human rights institution, had not been consulted on an issue of such importance, but also because the subject had not been discussed in the working group for the elaboration of the Regulation on the evaluation of detention conditions, created by the Ministry of Justice.

²⁵³

<https://newsmaker.md/ro/guvernul-a-instituit-moratoriu-asupra-instrumentul-care-permite-reducerea-pedepselor-condamnatilor-din-cauza-conditiilor-precare-de-detentie/>

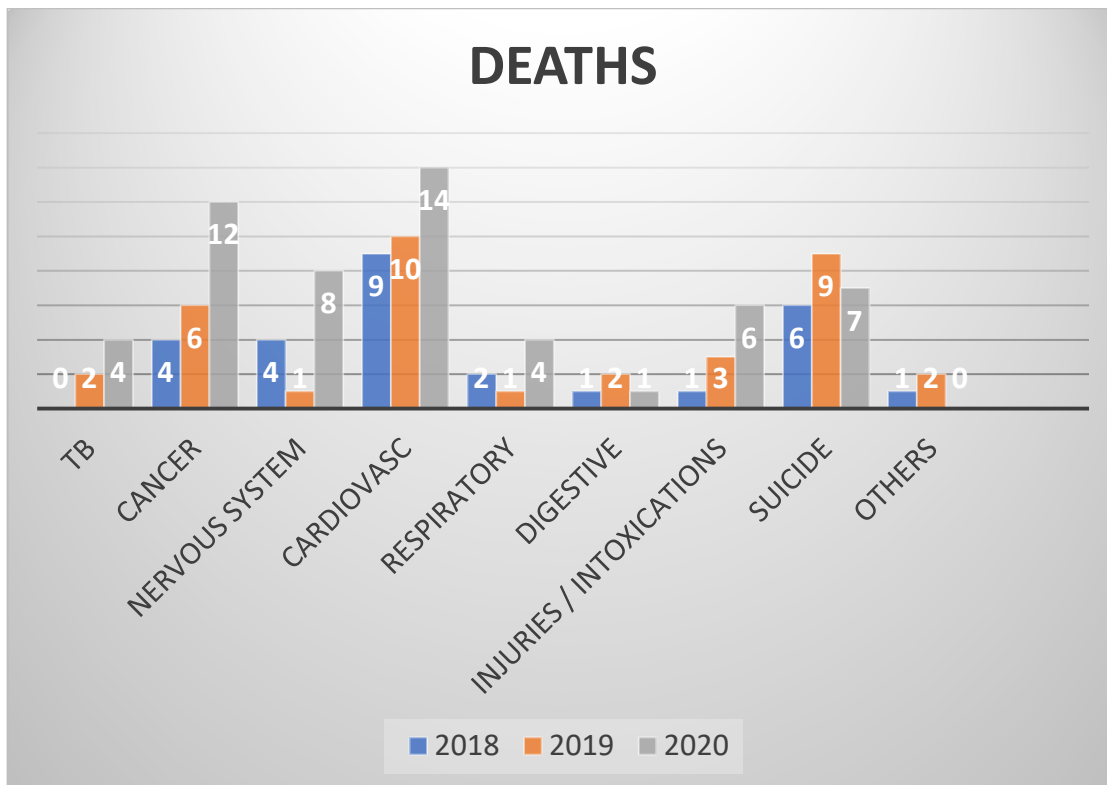
At the same time, the People's Advocate requested the Parliament of the Republic of Moldova not to support the Government's initiative regarding the suspension of the application of reducing the sentence of the convict detained in precarious conditions of detention, according to the provisions of Art. 385 para. (5), Art. 473² - 473⁴ of the CPC of the Republic of Moldova. There have been a number of pros and cons of this compensatory appeal along the way²⁵⁴. Finally, the legislature approved the moratorium for a period of 2 months, being valid until the end of May 2020. Subsequently, the Ministry of Justice developed a draft amendment to the compensatory mechanism, which was not approved during the reporting period.²⁵⁵.

Deaths in prisons

The number of deaths in 2020 reached **56 cases**, an increase of 20 cases compared to 2019 (36 cases). Diseases of the cardiovascular system and cancer are among the leading causes of death. The data presented by NAP on mortality among detainees for three years show as follows: - 2 detainees who died of tuberculosis in 2019 and 4 detainees in 2020; 4 detainees who died of cancer in 2018, 6 in 2019 and 12 in 2020; 4 detainees who died due to diseases of the nervous system in 2018, 1 in 2019 and 8 in 2020; 9 detainees who died due to cardiovascular system diseases in 2018, 10 in 2019 and 14 in 2020; 2 detainees died due to respiratory diseases in 2018, 1 in 2019 and 4 in 2020; 1 detainee died of diseases of the digestive system in 2018, 2 in 2019 and 1 in 2020; 1 detainee died due to injuries or intoxications in 2018, 3 in 2019 and 6 in 2020; 6 detainees committed suicide in 2018, 9 in 2019 and another 7 detainees in 2020; due to other diseases 1 detainee died in 2018 and 2 in 2019:

²⁵⁴ <https://www.zdg.md/stiri/stiri-justitie/statul-nu-mai-vrea-sa-ii-plateasca-cu-libertate-pe-detinuti-ce-spun-expertii-despre-decizia-guvernului-de-a-supenda-mecanismul-compensatoriu/>

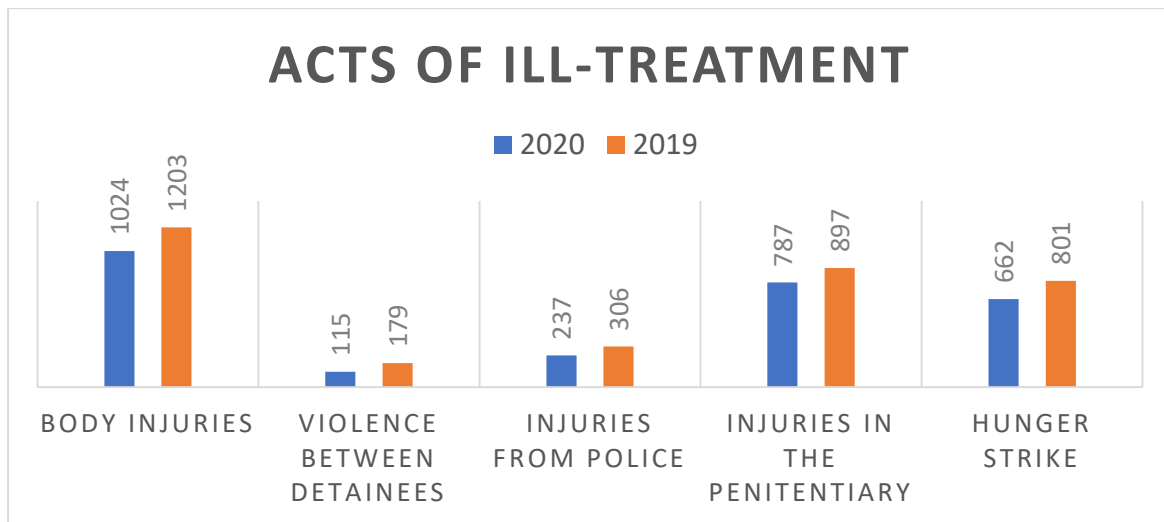
²⁵⁵ https://cancelaria.gov.md/sites/default/files/document/attachments/proiectul_371_0.pdf



At the same time, out of 8 convicts presented for release due to illness (Art.95 of the Criminal Code) - **6 died** while waiting for the decision of the NAP special commission for release due to illness from serving the sentence (in 2019 - 1 detainee deceased before submission to the Commission).

Acts of ill-treatment, other abuses in detention

During the reference period, the following were recorded: (a) 1024 cases of bodily injury among detainees (2019-1203), which is a decrease of 14.87%; (b) 115 cases classified as altercations between detainees (2019-179), an indicator decreasing by 35,75%; (c) 237 cases of injuries to persons detained / brought from the isolators of police inspectorates (2019-306) indicator decreasing by 22.54%; (d) 787 cases of injuries detected in convicts in the penitentiary (2019-897) and (e) 662 cases of declaring a hunger strike as a form of protest (2019-801 cases), indicator decreasing by 17.35%:



The most frequent cases being registered in Penitentiaries no. 6 Soroca (100 cases), no.11-Balti (58 cases), no.13-Chisinau (87 cases) and no.17-Rezina (73 cases). The fact that most cases were registered in these institutions is due to the status of criminal prosecution isolator they have, respectively the conditions and the detention regime, says NAP²⁵⁶. As a rule, the circumstances of the occurrence of bodily injuries in penitentiaries remain the *fall from level II of the bed; landslides; accidental blows to cells; following the football game, etc.* Most detainees refuse to declare the real circumstances of acts of violence, including fear of persecution. The lack of a complaint about acts of violence is the reason for not initiating any investigation in this regard. It seems that detainees are aware that they will not benefit from any effective protection inside penitentiary institutions if they file complaints of abuse, which is extremely serious. From the operative summaries received by the People's Advocate Office, situations of *settlement of accounts* were observed from some groups of detainees with authority over other detainees. In most cases, victims of physical / mental assault are among the groups of vulnerable detainees. Unfortunately, they are subjected to acts of humiliation both from detainees with authority and from employees.

We notice a slight decrease in the number of detainees brought to the criminal prosecution isolators by police officers from 306 cases in 2019 to 237 cases in 2020. According to the request of the People's Advocate, penitentiary institutions separately register newcomers with injuries, brought by police. Most of the detainees with injuries received before or during the detention were brought from the temporary detention isolator of the Chisinau Police Directorate to the penitentiary no.13.

The CPT rules state that the obligation to be responsible for detainees rests with prison staff. This task includes the responsibility to protect them from other detainees who could harm them. In fact, violent incidents between detainees are common in all prison systems. They

²⁵⁶ <http://anp.gov.md/rapoarte-de-bilant>

involve various phenomena, from subtle forms of harassment to overt intimidation and serious physical aggression. An effective strategy against acts of violence between detainees requires that prison staff be able, including in terms of staffing, to exercise their authority and supervisory function appropriately. Prison staff must pay attention to the signs of agitation and be determined and trained in an appropriate manner to intervene when necessary. The existence of positive relations between staff and detainees, based on compliance with the security rules of detention and on accountability to detainees, is a crucial factor in this context.

The Ombudsman considers that the National Administration of Penitentiaries must continue its efforts in order to prevent and punish acts of violence and intimidation among detainees, paying particular attention to the causes and origin of the phenomenon; take the necessary measures to ensure that prison staff no longer rely on the informal hierarchy of detainees in order to maintain order and security; take the necessary measures to ensure that the right of detainees to lodge complaints is effective, while ensuring that such complaints do not provoke pressure from prison staff; initiate an in-depth examination of the staff, in particular the security service, and review the number of staff units of the penitentiary institution in order to expand it and ensure the appropriate number of supervisory staff; take measures to train prison staff on security and safety, including the concept of dynamic security, the application of force and means of coercion and the confrontation of violent detainees, taking into account the preventive and neutralizing techniques such as negotiation and mediation.

Use of force and means on detainees

Penitentiary institutions resorted to the application of physical force for disobedience in 377 cases (2019-351) and 296 cases of application of special means to detainees (2019-300). Thus, there is an increase of 6.89% in the application of physical force, and in the application of special means a decrease of 1.33% compared to the analog period of the previous year. The most frequent cases occurred in Penitentiaries: no. 11-Balti (71/75 cases); no.13-Chisinau (45/34 cases); no.17-Rezina (57/31 cases); no.12-Bender (18/18 cases) and no.18 - Branesti (18/19). All cases have been properly documented, with the preparation of the necessary documents to establish the fact. Cases of verbal abuse are not included here.

At the same time, the National Administration of Penitentiaries registered only 5 complaints regarding the abuse of the application of special means, 59 complaints regarding the subjection to acts of torture; 128 complaints regarding the submission to inhuman and degrading punishment; 60 requests for ensuring personal security; 58 complaints related to the criminal subculture; 134 transfer requests for security reasons; 35 complaints about the

existence of danger to life, etc. We remind you that the legality of the application of physical force and special means belongs to the competence of the law enforcement bodies.

The firearm was used in at least 2 cases at Penitentiary no. 9 and no. 13. In the Penitentiary Institution no. 9 it was used to prevent the escape of a detainee (warning fire), and in the Penitentiary no. 13 - by mistake. In both cases, no detainee / employee suffered. The application of Teren4M brand "tear gas", as a special means, was used in several penitentiary institutions (no. 4, no. 17, no. 12 and no. 13) *to calm* the detainees. In the Ombudsman's view, the use of tear gas was used contrary to the legal provisions established by Law 218/2012 on the application of physical force, special means and firearms.

The People's Advocate is of the opinion that the Intervention Guide is to be completed / readjusted with a clear description of the enforcement actions / conditions of application of force and special means in closed spaces. These mechanisms must be applied uniformly by all employees, and detainees must be informed of the consequences of disobedience. Separate regulation of procedures on the use of handcuffs, physical force and tear gas against detainees is paramount in the context of preventing the acts of abuse.

Critical self-harm from detainees

In 2020, the number of self-mutilation cases is increasing by 27.86% compared to 2019. The National Administration of Penitentiaries registered 743 cases of self-mutilation. In 2019, 536 cases were registered.

The most frequent cases were registered in Penitentiaries no.5 Cahul (58 cases), no.11 Balti (57 cases), no.12 - Bender (66 cases), no.13-Chisinau (128 cases), no. 17 - Rezina (99 cases) and no.18- Branesti (44 cases) such as: *the introduction of a kitchen knife in the abdomen region; ingestion of drugs; suturing both eyes and the oral cavity; swallowing foreign bodies; insertion of sharp metal objects (nails) into the body; suturing the oral cavity; wounds with damage to the cubital vein; wound in the abdomen region; swallowing metal bodies; introduction of the metal body into the leg; metal body in the region of the cubic fossa; swallowing razor blades; wound in the neck region; swallowing forks (16 times); self-immolation; amputation of the phalanx of the fingers; injection of saliva into the foot; etc.* The reasons for which the detainees resorted to the respective acts are: disagreement with the court decisions; actions / inactions of the administration of the place of detention; low level of healthcare; non-acceptance of the transfer to another penitentiary institution; disagreement with detention conditions; return of objects picked up from the cell; disagreement with food quality, etc.

The cases reported in the operative summaries to the People's Advocate Office show that detainees use self-harm acts quite often, in order to succeed in communicating with the prison administration, or to challenge certain inactions or actions of the prison. It gives the impression that there are serious communication problems between the administration and the detainees. Or, the employees refuse / ignore the problem exposed by the detainees, or the latter exaggerate the use of rights. Consequently, employees who are not targeted in detainees' complaints resort to the application of special or physical means to "calm" detainees. As a result, the detainee's problem is not solved, but delayed until the next act of self-harm, on the other hand, it is necessary to proactively involve specialized staff in the situations described (educators, psychologists, doctors, etc.).

At the end of 2020, the National Administration of Penitentiaries drafted the *Instruction on the procedure for calculating the sentence in the case of a convict who caused his own illness and is undergoing hospital treatment*. The instruction involved a reaction by the penitentiary system to regularize / stop or prevent the large number of cases of self-harm, including by holding prisoners accountable. The Ombudsman argued that a detainee who self-mutilates in protest cannot be sanctioned. Respectively, the elaborated order would be contrary to the guarantees provided by Art.2 and 3 of the ECHR.

The People's Advocate reminds that detainees who self-mutilate in protest cannot be disciplinary sanctioned. It is the task of the National Administration of Penitentiaries to offer specialized treatment, to make efforts of prevention, counseling, re-education, resocialization, etc., to discourage acts of self-aggression and in no way to "re-punish" the person for supplementing the detention term, or affecting it before "parole" or other form of release. Likewise, it is extremely important that a complex mental health care strategy be implemented in each penitentiary. At the same time, prison staff need to be trained in assessing the risk of developing a self-harm behavior.

Attacks on prison staff

We notice an increasing trend in the number of cases of attacks on employees (with injuries / other consequences). In 2020, there were registered **20 cases of employee attacks**, compared to the same period in 2019-16 cases of attack.

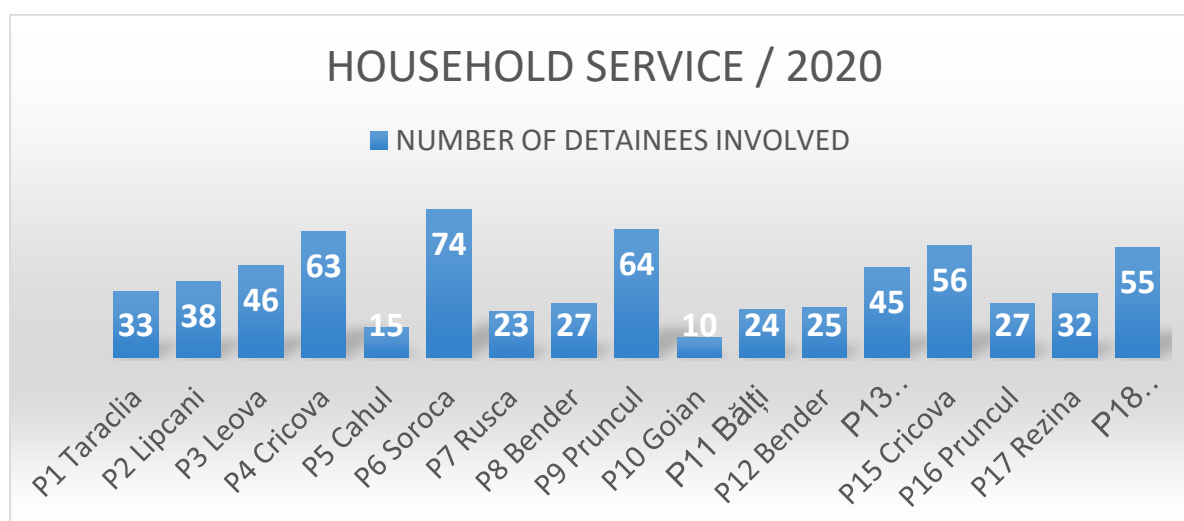
The acts of abuse against the employees are attested within the Penitentiaries no. 1, 5, 9, 10, 11, 15 and 18. For example: *hit with scissors in the abdomen; hit with the receiver in the head region; applying blows to different regions of the body; other forms of ill-treatment, etc.*

In all cases, criminal cases were filed. Cases of verbal abuse, intimidation and offense by detainees / informal leaders are not included here.

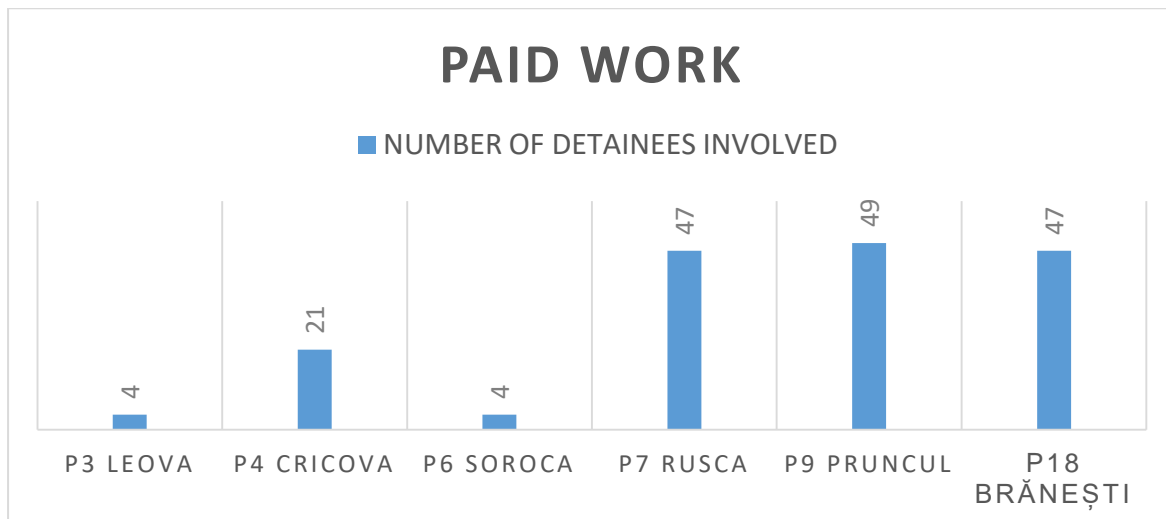
The People's Advocate received more information about the ongoing abuses against employees. It seems that the criminal punishment for non-compliance with legitimate requirements is not exactly drastic to discourage the mentioned phenomenon. The lack of mechanisms to protect employees against mental abuse and physical attacks is a major problem for human resources in prisons. We are of the opinion that in the conditions of the insufficient number of employees, of the increase of the influence of the criminal subculture, the authorities must return to this subject, in order to overcome the possible risks of proportions. The use of physical force to oppose resistance in favor of Article 233 of the Executive Code, likewise, is not a timely and reasonable solution.

The work of detainees

Approximately 5,254 convicts fit for work are detained in penitentiary institutions. Therefore, based on the data of the accounting records, 859 detainees were placed in the process of performing remunerated work. Out of the total number of detainees (6457), only 61 convicts (about 1%) have medical contraindications to be trained for work. At the moment, **168** detainees are employed in paid work in penitentiary institutions, and **657** detainees or about **12%** of convicts work in household service:



Only in 6 penitentiary institutions (out of 17 institutions) detainees are involved in paid work, where the rate of women detained prevails over the rate of men: -



According to the National Administration of Penitentiaries, not all penitentiary institutions have the possibility to arrange jobs, sufficient for the training of all detainees at work. And, apart from penitentiaries, the National Administration of Penitentiaries is facing a lack of security and surveillance staff. Added to this is the lack of intention of economic agents to contract workforce among detainees, as well as the lack of penitentiary infrastructure.

Detainees' food

The food of the detainees takes place according to the provisions of the Government Decision no. 609/2006 regarding the minimum norms of daily feeding and toilet and household items of the detainees.

Examining the balance sheet report of the National Administration of Penitentiaries for the first half of 2020, we find that about 5.8% of the budget of the penitentiary system has been allocated to food procurement. We mention that out of the planned amount of 44394.5 million MDL / year, only 10287.5 million MDL were spent for food purchases or over 34 million MDL were not used. A mathematical calculation shows that for 6,500 detainees in the first half of the year, the purchase of food products in the amount of 6830 MDL / year or 570 MDL / month, or about **18 MDL / day**, were planned. In 2016, 2017 the respective amount was 16 MDL, respectively 17 MDL / day²⁵⁷.

Subsequently, analyzing the annual balance sheet report of the National Administration of Penitentiaries, we find that the planned budget for food procurement in 2020 was 6.9%, namely 1.1% more than that reported for the second half of 2020. Respectively, the amount allocated decreased from 44394.5 million MDL / year to 39637.7 million MDL / year (- 475 thousand MDL). Effectively, 36390.2 million MDL were spent to feed the detainees.

3.4 SITUATION OF PERSONS DETAINED BY THE POLICE

²⁵⁷ <http://anp.gov.md/rapoarte-de-bilant>

Findings of the European Committee for the Prevention of Torture

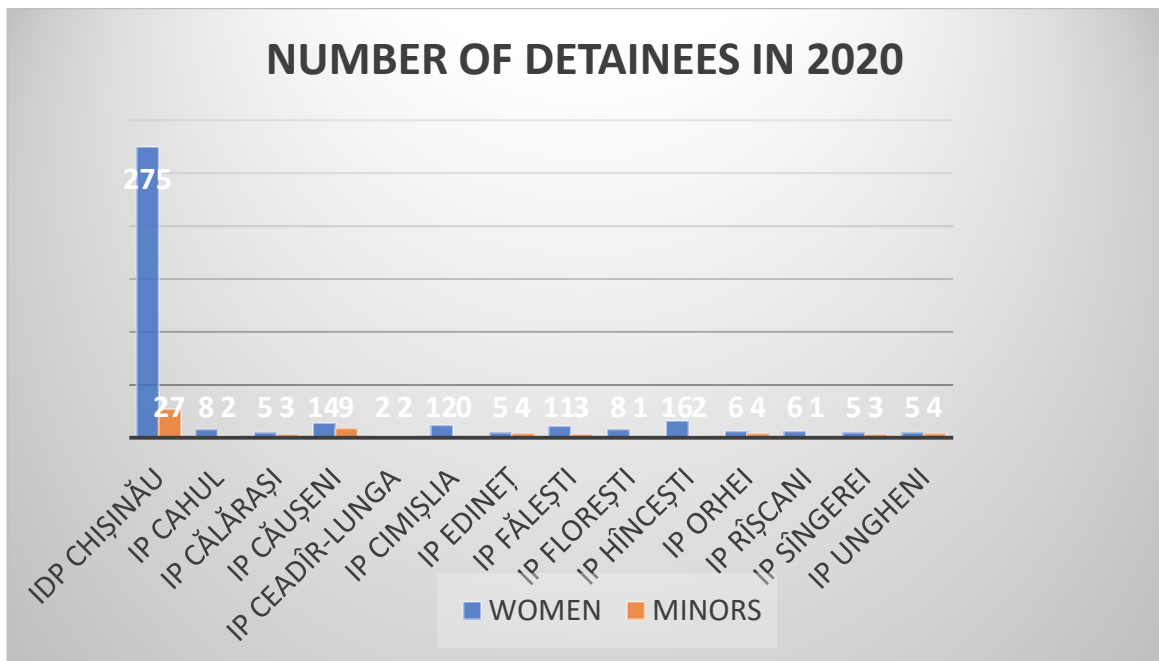
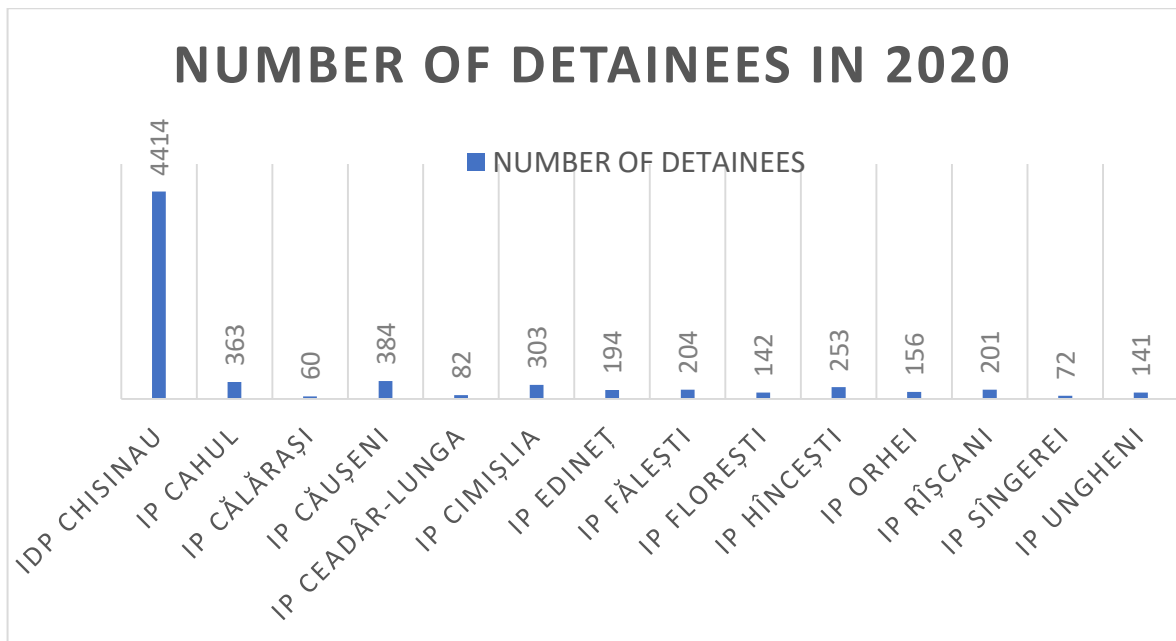
The CPT has seen further progress (*since its 2015 visit*) in the treatment of persons detained by the police. Although the delegation did not receive any complaints during its visit, it remained concerned about the considerable number of cases of alleged ill-treatment by police officers reported to the Anti-Torture Section of the General Prosecutor's Office of the Republic of Moldova, claimed the delegation in its report of September 15, 2020. **The CPT recommended that the Moldovan authorities continue their efforts to combat the ill-treatment of detainees by police officers and to encourage them to remain vigilant about any information that indicates ill-treatment.**

With regard to the fundamental guarantees against ill-treatment, the CPT is of the opinion that **the right to a lawyer** is not ensured. From the beginning of the deprivation of liberty there have been accusations that, in practice, this right was granted only after the first interrogation of a criminal suspect by the police. The CPT calls on the Moldovan authorities to ensure, including by amending the relevant legislation, that persons in police custody can effectively enjoy the right of access to a lawyer from the moment they are obliged to remain with the police. Regarding **the right of access to a doctor**, people were medically examined by a feldsher or a civilian hospital before being placed in a temporary detention facility. However, several recommendations are made regarding the medical confidentiality and completeness of medical examinations, as well as the registration of injuries. Furthermore, the Committee received allegations that persons in police custody were **informed of their rights** only after their first interrogation. The CPT encourages the Moldovan authorities to continue their efforts to ensure that all persons detained by the police are fully informed of their fundamental rights from their de facto deprivation of liberty.

