

Council for the Prevention of Torture

(National Preventive Mechanism)



Annual Activity Report

2018

**Situation regarding the prevention of torture
in the Republic of Moldova**

**Council for the Prevention of Torture
(National Preventive Mechanism)**

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2018**

**SITUATION REGARDING
THE PREVENTION OF TORTURE
IN THE REPUBLIC OF MOLDOVA**

Chisinau • 2019

This Activity Report 2018 of the Council for the Prevention of Torture (CfPT) has been prepared by the CfPT members (as authors):

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COUNCIL OF EUROPE



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OF TORTURE**

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LIST OF ABBREVIATIONS

- OP** Ombudsperson
- LPA** Local Public Administration
- CAT** UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- NAC** National Anti-Corruption Centre
- NHIC** National Health Insurance Company
- NSIH** National Social Insurance House
- CoE** Council of Europe
- CC** Criminal Code
- CPP** Code of Criminal Procedure
- CfPT** Council for the Prevention of Torture
- CPT** European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- DPI** Department of Prison Institutions (predecessor of the National Prison Administration subordinated to the Ministry of Justice)
- NPA** National Prison Administration subordinated to the Ministry of Justice
- TDI** Temporary Detention Isolator
- GPI** General Police Inspectorate
- LPA** Local Public Authority
- MoD** Ministry of Defence
- MIA** Ministry of Internal Affairs
- MoJ** Ministry of Justice
- NPM** National Preventive Mechanism
- MHLSP** Ministry of Health, Labour and Social Protection
- OO** Ombudsperson's Office
- PI** Police Inspectorate
- SEN** special educational needs
- UN** United Nations Organization
- OP CAT** Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
- UN CAT** UN Committee Against Torture and Other, Cruel, Inhuman or Degrading Treatment or Punishment
- UN SPT** UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

FOREWORD



The Council for the Prevention of Torture (CfPT) was established on 25 October 2016 within the Ombudsperson's Office as a National Preventive Mechanism, under Law No. 52 of 2014 on the Ombudsperson and the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The CfPT consists of 5 representatives of civil society and 2 Ombudspersons, and the current membership has been selected for a 5-year term. The 5 members are experts in promoting the respect for human rights,

and have legal, medical and psychological degrees.

The CfPT mission is to provide protection to people against torture and other cruel, inhuman or degrading treatment or punishment, by carrying out preventive and monitoring visits to places of detention, identifying system problems, and issuing recommendations to competent authorities to address them.

Despite the imperfection of the Law nr. 52, the CfPT worked successfully throughout 2018 and continued visits and activities to prevent torture in places of detention in the Republic of Moldova.

In accordance with Art. 23 of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Republic of Moldova undertakes to publish and disseminate annual reports of the National Preventive Mechanism. This Annual Activity Report 2018 reflects the common position of the 7 members of the Council for the Prevention of Torture

Mihail COTOROBAI,
*President of the Council for the Prevention of Torture,
Ombudsperson*

SUMMARY

This Activity Report 2018 of the Council for the Prevention of Torture was approved unanimously by the members of the CfPT on 7 May 2019.

After a certain degree of uncertainty on the part of the Moldovan State regarding the shape and form of the National Preventive Mechanism (NPM) under the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), **on 25 October 2016, the Council for the Prevention of Torture (CfPT) was established as a National Preventive Mechanism** under Law No. 52 of 3 April 2014 on the Ombudsperson¹.

The Council consists of 7 members: the Ombudsperson, the Ombudsperson for Children and 5 members nominated by civil society. The CfPT's duties consist, in particular, of carrying out preventive monitoring visits to places where there are or may be people deprived of their liberty; submitting systemic proposals/recommendations; and initiating and maintaining a continuous dialogue with national and international institutions dealing with the protection and promotion of the respect for/defence of human rights.

In the period January – December 2018, the Council for the Prevention of Torture carried out **31 visits to 26 detention institutions (out of the total of 61 detention institutions in the Republic of Moldova). As a result, 25 reports were produced, out of which 23 (including over 650 findings and 500 recommendations)** were sent by the President of the CfPT (Ombudsperson) to the institutions concerned. As the submitted recommendations are complex, and clear implementation mechanisms are missing in most of the institutions concerned, the implementation of the CfPT's recommendations is ongoing. Nevertheless, many of the recommendations have already been put in place.

The CfPT's findings and recommendations specifically concern the following issues:

- ▶ the situation of torture in places of detention;
- ▶ the treatment of prisoners/patients/residents;
- ▶ the safeguards against torture and other ill-treatment;
- ▶ the conditions of detention;

¹ Please see: <http://lex.justice.md/md/352794/>

- ▶ healthcare provision;
- ▶ the situation of vulnerable groups;
- ▶ other relevant aspects, depending on the specifics of the institution.

Thus, the CfPT focuses not only on the verification of the material conditions of detention, but also on a wider range of aspects, according to the preventive mandate of the CfPT. *The findings and recommendations of the NPM are given in Chapter III of this Report.*

Summing up the results of the CfPT's visits, we conclude that ***unlike in previous years, the fight against torture in the Republic of Moldova in 2018 does not show any progress, and in some respects the CfPT finds a 'freezing' or even a worsening of the general state of affairs.***

Nevertheless, ***the Council for the Prevention of Torture appreciates the efforts and intentions of the state institutions to improve the overall respect for the rights of persons deprived of their liberty, and expresses its intent to support and contribute to actions aimed at preventing and combating torture as well as related measures.***



I INTRODUCTION

1.1. Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OP CAT)

What is the OP CAT?

In order to set up a system of regular visits by independent international and national bodies to facilities where people are deprived of their liberty so as to prevent torture, inhuman or degrading treatment, on 18 December 2002 the United Nations General Assembly adopted the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OP CAT)².

On 16 September 2005, the Republic of Moldova signed, and through Law No.66 of 30.03.2006, ratified the Optional Protocol to the UN Convention (OP CAT)³. Currently, there are 90 States Parties to the OP CAT and another 13 signatory states⁴.

The Optional Protocol sets out a 2-component system that includes independent international and national monitoring bodies by making unannounced and unrestricted visits to all places of detention in the States Parties. The UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UN SPT) was established under the Optional Protocol⁵. The Subcommittee has a dual mandate: a) to monitor the conditions of detention and treatment of persons deprived of their liberty by visiting the States Parties to the Optional Protocol; and b) to provide advice/guidance in the implementation of the Optional Protocol by the States Parties, and in particular, to support the establishment and proper functioning of the National Preventive Mechanisms.

² Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by General Assembly resolution A/RES/57/199 on 18 December 2002, entering