In addition, the CPT welcomed the general trend towards the improving of the **material conditions** in police detention facilities and noted that the recently renovated facilities seen by its delegation provided very good material conditions. However, the rest of the temporary detention facilities visited still had a number of shortcomings.

Dynamics of detention and placement in pre-trial detention

In 2020, **7064 persons** (6969 persons detained criminally and 95 persons detained for misdemeanor) were detained and placed in pre-trial detention facilities (*hereinafter IDP*) within the territorial police inspectorates (*hereinafter IP*): - Of the total number of detainees, 378 women and 65 minors were placed in police custody: -



Also, **95 people** (84 men and 11 women) were detained and placed in police custody. During the same period, **1787 persons** detained by other institutions with the right of detention (of which 85 women and 19 minors) were placed in police custody. We mention that the number of detained persons increased by 733 persons, compared to the same period in 2019.

In 2020, employees of the Directorate for the Prevention of Torture made 14 visits to 14 police inspectorates, preparing 14 visit reports containing 189 recommendations for improving the situation and preventing torture and ensuring the rights of persons to detention.²⁵⁸

²⁵⁸ <http://ombudsman.md/rapoarte/prevenirea-torturii/in-baza-vizitelor/>

Allegations of abuse and ill-treatment by the police

International and national rules clearly prohibit the application of torture or other ill-treatment to persons detained or in detention. Commitments to eradicate the phenomenon of torture include the application of non-offensive techniques to detention, ensuring the range of safeguards against abuse, professional attitude towards police activity, respect for human dignity as such, creating a professional environment for police officers, quality and protective equipment, clear operational processes, regular training and more.

It is important to mention and appreciate that the rate of allegations of torture or abuse by the police is relatively low compared to previous years and the number of detainees. According to the report on the activity of the police in the first semester of 2020, 4 criminal cases were started for torture, inhuman or degrading treatment²⁵⁹. At the same time, according to the information provided by GPI, on December 18, 2020, 9 criminal cases were filed against GPI employees. Criminal prosecutions are taking place on all cases, with no final decisions issued²⁶⁰.

Regarding the number of complaints addressed in 2020, concerning the application by police officers of acts exceeding service duties, especially allegations of torture, GPI informed the PAO that until December 18, 2020 the institution was notified by phone about 11 cases of: *causing physical pain in the means of transport of the police; the application of physical force and torture; unjustified application of physical force; physical aggression when removing from the means of transport; unfounded physical aggression; excessive application of physical force and handcuffs in the street; physical aggression at home with the application of tear gas; physical aggression at home; physical aggression in the street, etc.* In 7 complaints filed against the police - the allegations of abuse were not confirmed, in 2 cases disciplinary violations were found, the rest being under examination²⁶¹.

During the preventive and monitoring visits carried out by the PAO employees, complaints regarding abuses or inhuman or degrading treatment from the 4 detained persons did not reach. However, from the **Records of the reception and transmission of complaints, statements or other information about alleged acts of torture, inhuman or degrading treatment** in some monitored police inspectorates, 23 worrying complaints were found, such as: *kicked by police officers; physically assaulted by MIA employees; conflict with the police officer; assaulted by BDS Fulger masked men; excessive use of force and special means by*

²⁵⁹ <https://politia.md/ro/advanced-page-type/rapoarte-si-evaluari>

²⁶⁰ Response to the approach, no. 34/16-1522 of 18/12/2020 GPI;

²⁶¹ http://ombudsman.md/wp-content/uploads/2020/12/Raport_Retinare_2020_OAP_FSM_FINAL-proiect_pe-site.pdf

police officers; hit by the sectorist; beaten by a police officer, at the Police Inspectorates Anenii Noi (9 cases), Edinet (6 cases), Calarasi (4 cases), Nisporeni (2 cases), Glodeni (1 case) and Riscani (1 case). According to the Law on the Prosecutor's Office, only the institution of the Prosecutor's Office can prosecute cases of torture, inhuman or degrading treatment. The cases described were under examination.

A positive aspect highlighted in the *Thematic Report of the People's Advocate "Compliance with the fundamental guarantees of detention and pre-trial detention in police inspectorates"* presented in 2020, following the survey of 138 police employees, is that they do not resort (according to questionnaires) to the application of the use of force, means and firearms. Police officers apply handcuffs, tear gas and the sambo procedure or twisting the arms behind the back. The police officers interviewed **did not apply the firearm at all**. Some have generally not resorted to the application of physical force or special means in their practice. Peaceful police policies are appreciated and encouraged. At the same time, we believe that it is necessary to continuously train employees in the application of non-offensive restraint techniques, including communication. Likewise, most stated that from restraint techniques most often apply the "handcuffs". **We reiterate that it is gratifying that among the ways of immobilization is frequently used the application of handcuffs, which, moreover, prevail the techniques of physical restraint, recognized as being practically often abusive, threatening human dignity. The identification of alternative techniques that do not lead to physical harm should be seen as an ideal, both from the perspective of forensic development and from a practical perspective. The police are to be trained in the field of techniques and practices, stated over time, which provide the picture of detentions and behavioral patterns of the detained person. And, the attitude of lack of control on the part of the police officer over the process of detention or minimal reactive control, the attitude of letting the process run by itself, is to be categorically combated, or, the police bodies are closest to social realities, respectively, the best equipped, from legal attributions to the provision of material means, to secure and control, in a broad sense, the process of combating crime and, in particular, the process of detention.**

Ensuring fundamental guarantees of detention

The rules say that detention (without making any suspicion) should not exceed 3 hours. The police must be able to present an accusation to the detained person, by drawing up the detention act within the express term provided by the legislation, i.e. 3 hours.

According to the data of the thematic report, de jure the detention period is respected in all cases. All police officers stated with certainty that they strictly adhere to the detention

period. Unofficially, most mentioned that it is unfeasible to meet this deadline, especially in the case of detaining a person at a distance, at the border or when evidence is to be administered on the spot. In the case of the detention of persons notified in pursuit at border crossing points or by other detention institutions, the detention act shall be drawn up by the criminal prosecution officer in the territorial area of the place of detention. Thus, the detention takes place within the term provided by Art. 167 of the Criminal Procedure Code (3 hours). The problem lasts for years (in the visits in 2018 it was also one of the highest priorities) and it seems that an optimal solution will be missing in the near future.

The same police officers claimed that the time from bringing the person to the police inspectorate to drawing up the detention minutes is **from 5 minutes to 3 hours**. Combining the time declared from the *de facto* detention with the period of preparation of the detention act, it appears that the detention period (*3 hours*) is exceeded in all cases. At the suggestions, the criminal prosecution officers reiterated the need to increase the term provided by paragraph 1, Art. 166 of the Criminal Procedure Code for more than 3 hours. The increase of the 3-hour term is necessary in the context of ensuring the quality of the detention act and the respective processes, the police claim. The PAO team noticed an inexplicable fear on the part of the prosecuting officers regarding the request for the legal increase of the 3-hour term (amendment of the CPC).

At the same time, international recommendations call for the reduction of the term of deprivation of liberty from 72 hours to 48 hours. In such a case, the justification for increasing the time limit from 3 hours to 6 hours would be inappropriate.

Information on the grounds for detention shall take place **in verbal, verbal against signature and verbal and written form against signature**. This takes place both at the time of the **de facto detention (at the place of detention), in the means of transport, at the police headquarters, depending on the situation, in all cases and during the preparation of the detention minutes**.

The respondents claimed that the person responsible for notifying the detainee of the procedural rights to detention is the *police officer who detained the person; the police officer who drew up the detention minutes; the police officer who detained the person and drew up the detention minutes and the criminal prosecution body*. **The People's Advocate insists on immediate, mixed, repetitive communication, shared between several police employees in order to ensure that the information was received and used with the power to change certain facts. As a result, police officers are to honor their positive obligation (formation of informed consent) immediately upon proceeding with the detention action, not allowing the provocation of a state of uncertainty, unpredictability, giving the person subject to the exercise the space and time necessary to exercise his or her immutable rights in obtaining a procedural status.**

From the interviews with the detainees, the PAO employees created the impression that they were not fully informed and did not understand the essence of the accusation brought. At the same time, it was observed the unprofessional and ignorant attitude of the police officers and lawyers:

The case of C.R_ extract from the detainee interview about the detention process: -

... I came to court half an hour earlier, at 12.30. The guard at the entrance told me to wait outside until I was called to the meeting. After a while I was called by the guard to come to the meeting. When I entered the courtroom, the hearing was over and there was only the judge. In 2 minutes, the lawyer came in. The judge remarked to the lawyer ... (Why are you late for the hearing? The person is detained!). At the exit, the judge told me ... wait here by the door, someone will come to take you. Within 15 minutes I was brought to the police, I was documented and imprisoned. From the trial, I walked in handcuffs, accompanied by two police officers. In the solitary confinement they informed me that I was under arrest for 1 year. They didn't explain anything to me, they gave me a sheet. I had no contact with the lawyer for two hearings. The court hearing took place on 14.08.2020 at 13.00. I have been here for 4 days. I'm going to be imprisoned for another 1 year ...

As a basis for the detention of the suspect may serve: (a) *he is caught red-handed;* (b) *the eyewitness, including the victim, directly indicates that it was the person who committed the crime;* (c) *obvious traces of the crime are found on the person 's body or clothing, at his home or in his transport unit;* (d) *the traces left by that person are discovered at the place of the offense;* (e) *the perpetrator of the unlawful act attempted to conceal himself or his identity could not be ascertained.*

A genuine guarantee of respect for human dignity is provided by the regulation in principle of the possibility of recourse to **the right to silence**. For the most part, detainees **do not** resort to the right to silence, or this right is not correctly and fully explained by the police, or is not perceived as such. ***From informal discussions, the police claim that only detainees who know them defend their rights and insist on their observance.***

Informing relatives or others about their detention and whereabouts is part of the three fundamental guarantees proclaimed by the European Committee for the Prevention of Torture. In practice, the information is made by telephone by the *duty officer* or the *prosecuting officer, detainee or lawyer* and is not made, if the detainee does not want the *information or the contact details are not known*. In all cases, notifications shall be made in the minutes of detention. Likewise, most of the police officers surveyed stated that there were no grounds to postpone notifying relatives or third parties of the detention.

The realization of the **right to legal assistance** in detention takes place through the request (written or by phone) of lawyers who provide free services guaranteed by the state

(from the list of persons employed). Cooperation with lawyers is good. Likewise, according to the IP employees surveyed, lawyers show up *from immediately - to 2 hours*, and sometimes *difficult, including at night*.

Some said that among the first actions taken by lawyers were *confidential discussions with the detainee, information about the grounds for detention, or familiarization with the materials of the case*. The "confidential" discussions take place, de facto, in the hall or in the investigators' offices, or outside (during the pandemic period). PAO observers do not consider that these methods ensure the confidentiality of discussions. Even some prosecuting officers were disturbed by the fact that they had to leave their offices during the discussions between the lawyer and the detainee. **There are no rooms for confidential meetings and discussions between detainees and lawyers in any police inspectorate.** Here, we are not talking about the meeting offices inside the remand center. However, they are placed in the pre-trial detention facility those detained for whom the detention minutes has been drawn up.

87% of employees surveyed said that lawyers and detainees did not object to the detention, which the Ombudsman considered to be worrying. **The People's Advocate reminds that the objection of the content of the detention minutes will in all cases be a declared, effective, unlimited option to all participants in the detention action. The use of such a means of defense ensures the attestation of defects, their removal, restoration of rights, reparation of the damages thus caused in order to achieve the applicability of the principle of equality of arms in the process.**

Another observation regarding the quality of the defense act by the lawyers is the extremely short duration of meetings with the detainee in the remand center. Examining the internal registers of IDP meetings visited, the PAO observers noticed that the duration of the discussions between the lawyer and the client is from 5 min - to 15 min. In this short period of time, the quality of the representation is questioned. At the same time, the duration of the discussions between the criminal prosecution body / prosecutor with the detained person is from 15 min - to 45 min.

The findings made in the field show that the old problems regarding the provision of police inspectorates with **translators and interpreters** are maintained during the monitoring period. Some police inspectorates have budgeted expenses for translations from Romanian into Russian, other police inspectorates have hired translators (Romanian-Russian) or use the services of a translator from the court. Some police inspectorates do not have budget lines for translations. No police inspectorate has a foreign language translator. In such a case, the respondents claimed that translator services were contracted from the local translation offices. However, all police officers stated with satisfaction that they did not encounter any difficulties

in this regard, because they did not detain foreigners. **Although they did not detain foreigners, in the presence of an abstract exercise, some police officers say they only translated: the detention minutes and the minutes informing the detainee's rights and obligations. The People's Advocate does not admit partial assistance. Furthermore, the Ombudsman does not tolerate the circumvention of the translation of the detention act considered to be requested as a matter of priority by a possible challenge.**

The length of the person's detention at the police varies from 30 minutes to 2 hours (according to the police). However, during the public pandemic, the length of stay of the person detained in solitary confinement was extended to **7 days**. No meetings with relatives were allowed. No foreigners could enter the solitary confinement during the pandemic, except the relatives of the minors. According to the General Police Inspectorate, during the emergency period only 64 detainees were detained in solitary confinement for more than 7 days.

De facto, the medical examination is ordered only in cases where the detainee is to be placed in the IDP. In the case of police inspectorates that have IDPs, it is provided by the institution's feldsher. In the case of police inspectorates that do not have an IDP, this is done in a mixed / triple form (the detained person is taken to the district public medical institutions, or the **112 emergency service** is called, then the detainee is also examined at the entrance to the isolator). In the police inspectorates that do not have IDPs, there are no records specifying that the detainee was handed over for medical examination at the district hospital, respectively, it is not possible to verify whether they take place. However, the police claim that the medical examination takes place and that its proof is attached to the detainee's personal file. Some police inspectorates have reported that the feldsher from the remand center is being trained in the Detention and Escort Service team, which goes to the police inspectorate (which does not have an isolator) and proceeds to the visual medical examination of the detainee. After that, the detainee is escorted to IDP.

In 2020, the GPI approved an operational procedure for medical examination. In fact, some feldshers mentioned that they know this standard operating procedure, others - do not. However, according to the Thematic Report - the standard operating procedure does not provide for the medical examination of the detainees at the entrance-exit of the IP. This describes the process of medical examination of detainees placed or to be placed in IDP. Respectively, the GPI is to decide on the application of a mechanism to provide security against abuses of detention and to persons summoned in the IP without any procedural status, in order to ensure that no person entering and leaving the IP has been subjected to abuse.

There is no space for temporary detention (detention room) in any monitored police inspectorate. The detainees can be during the decision regarding the granting of a statute, either

to the presentation of the lawyer or to the Detention and Escort Service, next to the space of the guard unit, in the hall, chairs, in the yard of the police inspectorate, etc. This can take from 10 minutes to 2 hours. The criminal prosecution officers, as well as the investigative officers carry out criminal prosecution actions in their own offices. Detainees sit in chairs, often handcuffed, face to face with the criminal prosecution officer. Employee safety is also an issue in these situations. The lack of a room for standard hearings as well as for temporary detentions creates or may create impediments to police activity. According to the representatives of the police inspectorates, the General Police Inspectorate is looking for solutions in order to arrange waiting rooms.

Observance of material conditions in pre-trial detention

In 2016, the Financing Agreement was signed between the Government of the Republic of Moldova and the European Commission, under the form of budget support to the police in the amount of EUR 57 million. The financial support provided to the police is one of the most valuable and consistent in the history of the police. In May 2016, the Police Development Strategy for 2016-2020 was approved.

In 2017, by Government Decision no. 748 of 20/09/2017 was approved the Action Plan on reducing ill-treatment, abuse and discrimination against persons in police custody for the years 2017-2020. The objectives of this plan (in the monitoring segment) included the renovation of at least 14 pre-trial detention facilities according to international standards.

According to the ***Progress Report on the implementation, in 2019, of the Action Plan on the reduction of ill-treatment, abuse and discrimination against persons in police custody for the years 2017-2020***, the activity of 10 Temporary Detention Isolators has been relaunched, operating according to the regional principle (Edinet, Riscani, Singerei, Orhei, Ungheni, Hincesti, Chisinau, Causeni, Cimislia and Cahul). It was also necessary to modernize the detention conditions in at least 5 other locations. In this sense, at the end of 2019, at 2 TDI (of Anenii Noi and Criuleni) the reconstruction works were completed in proportion of 95%, and at the other 3 objects (TDI of Balti, Soroaca and Comrat) the works were completed in proportion of 45-50%, which will be completed and put into operation in the third quarter of 2020²⁶².

As of December 18, 2020, the Temporary Detention Isolators of Anenii Noi, Criuleni, Balti, Soroaca, Comrat were not put into operation, and the TDI of PD of Chisinau was still under

²⁶² https://politia.md/sites/default/files/raport_de_progres_rele_tratamente_2019_ro.pdf

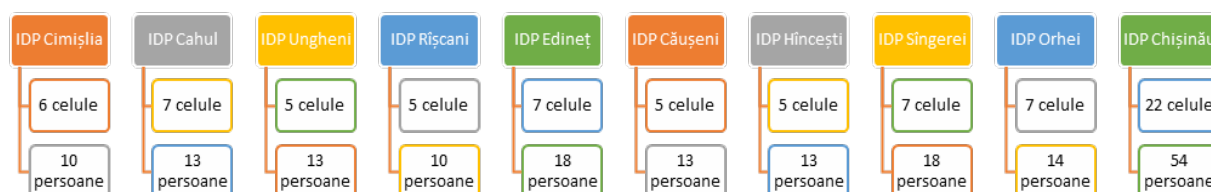
renovation. The PAO observers visited the TDI of Anenii Noi and TDI of Soroca. At TDI of Anenii Noi, 95% of the construction was completed and it was promised to put it into operation on December 18, 2020 (Police Day). However, the visiting team noticed that in TDI of Anenii Noi a series of works are to be carried out, which are by no means within the limit of 5%, but much more. Likewise, TDI of Soroca is at a much lower level than the one proclaimed in the progress report. Although the visit took place in mid-July, TDI of Soroca was to be put into operation on Independence Day. However, even then there were a series of complex works, which could not be completed in the near future. Respectively, even so far, TDI of Soroca has not been put into operation.

Police commitments to manage only 14 renovated TDIs are apparently good options. However, it seems that PIs without isolators were already worried that they did not have detention facilities and a number of other inconveniences arising from the cessation of their own TDI activity. Some representatives of the PI were also satisfied with the decision to stop the activity of the isolators due to improper conditions. At the same time, the escort rate has significantly increased. In 2020 the number of escorts has increased to 44 thousand, compared to previous years. This means that the maintenance costs of means of transport, fuel, etc. increase.

PAO employees made visits to 14 police inspectorates, of which 4 visits to renovated TDIs, 3 visits to functional old TDIs and another 7 visits to police inspectorates without isolators.

At the end of 2019, the TDIs of Hincesti, Orhei, Cimislia, Ungheni, Causeni, Edinet, Singerei, Riscani and Cahul Police Inspectorates were put into operation. The isolator of the Chisinau Police Department is in the process of renovation.

Each **renovated isolator** has 5/7 cells, with a capacity of 10/18 people:



Translation of picture:

TDI of Cimislia	TDI of Cahul	TDI of Ungheni	TDI of Riscani	TDI of Edinet	TDI of Causeni	TDI of Hincesti	TDI of Singerei	TDI of Orhei	TDI of Chisinau
6 cells	7 cells	5 cells	5 cells	7 cells	5 cells	5 cells	7 cells	7 cells	22 cells
10 people	13 people	13 people	10 people	18 people	13 people	13 people	18 people	14 people	54 people

At the time of the visits, the material conditions of detention in the renovated isolators corresponded to international minimum standards. They are arranged with stationary beds for 2 and 3 people; table and chairs fixed to the floor, for an equivalent number of people. Beds are fitted with new mattresses, linen and blankets. In each cell there is a window with access to sufficient natural light. At night, the cells are artificially illuminated. In special and unforeseen cases, the isolator has lighting from a diesel generator. All cells have their own sanitary blocks, which combine the toilet and the shower with hot or cold water. Therefore, each detainee can take a shower whenever he needs to, without seeking the permission of the police officer on duty (as before).

Temporary Detention Isolators of Floresti, Falesti and Calarasi Police Inspectorates have remained operational and ensure the pre-trial detention of persons from Floresti and Soroca districts; Falesti districts and Balti municipality (north) and Calarasi district (center). The People's Advocate has repeatedly described pre-trial detention in these police inspectorates as inappropriate conditions. **TDI of Floresti** is located in the yard of the police inspectorate in the basement. It has 7 (seven) cells, of which 5 (five) cells are functional and 2 (two) non-functional. **TDI of Falesti** is located in the basement of the inspectorate and has 9 cells, of which 5 are functional (the activity of 4 cells is stopped). **TDI of Calarasi** is located in the basement of the Calarasi Police Inspectorate building and has 4 functional cells (7 stopped) that can ensure the detention of 11 people.

Following the visits to Temporary Detention Isolators of Falesti (08/10/2020), Floresti (23/07/2020) and Calarasi (09/12/2020), the People's Advocate issued recommendations to stop the activity of the isolators²⁶³. These are contrary to the minimum standards of detention. Continued detention of persons (including for 7 days) may be considered a form of inhuman or degrading treatment²⁶⁴. From the answer received from GPI on 26/11/2020, it appears that the activity of TDI of Falesti will be stopped after the TDI activity of the Police Inspectorate of Balti will be put into operation, without mentioning a concrete date. Subsequently, the persons detained by PI of Falesti will be placed and detained in TDI of Balti. In his reaction, **the People's Advocate warned that the material conditions in the isolators from the Police Inspectorate of Floresti and the Police Inspectorate of Falesti have reached worrying proportions, incompatible with respect for human dignity, standards and minimum norms applicable in the matter, with detrimental effect on mental health, somatic and social conditions of persons deprived of their liberty. Stopping their activity would be a solution.**

²⁶³ http://ombudsman.md/wp-content/uploads/2020/08/IP_Floresti_27.07.20_FINAL_pe-site.pdf

²⁶⁴ http://ombudsman.md/wp-content/uploads/2020/12/Raport_IP_Calarasi-09.12.2020_FINAL_PE-SITE.pdf

In 2019, the activity of TDI of Soldanesti PI, PI of Basarabasca, PI of Comrat, PI of Rezina, PI of Stefan Voda, PI of Soroca, PI of Telenesti, PI of Bender, PI of Nisporeni, PI of Glodeni and PI of Leova was stopped. Of these, PI of Soroca and PI of Comrat are in the process of renovation, although they were to be put into operation in 2020.

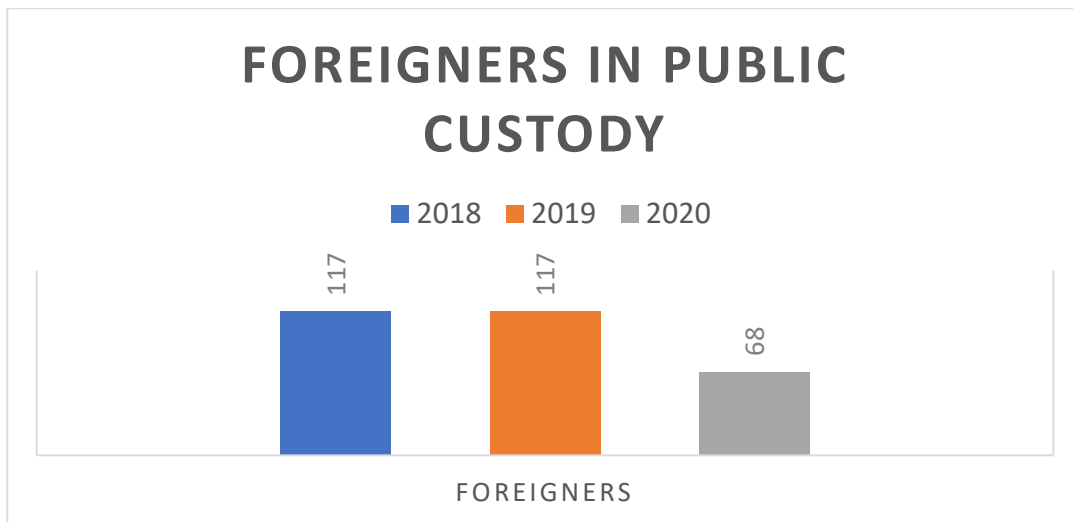
PAO employees monitored the situation at the Police Inspectorates of Nisporeni, Glodeni, Cantemir, Leova, Straseni, Soroca and Anenii Noi (the last 2 being under renovation). All isolators were locked or sealed. Recommendations were made to clean the spaces in the two isolators. **In general, we are of the opinion that the General Police Inspectorate / Police Inspectorates should decide on the status of the rooms of the former isolators (whether they are used for archives or warehouses), so that their usefulness is clear (if possible).**

As a rule, the detainees are taken over by the detention and escort services of the Police Inspectorates that have functional TDIs. They are contacted in advance, in order to present themselves in order to escort the detainees to the new type of isolators (according to the respondents). The police claimed that the Detention and Escort Services managed to escort the detainees in time. However, in the Ombudsman's view, the lack of waiting rooms / temporary detention rooms for detainees (until they are picked up by the Detention and Escort Service or the arrival of lawyers or other actors) remains a common problem for all police inspectorates (harmful causes have been exposed above).

The People's Advocate encourages the General Police Inspectorate / Police Inspectorates to continue the reforms initiated regarding the improvement of the material situation in temporary detention isolators; to decide on the arrangement of temporary detention rooms in police inspectorates that do not have an isolator; to ensure the medical examination of detainees regarding injuries / other allegations; to continue to record and report any cases of abuse during detention / within the premises of police inspectorates, as well as during the escort of detainees, etc.

3.5 SITUATION OF FOREIGN PERSONS IN PUBLIC CUSTODY

In 2020, **68 foreign persons** declared undesirable or against whom the measure of return or expulsion was ordered were placed in public custody at the Temporary Placement Center for Foreigners. The rate of placing foreigners in custody decreased by 42% compared to previous years. For example, in 2018, 117 foreigners were placed in public custody, in 2019 - 117 and 2020 - 68:



Of the total number of foreigners, 56 are men and 12 women. Minors were not placed in 2020. By country of origin we specify that 18 foreigners came from Ukraine; 16 foreigners - Turkey, 9 from the Russian Federation, 5 from Tajikistan, 4 from Uzbekistan, 4 persons from Kazakhstan, 2 from Azerbaijan, 2 from Georgia, etc. The largest share of persons taken into public custody belongs to the "North" Regional Section, followed by the "Center" and "South" sections. The average length of detention of foreigners in the Placement Center increased from 30.70 days to 45.63 days due to restrictions imposed by the pandemic situation (prohibition of air travel and rail transport). Although the report submitted by the Center for the Placement of Foreigners to the PAO claims on the one hand that the length of detention has increased due to the ban on flights, on the other hand, most foreigners were still removed through Chisinau International Airport (with air races).

In 2020, the People's Advocate Office did not receive allegations of ill-treatment from foreigners in custody. At the same time, the People's Advocate was informed about the long-term detention of some foreigners; multiple escorts to courts in the north and south of the country; non-assessment of vulnerability risks, etc. The Ombudsman's efforts in this regard were refuted by the Bureau for Migration and Asylum. A preventive visit to the Center for the Placement of Foreigners was held by the Council for the Prevention of Torture on 28 September 2020²⁶⁵. **The People's Advocate appreciates the opening of the Bureau for Migration and Asylum, as well as of the Temporary Placement Center for Foreigners, compared to his recommendations. At the same time, the Ombudsman reminds us of the need to permanently ensure the rights of foreigners taken into public custody or disposed of in return. Likewise, the People's Advocate reiterates that the recommendations launched in the *Thematic Study "Respecting the rights of foreign citizens in state custody"*,**

²⁶⁵ <http://ombudsman.md/wp-content/uploads/2020/12/08-1-66-din-01.12.2020-MAI-raportul-de-vizit%C4%83-la-CPTS-din-cadrul-BMA-la-28.09.2020.pdf>

launched in 2019, remain valid²⁶⁶, such as: - (a) the Republic of Moldova does not have a policy of zero tolerance towards foreigners; (b) the Republic of Moldova does not always respect the principle of non-refoulement in the country where asylum seekers may be subjected to acts of torture (*the case of returned Turks, the case of citizens of Iraq, Russia, etc.*); (c) under the pretext of endangering national security, foreign nationals may be easily declared indisputable without giving reasons for the decision to return and access to justice; (d) on return, the principle of family reunification is not respected (they can be returned, even if they have families in the country); (e) foreigners do not always receive asylum at the border (the police strive to remove them); (f) cases of requesting international protection are not always thoroughly examined by border guards; (g) at the border as well as on government sites, there is no description of asylum procedures and any other sources in the languages of international circulation as an element of ensuring human rights; (h) only 10% of border police headquarters (approx. 40) have decent rooms for asylum seekers; (i) the border police sectors do not have food parcels and hygiene products to distribute to asylum seekers until they are taken over by the Bureau for Migration and Asylum (up to 48 hours); (j) the General Inspectorate of Border Police does not have standard operating procedures regarding detention, escort and transportation, information, ensuring uniform basic detention guarantees for all police officers; (k) asylum seekers are not included in the category of free health insurance and cannot have access to free primary / specialized medical care. They also have a minimum amount of money that does not cover basic needs; (l) the banking system refuses to issue salary cards to aliens from areas at risk of terrorism; (m) there are cases of taking into public custody beyond the prescribed period (more than 6 months); (n) there is only one Temporary Placement Center for Foreigners, with accommodation capacity for 110 people and which is properly arranged for a detention institution (filter access, barbed wire). Foreigners are deprived of freedom of movement, do not have free access to leave / enter the Placement Center; (o) rarely applies to aliens - alternatives to detention (other than detention in TPCF); (p) there are problems with ensuring the right to an interpreter / translator for foreigners, including in the context of a greater influx of foreigners into the country or towards foreigners who speak rare languages; (q) TPCF employees have discriminatory and xenophobic attitudes towards foreigners; (r) TPCF does not have a psychologist's office; (s) the TPCF does not have an Anti-Torture Register, as well as a protection mechanism in case of retaliation, abuse or any other form of ill-treatment in the institution; and (t) the courts do not verify the time of placing in public custody of foreigners and administrative control of detention.

²⁶⁶ http://ombudsman.md/wp-content/uploads/2019/12/Studiul_Situatia_str%C4%83inilor_FINAL.pdf

3.6 SITUATION OF PERSONS DETAINED AT THE BORDER

The General Inspectorate of Border Police (GIBP) ensures the maintenance of the state border regime, the border area regime, as well as the regime and public order at state border crossing points, ensures public security, aeronautical security, passenger security control, of baggage, cargo, aeronautical personnel, naval personnel and security personnel of security zones with limited access at airports and ports of the Republic of Moldova. In the field of combating illegal migration and cross-border crime, the Border Police is entitled to apply the measure of preventing the entry of aliens into the Republic of Moldova, in accordance with the legislation in force. Likewise, the institution ensures the control over the migration at the state border crossing points (BCP), it also has other attributions provided by the Law 283/2011.

In 2020, the PAO employees monitored 4 border crossing points and 3 sectors of the border police during joint monitoring visits (General Inspectorate of Border Police, Law Center of Advocates, Bureau for Migration and Asylum and PAO)²⁶⁷. The purpose of the joint visits was to verify the situation regarding the observance of the rights of foreign nationals, asylum seekers and / or detainees for illegal crossing of the state border, to make recommendations for improving the situation and to protect asylum seekers²⁶⁸. Following the visits, the People's Advocate observed **circumstances indicating the effort of the General Inspectorate of Border Police to improve the material conditions within the border crossing points "Palanca", "Ocnita", "Otaci", the border police sector "Tudora" -2", border police sector Ocnita. At the same time, the lack of temporary detention rooms at border crossing points is likely to force GIBP to host detainees in inadequate material conditions. In other words, the lack of records of persons detained and placed at border crossing points and / or border police sectors regardless of their duration raises questions and, in some cases, concerns about the provision of safeguards against torture and / or other forms of ill-treatment of persons in custody. In addition, the General Inspectorate of Border Police will identify solutions to ensure the fundamental rights to food, sanitation, health care, walking in the fresh air, access to luggage and other specific needs of people in vulnerable groups (minors, people with disabilities, etc). Thus, the People's Advocate made 21 recommendations to the General Inspectorate of Border Police that is going to improve that situation. We mention the opening of the General Inspectorate of Border Police in the implementation of the Ombudsman's recommendations which belongs directly to this institution.**

²⁶⁷ http://ombudsman.md/wp-content/uploads/2020/07/Raport_vizita_PTF_24.06.2020_pe-site.pdf

²⁶⁸ http://ombudsman.md/wp-content/uploads/2020/07/Raport_vizita_PTF_Ocnita_Otaci_SPF_Ocnita_5.07.2020.pdf

3.7 SITUATION OF PERSONS HOSPITALIZED IN PSYCHIATRIC INSTITUTIONS

We remind you that in February 2020, the European Committee for the Prevention of Torture carried out monitoring visits to psychiatric institutions in the country. Therefore, in its report on the **treatment of persons in psychiatric, psycho-neurological and other residential institutions**, the Committee remained deeply concerned about communications that (a) persons with mental disorders and psychosocial and intellectual disabilities are placed in psychiatric hospitals and residential psycho-neurological institutions in inadequate food and hygiene conditions; (b) particularly inadequate conditions being reported in the institutions from Balti and Cocieri; (c) many residents of these institutions have been deprived of their legal capacity; (d) patients have been kept in confined spaces in psycho-neurological foster homes, including for disciplinary purposes; (e) residents of boarding schools have been sent to psychiatric institutions as punishment, as stated in the case of Igor Sandler, (f) some persons deprived of their liberty are sexually exploited by the supervisory staff; and (g) -neurological mortality rate is high²⁶⁹.

In this regard, the CPT stressed that the **State party must: (a) Urgently ensure access to independent monitoring mechanisms in psychiatric hospitals and psycho-neurological institutions; and provide an independent grievance mechanism for patients in all psychiatric hospitals and residential psycho-neurological institutions, as well as for their families; (b) Ensure that all alleged cases of abuse and violence, including those committed or overlooked by administrative and medical staff employed in these institutions, are promptly, impartially and effectively investigated, that alleged perpetrators are held accountable and that victims they are provided with appropriate remedies; (c) Ensure that no one is involuntarily placed in such institutions for non-medical reasons, including ensuring the right of patients to be heard in person by the inpatient judge, that judges seek the advice of a psychiatrist and that such decisions may be challenged; (d) Examine all cases of persons who have been forcibly hospitalized for non-medical reasons and ensure that they have the opportunity to be released and, where appropriate, to receive appropriate remedies; and (e) Take urgent measures to improve**

²⁶⁹ Art. 2, 11-14 and 16 <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-publishes-report-on-moldo-6>

material conditions, including food and hygiene, in all psychiatric hospitals and residential psycho-neurological institutions.

We remind you that psychiatric hospitals should be safe places for both patients and staff. The mentally ill must be treated with respect and dignity, and in a humane manner that respects their decisions and personality. In 2020, the People's Advocate did not visit psychiatric institutions due to the state of emergency in public health and not to put patients at risk. The PAO continued to receive operational information on acts of ill-treatment, abuse, etc. from psychiatric and placement institutions in the country. Where appropriate, the Ombudsman took appropriate action. Renovation / reconstruction of the residential and administrative spaces took place in all institutions, including staffing, as mentioned in the reports submitted by them.

There are three psychiatric institutions in Moldova: Clinical Psychiatric Hospital in Chisinau with 740 beds (*SCP Chisinau*); Psychiatric Hospital in Orhei with 145 beds (*SP Orhei*) and Psychiatric Hospital in Balti with 530 beds (*SP Balti*). They provide comprehensive, curative and recovery medical care to patients with mental or behavioral illnesses.

Dynamics of patients hospitalized to psychiatric institutions, duration of hospitalization

In 2020, 4,937 patients were hospitalized in Clinical Psychiatric Hospital in Chisinau (in 2019: 6791 hospitalized), of which 2358 women and 2579 men. Likewise, 200 minors were treated (in 2019 - 324 hospitalized). In Balti PH there were admitted 5218 patients (in 2019: 8008 hospitalized) of which 2047 women and 3171 men. Likewise, 274 minors were treated. In Orhei PH there were admitted 1652 patients (in 2019: 2245 hospitalized), of which 1007 men and 645 women²⁷⁰. The decrease in the number of patients was determined by the situation generated by the state of emergency.

The duration of hospitalization of patients at Clinical Psychiatric Hospital in Chisinau was 37.1 days (*increasing by 5 days compared to the situation in 2019*), at Psychiatric Hospital in Balti- 25.73 days (*increasing by 4 days compared to the situation in 2019*) and at Psychiatric Hospital in Orhei - 24.5 days (*increasing by 1 day compared to the previous year*). The People's Advocate Office received complaints regarding the exceeding of the duration of hospitalization of patients (over 6 months) due to the refusal of the guardianship authorities to take into custody the discharged patients. Apparently, the relations between the responsible civil institutions and the psychiatric ones remain tense due to the lack of procedures for regulating the situation of patients with external intellectual disabilities. **The People's**

²⁷⁰ http://ombudsman.md/wp-content/uploads/2020/09/Avocatul-Poporului_Raport-_aprobare-pentru-tipar.pdf

Advocate is of the opinion that the respective issue should be solved correctly, in the spirit of respecting the right to health of patients, without admitting the long deprivation of liberty of persons.

Deaths in psychiatric institutions

The number of deaths at Clinical Psychiatric Hospital in Chisinau has increased compared to the previous year. If in 2019, 26 patients died then in 2020, there were registered **44 cases of death**. Among the causes of death are: 19 cases of death due to ischemic heart disease; 5 cases due to cardiovascular failure; 5 cases due to acute myocardial infarction, 7 due to SARS-COV-2 virus (out of 342 treated) and the rest of the patients died of other common diseases.

At the same time, at Psychiatric Hospital in Orhei, **11 patients** died (of which 1 case of suicide), compared to 19 deaths registered in 2019. Likewise, at the Psychiatric Hospital in Balti the death rate is slightly decreasing. In 2020, **56 deaths** were registered, and in 2019 - 62 cases. A total of **111 patients** died in psychiatric institutions (including due to diseases caused by SARS-COV-2).

Applying means of restraint to patients

The number of cases of application of means of restraint on patients of Clinical Psychiatric Hospital in Chisinau is slightly increasing, compared to the previous year. In 2019, **101 actions** were taken to immobilize offensive patients, and in 2020, **116** such situations took place. Employees resorted to protective immobilization, immobilization by fixing (*tying to the bed*) or means of restraint, after the elements of psychotherapy failed, to improve the behavior of patients, refusal to receive medication, as well as in response to acts of attack on employees or other patients. For example: *the patient has a psychomotor agitation, he/she is aggressive, impulsive, does not correct himself / herself when receiving remarks, threatens the staff of the institution, manifests attempts to attack; the patient exposes delusional ideas of overestimation; the patient became extremely agitated due to the psychomotor, he/she is tense, verbally and physically aggressive, hit the nurse over the shoulder and intended to hit other patients; the patient does not pick up the remarks; the patient manifested a psychotic episode, refused drug treatment, psychomotor agitation, there was a probability that he / she also had auditory hallucinations, pushed patients and nurses, knocked on doors and shouted; the patient had been aggressive, mentally and physically tense, mischievous, disobedient to the medical staff;*

the patient spat in the hall of the institution, later on the nurse, laughed for no reason, then cried; the patient became extremely agitated, caused self-harm, was in conflict with those around him / her; the patient developed aggressive behavior, intends to aggress the medical staff; the patient became extremely agitated, threatened the medical staff, threatened the physical integrity of the nurse; the patient became verbally and physically aggressive, he / she made insulting to the medical staff; the patient became aggressive, the medical staff was unable to administer treatment, etc. The period of immobilization, according to the operative information, varies from 25 to 60 min. In all cases, the patients of Clinical Psychiatric Hospital in Chisinau received the appropriate medical care.

During the same period, at the Psychiatric Hospital in Balti the means of containment were applied in 51 cases, and at Orhei PH- in 4 cases. A comparative analysis on the situation regarding the use of means on patients is relatively high at the Clinical Psychiatric Hospital in Chisinau and low at the Psychiatric Hospital in Orhei. This fact indicates that in psychiatric institutions employees use different forms of repercussions on agitated or violent patients, etc. **The People's Advocate reminds that the use of immobilization instruments is to be conditioned by passing the test of necessity and opportunity. Immobilization measures may not be applied as a sanction, in the presence of other patients or in order to organize hospital affairs. The application of coercive measures may not exceed the required time and must be carried out in strict accordance with the principle of humanism, respect for human dignity, under the permanent control of medical staff, to prevent a direct danger to oneself or others.**

Patients with injuries, abuses in the institution

During the same period, at the Clinical Psychiatric Hospital in Chisinau, **208 cases** of hospitalization of injured patients (brought by relatives, police, 112 or alone) were registered and another **123 cases of injuries** received by patients inside the institution, either due to acts of self-harm, falling or violence between patients. For example: *the patient caused scars on his / her neck in order to reduce the pain in his / her soul; the patient punched the wall; the patient caused excoriations on his / her face; the patient hit the floor; the patient became aggressive and caused injuries by breaking a bottle; the patient broke the window with his / her head; the patient was throwing intentionally his / her knees on the floor; the patient scratched his / her with a blade; the patient hit his / her thighs on the bed; falling into the rest room; falling in the bathroom; falling into the canteen following convulsive acts, etc.* Regarding the origin of the lesions in patients before hospitalization, the operative summaries show that *the lesions were*

caused as a result of suicide attempts; following acts of domestic violence; following participation in conflicts; enduring accidents on the street, etc.

At the Psychiatric Hospital in Orhei, **52 patients** with bodily injuries and **8 cases** of violence between patients were hospitalized. At the same time, at the Psychiatric Hospital in Balti were registered **27 patients** with injuries on hospitalization, **6 acts** of alleged acts of torture, inhuman or degrading treatment and **80 cases** of violence between patients. In all the mentioned cases, the psychiatric institutions informed the police and the territorial prosecutor's office. The People's Advocate Office has no information on the measures taken by law enforcement agencies. **The People's Advocate considers the variation of aggression on patients a difficult challenge for the staff. For these reasons, the Ombudsman encourages nurses and other employees of psychiatric institutions to monitor patients' relationships, including involving them in activities designed to use their free time. At the same time, the People's Advocate repeatedly urges the relevant institutions to develop, approve operational procedures on protective restraint or immobilization, the obligations and responsibilities of employees, as well as tools to protect employees against abuse of violent patients.**

3.8 SITUATION OF PERSONS IN TEMPORARY PLACEMENT CENTERS FOR PEOPLE WITH DISABILITIES

In the Republic of Moldova there are six Temporary Placement Centers for People with Disabilities (hereinafter TPCPD) for adults and another 3 for children²⁷¹. TPCPD provides temporary placement services for adults and minors, under the management and coordination of the National Social Assistance Agency.

A. Dynamics of residents

In residential institutions 2064 residents (445 minors) benefit from specialized social services. During the monitoring period, the overcrowding of residential spaces in residential institutions was not attested:



Translation of picture:

²⁷¹ CPPVPD Chisinau, CPPVPD Cocieri, TPCPD Balti, TPCPD Badiceni, TPCPD Branzeni, TPCPD Cocieri, CPTCD Orhei, CPTCD Hincesti and CPTCSP Soroca (www.anas.md);

PC Balti	PC Branzeni	PCV Cocieri	PC Badiceni	PC Cocieri	PC Hincesti	PC Orhei	PC Chisinau
550	300	355	450	350	350	350	210
435	250	108	349	334	256	189	143

During the state of emergency, some residential institutions managed to organize the purchase of sheltered housing for 60 residents, thanks to the support provided by external donors. Renovation / reconstruction of the residential and administrative spaces took place in all institutions, including staffing, as mentioned in the reports submitted by them. At the same time, 2020 was an extremely difficult year for both residents and employees due to the measures taken during the state of emergency. Limiting the external contact (exit from the territory), as well as the internal one (between residents), of the therapeutic occupational fields (walks, teamwork, cultural events, routine visits, visits of relatives) led to riots and abuses. Some residents allegedly accepted the mandatory restrictions, while others protested against them. The placement centers informed the People's Advocate Office about some cases of residents *leaving* the institutions during the state of emergency, including by violent methods. After the "capture" of the "fugitive" residents, they were forcibly placed in quarantine facilities for 14 days, during which time the residents behaved aggressively towards the employees and the assets of the institution. Subsequently, between August and October 2020, some institutions allowed residents to move out.

Assaults / ill-treatment in residential institutions

However, cases of **aggression and / or acts of ill-treatment** of residents persist compared to previous years. For example: at the Placement Center of Badiceni, 2 cases of abuse against residents were reported, reaching the level of aggression compatible with acts of torture. The PC of Badiceni ordered the disciplinary sanction of the nurses, and the Soroca Prosecutor's Office was to initiate criminal cases. The Placement Center of Balti reported 3 other cases of abuse against residents. For example: *I was punched in the body by the paramedic, 2-3 times in the bathroom. I was naked and taken to the doctor's office*, according to a resident. According to the Placement Center of Balti, the beneficiary's allegations are confusing, including erroneous regarding the person, the mental suffering she suffers was also invoked and that such a diagnosis could be liable to damage the veracity of the information. However, the People's Advocate Office was assured that individual discussions were initiated with the institution's nurses and a training session for employees with the training of a psychologist was initiated. Here we do not mention the offensive attitudes and daily verbal attacks between residents and employees. **The People's Advocate condemns the acts of abuse on the residents, as well as any other form of physical / verbal pressure on them. The employees of the Centers must do their utmost diligence in the performance of their duties. In the same vein, the People's Advocate does not admit the practices of "solidarity in professional groups" in the part related to the cover-up of ill-treatment.**

Any action that violates human rights is to be brought before the law enforcement agencies, and the guilty persons are to be held accountable.

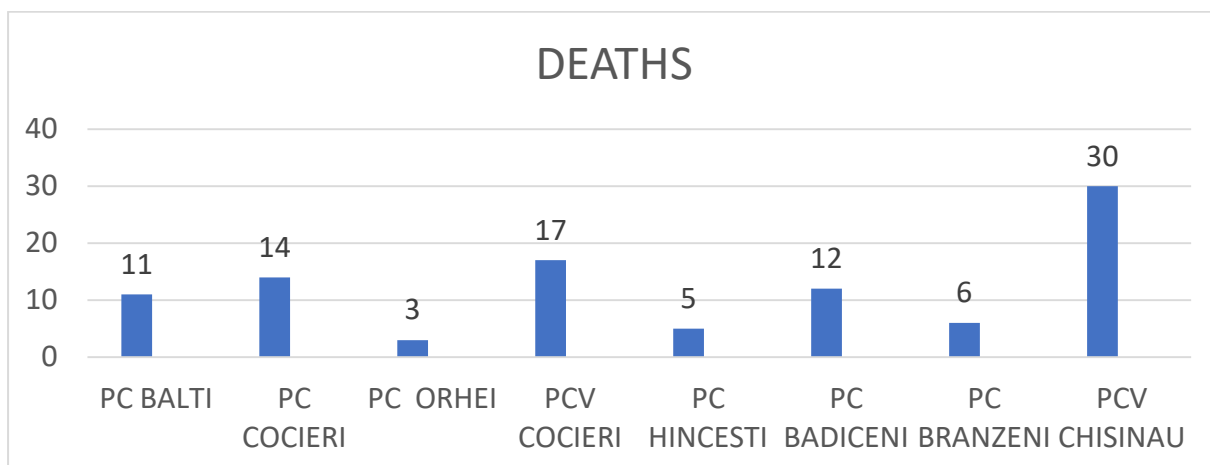
Violence between residents

Although, during the monitoring period, residential institutions were *de jure* closed, the number of cases of abuse due to alcohol consumption by residents was increasing in 2020. Alcohol abuse, strained relationships between residents are the main factors causing aggression and violence in residential institutions (146 cases of violence in total). Violent incidents between residents were reported by the Placement Center of Balti (8 cases), the Placement Center of Branzeni (5 cases), the Placement Center of Badiceni (9 cases); the Placement Center of Orhei (3 cases), the PCV Cocieri (9 cases) and the Placement Center of Cocieri: - ... *he / she punched another beneficiary in the back; hit another resident in the head area; one beneficiary pushed another resident; while in the bathroom, one beneficiary bit another beneficiary; a beneficiary punched another resident; a beneficiary pushed the wheelchair of another resident, who later overturned; he / she hit another beneficiary with a plate in the head area; he / she cut him / her at his / her finger with a blade he / she had acquired individually; the beneficiary physically assaults another beneficiary; beneficiaries in a state of intoxication and in a fight, when the nurse is involved, bites his / her leg and grabs the subject who came to disperse the conflict; beneficiaries, in a state of intoxication, show aggressive behavior; the beneficiaries got into a fight, one of them intended to use a knife, the nurse intervened promptly to calm the beneficiaries, etc* – extracts from the informative notes sent to the PAO. In all the cases stated, the placement centers provided the necessary medical assistance, had individual discussions with each one; requested the intervention of the police bodies, or addressed the events at the meetings of the Commissions for reporting cases of trauma and abuse. **The People's Advocate considers that the aggression cannot take place in residential institutions. The role of these institutions is to increase their beneficiaries' calm emotional states, openness to cooperation and socialization with peers and community members. Moreover, the expression of aggression intensely promoted by the employees of the institution seems to be a response to a correlative-hostile behavior, fed over time and increased in stages, or the aggression is not a challenge-free reaction. In addition, the People's Advocate is concerned about the phenomenon of "circulation of alcoholic substances" inside the Placement Centers, which, beyond the profound negative effect on the treatment of residents, becomes a factor that generates and causes aggressive behavior.**

Deaths in residential institutions

In 2020, **101 deaths** were registered in the eight Placement Centers. The age of the deceased varies from 10 to 91 years. The cause of death in 11 cases were complications from SARS-CoV-2 infection; in 3 cases: complications of some common diseases, against the background of the past treatment of SARS-CoV-2; in 87 cases: complications of common diseases, such as: *toxio-septic shock, cardiogenic shock, ACVA concession, cerebral coma, gastric hemorrhage, bulbar syndrome, BCV encephalopathy,*

repeated AVC, carcinogenic intoxication, epileptic stollus, liver cirrhosis, acute heart failure, cardio-pulmonary insufficiency, diabetes mellitus, acute right pneumonia, acute myocardial infarction, hepatic impairment, acute renal failure: -



The People's Advocate highlights the importance of activating qualified medical services in residential institutions. The functionality of preventive instruments is one of the indispensable conditions for the quality of life in institutions concerned with the care of people with disabilities. Moreover, it is recognized, as the possibility of controlling the evolution of the beneficiary's disease, the occurrence of: complications of the disease; the death of the person. Therefore, strengthening the organization of such services, promoting policies to fill vacancies in the Temporary Placement Centers for People with Disabilities, equipping medical institutions with modernized tools and various preparations to meet vital needs could significantly reduce the mortality rate.

CHAPTER IV. PROMOTING HUMAN RIGHTS

INFORMATION / TRAINING ACTIVITIES, COLLABORATION WITH MASS MEDIA AND EDITORIAL ACTIVITY

The activity of education, information and training in the field of human rights is a basic direction in the activity of a National Institution for Human Rights (NIHRs), according to the Paris Principles. This document, which contains a set of standards for the activity of a NIHR, states that a NIHR must "contribute to the formulation of human rights education and research programs and participate in their implementation in schools, universities and professional circles" ; to inform about human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by raising public awareness, in particular through information and education and the use of all media".

The information / training activity in the field of human rights is important because it contributes to the prevention of human rights violations.

In 2020, the People's Advocate Office contributed to the prevention of human rights violations by educating in the field of human rights, promoting respect for human dignity, in 151 information actions²⁷², training, meetings and organized events, attended by about 3000 people. The institution published 26 titles of informative materials, developed 2 spots on the protection of whistleblowers and the role / mission of the PAO, launched on the institution's website www.ombudsman.md an application (E-LEARNING) through which offered internet users the opportunity to train online.

The People's Advocate Office made public the information about its activity, the position regarding various issues in the field of human rights, the initiatives launched through the official website, the accounts on social networks and the media. Both the number of press releases, materials placed on the site, and downloads by the media was a record last year, as well as the number of views and the impact of posts on the institution's website and accounts from socializing network.

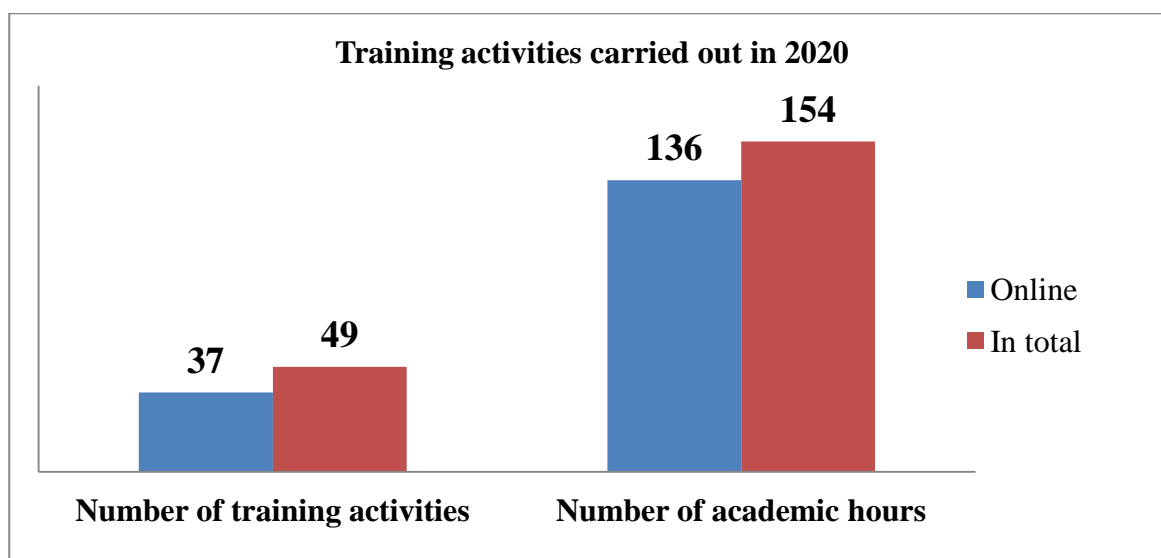
This is even if in 2020 the activity in the traditional format of promoting the human rights of the People's Advocate Office was affected by the restrictions imposed in the pandemic conditions by COVID-19. Until March, the planned activities were carried out in real format, according to the Activity Plan and methodology adopted within the PAO, starting with March 2020 it was necessary to restructure the planned activities and adapt to existing circumstances by conducting training and information activities in online format.

Thus, for objective reasons, it was not possible to carry out all the planned training and information activities in full. In offline format they could not be organized due to the pandemic, and online because the institution did not have access to platforms that would allow activities without limiting the number of activities, frequency of meetings, time and number of participants, but and with the tools necessary to carry out these processes.

Training activities

In 2020, the trainers of the People's Advocate's Office carried out a total of **49 training activities (154 course hours), with the participation of 1113 people. 37 of the activities took place online (136 hours).**

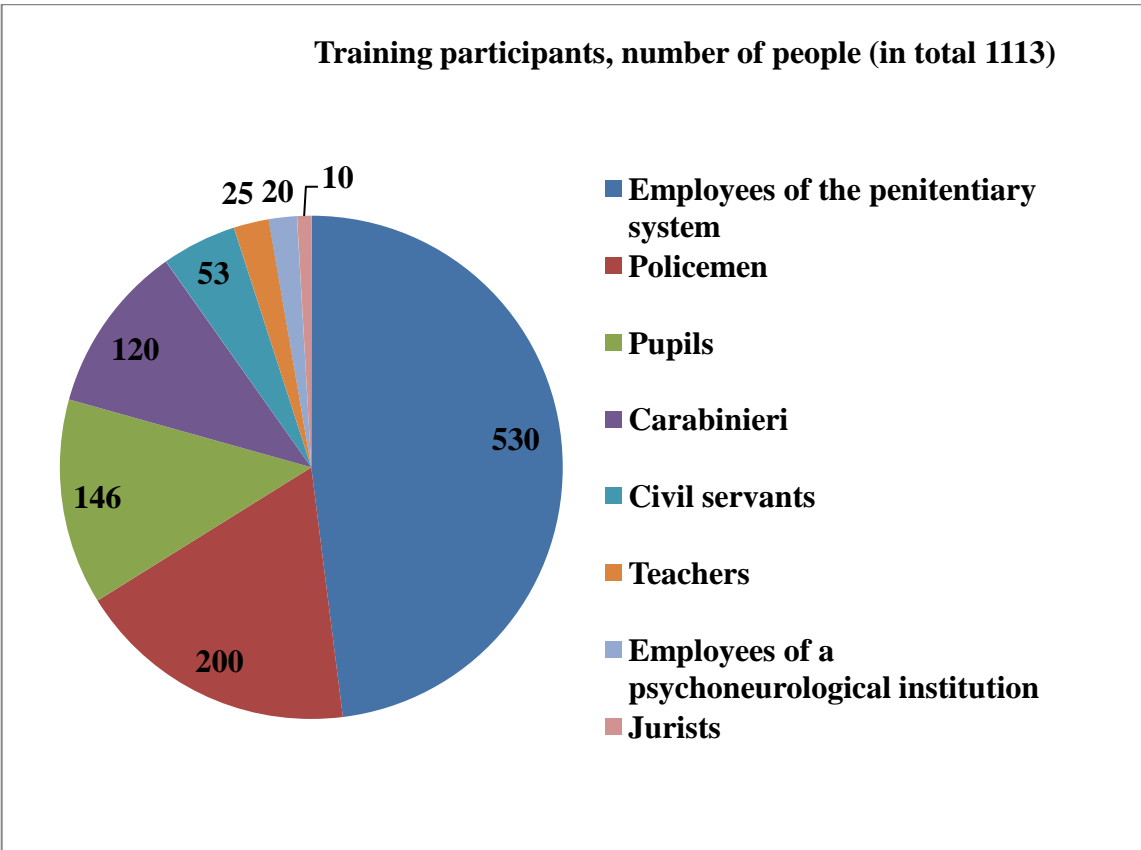
²⁷² This figure includes training activities (49), information activities (62) and 37 events organized by the PAO.



In 2020, the collaborations with the National Administration of Penitentiaries and the General Inspectorate of Carabinieri continued, for whose employees the PAO officials organize training activities. Accordingly, the topics previously set for the lectures were further addressed: the prevention of torture; mechanisms to prevent torture and ill-treatment; fundamental guarantees against torture; the process of preventing torture and ill-treatment in the work of penitentiary officers and the carabinieri corps.

Within the training actions intended for the beneficiaries from other institutions, topics aimed at ensuring the observance of the child's rights were treated; children's participation in the decision-making process; implementation of the UN Convention on the Rights of the Child; prevention of violence against children. Topics on respect for human rights in policing, health warnings and health warnings were also addressed.

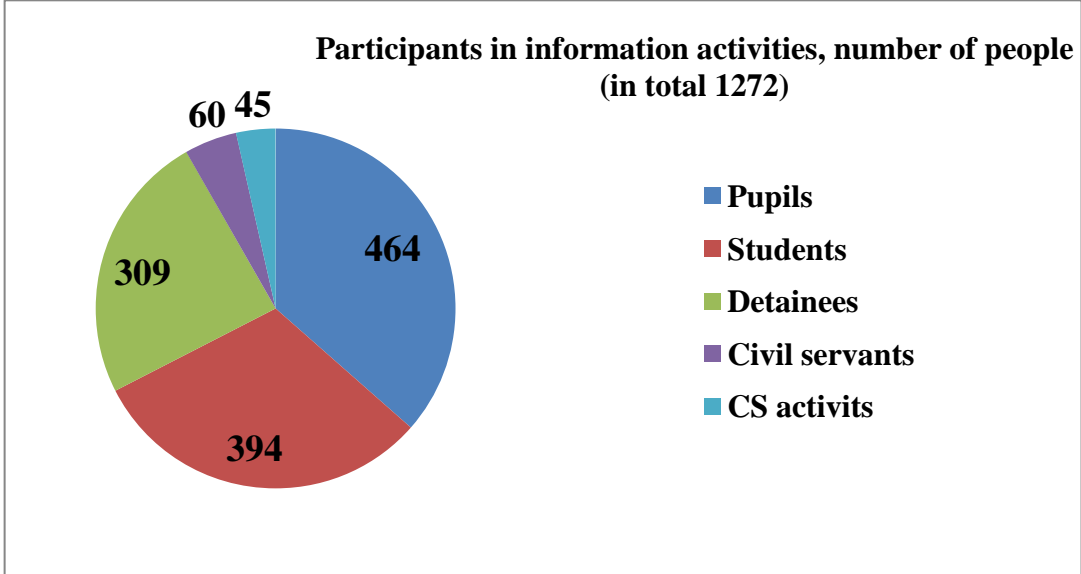
The participants in the trainings (1113) were civil servants, lawyers, carabinieri, policemen (MIA, Material Reserves Agency, MIA Academy, Border Police, police inspectorates from ATU Gagauzia), employees of the National Administration of Penitentiaries (integration specialists, psychologists, group leaders, officers, heads of guard and escort subdivisions), employees of the Temporary Placement Center for People with Disabilities (adults) in Balti, teachers.



Information activities

In 2020, the PAO trainers carried out a total of **62 information activities, all being conducted online, which was 107 hours**, attended by **1272 participants**.

The profile of the participants is different: pupils, students, civil servants, young activists from civil society organizations, detainees.



Themes of information activities: children's rights, prevention of violence in educational institutions, participation of children and young people in decision-making, child labour, exploitation of children through work, social rights and guarantees of young people, prevention of torture and ill-treatment, whistleblowing and whistleblower protection, the human rights approach.

Topics related to children's rights were discussed with students of different ages. In addition to mechanisms to ensure that children's rights are respected and that children are involved in decision-making, emphasis has been placed on informing about the prevention of violence, especially in educational institutions.

The prevention of torture was a topic discussed with the second target group interested in this subject - detainees in penitentiary institutions. During the activities of the detainees, they were informed about their rights, guarantees against the application of acts of torture and ill-treatment.

For the first time, the theme of information activities was "Human Rights Approach (HRA)". The topic was discussed with two target groups: students and civil servants. Whistleblowing and whistleblower protection were addressed with a group of public officials.

Other ways of training

In 2020, the People's Advocate Office created with the support of UNDP Moldova²⁷³ on the institution's website www.ombudsman.md **an application (E-LEARNING)** through which it offered internet users the possibility to train online. **E-LEARNING is a modern platform set up for the online study of various subjects in the field of human rights. Through this platform, the PAO aims to contribute to the development of human rights education, to promote human rights knowledge and to increase free access to information in a flexible and comfortable environment. Each person can go through the course step by step and check their own knowledge.**

The first training course is dedicated to the Whistleblower. The user goes through several pages with information on the topic presented attractively from the point of view of design, and at the end the user is offered a test to verify knowledge.

The creation of the application offers the People's Advocate Office the possibility to inform and train as many people as possible in several fields, without the need to organize the process live, which means saving resources for the institution.

²⁷³ This course was created within the project "Fight corruption by strengthening integrity in the Republic of Moldova", implemented by UNDP with the support of the Ministry of Foreign Affairs of Norway;

The institution aims to develop the E-learning platform, by developing new courses (Human Rights-Based Approach, hate speech, for example), to continue developing teaching materials, other documents, according to the PAO methodology, but also to actively use of online platforms that provide time for meetings with different formats, especially with training functions.

Other more important activities organized by the PAO

"70 years of the ECHR, 25 years since the accession of the Republic of Moldova to the Council of Europe - implementation of CoE standards at national level" was the theme of the international conference organized online on December 8 by the People's Advocate Office jointly with the Council of Europe Office in Moldova ²⁷⁴. The event was attended by over 50 people, including senior CoE officials, but also representatives of public institutions, the non-governmental sector, international organizations.

With the support of the CoE, a video spot on the role and responsibilities of the PAO was developed and presented at the conference, which will later be used in information / training activities, and another video spot vox populi on people's views on respect for human rights in the Republic of Moldova.

Last year, the institution launched 3 online campaigns: the **#EuNuSuntVirusEuSuntOm Campaign**, the **"#EuNUAplic166¹-EuRespectDemnitateaUmană" Campaign** and an information campaign in support of whistleblowers among doctors. The People's Advocate Office also joined 2 other campaigns, such as **"Filter words. Report hatred!"**, Launched by the PromoLEX Association, and the information campaign **"Reducing the stigma associated with COVID-19"** with the message **"Only together we can stop the pandemic and stigmatization!"**, Launched by the UN Office for Human Rights in Moldova.

The **#EuNuSuntVirusEuSuntOm** campaign was launched to combat discrimination and hate speech against people suspected of being infected with COVID, contaminated with coronavirus or cured of this infectious disease.

The traditional campaign **EuRespectDemnitateaUmana** was carried out between June 25 and 30, on the occasion of the International Day in Support of Victims of Torture, in partnership with the General Police Inspectorate, the National Administration of Penitentiaries, the Ministry of Health, Labour and Social Protection and National Social Assistance Agency.

²⁷⁴ The conference was organized within the Program "Promotion of a criminal justice system based on respect for human rights in the Republic of Moldova", funded by the Government of Norway and implemented by the Council of Europe;

In May-June 2020, the People's Advocate Office, in collaboration with UNDP Moldova and the National Anticorruption Center, conducted an information campaign in support of whistleblowers among doctors, launching a video spot and several informative materials on the subject. At the same time, a new application has been developed on the www.ombudsman.md portal, through which whistleblowers can submit an online application to ensure protection from the People's Advocate Office, as well as an online training course.

The People's Advocate also had several important meetings, including the one with the Council of Europe Commissioner for Human Rights, Dunja Mijatović, with the representatives of the Council of Europe program "Promoting a criminal justice system based on respect for human rights in the Republic of Moldova", with Deputy Prime Minister - Minister for Reintegration on Human Rights in the Transnistrian Region and with Members of the OSCE / ODIHR Mission to observe the presidential elections in the Republic of Moldova etc.

Between June 1 and December 31, 2020, the employees of the People's Advocate Office carried out several activities within the **"Defenders against Torture" Project**. The project aimed to help reduce the violations of the rights of detainees in police custody and strengthen the capacity of 12 public lawyers (northern, central and southern regions) in preventing acts of ill-treatment of detainees and those in police custody, including through monitoring tools developed by the Soros Foundation Moldova.

Editorial activity

In 2020, the People's Advocate Office published **26 informative materials**: *"How to submit an application to the People's Advocate?"* and *"How to apply to the People's Advocate if you are in detention?"*, the leaflet *"The human rights approach"*. In addition to the publication of the *Report on the observance of human rights in the Republic of Moldova in 2019* and its summary into English, the thematic report *"Assessment of respect for the rights of children in detention in connection with the criminal prosecution or the execution of sentences"* was edited.

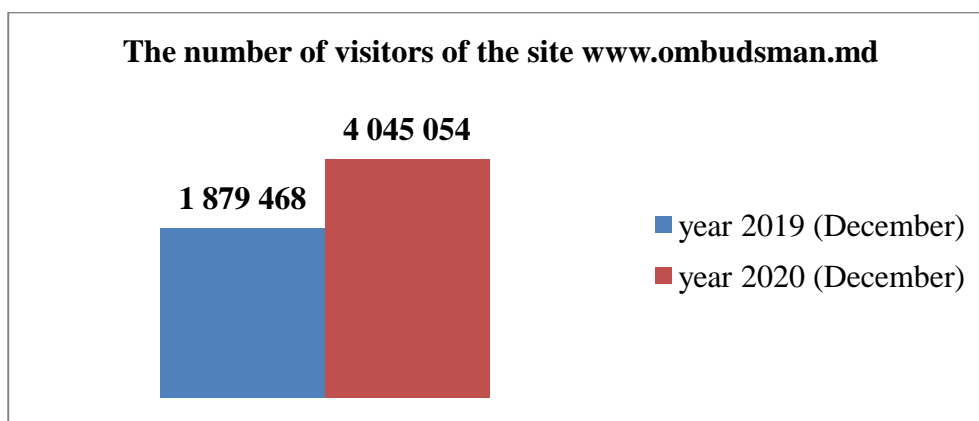
The publication of the series of leaflets *"14 patient rights"* has been completed. In 2020, there were published the leaflets: *"The right to innovation"*, *"The right to safety"*, *"The right to avoid unjustified suffering and pain"*, *"The right to express dissatisfaction"*, *"The right to be compensated"* and republished the informative material *"14 patient rights"* in Romanian and Russian.

With the financial support of UNICEF Moldova, the *Report on the observance of children's rights in the Republic of Moldova in 2019* and the thematic report “*Assessment of the efficiency and effectiveness of intersectoral cooperation mechanisms in the field of child rights protection*”, “*UN Convention on the Rights of the Child*” were published in Romanian and Russian.

Ensuring the transparency of the activity of the People's Advocate Office and the institution's collaboration with mass media

The People's Advocate Office uses various tools to make known its work, its position on various human rights issues, initiatives and proposals launched in order to improve the situation in this area: placing information on the website ombudsman.md, accounts on social networks (Facebook, YouTube), organizing conferences, press clubs, informal meetings with journalists, developing and distributing newsletters, etc. The PAO website www.ombudsman.md is one of the most operatively updated, as well as rich in content in the public sector.

In 2020, the site registered a constant increase in the general number of visitors and reached a record value of **4 045 054** visitors and 181,135 unique visitors, demonstrating an above average dynamic.



The increase was caused by several factors, determining in this sense the prompt reactions of the People's Advocates to various human rights violations, the rather intense activity of the People's Advocate Office during the pandemic. Thus, 1905 materials were published on the website, of which 907 press releases in Romanian, Russian and English. The establishment of several sections corresponding to the needs of information during a pandemic contributed to the increase of the views on the site: “*Observance of human rights during a pandemic*”, “*Opinion of international experts on the observance of human rights during the health crisis*”.

The interest in the institution's website has increased following the launch of the new E-learning application. In addition, during 2020, more work was done related to the design of the main page, work began on the *Podcast* page, the site menu was restructured.

Social networks

The Facebook account of the People's Advocate Office is the most active. In 2020 it became an open platform for dialogue with the people, through which the institution promptly informed about various events, reactions of the Ombudsmen in the context of the pandemic. The number of views on Facebook has also increased - the average number of views has reached and remained between **5,000 and 9,000 views**, and the number of followers has considerably increased to **4,200 people**.

PAO collaboration with mass media

In 2020, there was registered a record number of press appearances, the highest in the last 10 years - **1198** (in 2019 - 683 and in 2018 - 400 appearances). During the year the proposals, the reactions of the People's Advocates were widely mirrored by the most important media institutions. All important events, reports, studies prepared by the People's Advocate Office, their reactions, statements and opinions were publicized.

Studies measuring the perception of the beneficiaries regarding the activity of the People's Advocate Office

In accordance with the Strategic Development Program of the People's Advocate Office for the years 2018-2022, the institution aims to monitor the level of knowledge of the PAO in society and the appreciation of its performance. In this sense, surveys on the perception of the institution by the population and / or beneficiaries are to be carried out periodically. In 2020, a study was conducted to measure the perception of beneficiaries regarding the work of the People's Advocate Office, which was conducted with the support of the Council of Europe Program "Promoting a criminal justice system based on respect for human rights in Moldova", funded by the Government of Norway. It appreciated the perception of civil servants, media representatives and civil society organizations with which the PAO worked in 2020 in terms of performing the tasks in the most important areas of activity of the institution: promoting human rights, relations with the press , preparation of the annual report and presentation of proposals and recommendations for accession to international human rights instruments, preparation of reports to UN committees, improvement of human rights law and examination of applications for human rights violations.

The study found, among other things, that, according to the beneficiaries participating in the survey, the institution manages to promote human rights in the Republic of Moldova.

More than 8 out of 10 study participants rated this aspect on a 10-point scale with marks of 8 or higher. Almost half (44%) of the beneficiaries of the PAO appreciated this activity with marks of 9 and 10. Negative assessments (5 points and less) were given only by 4% of the respondents.

However, even if the positive assessments prevail in all areas of the PAO's activity, according to the respondents, in some sectors things are going very well while in others improvements are still needed. The strong areas in which "very good" and "good" assessments accumulate over 70% are: collaboration with the media, preparation of the Annual Report on the Observance of Human Rights and presentation of proposals and recommendations for accession to international human rights instruments, presence in the mass media and the presentation of recommendations on the reinstatement of persons whose rights have been violated.

Preparation of reports to UN committees, improving human rights law, and examining claims of human rights violations are areas of moderate performance, according to study participants.

The overall impact function of the entire PAO activity and of all actors whose activity is meant to contribute to the observance of human rights - the improvement of the human rights situation cumulates 60% of positive assessments (very good and good), and 14% - with the qualifier "satisfactorily". Along with this area, it is necessary to improve the performance of the PAO and in terms of contributing to the amicable settlement of conflicts between citizens and authorities, according to study participants.

However, the answers of the respondents to the trap questions showed that the degree of knowledge of the attributions of the People's Advocates is not good enough, so that only 7% answered correctly, and one in four did not know what appreciation to offer.

Human rights education

The People's Advocate Office, as the National Institution for Human Rights (NIHR), has the task of promoting the culture of human rights, of "contributing to the formulation of education and research programs in the field of human rights and participation in their implementation in schools, universities and professional circles"²⁷⁵.

It is also worth mentioning that the National Action Plan in the field of human rights for years 2018-2022²⁷⁶ (NAPFHR) stresses the need to complement the school and university curricula by developing modules on: human rights, a culture of peace and non-violence, global

²⁷⁵ The international activity standards of a National Institution for Human Rights are stipulated in the Principles on the Statute of National Institutions - Paris Principles, adopted by General Assembly Resolution no. 48/134 of 20 December 1993;

²⁷⁶ http://www.justice.gov.md/public/files/massmedia/PNADO_III.pdf, page 11;

citizenship and cultural diversity; ecological education; promoting the health of children and adolescents in accordance with relevant evidence in the field; gender dimension.

In order to achieve this task and guided by the provisions of the UN Declaration on Human Rights Education and Training, the World Program in this field and the Sustainable Development Goals (Goal 4, “Quality Education”, target 4.7, of the 2030 Agenda for Sustainable Development) the People's Advocate Office aimed to monitor the state of affairs in the field concerned and to contribute to the improvement of the situation in this regard in the Republic of Moldova.

In 2019, the People's Advocate Office aimed to monitor the state of affairs regarding the training on the functions and attributions of the People's Advocate at the law faculties in the country and, if possible, at other faculties where the legal protection of human rights is taught. To this end, a questionnaire was developed with general questions about the mission and role of the People's Advocates, their competencies, the students will only tick the correct answers from the proposed options. The findings reached as a result of the synthesis of the evaluation results are that the future lawyers have superficial knowledge about the role and attributions of the People's Advocates.

In order to establish the reasons why students do not obtain satisfactory knowledge on the duties and activity of the People's Advocate Office, in 2020, the institution aims to develop the study on the reflection of the Legal Institute of the People's Advocate in the content of courses in higher education institutions Moldova. The study shows the reduced number of hours for students to study the mission and responsibilities of the People's Advocates (varies between 2 and 4 hours) and the tendency to further limit them; it is also established that the study program does not always reflect the attributions of improving the legislation, notifying the Constitutional Court, examining the applications, the conditions under which they can be addressed to the People's Advocate. The study programs largely do not include references to the international standards of activity of a National Institution for Human Rights (NAHR), on the basis of which the national legislation governing the functioning of the given institution was elaborated: Paris Principles and Venice Principles. It was also established that some teachers did not update the study programs, operating with outdated data about the activity of NAHR in Moldova, even if it has been active for 5 years under a new law (Law on People's Advocate No. 52 of 03.04. 2014). It was also found that university institutions do not have sufficient, up-to-date teaching materials. It was also established that there are no standardized methodological guidelines regarding the teaching of the NAHR study object neither for the subject sheet nor for the study program.

The study recommends, among other things, the elaboration of a model curriculum for studying the discipline "The role and responsibilities of the Institution for the Protection of Human Rights"; as well as a methodological guide with guidelines for teachers who teach the discipline in question. Based on the findings on the degree of knowledge of the Legal Institute of the People's Advocate among students, but also related study programs, which refer to training on national and international mechanisms for the protection of human rights, it is appropriate to introduce a mandatory course on this topic at all higher education institutions in the Republic of Moldova and at faculties other than law faculties.....

Furthermore, the People's Advocate Office intends to expand the research area to analyze in another study the overall teaching of the subject of human rights in higher education institutions in the country, containing a compartment about the experience of other states in the field. This would allow the promotion of positive practices in other countries at the national level and the adjustment of study programs according to the most advanced experiences in the field.

V. PEOPLE'S ADVOCATE OFFICE ACTIVITY

CONTRIBUTING TO THE PROCESS OF IMPROVING LEGISLATION

According to Art. 16 of the Law on the People's Advocate (Ombudsman) no. 52/2014, one of the attributions of the People's Advocate is to contribute to the improvement of the legislation in the field of human rights and freedoms. To this end, the People's Advocate presents to the subjects with the right of legislative initiative proposals and recommendations for improving the legislation in order to eliminate the causes and conditions that create premises for violation of human rights and freedoms, issues opinions on draft normative acts concerning human rights and freedoms, presents visions on the compatibility of national legislation with international legal instruments in the field of human rights and freedoms, notifies the Constitutional Court on the control of the constitutionality of normative acts.

In carrying out the task of improving the legislation in force, in 2020 the People's Advocate and the People's Advocate for Children's Rights formulated **22 proposals to amend the regulatory framework**, which were submitted to subjects with the right of legislative initiative at both Government and Parliament level. The issues addressed in 5 proposals submitted to the authorities were resolved during the reference period, 9 were accepted in principle or partially accepted by the authorities concerned to examine and initiate the procedure for amending the regulatory framework, and in 3 cases the proposals were not

supported. With regard to the 5 legislative issues addressed, the authorities' responses were not received.

As a subject with the right to notify the Constitutional Court, in 2020, the People's Advocate submitted **1 referral to the Constitutional Court**. The object of the constitutionality control referred to the interdiction of the transfer of the pension abroad to the pension beneficiaries based on the Law on pension insurance of the military and persons from the command corps and from the troops of the internal affairs bodies and from the General Inspectorate of Carabinieri no. 1544/1993. The contested provisions were declared unconstitutional.

At the same time, in 2020 the People's Advocates presented **10 opinions / Amicus Curiae to the Constitutional Court** with reference to the notifications under examination, with impact in the field of human rights, of which 8 - at the request of the Court, and 2 - on their own initiative.

Influencing public policies, the regulatory framework and administrative practices by promoting the integration of international standards in the field of human rights is a priority segment of the activity of the People's Advocate Office, established in the Strategic Development Program of the institution for years 2018-2022.

The People's Advocates rely on an effective dialogue with the Parliament, the Government and the main actors in the field of justice. Therefore, the actions of the People's Advocates were focused on identifying gaps in the normative framework, according to the principles of the Human Rights Based Approach (HRBA), and contributing to its improvement, participating in the debate on human rights issues in parliamentary committee meetings, providing opinions on to the subjects under examination procedure at the Constitutional Court.

In 2020, **32 draft normative acts were examined**, on which the People's Advocates expressed their point of view in terms of their compliance with international standards in the field of human rights. The most frequent opinion of the People's Advocates was requested by the State Chancellery at the proposal of the Ministry of Justice, the Ministry of Health, Labour and Social Protection, but also the People's Assembly of ATU Gagauzia.

Also, in order to prevent the violation of fundamental human rights and freedoms, if the People's Advocate considers that certain draft normative acts could infringe human rights and freedoms, he intervenes *ex officio* to the competent authorities with proposals and recommendations for improving the projects of normative acts placed on the official pages for public consultations. Therefore, with reference **to 5 draft normative acts concerning human rights and freedoms, the views were expressed ex officio**. For example, the People's Advocates came up with some suggestions for improving the draft law for the approval of the

National Development Strategy "Moldova 2030" developed by the State Chancellery, from the perspective of integrating the principles of the Human Rights Based Approach.

Given that the summary of objections and proposals is not always published, it is difficult to trace which of the proposals submitted during the project consultation process were accepted. The People's Advocates consider it important for public authorities to ensure a transparent process in this regard, as well as for draft normative, administrative acts that may have a social, economic, environmental impact (on lifestyle and human rights, on culture, health and social protection, local authorities, public services).

MANAGEMENT AND INVESTIGATION OF APPLICATIONS

The examination and investigation of applications regarding the violation of human rights and freedoms is one of the attributions of the People's Advocate, according to the Law on the People's Advocate (Ombudsman) no. 52 of 03.04.2014. The People's Advocate examines the applications of individuals, regardless of race or ethnic origin, colour, sex, language, religion, political opinion or any other opinion, of national or social origin, wealth, birth or any other circumstances, who live permanently, are or they were temporarily on the territory of the country, whose rights and freedoms are presumed to have been violated by the Republic of Moldova.

In accordance with Article 17 of Law no. 52 of 03.04.2014, the People's Advocate for Children's Rights provides protection and assistance to the child at his / her request, without seeking the consent of parents or legal representatives. The child is informed about the result of the examination of the application in a form corresponding to his / her intellectual and mental maturity.

Applications may be submitted in person or by post, fax, e-mail or other means of communication. The request from a person in detention, a person in the criminal investigation isolators, from the military in the military units is not subject to censorship and is sent by the administration of the respective institutions to the People's Advocate within 24 hours.

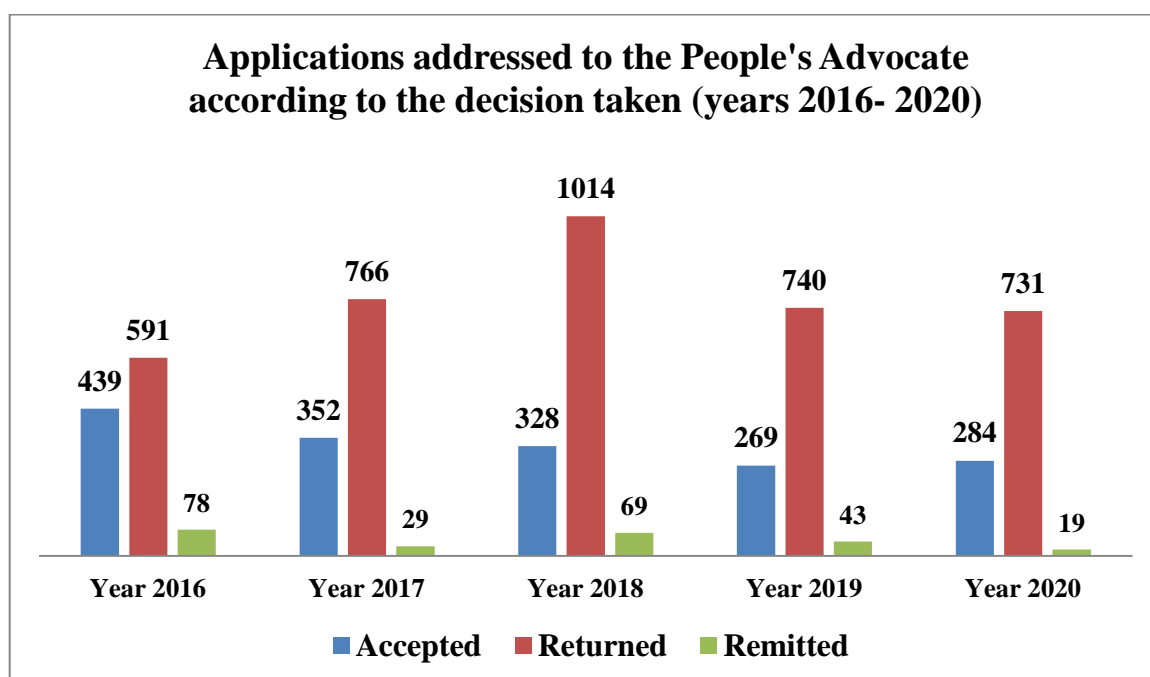
According to Art. 21 of Law no. 52/2014, after receiving the application, the People's Advocate is entitled: to accept the application for examination; return the application without examination, explaining to the petitioner the procedure he / she is entitled to use to defend his /

her rights and freedoms; submit the application to the competent bodies for examination in accordance with the provisions of the legislation on petitioning.

Within 10 days from the date of receipt of the application, the People's Advocate notifies the petitioner of the decision taken. If the application is returned without examination, the reasons for the return must be indicated. The decision to return the application cannot be challenged.

The repeated application may be filed after the removal of the causes that served as the basis for the refund.

Every year, the People's Advocate Office, including its representative offices, receives an average of about 1300 applications. About 75% of these applications are returned without examination, because they do not fall within the competence of the People's Advocate or do not meet the conditions of admissibility set forth in Articles 19 and 20 of Law no. 52/2014. However, each petitioner is explained the procedure he / she is entitled to use in order to defend his / her rights and freedoms.



In the process of investigating the applications accepted for examination, the People's Advocate is entitled to address in court with applications in defense of the petitioners' interests; to intervene with the competent authorities with steps for the intent of disciplinary or criminal proceedings against persons with positions of responsibility who have committed offenses that have resulted in the violation of human rights and freedoms; to notify the police regarding the commission of the contravention presented in art. 320 of the Contravention Code of the

Republic of Moldova; to notify persons with positions of responsibility at all levels on cases of negligence in the service, violation of work ethic, procrastination and bureaucracy. The People's Advocate can also intervene in the process to draw conclusions in the vision of defending the rights, freedoms and legitimate interests of individuals.

During 2020, in connection with the epidemiological situation generated by Covid-19, the People's Advocate Office organized and carried out its activity largely remotely. In order to ensure the access of persons to the People's Advocates on the official website of the institution www.ombudsman.md, the application "Submit an online application" has been improved for persons who wish to submit an application to the People's Advocate by e-mail. The application provides the confidentiality and security of the information provided. In this way, citizens were given the opportunity to address the Ombudsman quickly and safely. Also, in order to facilitate the process of providing information assistance to citizens, the process of receiving and managing daily phone calls by the employees of the Office was organized.

In 2020, **1034 applications** were received by the People's Advocate's Office by various means: mail, e-mail, electronic document management system. Out of the total number of **1034 applications, 856 (88%) applications were addressed to the People's Advocate and 178 (12%) applications were addressed to the People's Advocate for Children's Rights.**

Of the **1034 registered applications, 284 (25%) were accepted for examination** with the enterprise of procedural actions, pursuant to Art. 25 of Law no. 52/2014. **19 applications (4%)** were submitted to the competent authorities for examination. Another **731 applications (71%)** were refund pursuant to the provisions of Art. 18, 19, 20 of Law no. 52/2014. In each case, the addressees were explained the procedures they are entitled to use to defend their rights and freedoms and, at the same time, they were informed about the attributions of the People's Advocate. The large number of applications that have been refund are caused by the fact that the attributions of the People's Advocates are insufficiently known or are misinterpreted both by the population and by those who address the People's Advocate on behalf of certain persons.

According to the content of the applications received in 2020, the most alleged violation of the following rights was most frequently invoked:

The right to a fair trial - 189 applications. The issues raised by the petitioners were related to the disagreement with the decision (sentence) of the court; the right to be assisted by an ex officio appointed lawyer; disagreement with the decision taken by the police, trial of the case by an independent, impartial and lawful court, ensuring the presumption of innocence, actions / inactions of judges and lawyers, non-enforcement of court decisions, delay in examining court files and correcting court decisions.

The right to life, physical and mental integrity - 210 applications. The petitioners complained about the actions of the penitentiary employees, the precarious conditions of detention, the damage to honour and dignity. Detainees frequently requested the intervention of the People's Advocate for their transfer to other penitentiaries, citing the fact that they were ill-treated by other detainees-representatives of the penitentiary subculture, or in the applicants' opinion, continuing to serve the custodial sentence in the penitentiaries in which they were assigned was a real danger to their lives and physical and mental integrity.

The right to individual liberty and security of the person - 56 applications. Immediate failure to provide information on the reasons for detention or arrest and exceeding the legal time limits for persons in pre-trial detention were most often invoked.

The right to health care - 92 applications. The issues addressed are related to free health care in the volume established by law; lack of respectful and humane attitude on the part of health care providers; examination and treatment in conditions unsuitable for sanitary regulations; failure to provide comprehensive information on one's health; methods of diagnosis, treatment and recovery; accessibility of medical services; cancellation of appointments for planned medical investigations and treatment due to the pandemic and the establishment of Covid hospitals; not including medicines for the treatment of Covid virus in the list of reimbursed medicines.

The right to private property and its protection - 50 applications. The petitioners quite often invoked the non-observance of the debtors' assets within the execution of the enforcement documents, by applying the seizure on the movable and immovable property; exceeding the powers of bailiffs by abusively applying the seizure on the debtors' bank accounts; obtaining as well as owning private property; the right to inherit; excessive payment for communal services, as well as the impossibility of paying loans during the pandemic period.

The right to social assistance and protection - 59 applications. The issues addressed were: the small amount of pensions; refusal to grant social assistance / aid for the cold period of the year and other social benefits; impossibility to pay for communal services; insurance in case of unemployment, illness, disability, old age, loss of livelihood during the state of emergency; failure to provide personal assistance to people with severe disabilities; non-distribution of pensions and social benefits by postmen in some remote localities, lack of financial sources to support their family in connection with the temporary loss of employment during the pandemic period

The right to information - 66 applications. Many applications were made in which the petitioners requested information on the work of international human rights institutions and the

reports issued by them. Also, requests continued to be received requesting the Reports of the People's Advocate Office regarding the finding of precarious conditions of detention.

The right to defense - 38 applications. Quite often citizens have been asked to be represented and to have their rights defended in court hearings, as well as to monitor the conduct of court hearings.

The right to work and labour protection - 35 applications. Illegal redundancies, non-payment of wages, intimidation and threats from employers, occupational hygiene, protection against unemployment, as well as fair and satisfactory working conditions, lack of support for patents during the pandemic period and their non-inclusion in the category of persons to receive financial support were invoked.

The right to petition - 22 applications, in which the disagreement with the answers received from the authorities was invoked; violation of the time limit for examining petitions.

The right to citizenship - 6 applications. The petitioners claimed that the state authorities did not receive their documents for acquiring citizenship, they were not granted citizenship of the Republic of Moldova, two foreigners requested the input of the People's Advocate for obtaining political asylum.

Alleged violations of the right to free movement (7 applications), freedom of opinion and expression (7 applications), freedom of assembly (6 applications), and protection of personal data (2 applications) were also invoked.

For the first time, in 2020, 4 applications were received from people who requested protection, claiming that they are whistleblowers. The granting of the protection of the whistleblowers is a new attribution of the People's Advocate, obtained based on the Law on whistleblowers no. 122 of 12.07.2018

In 2020, there was a growing concern of the population regarding the observance of the right to a healthy environment. Thus, at the People's Advocate Office were registered 9 applications in which the lack of financing from the state budget for the activities regarding the protected natural areas, including for the scientific natural reserves was invoked; exposure to tobacco smoke in residential buildings, as well as improving the legal framework for tobacco; the illegal construction of PECO stations in the green area of the city and in the immediate vicinity of residential blocks and educational institutions; timely disposal of waste from the penitentiary territory.

Of the **284 applications accepted** for investigation, in 145 cases it was found the violation of human rights and freedoms and, as a result of the intervention of the People's Advocate and the People's Advocate for Children's Rights, 108 persons were reinstated. At the end of the year, 37 applications were still under investigation.

In the process of investigating the applications, certain procedural actions are taken and certain types of documents, specific to the mandate, are issued, as follows:

Procedural actions	2017	2018	2019	2020
Opinion with recommendations on the measures to be taken for the immediate reinstatement of the petitioner (Art. 24 of Law no. 52/2014)	129	57	41	71
Approach for initiating a criminal / disciplinary trial regarding the person with positions of responsibility who committed violations that generated considerable damage to human rights and freedoms (Art. 25 para. 1 letter b) of Law no. 52/2014)	13	9	7	10
Notification on the case of violation of work ethic, procrastination and bureaucracy (Art. 25 para. 1 letter d) of Law no. 52/2014)	6	9	1	6
Actions in court / intervention in the process to submit conclusions, (Art.25 para.2) and 3) of Law no. 52 / 2014)	13	1/11	4/12	3/9
Agreement for conciliation of the parties (Art. 23 para. 3) of Law no. 52/2014)	2	1	-	-
Proposals regarding the improvement of the activity of the administrative apparatus (para. 6 point 7 of Law no. 164/2015)	4	-	8	13
Request for judicial expertise (Art. 11 of Law no. 52/2014)	-	-	-	-
Proposals and recommendations for improving the legislation (Art. 27 letter a) of Law no. 52/2014)	14	12	18	34
Referral to the Constitutional Court in order to control the constitutionality of normative acts / Amicus curiae (Art. 26 of Law no. 52)	3	-	3	1/11
Opinions on the draft normative acts (Art. 27 letter b) of Law no. 52/2014)	59	42	42	37

Opinions with recommendations for the immediate reinstatement of petitioners

According to Art. 24 of Law no. 52 / 03.04.2014, in situations where violations of the rights or freedoms of the petitioner are found, the People's Advocate presents to the authority or the person in charge, whose decisions, actions or inactions, in his opinion, violate human rights and freedoms, an opinion which will contain recommendations on the measures to be taken for the immediate reinstatement of the petitioner.

The responsible authority or person who received the opinion is obliged to examine it within 30 days and to inform the People's Advocate of the measures taken to remedy the situation.

If the People's Advocate does not agree with the measures taken, he is entitled to address a higher hierarchical body to take the necessary measures to implement the recommendations contained in his opinion and / or to inform the public. The higher hierarchical body is obliged to communicate the measures taken within 45 days.

During 2020, **71 opinions** were submitted to the central and local public authorities **with recommendations** on the measures to be taken for the immediate reinstatement of the petitioners. The People's Advocate In three cases, the right to address the higher hierarchical body was exercised, given that the authorities concerned did not comply with the recommendations submitted.

The institution concerned	2018	2019	2020
Ministry of Justice, including subordinate institutions	27	11	18
Ministry of Health, Labour and Social Protection and subordinate institutions	6	10	14
Ministry of Internal Affairs, including subordinate institutions	5	6	6
Local public authorities	5	6	5
Ministry of Education, Culture and Research and subordinate institutions	9	2	5
Government of the Republic of Moldova	-	1	7
National Union of Bailiffs	-	1	-
State Labour Inspectorate	-	1	-
General Prosecutor's Office and subordinate prosecutor's offices	1	1	3
Ministry of Defence	-	1	1
State Tax Service	-	1	-
Ministry of Economy and Infrastructure	-	-	3
National Agency for Energy Regulation	-	-	1
Ministry of Finance	-	-	1
Public Property Agency	-	-	1
National Agency for Regulation in Electronic Communications and Information Technology	-	-	1
National Anticorruption Center	-	-	1
Ministry of Foreign Affairs and European Integration	-	-	1
Ministry of Agriculture, Regional Development and Environment	-	-	1

Chisinau municipality City Hall	-	-	1
National Council for State Guaranteed Legal Aid	-	-	1
TOTAL	53	41	71

The recommendations submitted to the **Ministry of Justice** and subordinate institutions refer to the undertaking of the necessary measures for the prevention of acts of violence and intimidation between detainees; taking measures to expand the number of video surveillance cameras; deal with detainees' applications for personal security in a timely and rigorous manner; to undertake effective activities to eliminate the inhuman and degrading conditions in which they are detained in prisons, as well as to undertake other activities which would make an essential contribution to creating a favorable climate for living and cohabitation in detention so that detainees feel humane and their quality as human beings, protected by the state in terms of honesty, honour, dignity, health and safe life, taking measures to consult and provide health care appropriate to the health of detainees, guaranteeing the right of detainees to lodge complaints, such as and respect for the rights of the child in places of detention; the need to implement effective, proportionate and legal measures in the fight against the prevention and spread of Covid-19 infection in prisons.

The **Ministry of Health, Labour and Social Protection**, including subordinate institutions, received recommendations for the provision of adequate medical services, according to the National Clinical Protocol; taking effective action to provide citizens, who became unemployed during the pandemic, with unemployment benefits; implementation of effective, proportionate and legal measures in the fight against the prevention and spread of Covid-19 infection in penitentiary institutions, adequate and sufficient staffing of penitentiary staff with protective equipment, strengthening the medical service in penitentiaries and providing them with the necessary equipment, medicines and medical devices, both for the prevention of Covid-19 infection and for its treatment and prophylaxis; full respect, protection and assurance of patient rights, enshrined in the European Charter of Patient Rights, as well as improving the process of preventing and controlling Covid-19 transmission, by ensuring effective and timely access to laboratory tests and strengthening the institutional capacity of the National Agency for Public Health, including the prevention, reduction and compensation of "professional burnout" in favour of all employees of the Agency.

The recommendations submitted to the **Ministry of Internal Affairs, including subordinate institutions**, refer to the observance of the right to petition and the provision of answers regarding the satisfaction, inopportuneness or impossibility of satisfying the

applications, within the term established by law; take effective measures to identify and permanently stop the use of detention facilities (cells) whose material conditions are incompatible with the applicable minimum standards and norms; renovation of detention facilities as well as temporary detention cells; identification of all direct / indirect / potential victims of domestic violence and immediate issuance of protection orders.

The **Local Public Authorities** have received recommendations regarding the emergency undertaking of the necessary measures for the installation of access ramps in the town halls, for ensuring the observance of the rights of persons with disabilities and the urgent identification of possibilities at local level to receive petitions from this group of persons, in the absence of access ramps in the town halls; observance, promotion and guarantee of the child rights established by the Constitution of the Republic of Moldova, the Law on the Child Rights (no. 338/1994) and in accordance with the provisions of the UN Convention on the Rights of the Child; special protection of children at risk and children separated from their parents, prevention and combating violence against children, provision of assistance and protection of children, as well as recovery care, which also includes psychological assistance, establishment of concrete measures for the protection of children at risk and children separated from their parents.

The **Government of the Republic of Moldova** was recommended to create a reliable mechanism for ensuring the social protection of patent holders, who ceased their activity during the state of emergency and were left without unemployment benefits in sufficient amount and in proportion to the minimum consumption basket; adoption of legal instruments to reduce the number of detainees by applying to certain categories of detainees (sick, with first and second degree disabilities, the elderly, over 60 years of age, minors who have served 2/3 of their sentence and have good conduct) release conditioned before the term, with the serving of sentences in conditions of freedom, in the context of the prevention and spread of Covid-19 infection in penitentiary institutions; order the start of a comprehensive process of reviewing child labour legislation, in line with the standards set out in the UN Convention on the Rights of the Child and other relevant international acts; establishing on the basis of relevant estimates the annual allocation of financial resources from the state budget for the financing of scientific reservations; take the necessary measures to ensure effective and continuous access to safe and sufficient drinking water, acceptable and safe to the population.

The **Ministry of Education, Culture and Research** was recommended to develop / apply the non-discriminatory policy in educational institutions, in order to ensure the principles of equality and the recognition / guarantee of the rights of persons belonging to national minorities, including by creating a friendly environment for children from minority families;

familiarizing teachers with non-discriminatory educational policy, as well as taking the necessary measures to achieve the right to education of children with severe disabilities.

Recommendations were submitted to the **General Prosecutor's Office** regarding the urgent examination of the opportunity to issue urgent restraining orders in cases of domestic violence, as well as the initiation of criminal proceedings against persons guilty of domestic violence; reassessing the situation of victims of abuse and ensuring psychological examination in order to benefit from conciliation / rehabilitation and their protection. It was also recommended that due diligence be taken to ensure the protection of personal data.

There are currently 7 recommendations under review by the authorities concerned.

In the process of examining the recommendations of the People's Advocates, 2 institutions (Ministry of Labour, Health and Social Protection, National Administration of Penitentiaries) informed about taking all necessary measures to remove the shortcomings indicated in the notices with recommendations. Several institutions concerned reported that they are constantly monitoring the work of subordinate institutions, in order to exclude derogations from the national and international regulatory framework in the field of human rights.

In 4 cases, for the purpose of the multiaspective examination of the submitted recommendations, either interdepartmental working groups were created, or meetings were organized with the participation of experts / specialists for the objective resolution of cases.

In most cases, with few exceptions, the institutions concerned have shown a responsible attitude towards the recommendations of the Ombudsman and the Ombudsman for the Children's Rights, and have taken them into account.

Approaches for initiating disciplinary or criminal proceedings

According to Art. 25 letter b) of Law no. 52/2014, based on the results of the examination of the notification, the People's Advocate is entitled to intervene with the competent authorities to initiate disciplinary or criminal proceedings against the person in charge who has committed violations that resulted in the violation of human rights and freedoms.

In 2020, the People's Advocate requested the initiation of disciplinary or criminal proceedings in **10** cases involving persons with positions of responsibility who are alleged to have committed violations that resulted in the violation of human rights and freedoms. **As a result of the examination of the People's Advocates, 6 disciplinary and 4 criminal proceedings were initiated.**

Thus, **7 approaches** were submitted to the General Prosecutor's Office **regarding the initiation of criminal prosecution** for the application of torture and / or ill-treatment against persons in state custody. It was requested to initiate and conduct effective investigations with the initiation of criminal proceedings, as appropriate. It was also ordered to control the legality of the actions / inactions of some employees of the penitentiary administration system in the alleged activity of the organized criminal group, which generated the violation of the rights of persons in state custody and initiate criminal proceedings, as appropriate. The prosecution bodies were also asked to order a control regarding the legality of the actions / inactions and to initiate a disciplinary procedure regarding the collaborator that generated the violation of the right to petition. As a result of the service investigation carried out on him, the collaborator of the prosecutor's office bodies was not punished.

As a result of the controls carried out by the prosecution bodies, **it was ordered to start 4 criminal files** regarding the collaborators who violated the rights and freedoms of the detainees.

An approach was submitted regarding the disciplinary prosecution of some doctors who were charged with malpractice, and as a result of the examination of the case, it was decided not to start the criminal investigation on this fact.

An approach was sent to the Ministry of Internal Affairs regarding the disciplinary sanctioning of the police officer, which restricted the access of the members of the Council for the Prevention of Torture to the headquarters of the Police Inspectorate. As a result of the examination of the approach, the police officers were warned about the provisions of Law no. 52/2014 on the People's Advocate (Ombudsman), in particular to ensure express, prompt, qualitative and efficient access to any sector of the police, territorial inspectorate and subdivision, the People's Advocate, the employees of the People's Advocate Office and the members of the Council for the Prevention of Torture. The police body was also asked to initiate criminal proceedings against persons involved in the organization of a sporting event, which led to the fracture of the spine of a minor. In this case, he refused to initiate criminal proceedings on the grounds that the facts do not meet the elements of any crime.

An approach to initiate disciplinary proceedings against an employee, whose actions have led to the violation of the rights of minor children, has been sent to an educational institution. Discussions were held with the employee suspected of violating the rights and freedoms of minor children, being warned about not admitting such cases in the future.

Notification of persons with positions of responsibility at all levels on cases of negligence in the service, violation of work ethic, procrastination and bureaucracy

According to Art.25 letter d) of Law no. 52, the People's Advocate is entitled to notify the persons with positions of responsibility of all levels on cases of negligence in office, violation of work ethic, procrastination and bureaucracy.

Based on this provision, in 2020, **6** notifications were submitted: 2 - to the prosecutor's office bodies, 2 - to the local public authorities, one to the Directorate of Assistance and Social Protection and one to the Municipal Directorate for the Protection of the Children's Rights.

The prosecution bodies were asked to verify the correctness of the fulfillment of the functional attributions by the local guardianship authorities, regarding the measures taken against some children left without supervision.

The local public authorities were notified about the need to ensure the best interests of the child; taking all necessary measures to provide assistance and support to children and families in order to prevent cases of separation of children from parents or family and their integration / reintegration into the family and to improve the activity of local guardianship bodies.

The Directorate of Social Assistance and Protection and the Municipal Directorate for the Protection of Children's Rights were requested to respect, promote and guarantee the children's rights; ensuring the effective and immediate protection of children subjected to domestic violence, with the provision of social-economic, psychological and legal assistance to the children concerned.

The institutions concerned informed the People's Advocates that they will make every effort to ensure that the rights and freedoms of the child are respected.

General objections and proposals concerning the assurance of human rights and freedoms, the improvement of their activity

Pursuant to point 8, para. 6) of Law no. 164 of 31.07.2015 for the approval of the Regulation on the organization and functioning of the People's Advocate Office, the People's Advocate Office elaborates and presents to public authorities, organizations and enterprises, regardless of type of property and legal form of organization, non-profit organizations and persons with positions of responsibility of any level general objections and proposals regarding the assurance of human rights and freedoms, to improve their activity.

Thus, during 2020, the People's Advocate Office submitted **13** general objections and proposals.

The Ministry of Health, Labour and Social Protection (MHLSP) was recommended to take the necessary measures for the immediate cessation of any forms of revenge on employees who have made disclosures regarding illegal practices by staff with managerial positions in subordinate authorities; informing all managers of subordinate authorities and their staff on the provisions of Law no. 122/2018 on whistleblowers.

As a result of the Ombudsman's recommendation, an order was issued within the institution approving the Regulation on procedures for the examination and internal reporting of disclosures of illegal practices, as well as the Register of disclosures of illegal practices and whistleblowers, the model of the internal disclosure form, recording and examining disclosures of illegal practices at the unit level.

The Ministry of Health, Labour and Social Protection was also recommended to issue as soon as possible a document (recommendation / clinical protocol) for family doctors to standardize home treatment for people with Covid-19 with various forms (medium and severe); the development of an algorithm that would provide equitable access to the necessary investigations for people with Covid-19 in home treatment (covered by the Compulsory Health Care Insurance), in order to indicate a quality treatment according to their health needs; the inclusion of the drugs indicated in the home treatment of various forms of Covid-19 infection, as well as the drugs necessary for the rehabilitation treatment of post-Covid conditions in the List of Compensation Medicine in the Single Compulsory Health Insurance Program and the monitoring and analysis of prices for the drugs indicated in treatment of various forms of Covid-19.

The Ministry took into account the recommendations of the People's Advocate and revised and updated the Standardized Clinical Protocol for Family Doctors and approved the list of laboratory and instrumental investigations for examining patients with signs of worsening disease and regulated the access mechanism of patients infected with Covid-19 to investigations in laboratory conditions. In addition, the Ministry of Health, Labour and Social Protection has ensured that people who are treated at home with mild forms, moderate by Covid-19 or who are in post-Covid-19 rehabilitation, will benefit from reimbursed medicines from the compulsory health insurance funds.

Other recommendations addressed to the Ministry of Health, Labour and Social Protection refer to the undertaking of measures for individual multidisciplinary evaluation of some citizens, hospitalized in psychiatric institutions, who do not present social danger, in view of their social inclusion; identifying the possibilities for providing personal assistants for daily

monitoring. The Ministry took into account the issues addressed by the People's Advocate and ordered the competent subordinate institutions to provide medical, social and legal assistance in accordance with the legislation in force.

Another recommendation sent to the ministry refers to the undertaking of the technical and organizational measures necessary for the implementation of the principles of personal data protection, as well as informing all subordinate institutions about the importance of ensuring the protection of medical data.

At the same time, the ministry was also asked to take the necessary measures for the immediate cessation of the persons in charge of any form of revenge on medical workers, who made disclosures about the quantity and quality of equipment and devices to protect medical personnel against Covid-19 infection and promoting the climate of integrity in public and private medical institutions.

The People's Advocate for Children's Rights recommended to the Government of the Republic of Moldova to provide in the National Public Budget for 2021 financial resources for some priority activities, such as: supporting families with children affected by the consequences of the unfavorable epidemiological situation related to the Covid-19 pandemic, ensuring children's access to improved water sources in kindergartens and schools; the remuneration of the specialists in the protection of children's rights within the town halls, who carry out support activities for fulfilling the attributions of the local tutelary authority. The Ministry of Finance has given us assurances that for 2021 the necessary allocations for the implementation of the Social Assistance Program according to the legislation will be provided, as well as approved allocations to the National Ecological Fund, in order to finance programs to ensure access to quality drinking water. With regard to the remuneration of specialists in the protection of the rights of the child, this issue belongs to the own competences of the local public authorities and is financed from the account and within the limit of their own incomes.

Recommendations have been submitted to the Central Electoral Commission with a view to drawing up very clear special recommendations / measures to ensure maximum security and protection for citizens against the spread of the Covid-19 virus in the run-up to the presidential elections on November 1, 2020. As a result, the Commission Central Electoral Commission has taken a number of measures to minimize the risk of spreading the infection among election officials and citizens during the voting process.

The President of the Chisinau Court was given recommendations in order to ensure control over the manner of drafting full decisions; continuous monitoring of compliance with the requirements for digital audio recording of court hearings, as well as training of employees on the segments addressed above.

The head of a Police Inspectorate in the country was sent a recommendation to ensure the control over the supervision of the execution of measures for the protection of victims of domestic violence by subordinate collaborators. The police body informed that he ensures and will ensure the control regarding the supervision of the execution of the protection measures of the victims of domestic violence by the police employees, and the training of the latter will be organized periodically.

A penitentiary institution was recommended to improve the internal mechanism for recording detainees' requests and responses, the correct monitoring of specific documentation and deadlines set out in the Statute for the Execution of Sentences by convicts, so as not to infringe on detainees' right to petition. In this context, the prison administration in question has improved internal mechanisms to ensure full respect for the fundamental rights of persons deprived of their liberty.

Following the receipt by the People's Advocate of a large number of summons, issued by the courts, in which the People's Advocate was summoned as an ancillary intervener, for participation in civil cases to submit conclusions in defense of rights, freedoms and legitimate interests of persons, a general recommendation was sent to the Superior Council of Magistracy. In the sent recommendation, the People's Advocate requested that a circular be issued to all courts, in order to alert the judges to the Ombudsman's guarantees of independence and to avoid the unilateral / automatic attraction of the People's Advocate in court proceedings.

The Superior Council of Magistracy was also recommended to sensitize judges, in order to exercise due diligence in examining the approaches regarding the possibility of applying the release from execution of the sentence of seriously ill persons and examining these cases as soon as possible, as well as warning judges about the importance and obligation exactly of the law when examining the steps for applying preventive measures in the form of pre-trial detention. The SCM examined the recommendations of the People's Advocate, as a result, issued a circular, which were sent to the courts, regarding the importance and obligation to comply with the criminal procedural provisions.

The General Prosecutor's Office was recommended to warn the prosecutors about the importance and obligation to comply exactly with the provisions of the Code of Criminal Procedure, on compliance with the term of detention of persons suspected of committing a crime, which must not exceed 72 hours. On this subject of major importance, regulations of an imperative nature have been introduced in several acts of internal use of the Prosecutor's Office, and the prosecutors are regularly warned during the meetings held regarding the non-admission of violations of this law.

In order to ensure the respect for human rights and freedoms, the People's Advocate and the People's Advocate for Children's Rights are entitled to act ex officio.

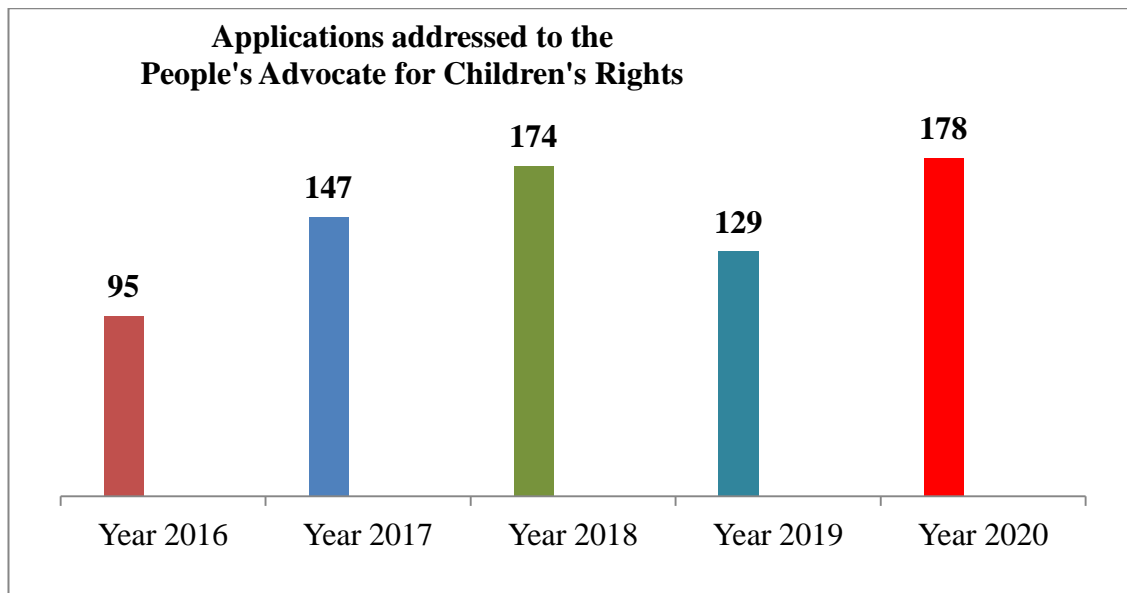
Thus, during 2020, the People's Advocates in **9 cases were notified ex officio, in which it was attested the violation of the right to health care (3 cases), the right to life, physical and mental integrity (4 cases), the right of access to information (1 case), protection and assurance of the rights of homeless people (1 case).**

The ex officio notifications were as a result of the publication of the information in the mass media, social networks, etc.

During the year, **2620 telephone calls** were received, during the telephone conversations, ample information was provided on the procedure that people are entitled to use to defend their rights and freedoms. Out of the total number of calls, **43 applications were taken for examination.** The most common issues raised: lack of pandemic unemployment benefits for patent holders; the impossibility of completing the retirement file for persons who reached the retirement age during the state of emergency and, implicitly, the impossibility to benefit from the health insurance policy as persons insured by the state forcing employees to go on paid or unpaid leave during the state emergency; the application by the bailiff of the seizure on the salary card as a measure to ensure the execution of the writ of execution, during a pandemic; lack of access to medical care for patients with chronic diseases during the state of emergency; disconnection of telecommunications services due to non-payment of fees for services provided during the state of emergency; remuneration for work during the state of emergency; the impossibility of raising pensions from post offices in a state of emergency, in connection with the cessation of their activity; limiting the right of detainees to meetings with family or relatives, during the health crisis; failure to pay on time the allowance for temporary incapacity for work.

Analysis of the applications received by the People's Advocate for Children's Rights in 2020

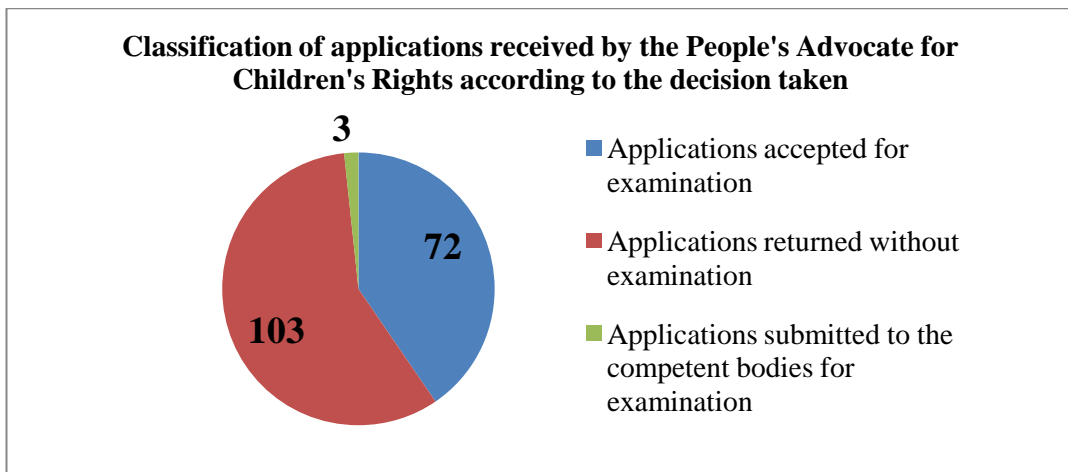
In 2020, 178 applications were received by the People's Advocate for Children's Rights. We witness an increase in the number of addresses compared to previous years: in 2016 - 95 applications; in 2017 - 147 addresses; in 2018 - 174; in 2019 - 129 applications, in 2020 - 178 applications.



In the process of examining the applications received by the People's Advocate for Children's Rights, several violations were found in the section on the observance of children's rights.

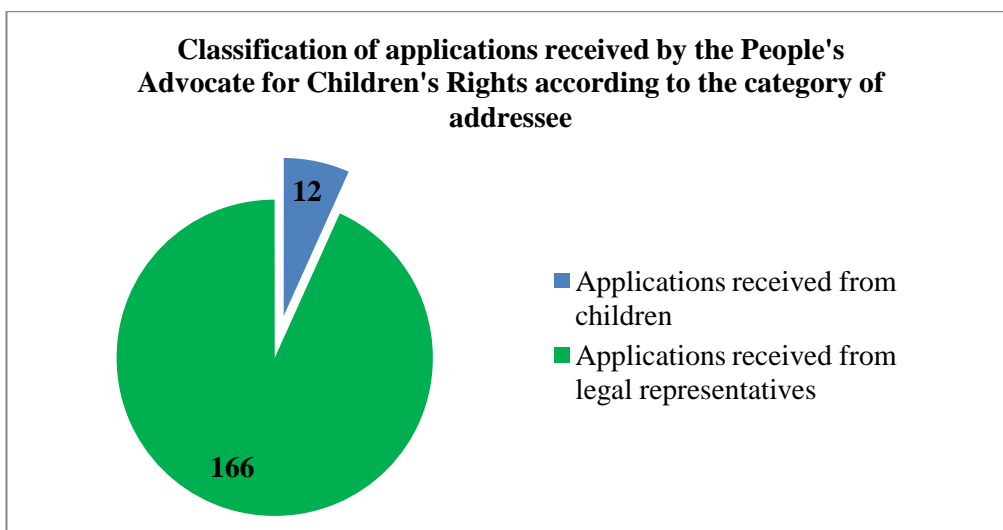
In the addresses, the violation of several rights was invoked: **the right to education -34 applications, the child's protection against abuse and neglect - 28 addresses, the child's right not to be separated from his / her parents against his / her will - 26 applications, the right to family - 16 addresses, the right to healthcare - 13 applications, the right to assistance and social protection -14 applications, the right to life, supervision and development -13 applications.**

Out of the total number of 178 applications, 103 applications (57%) met the eligibility conditions and were accepted for examination. With regard to 72 applications (41%), decisions were issued to return the application without examination, explaining to the petitioner the procedure he / she is entitled to use to defend his / her rights and freedoms, and 3 applications (2%) were submitted to the competent bodies for examination in accordance with the provisions of the legislation on petitioning.



During 2020, **12 applications from children** were received by the People's Advocate for Children's Rights. In these addresses, children have sought protection from abuse and neglect, as enshrined in the UN Convention on the Rights of the Child. *The small number of applications received from children demonstrates that children do not know -) their right to address by themselves the Advocate for Children's Rights, without the consent or information of the legal representative: -) do not know or insufficiently know about the mechanism to address the People's Advocate for Children's Rights; -) lack of confidence that he / she will be heard and helped by adults, including the Children's Ombudsman; -) lack of skills to talk about his / her and / or peers' problems, family problems, etc.; - sufficient knowledge of rights and responsibilities and their perception as natural, inalienable and guaranteed rights.*

These findings indicate the need to intensify the work of informing children about the status and responsibilities of the People's Advocate, the mechanism for addressing him.



Statistical data show that the addressees mostly seek legal advice to protect the child in the event of violence against him / her, the child's right not to be separated from his / her parents against his / her will, the right to education and the right to family.

Classification of applications according to the alleged right violated

The alleged right violated	Applications received				Applications accepted				Applications returned				Applications submitted			
	2017	2018	2019	2020	2017	2018	2019	2020	2017	2018	2019	2020	2017	2018	2019	2020
The right to family	47	28	39	16	27	15	18	10	15	11	21	6	5	2		-
The right to education	28	18	9	34	21	7	5	25	5	7	3	9	2	4	1	-
The rights of children in the youth administration system	4	15		3	3	10	1	1	1	5		1	-	-		-
The right to private property and its protection	4	3	5	3	3	1	2	1	1	2	3	1	-	-		-
The right to health care	9	8	2	13	5	5	1	4	3	3	1	9	1	-		-
The right to information	3	9	7	11	1	2	-	5	1	5	7	6	1	2		-
The right to social assistance and protection	17	19	4	14	15	10	2	8	1	6	2	6	1	3		-
The right to name and citizenship	5	9	1		3	5	-		2	4	1		-	-		
The right to defense	3	13	2	1	2	6	-	1	1	7	2		-	-		
The right to life, supervision and development	7	8	2	13	7	6		3	-	2	1	9	-	-	1	2
The right to work	2	-		4	-	-	3	2	2	-	1	2	-	-		-
Protection from abuse and neglect	18	40	6	28	2	24	5	18	15	15	-	10	1	-	1	-
Freedom of opinion and expression	-	2	1		-	1	1		-	1			-	-		
Illegal collection of money in educational institutions	-	2														
The right to a fair trial			9	8			6	5			3	3				1
Protection of the family and orphaned			3	4				4			3					

children																
The child's right not to be separated from his / her parents against his / her will			18	26			7	16			11	10				
The right to cultural and religious identity			1				1									
The right to free movement			5								5					
The child's right to play, rest, recreation			1				1									
The right to a healthy environment			1				1									
Total	14 7	174	116	178	89	94	53	103	47	69	64	72	11	11	3	3

In the process of investigating the applications accepted for examination, the People's Advocate for Children's Rights is empowered to take certain procedural actions and to submit documents with recommendations on the measures to be taken for the immediate reinstatement of the petitioners. Thus, in 2020, the People's Advocate for Children's Rights undertook several actions and issued several reaction acts, according to the competencies provided by the Law on the People's Advocate (Ombudsman) no. 52 of 2014.

Dynamics of procedural actions / reaction acts of the People's Advocate for Children's Rights

Procedural actions	2017	2018	2019	2020
Opinion with recommendations on the measures to be taken for the immediate reinstatement of the petitioner (Art. 24 of Law no. 52 of 03.04.2014)	28	25	14	17
Approach (for initiating a criminal / disciplinary trial regarding the person with positions of responsibility who committed violations that generated considerable damage to human rights and freedoms (Art. 25 para. (1) letter b) of Law no. 52)	4	1	1	3
Notification on the case of violation of work ethic, procrastination and bureaucracy (Art. 25 para. (1) letter d) of Law no. 52)	4	4	2	6
Actions in court / intervention in the process to	8	8	3/6/10	1/3/7

submit conclusions / conclusions (Art.25 paragraphs (2) and (3) of Law no.52				
Conciliation agreement (Art. 23 para. (3) of Law no. 52)	1	1	-	-
Proposals for improving the activity of the administrative apparatus pursuant to subpoint 6 of point 7 of Chapter II of the Regulation on the organization and functioning of the PAO	1	1	1	2
Request for judicial expertise (Art. 11 letter m) of Law no. 52)	-	-	-	-
Proposals and recommendations for improving the legislation (Art. 27 letter (a) of Law no. 52)	4	1	2	7
Notification of the Constitutional Court in order to control the constitutionality of normative acts (Art. 26 of Law no. 52) / opinions	2	2 opinions	-/2	-/2
Opinions on the draft normative acts (Art. 27 letter (b) of Law no. 52)	1	8	11	8
TOTAL	53	51	52	56

Most of the reaction acts were the opinions with recommendations on the measures to be taken for the immediate reinstatement of the petitioner, submitted in accordance with the provisions of Article 24 of Law no. 52 of 03.04.2014, notifications and actions / opinions in court, as well as proposals and recommendations for improving the legislation, submitted based on the provisions of the law indicated above. In all the cases examined, the recommendations of the Children's Ombudsman were complied with.

During 2020, **56 people, including 2 children**, called the People's Advocate for Children's Rights on the **Child's Trust Phone 080011116, managed by the People's Advocate Office.**

Based on these appeals and information from the mass media, the People's Advocate for Children's Rights ordered the **ex officio notification in 27 cases** regarding the: protection against abuse and neglect, exploitation of children through work, right to health, right to social protection and right to life, survival and development.

Calls received by the Child's Trust Phone 080011116 during 01.01.2020 – 31.12.2020

The alleged right violated	Adult	Child	Urban	Rural	M	F
Protection of the family and orphaned children	9		4	5	2	7
Protection from abuse and neglect	12	2	9	5	3	11
The right to social assistance and protection	8		6	2		8
The right to health	7		5	2	-	7

The right to name and citizenship	6		1	5	1	5
The right to education	3		1	2	-	3
The right to property	5		3	2	1	4
The access to information	4			4	2	2
TOTAL	54	2	29	27	9	47

Analysis of systemic issues regarding the observance of children's rights identified based on the issues raised in the applications.

In the vision of the People's Advocate for Children's Rights, children, as rightholders, are a priority in the activity process, especially when he aims to illustrate how the legal norm adapts to the specific interests and needs of children, the role of parents / legal representatives, as well as of the public authorities responsible for the implementation of the legal framework for the promotion, assurance and protection of the rights of the child, being an essential one, in situations where the responsibilities are largely theirs.

The right to education

Recognizing the fundamental principles of education, the People's Advocate for Children's Rights continues to pursue with particular interest the assurance of state commitments in the field of education, in particular with regard to *access conditions, teaching and educational purposes language, including through non-discrimination and inclusive education process.*

Following the analysis of the requests received on this subject, the Children's Ombudsman further finds the lack of tolerance towards children with disabilities, both of groups of parents and of the management staff of some educational institutions, in the process of implementing inclusive education. The Children's Ombudsman remains deeply disappointed that the promotion of inclusive education is causing a negative attitude in education systems. The People's Advocate for Children's Rights came to this conclusion when the applications addressed to him demonstrated actions of discrimination against children with special needs in the educational process. Reasons such as "lack of reduced comprehension skills", "creating impediments and distracting students from classes other than those with special needs", "lack of skills and teacher training" were the basis of the Children's Ombudsman's complaints, citing the fact that inclusive education is a premature process for Moldovan education, advocating the maintenance of the education process in special institutions for them. It was amazing that this approach to the right to education has manifested itself in some private educational institutions,

which interpret the inclusive education of children with special needs as a phenomenon that "spoils the image" of such institutions, the inclusion process being perceived in a hostile / destructive way. Although the People's Advocate for Children's Rights wished to remind the petitioners of the State's commitment to the implementation of the education development program, the aim of which is to ensure equal opportunities and fair chance for excluded / marginalized people to benefit from fundamental human rights to development and education, in conditions of human diversity, intervening with prompt action on individual cases to restore the right to education and exclude the phenomenon of discrimination, however he considers that the management of inclusive education is flawed, the phenomenon is largely due to the fact that the State's efforts to strengthen and make feasible the services of inclusive education at the institutional level, in the opinion of the Children's Ombudsman, are not supported by adequate financial resources for the positive promotion of inclusive education among teachers, and the misunderstanding, lack of awareness of the need, as well as the negative perception of the benefits of inclusive education by teachers, especially at the local level. This state of affairs results, in the view of the People's Advocate for Children's Rights, from the lack of inter-institutional collaboration, as well as support from local public authorities, from poor promotion of inclusive education and tolerance, including among parents whose children are others than those with special needs, as well as the lack of promotion and development of volunteer services, educational institutions remaining to solve on their own the problems that arise in the process of achieving inclusive education. The Children's Ombudsman notes a strong need for the active promotion and monitoring of inclusive education and the prompt involvement of the authorities responsible for ensuring the process, when gaps and / or impediments are identified that burden him, or they lead to the failure to achieve educational purposes, guaranteed by the legal norm. Thus, the People's Advocate for Children's Rights further notes the stagnation of the inclusive education process and urges the state authorities to draw more attention to this issue, in order to guarantee and ensure the right to education, on non-discriminatory principles.

Another issue necessary to be elucidated in the context of ensuring the right to education is the *safety and protection of children / pupils* in educational institutions, or the state has the obligation to protect children from all forms of abuse committed by parents or other persons responsible for child care and to apply preventive and treatment programs in this regard. During 2020, the Children's Ombudsman was notified several times of cases of psychological and physical abuse of children in early childhood and high school institutions, admitted by both the management staff and the minors themselves. Monitoring and intervention in these cases led the People's Advocate for Children's Rights to identify a number of

arguments that determined the admissibility of such actions, including: the procedure of institutional organization and intervention of the employees of educational institutions in cases of abuse, neglect, exploitation, child trafficking is not known at a sufficient level by the management staff, nor the procedures for implementing their methodology, there is no perception firm positive of the child protection policy in the educational institution as a whole. Also among the causes listed are the phenomenon of collegial protectionism or so-called "corporate solidarity", indifference and / or lack of ability to identify potential child abuse by both staff and pupils, fear of children to expresses their opinion, in order not to be subsequently subjected to possible victimization actions, etc., the most serious cause in this regard considered by the Children's Ombudsman, being the action of concealing cases of abuse and violence admitted against minors by managers and / or the staff of the educational institution. This fact in most cases leads to the avoidance of the latter from administrative and / or criminal liability, internal service investigations and the intervention of criminal prosecution bodies, often with formal purposes. In the opinion of the People's Advocate for Children's Rights, the management / teaching staff does not fully ensure the safety of life and health of children, pupils and students in the educational process, in some cases being complicit in tolerance, hiding such acts.

In this context, the Children's Ombudsman highlights the case reported by the mother of a minor regarding acts of violence against him, when the teacher at the pre-school institution in Chisinau left the children unattended, which led to actions that caused signs of strangulation and visible lesions around the child's neck. Although, in this case, a criminal prosecution was initiated, the petitioner requested the intervention of the Advocate for Children's Rights on the grounds that the administration of the pre-school institution creates impediments that lead to the delay of the investigation, trying to cover up the case. Moreover, given the fact that the petitioner was in legal working relations with the given institution, acting as an educator, the management staff considered it necessary to terminate them, once the petitioner notified the criminal prosecution body, thus carrying out actions of discrimination through her victimization. Following the investigation of the case, the Children's Ombudsman found a violation of the child's right to safety and protection, whereby the state is obliged to protect children from all forms of abuse and to apply preventive programs, the petitioner's right to work by unjustified dismissal from work, as well as free access to justice, by delaying the investigation of the case of violence, for which he intervened to the competent authorities in order to restore the rights of both, the case being in the process of investigation.

Another similar case is that of the younger brothers, students of a high school in the capital, whose parents notified the Children's Ombudsman in order to intervene in the acts of

psychological abuse and discrimination admitted by the responsible household staff of the high school, in their regard. The petitioners claimed that the employee was behaving aggressively towards their children, verbally harassing them with expressions such as "little terrorists", "stupid Turks", which led to their psychological impairment and the appearance of the fear of attending high school. Considering the actions invoked as discriminatory on the basis of ethnicity and psychological abuse, the Children's Ombudsman intervened with the administration of the high school with opinions, requesting the taking of urgent measures found in the children's protection policy approved at State level. Following the responses of the high school administration, the Children's Ombudsman found a lack of knowledge of the methodology for applying the procedure of institutional organization and intervention of employees of pre-university institutions in cases of abuse, neglect, exploitation, child trafficking, but also a biased attitude of the management staff towards this case, demonstrated through formal actions and subjective analysis of the notified facts, the recommendations not being made. Considering it important to act in the best interests of the children, the People's Advocate for Children's Rights notified the Ministry of Education, Culture and Research, which responded promptly and positively, establishing for the high school in question, including the persons concerned, a series of necessary activities for recovery of the situation and to ensure the efficient management of cases of violence and abuse, these being continuously monitored. In this context, the Children's Ombudsman welcomes and supports the inter-institutional collaboration relations with the Ministry of Education, Culture and Research in the field of protection of children's rights, resolving the stated case, having a positive purpose.

With the declaration of a state of emergency in 2020, the Children's Ombudsman strengthened his mechanisms for monitoring and protecting the rights of the child, reminding public authorities at all levels of the need to act promptly in cases where children are targeted, regardless of the social sphere in which actions and / or inactions that led to the violation of the child's rights directly or indirectly were admitted. Aware of the *importance of ensuring equal conditions of access to education*, especially with regard to the pandemic situation, the People's Advocate for Children's Rights informed the General Directorate of Education, Youth and Sports of several signals from parents regarding actions to promote pupils in the context attending the study hours, citing the fact that some students are present daily in the classrooms of educational institutions, and others are obliged to vary the educational process by hours in online format, according to the schedule approved by the educational institution, although they have no medical contraindications or other grounds in this regard.

In this regard, the Children's Ombudsman reiterated that educational institutions cannot establish principles for admission to studies based on certain restrictions, except in cases stipulated by current legislation, and conditioning in the sense of restrictions allowed during the state of emergency does not cancel the basic principles of the educational relationships on which they are based.

Although the managers of educational institutions are autonomous in terms of managing the educational process during the pandemic period and can create conditions for access to studies within the institution, however, the Ombudsman recommended that DGETS require that these conditions be positive and proportionate to the need for them, or that the admission of some pupils to classrooms should not be to the detriment of other pupils.

As a result of the notification, the recommendation of the Children's Ombudsman was brought to the attention of all managers of educational institutions through a circular, published on the DGETS page, while being informed about the obligation to ensure the right to education of pupils.

Concluding on the cases mentioned above, the People's Advocate for Children's Rights highlights a lack of approach to educational management based on children's rights in some educational institutions, which leads directly and / or indirectly to their fraud, as well as a pressing need for training of educational staff in the field of non-discrimination.

Another issue in the eyes of the People's Advocate for Children's Rights submitted by the parents of pupils in educational institutions of all levels was the ***obligation to wear masks in educational institutions throughout their stay in institutions.***

Based on the concerns and disagreement of parents to impose on children the mandatory wearing of masks in open and closed public spaces, as well as the presumption that the child protection margin allowed by local public health authorities would be one that could exceed positive reasoning, the People's Advocate for Children's Rights considered it appropriate to seek the views of the Academy of Sciences of Moldova, the Municipal Clinical Hospital for Infectious Diseases for Children, international organizations UNICEF and WHO in Moldova. The institutions concerned were to present themselves in the light of scientific and medical opinions on the compulsory wearing of protective masks by children for a long period of time, as well as on the positive and negative effects on their health. At the same time, the People's Advocate for Children's Rights also requested the National Extraordinary Public Health Commission of Chisinau to comment on the reasons for adopting restrictive measures regarding the wearing of protective masks by children under the mentioned conditions.

Following the statements made by the institutions concerned, the People's Advocate for Children's Rights concluded that the protective mask is not contraindicated if the conditions for

wearing it are observed, except for the presence of medical contraindications. However, the Children's Ombudsman remains skeptical about the arguments that the permanent wearing of masks does not have a negative effect on children's psycho-emotional state, as they are not based on the conclusions of studies on the impact of wearing masks by children, especially those aged between 6-11 years. Moreover, no arguments were made regarding the impact of wearing masks by children in relation to seasonal temperatures.

The People's Advocate for Children's Rights reminded that decisions on imposing restrictions in the face of adverse epidemiological conditions, including wearing masks in educational institutions, must be based on the principle of causality and proportionality, and the best interests of the child must take precedence. At the same time, to take into account the opinions of teachers / managers of educational institutions, parents and children, or international recommendations consider important the availability of adult supervision and equitable access to masks, given that they are to be changed every 4 hours. Also, the People's Advocate warns about the non-admission of mimicking the observance of sanitary-epidemiological rules imposed by the competent public bodies in managing the epidemiological crisis caused by the SARS-COV-2 virus, a situation observed in many educational institutions: lack of conditions for hand washing and disinfectants; non-wearing of masks by pupils and lack of control over their change every 4 hours; lack of access to masks for children from families with an unsatisfactory financial income.

The exercise of parental rights vs. children's rights

The exercise of parental rights is guaranteed and can be achieved provided that it is compatible with the best interests of the child, or the rights of parents can not be exercised against the interests of their child, parents can not harm the physical and mental health of the child.

During 2020, the Children's Ombudsman observed an increase in the number of applications, the subject of which is the lack of legal protection of the child in the context of exercising family rights, where such phenomena as the active migration of one and / or both parents abroad, divorce, the weak and sometimes incompetent activity of public authorities for social assistance and child protection, the detention of one and / or both parents, as well as the ambiguous mechanisms and / or even their lack of protection of the rights of the child, highlighted the vulnerability of children and its socio-psychological consequences.

Because every child has the right to live in the family, to know his / her parents, to benefit from their care, to cohabit with them, the obligation of parents is to ensure adequate living conditions for their development and psycho-emotional comfort, or parents are

responsible, in the established manner, for the exercise of parental rights to the detriment of the interests of the child.

An important element of the exercise of parental rights is to ensure the best interests of the child in any action related to his / her development and education, regardless of whether the parents live together or separately, and in any conflict or litigation, in family relationships that create or could create a danger to the normal growth and development of the child, affects his / her legal interests, the guardianship authority recommends family members in conflict or dispute to resolve it in a mediation process. In this context, the Children's Ombudsman considers the role of the guardianship authority in the process of ensuring the rights of the child to be essential, especially when family relationships between spouses are affected by violent conflicts, egocentrism and / or divorce, namely these factors create the lack of a psycho-emotional balance of the child making him / her vulnerable to family problems and / or placing him / her at risk.

An issue often addressed in the context of the exercise of parental rights notified by the Children's Ombudsman last year was the *provision of the right of communication of children with parents who are in the process of divorce* and / or in respect of whom there is already a court decision to terminate the family relationship, which in the opinion of the People's Advocate for Children's Rights is a very serious one, the investigated cases proving both the inability of parents to maintain positive relations, regardless of their status, and that of public authorities for the protection of children's rights, to act with and to enforce respect for the best interests of the child, in some cases due to a lack of a reliable legal framework, in others due to a lack of willingness to take on responsibilities and / or a weak capacity to know and implement children's rights protection mechanisms.

The parent living with the child does not have the right to prevent contact between the child and the other parent living separately, the parents having the right to conclude an agreement on the exercise of parental rights by the parent living separately from the child, and in case of differences between the spouses, the territorial guardianship authority intervenes in their settlement, by establishing a program of meetings, which can be challenged in court or to recommend and entrust the settlement of a mediator's case. The program of meetings will be based on a number of factors that need to be taken into account and need to be respected by both parents, whether the separated person lives in the country or is abroad, or the parent in whose custody the child is. ensures communication with the other parent through information technology or other means, as well as the possibility of visiting the child.

Despite the existence of legal provisions, most cases examined by the Children's Ombudsman indicate that the meeting schedules established by the guardianship authority are

often not followed by the parents, each of them trying in one way or another to show authoritarian and egocentric behavior. The result leads to aggressive conflicts, of manipulation of children, affecting their psycho-emotional state. In cases where the parents are in the process of divorce, such behaviors even lead to situations of abduction and illegal removal of the child from the territory by a parent, which are contrary to the obligation to comply with the schedule of meetings and ensure positive communication of the child with both parents.

In the opinion of the People's Advocate for Children's Rights, the *departure of minors to live permanently with one of their parents in another country, remains a major problem for the Republic of Moldova*. It is a trauma experienced by many parents and children, in the context of the increasing divorce rate in which minors are involved and the increasing mobility of people, caused by the phenomenon of population migration abroad. The Children's Ombudsman notes that in many cases the unjustified movement or non-return of a child to the parent with whom the child's domicile has been established is caused by the lack of knowledge on the part of the abducting parent. Often, parents do not know the conditions under which they can move beyond the borders of the state with their children or the stages they have to go through when traveling abroad. There are situations in which one of the parents (most often, this happens in marriages between spouses with different nationalities), moves the child to live from the stable place of cohabitation, in the country where he / she is without the consent of the other party. This situation occurs between the parents of a child or between parents and grandparents, one of the parties being the one who illegally moves / detains a child in another place than that of his / her usual residence.

Considering the detention of minors and / or the refusal to return them a violation of the provisions of the Hague Convention on the Civil Aspects of International Child Abduction, in court disputes involving family relations and referred to, the Children's Ombudsman promptly intervened by submitting in court in the best interests of the children, reiterating that for a parent and their child to be together is an essential element of family life, even if the relationship between the parents has ceased and that internal measures preventing them from being together constitute an interference in the law protected by Art. 8 of the ECHR.

At the same time, the People's Advocate for Children's Rights considers it important to strengthen the protection mechanisms of the guardianship authority, so that any family conflict between spouses and / or litigation is a priori oriented towards the safety and best interests of the child and only then on the exercise of parental rights.

Children at risk and their protection

The responsibility of the authorities to ensure protection against child neglect, violence and exploitation is one of the principles on which the protection of children at risk and children separated from parents is based and the benchmark for monitoring the observance of children's rights by the People's Advocate for Children's Rights.

In the context of the execution of the sentence by pregnant women and mothers with children up to 3 years of age, the Children's Ombudsman identified, through applications received from him, *problems related to the psycho-emotional aspect of detainees who became and / or who are to become mothers in state custody*. Although these categories of people are provided with better detention conditions, there are situations when detained mothers behave reluctantly and / or even aggressively towards their own children born in detention, creating real premises for abandoning the child, and the actions of the penitentiary administration they partially meet the needs, its intervention not having a holistic approach to solving problems. In such cases, the People's Advocate for Children's Rights concluded that the penitentiary administration focuses on medical care, educational conversations, in order to identify social needs, and sometimes even leads to the sanctioning of detainees and less on psychological assistance of such detainees, who are very vulnerable, manifesting an impulsive behavior, incompatible with the emotional balance and respectively which cannot lead to the strengthening of the child-mother relationship. In this context, the Children's Ombudsman called on the prison administration to avoid sanctioning detainees, as well as to intensify the monitoring of the psycho-emotional state of mothers with detainee status and training in its evaluation of specialists in the field, including psychologists. In response to the intervention of the Children's Ombudsman, the prison administration mentioned that its recommendations had a positive impact, and in a particular case, the mother's behavior towards the child regained a positive evolution against the background of psycho-emotional calming, settling in this meaning an emotional relationship with the child, even in conditions of detention.

In this context, the People's Advocate for Children's Rights considers it important for the state to strengthen mechanisms to protect children and mothers in vulnerable situations, focusing more on policies and strategies based on addressing children's rights, where the interests of children up to three years to respond to the primary responsibility of parents for their upbringing, education and protection.

The protection of minors-victims of abuse and ensuring the right to a fair trial in the conduct of the criminal investigation procedure and / or in the administrative proceedings are also subject to monitoring by the People's Advocate for Children's Rights. Analyzing such

requests, the Children's Ombudsman noted that in criminal proceedings and / or cases concerning minor offenses admitted in respect of minors, some prosecuting officers or detectives avoid taking complex investigative actions, avoiding taking into account aggravating circumstance in the examination of these cases, which ultimately also influences the judicial act.

Relevant for this situation is the case of a mother whose child has been subjected to rape by another minor. The victim's mother asked the District Police Inspectorate to take additional actions necessary for the criminal investigation, as well as to hear witnesses and order the child's psychological expertise or to attract a specialist in the field. The refusal of the criminal investigation officer, in the opinion of the People's Advocate for Children's Rights, was irresponsible, claiming that the execution of the requested, only presupposes the exhaustion of time and unjustified resources, fact for which the Children's Ombudsman sent to the District Prosecutor and the General Prosecutor's Office, by which he recommended ensuring the right to a fair trial and ensuring measures to protect the minor by providing psychological counseling to the abused minor. As a result of the actions taken, the child and his mother benefited from psychological therapy from NCCAP experts, and the minor abuser was taken into account by the district police and the social assistance services in the community.

Another case in the proceedings was that of a minor who, while in public with her father, in the presence of the father, was assaulted by a person, the latter applied several blows to the girl, causing physical pain, because the child addressed offensive words to him for unknown reasons. According to the minutes drawn up by the ascertaining agent, the person's actions were classified as less serious hooliganism, i.e. the offensive approach of the natural person in public places, other similar actions that disturb the public order and the peace of the individual, which is sanctioned with a fine from 6 to 30 conventional units or unpaid community service from 20 to 60 hours. And the provisions of Art. 63 para. (1) of the Contravention Code were applied to the child's father, non-fulfillment of the maintenance, education and training obligations of the child, which is sanctioned with a fine from 6 to 15 conventional units or unpaid community service from 15 to 25 hours. Following the analysis of the case materials in the light of the legal framework, the People's Advocate for Children's Rights concluded that the ascertaining agent did not examine the circumstances of the case in all respects, completely and objectively and did not take into account the fact that the illegal actions were admitted with regard to a minor, which represents an aggravating circumstance and presupposes actions of violence and damage to bodily integrity that were to be examined in the light of Art.78 of the Contravention Code.

Thus, the practice of investigating applications for violations of the child's rights, including the cases listed above, led the Children's Ombudsman to conclude that, contrary to Art. 3 para. (1) of the Convention on the Rights of the Child, the vulnerability of minors and the seriousness of illegal actions against minors is not taken into account by the representatives of the police and criminal prosecution bodies in all actions concerning children, undertaken by public or private social assistance institutions, courts, administrative authorities or by the legislature, the best interests of the child must be a primary consideration.

In this regard, the Children's Ombudsman considered it important to refer the matter to the Ministry of Internal Affairs, the General Prosecutor's Office and the Superior Council of Magistracy, drawing attention to the shortcomings and erroneous applicability of the legal framework in the investigation of juvenile cases, highlighting the priority and active role to be played by state law enforcement agencies and to respond to all forms of violence, regardless of their nature, in a prompt and appropriate manner, providing adequate and immediate protection to the child.

The realization of the right of succession of children at risk and the assurance by the state of their right to private property was another subject monitored by the People's Advocate for Children's Rights.

A point of reference for the development of the monitoring in question served the disagreement of a petitioner with the provisions of the legal framework regarding the legal succession of minor children. Following the examination of this application in the light of the existing legal framework, some inconsistencies in national legislation were identified, as well as the lack of a clear mechanism on the process of acquiring the right of succession of children at risk, without parental care, including temporary. This fact led the People's Advocate for Children's Rights to request from the public authorities directly responsible for managing this mechanism ample information on their practice in the field of succession in the context of ensuring the inheritance of children at risk, without parental protection, including temporary, as well as the impediments and / or relevant proposals, which in their opinion would improve the quality of this mechanism.

Thus, in addition to the gaps and imperfections of the legal framework identified by the Children's Ombudsman regarding the patrimonial and non-patrimonial rights of minor children left without parental protection, who acquire the successor status in the context of legal inheritance, a number of administrative impediments were found, reported by the authorities directly responsible for carrying out the decision-making process on the cases concerning the mentioned subjects, such as the defective mechanism for issuing agreements by the guardianship authorities, the lack of a methodological guide on the application of the

mechanism for issuing agreements and the fear of the guardianship authorities to intervene through firm actions to protect these vulnerable children.

These findings led the People's Advocate for Children's Rights to prepare and submit to public authorities with legislative initiative proposals to improve the legal framework in the field, as well as recommendations on improving its implementation mechanism.

Most of the reaction acts constituted the opinions with recommendations regarding the measures to be taken for the immediate reinstatement of the petitioner, submitted in accordance with the provisions of Article 24 of Law no. 52 of 03.04.2014, notifications and actions / opinions in court, as well as proposals and recommendations for improving the legislation, submitted based on the provisions of the law indicated above. In all the cases examined, the recommendations of the Children's Ombudsman were complied with.

HUMAN RESOURCES MANAGEMENT

Structurally, the People's Advocate Office consists of the People's Advocate and his deputies, the People's Advocate for Children's Rights, the Secretary General, the structural subdivisions with the status of directorates, sections, services and territorial representations. The general management of the Office is exercised by the People's Advocate, the organizational and administrative activity of the Office is conducted by the Secretary General.

According to *Art. 34 of the Law on the People's Advocate (Ombudsman) no. 52/2014*, the People's Advocate Office provides organizational, legal, informational and technical assistance to the People's Advocate in order for him to exercise his mandatory powers. In the territory, the activity is carried out through the 4 representations: Balti Representation, Cahul Representation, Comrat Representation, Varnita Representation.

By *Law no. 164/2015 for the approval of the Regulation on the organization and functioning of the People's Advocate Office*, was approved the limit staff of the institution in number of 65 units. The limit may be amended by Parliament on a reasoned proposal from the People's Advocate.

The organizational structure of the People's Advocate Office includes:

Structural subdivisions:

1. Public Policy and Legislation Directorate;
2. Monitoring and reporting department;

3. Torture Prevention Directorate;
4. Child Rights Directorate;
5. Directorate for the management and investigation of applications;
6. Directorate for the Promotion of Human Rights and Communication;
7. Financial-administrative section;
8. Internal audit service;
9. Internal management support service;
10. Human resources service;
11. Legal service;
12. Secretarial service.

Territorial subdivisions:

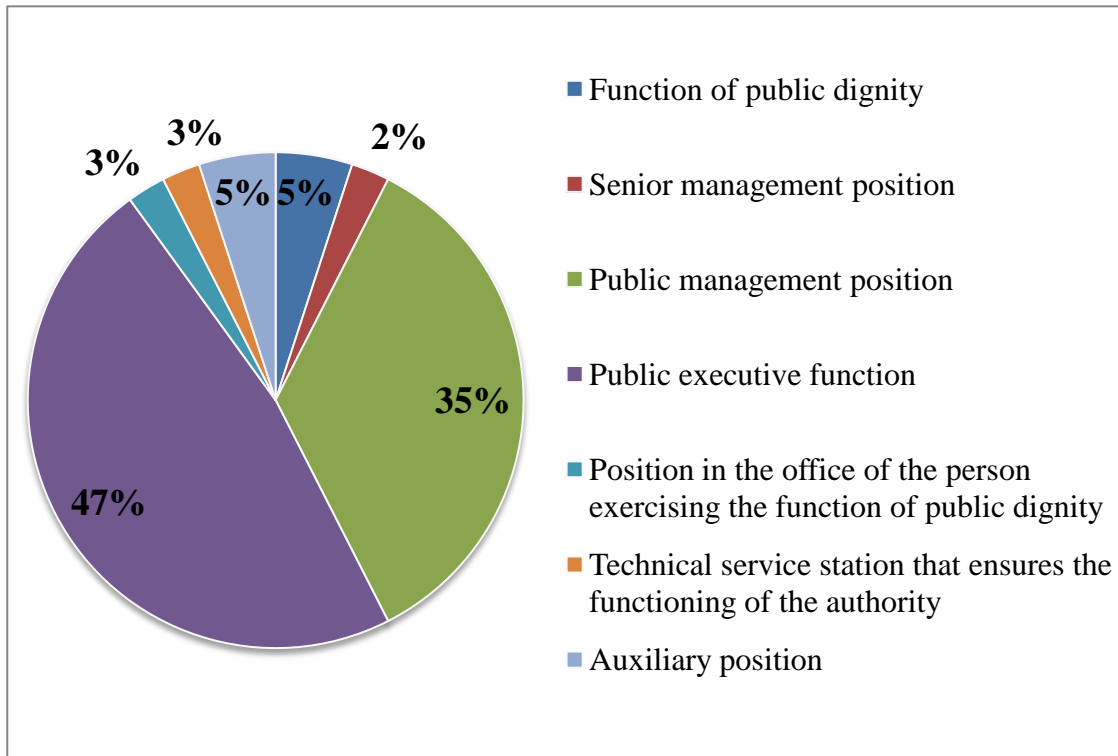
1. Balti Representation;
2. Cahul Representation;
3. Comrat Representation;
4. Varnita Representation.

At the end of 2020, 40 employees worked in the People's Advocate Office. The staff of the Office is composed of civil servants, staff employed in the People's Advocate's Office, technical service staff and other staff.

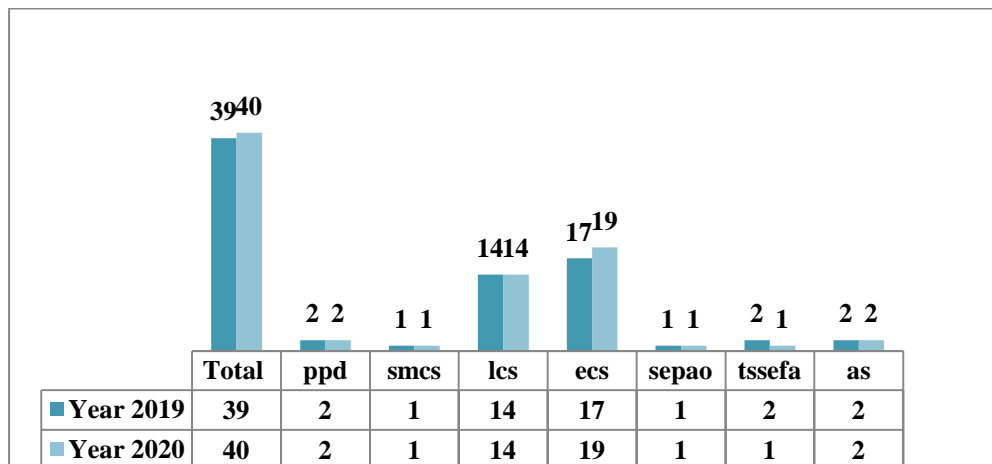
Staff structure by socio-professional categories

Category of public office / position	Number of persons at the end of 2020
Persons with public dignity (ppd)	2
Senior management civil servants (smcs)	1
Leading civil servants (lcs)	14
Executing civil servants (ecs)	19
Staff employed in the People's Advocate's Office (sepao)	1
Technical service staff ensuring the functioning of the authority (tssefa)	1
Auxiliary staff (as)	2
Total	40

The structure of functions and positions within the People's Advocate Office

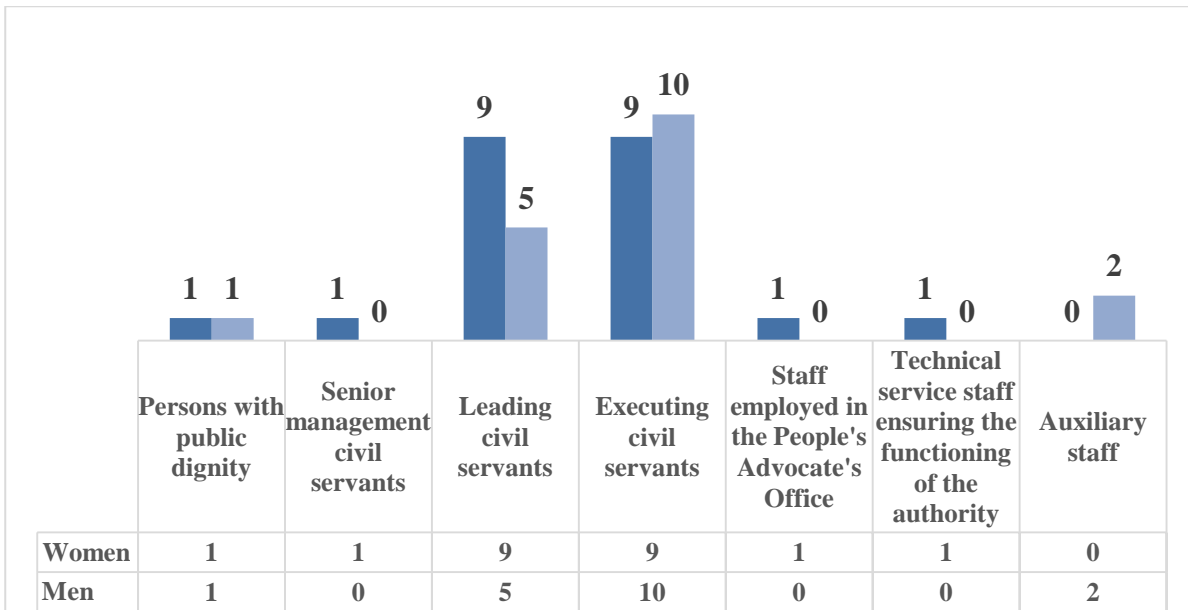


The analysis of providing the People's Advocate's Office with human resources implies the dynamic analysis of the workforce, in total and by category, year 2020 compared to 2019:



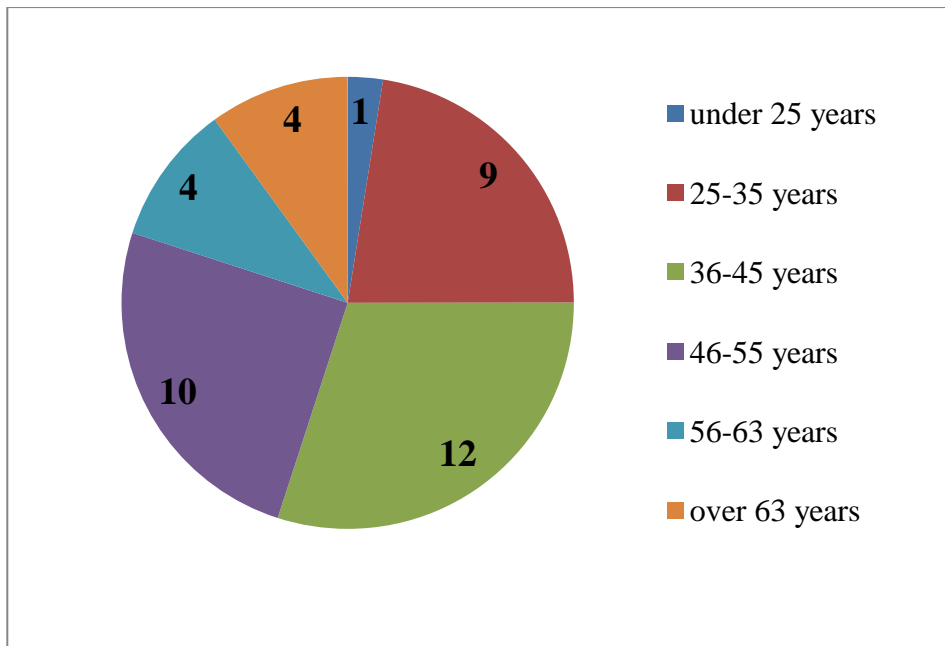
Gender-based structure of employees

The analysis of the structure of the staff highlights the fact that, according to the gender structure, within the institution women predominate, their number being 22 compared to 18 men.

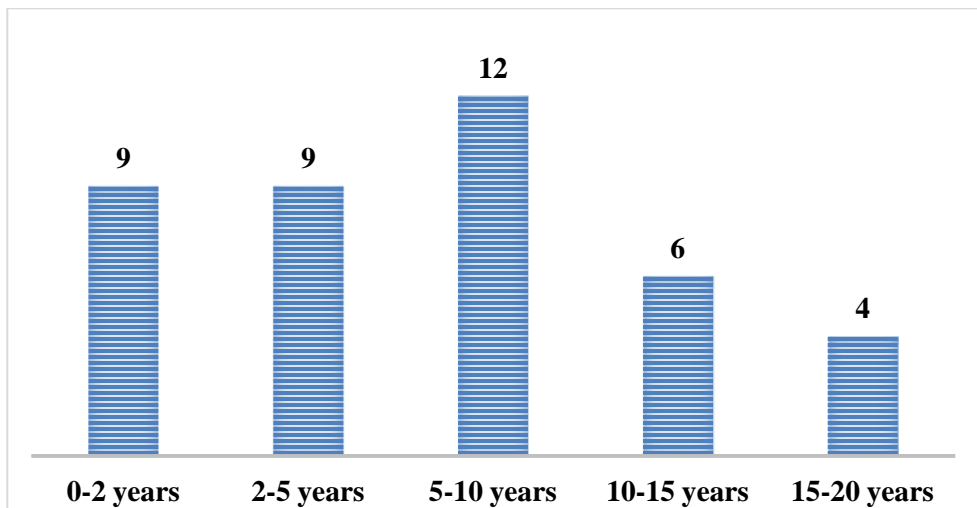


Age-based structure of employees

The analysis of the structure of the group of employees by age shows a numerical domination of people in the age range of 36-45 years.



Seniority-based structure of employees within the People's Advocate Office, persons



Within the People's Advocate Office there are employed 32 civil servants, all holding qualification / professional degrees.

<i>Type of qualification / professional degree</i>	<i>Number of civil servants holding a qualification / professional degree</i>
Counselor, Class I	5
Counselor, Class II	4
Counselor, Class III	4
State Counselor, Class I	10
State Counselor, Class II	4
State Counselor, Class III	6
State Counselor of the Republic of Moldova, Class I	1
State Counselor of the Republic of Moldova, class II	0

The occupation of public positions is carried out in accordance with the provisions of *Law no.158/2008 on State Functions and the Status of Public Servants, of the Government Decision no.201/2009 regarding the implementation of the provisions of Law no. 158-XVI of July 4, 2008 on State Functions and the Status of Public Servants.*

The employment of staff by other socio-professional categories is carried out in accordance with the legislation in the field of labour law.

In 2020, taking into account the Government Decision no. 672/2019 for establishing the temporary moratorium on the employment of staff in the budgetary sector in registered vacancies, 4 competitions were announced for filling vacant / temporarily vacant public positions, and another 5 completed from the number of competitions initiated in 2019.

Thus, during the reference period, 6 persons were appointed / employed, of which:

- by competition, 4 executive civil servants were appointed (following the competitions initiated in 2019);
- by transfer and promotion, 1 executive civil servant was appointed;
- 1 executive civil servant, was appointed for a determined period, after reaching the age of 63 years.

During 2020, the service / work relations were terminated by resignation, dismissal by transfer with 8 persons, thus the staff turnover rate was 20%, and the employee retention rate is 61,5%.

Analysis of the organizational structure, categories of positions and competencies of the staff within the People's Advocate Office

In 2020, with the support of the Council of Europe, there was carried out the analysis of the organizational structure, job categories and competencies of the staff of the People's Advocate Office.

The quantitative analysis of the work aimed at achieving the following objectives:

1. Establishing the current degree of accomplishment of functions at general and particular level;
2. Identifying the degree of workload at the subdivision level;
3. Establishing the workload at employee level, in the environment;
4. Identification of the necessary staff in case of full performance of all functions and duties.

The results of the labour analysis can be used in:

- Human resources planning;
- Establishing priorities in the staffing process;

- Reviewing the organizational structure and staff structure;
- Review of working methods.

The process of quantitative analysis of work was done from two perspectives: the current / current situation, called "AS IS" and the desired / ideal situation called "TO BE". In the analysis performed, the key products of the subdivisions were studied (volume, complexity, quality). At the same time, when determining the necessary staff, the motivated absenteeism of the staff (medical leave, annual rest leave, training) was taken into account.

Based on the analysis performed, several **findings** were identified at the level of functional subdivisions:

- **The average efficiency rate of the activity at institution level is 69%.** At the level of functional subdivisions, the effectiveness rate varies from 52% to 94%.
- **The average occupancy rate at institutional level is 61%.** At the level of functional subdivisions, the occupancy rate varies from 50% to 75%.
- **The average workload at institution level is 114% or 25 working days / month per unit of staff.** At the level of subdivisions, the workload varies from 89% to 159%.

Based on the findings, the following **conclusions** were drawn:

- The People's Advocate Office partially performs the functions and duties incumbent on it, in particular due to the low degree of occupation. Based on the data obtained, we can assume that if the institution fills all vacancies with professional staff, the available staff units will be sufficient for the quantitative and qualitative performance of functions and duties.
- The division of labour and the staff structure at the level of subdivisions largely correspond to the specificity, complexity and volume of work, with some necessary adjustments at the level of two subdivisions.
- Limited and / or lack of professional skills (strategic thinking, analysis and synthesis skills, problem solving, etc.) contribute to the insufficient or relatively poor quality of the most complex functions and responsibilities of the institution. As a result, the institution has a shortage of qualitative key products (which make a difference).
- Extremely high workload (multiple tasks and activities and / or high workload) in some subdivisions will lead to a decrease in the quality and relevance of the subdivisions 'activity, as well as to the staff burnout syndrome, with repercussions on employees' health.

Based on the findings and conclusions, the most important **recommendations** are the following:

- Reviewing the staff structure both in terms of the number of staff units and the type of public executive positions (main consultant, senior consultant, consultant). The subdivisions performing the most complex functions and duties will include most of the "senior consultant" staff units. At the same time, the staff structure of these subdivisions will take into account the distribution of tasks and responsibilities per unit of staff, reflected in the job descriptions.
- Initiating the necessary actions to fill all vacant positions of the institution with ensuring the quality of the employment process and the necessary working conditions.
- Continuous professional development remains a key priority in ensuring staff performance.

Continuous professional development

The professional training of the employees increases the level of accomplishment of the mission / strategic objectives of the public authority.

The institutional development of the People's Advocate Office, the improvement of procedures and working systems depends, to a large extent, on the initial training of employees and their continuous professional development.

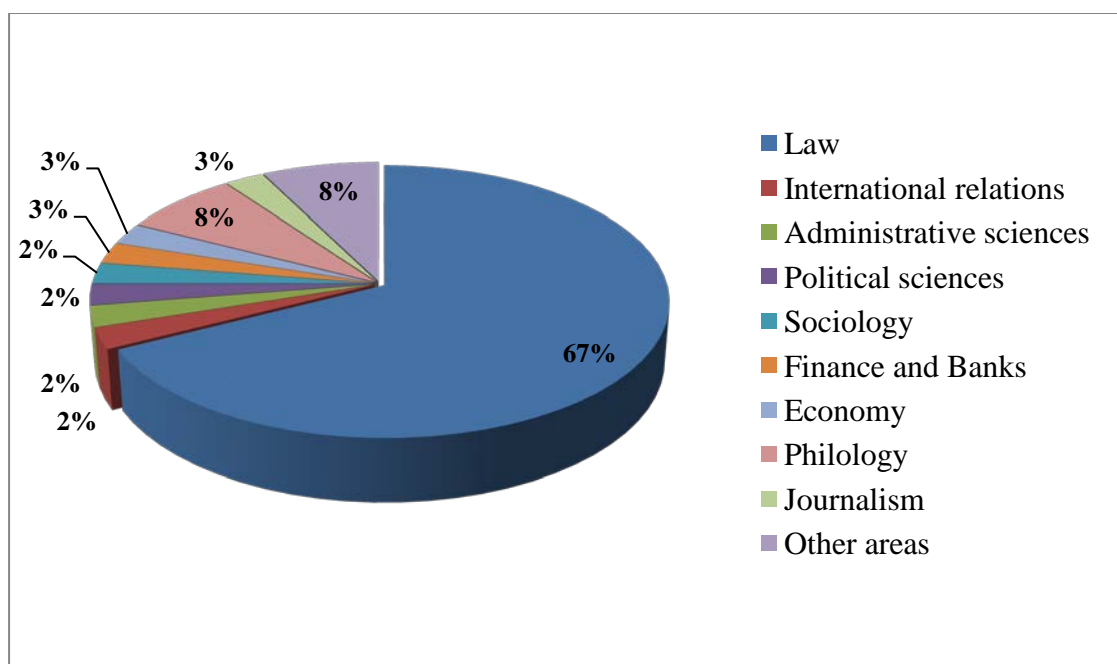
Within the People's Advocate Office, from the number of categories of functions / positions, only the auxiliary staff has studies in technical vocational education, the other categories have bachelor's degree, cycle I and master's degree, cycle II:

Number of employees with vocational training in technical vocational education	Number of employees with a single field of vocational training in higher education	Number of employees with several fields of vocational training in higher education	Number of employees with vocational training in bachelor and master's higher education	Number of employees with several fields of professional training in bachelor and master's higher education
2	14	1	20	3

Depending on the field of vocational training, the ranking states:

No. of crt.	The field of vocational training, cycle I - higher bachelor's degree	Number of employees
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1.	Law	27
2.	International relations	1
3.	Administrative sciences	1
4.	Political sciences	1
5.	Sociology	1
6.	Finance and Banks	1
7.	Economy	1
8.	Philology	3
9.	Journalism	1
10.	Other areas	3

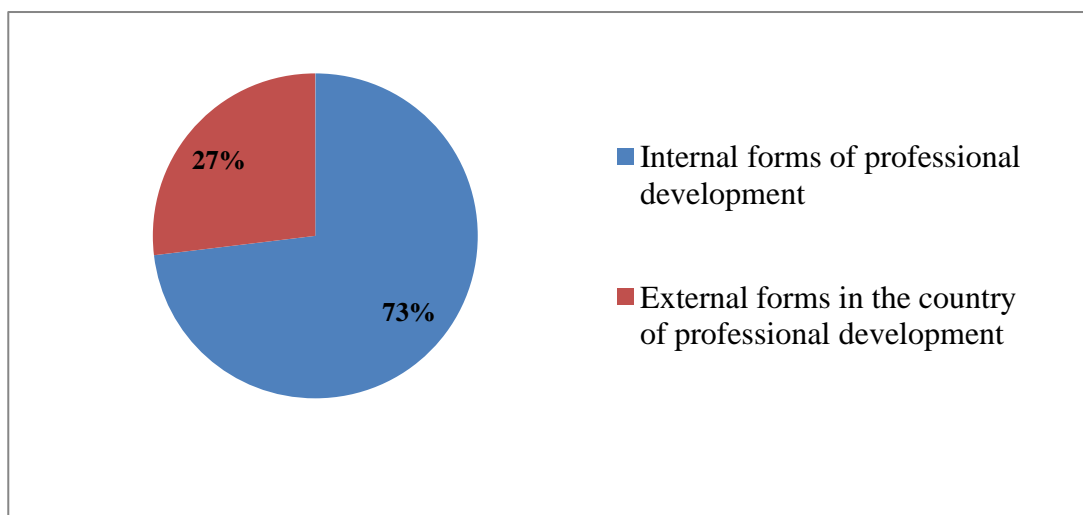


The process of continuous professional development within the People's Advocate Office is organized and carried out according to the following principles:

- observance of the civil servant's right to professional development;
- the obligation of professional improvement;
- orientation towards training needs;
- decentralization of the process of continuous professional development;
- liberalization of training services.

The continuous *professional development* of the employees of the People's Advocate Office is achieved through training activities of different types and forms, in order to deepen and update knowledge, develop skills and model attitudes / behaviors necessary for the effective exercise of duties.

In 2020, in connection with the pandemic situation caused by the COVID-19 infection, the People's Advocate Office motivated and ensured the participation of 40 employees in training activities, mostly carried out online, including those whose reports of service / work subsequently ceased, in total number of 2350 hours, of which external in the country (632 hours) and internal (1718 hours).



In order to efficiently achieve the strategic mission / objectives of the public authority, the People's Advocate Office establishes specific requirements for the training programs, correlated with the fields of activity of the institution.

Depending on the professional development needs of different categories of employees, concrete objectives are set, for the realization of which training programs are needed:

- 1) of a **general nature**, including regarding the civil service and the status of the civil servant, management / organizational leadership (for the leaders of the structural / territorial subdivisions), offered by the People's Advocate Office, with the support of the development partners.
- 2) of a **specialized nature**, of which:
 - a) in the field of fulfilling the mandate of the People's Advocate and the People's Advocate for Children's Rights;
 - b) in the field of human rights.

The main partners of the People's Advocate Office in the process of professional development in the field of fulfilling the mandate and human rights are the Council of Europe, the United Nations Development Program - within some institutional development projects.

FINANCIAL RESOURCES MANAGEMENT

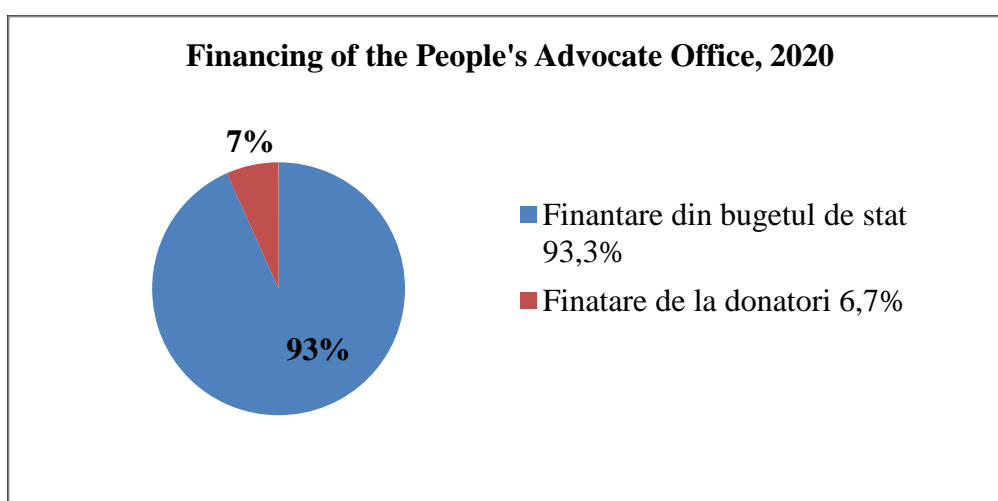
In accordance with the limits of the state budget and the budget rectifications approved for 2020, for the financing of the activity of the People's Advocate Office, financial means in the amount of MDL 11666.8 thousand were distributed. This amount is lower by MDL 1723.3 thousand, compared to the amount of MDL 13390.1 thousand, which was allocated from the state budget at the beginning of 2020. The decrease of the amount of allowances was a voluntary response of the People's Advocate Office to the Government's call to reduce expenses in the context of strengthening the efforts of the authorities in the fight against the COVID-19 pandemic.

The allocated funds were distributed to cover the expenses in two components:

- **00101** Control over the observance of human rights - allowances in the amount of MDL 11427.0 thousand
- **00453** National mechanism for the prevention of torture - allowances in the amount of MDL 239.8 thousand.

In addition, during 2020 the institution benefited from voluntary donations in the amount of MDL 836.7 thousand from:

- **SOROS Moldova Foundation** for the implementation of the grant project *"Defenders against torture"* - the amount of MDL 481.9 thousand;
- **UNICEF Moldova** for the implementation of the provisions of the collaboration agreement MOLA / 2020/01 *"Support for the People's Advocate for Children's Rights in increasing the capacity of independent monitoring and reporting in the protection of children's rights in the Republic of Moldova"* - the amount of MDL 354.8 thousand.



Translation of the diagram:

Financing from the state budget 93,3%

Financing from donors 6,7%

The level of execution of the PAO budget on each budget line as of 31.12.2020 is represented as follows:

Name of expenses by components	Stated, thousand MDL	Executed, thousand MDL	% execution
Control over respect of human rights			
Staff expenditure	7776.6	7773	99.9
Goods and services	3623.3	2760.2	76.2
Social benefits	80	55.5	69.4
Other expenses (membership fees in international organizations)	229.5	226.8	98.8
Procurement of fixed assets	184	110.5	60
Procurement of stocks of rolling stock	370.3	201.4	54.4
Total per component	12263.7	11127.4	90.7
National mechanism for the prevention of torture			
Goods and services	56.4	0	0
Remuneration of the members of the MNPT Council (for visits and meetings)	163.4	93.1	57.0
Procurement of fixed assets	20	20	100
Total per component	239.8	113.1	47.2
TOTAL	12503.5	11240.5	89.9

The execution rate of the budget of the People's Advocate Office for 2020 is about **90%**. Although this is at a high level compared to the established objective, the situation was affected by various external factors, such as the decrease in the volume of budget allocations during the budget year, in response to the Government's request to reduce budget expenditures (requests of the Ministry of Finance no.06 / 1-03-13 of 27.03.2020 and no.06 / 1-17-37 of 29.07.2020 regarding the need to review budget expenditures). The management of the PAO together with the decision-makers from the structural subdivisions reviewed the priorities and

decided to postpone / cancel some activities or to give up some acquisitions, which cannot be made in the conditions of the pandemic.

Although the institution voluntarily proposed a significant reduction in budget allocations, keeping the volume of budget allocations to a minimum necessary to cover essential expenditures, difficulties were encountered on the part of the Treasury in registering procurement contracts. Sometimes, the contracts presented to the Treasury for registration, including those on account of donations, remained unregistered for a long time, although according to the established procedure the term for their registration is a maximum of 14 calendar days. At other times, the contracts were not registered at all. These difficulties have influenced the decisions taken in the procurement working group, by giving up some of the procurements provided for in the annual procurement plan.

The non-execution of the budget for some economic spending codes is explained by the difficulties created by the COVID-19 pandemic, the Government's request to reduce expenditures, the establishment of a state of emergency and a state of emergency in public health, the impossibility of carrying out promotion and training activities. physical involvement of groups of people (target groups and beneficiaries). For the same reasons, it was decided to switch employees to remote work. Respectively, the expenditures for the payment of communal services were significantly reduced: electricity, thermal energy, water and sewerage, fixed telephony services, the expenses for the service trips of the employees inside and outside the country, the consumption of household goods, fuel, use of promotional materials and other expenses.

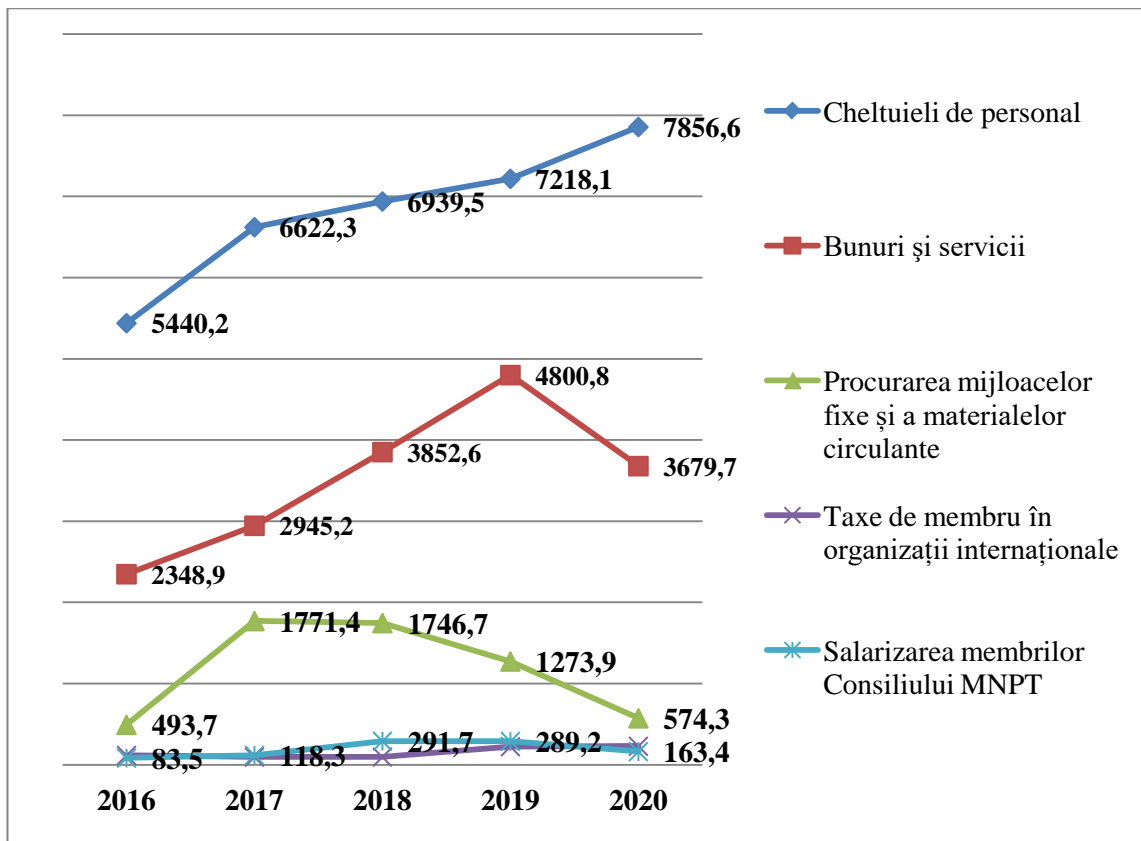
During the year, the financing of the activities and needs of the institution was usually carried out operatively. Most payments to employees, state budget, debts to suppliers were made. Both during the year and at the end of it, there were no debts with an expired payment term.

When comparing the amount allocated at the beginning of the year from the state budget, namely MDL 13390.1 thousand with the amounts allocated in previous periods, the trend was stagnant or even in an insignificant decrease. But, with the beginning of the pandemic, the deepening of the health and economic crisis, the People's Advocate Office voluntarily gave up about 15% (MDL 1960 thousand) of the institution's budget, reviewing the priorities set and activities planned for 2020, according to the Strategic Development Plan for 2018-2022.

After the rectification of the state budget by reducing the allocations, in dynamics the amounts allocated to the financing of the institution are represented as follows:

Financing of the People's Advocate Office in dynamics (2016-2020)					
Name of allowances, thousand MDL	2016	2017	2018	2019	2020
Control over respect for human rights					
Staff expenditure (including social benefits)	5440.2	6622.3	6939.5	7218.1	7856.6
Goods and services	1912.3	2940.2	3796.1	4740.8	3623.3
Procurement of fixed assets and circulating materials	493.7	1640.3	1699.5	1273.9	554.3
Membership fees in international organizations	116.8	95.6	96.1	224.2	229.5
Total per component	7963	11298.4	12531.2	13457.0	12263.7
National Mechanism for Torture Prevention					
Goods and services	436.6	5	56.5	60	56.4
Remuneration of the members of the MNPT Council (for visits and meetings)	83.5	118.3	291.7	289.2	163.4
Procurement of fixed assets and circulating materials		131.1	47.2		20
Total per component	520.1	254.4	395.4	349.2	239.8
TOTAL ALLOWANCES	8483.1	11552.8	12926.6	13806.2	12503.5

Analyzing the trend of each type of allowance, there is an increase in allowances for staff costs. This increase is explained by increasing the reference value, established by the State Budget Law. At the same time, given that at the end of 2020 these allocations were insufficient in connection with the adoption of amendments to Law 270/2018 on the unitary salary system in the budgetary sector, amendments were made to the State Budget Law for 2020 by which the institution additional financial means were allocated in the amount of MDL 236.7 thousand for the payment of the annual bonus to the employees for the results of the activity carried out in 2019.



Translation of the diagram:

Staff expenditure

Goods and services

Procurement of fixed assets and circulating materials

Membership fees in international organizations

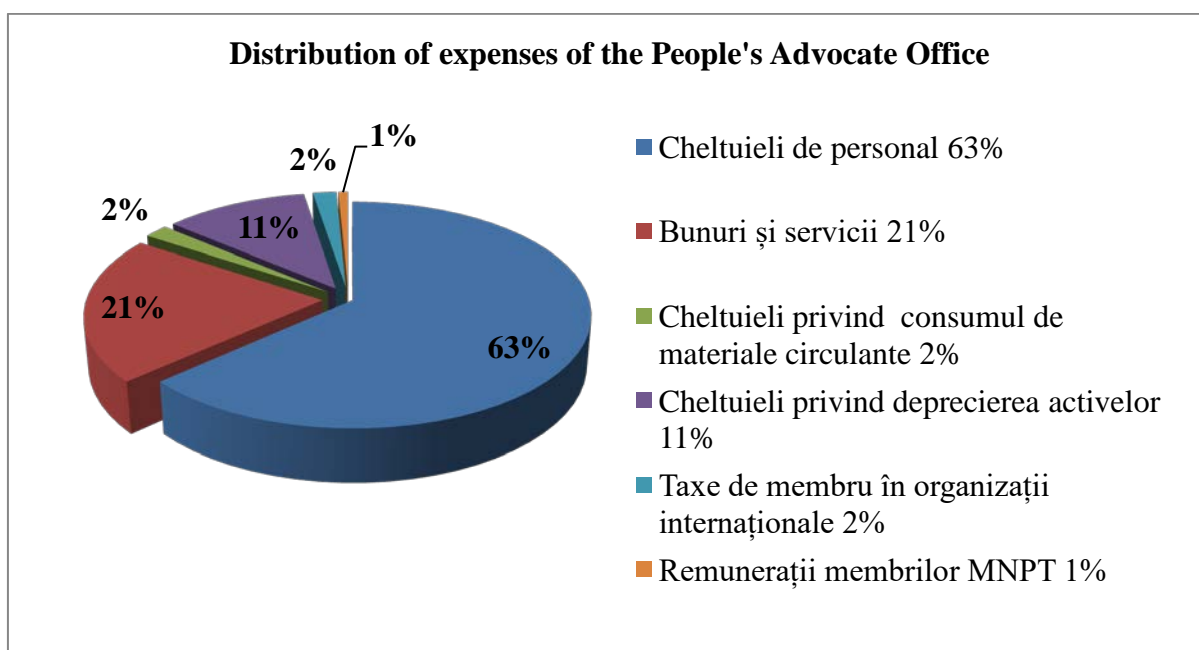
Remuneration of the members of the MNPT Council

During 2020, the People's Advocate Office had expenses in the amount of MDL 12332.5 thousand, compared to MDL 12362.5 thousand, actual expenses in 2019. These can be grouped, as follows:

- **Staff expenses** - constitute about 63% in 2020 compared to 53.8% of total expenses in 2019 and include remuneration of employees' work, payment of contributions and mandatory bonuses in the state budget, payment of benefits for employees according to legal provisions. The remuneration of the employees is carried out according to the legal provisions in the budgetary system.
- **Expenses for goods and services** - about 21% expenses in 2020, a significant decrease compared to 2019 (30.1%). These expenses include the maintenance of the institution's headquarters - payment for electricity, heat, water, security services,

rental services, current repairs, cleaning, hiring experts in various fields, training services, travel, etc.).

- **Expenses regarding the depreciation of assets** - about 11% expenses on wear and tear of fixed assets and depreciation of intangible assets.
- **Expenses for the consumption of circulating materials** - about 2% expenses for fuel, household goods, office supplies, spare parts, promotional materials, information materials, etc.
- **Membership fees in international organizations** - about 2% expenses
- **Remuneration of members of the Council for the Torture Prevention (MNPT)** - about 1% expenses (payment of remuneration of members of the Council for the Torture Prevention for visits to places of detention and participation in meetings)



Translation of the diagram:

Staff expenditure 63%

Goods and services 21%

Expenses for the consumption of circulating materials 2%

Expenses regarding the depreciation of assets 11%

Membership fees in international organizations 2%

Remuneration of the members of the MNPT 1%

Analyzing the component parts of the expenses we can conclude that the highest share in the total expenses are the expenses for the staff. This quota attests to the fact that during the

year the employees of the institution were financially protected, their jobs and salaries were maintained. It should be noted that, compared to 2019, the expenses for the payment of benefits for temporary incapacity for work paid from the employer's financial means have been substantially reduced. Thus, in 2020 the expenses in this chapter amounted to only MDL 18.8 thousand, compared to MDL 70.2 thousand - actual expenditures in 2019. One of the reasons for the decrease in expenses is the fact that employees worked remotely, in a favorable environment for health, relative to the environment of the institution's premises (air and walls contaminated with mold, high humidity and low light).

In conclusion, the volume of financial means allocated for the fulfillment of the mandates of the People's Advocate and the People's Advocate for Children's Rights in 2020 was in the minimum amount necessary, and the financial independence of the institution remains affected by the existing legal framework. At the same time, the employees of the institution, in the conditions of social distance, collaborated efficiently and worked productively, the visibility of the institution was increasing, the opinion of the institution was often requested and heard by the authorities, and the recommendations of the People's Advocate and the People's Advocate for Children's Rights have been taken into account in many situations.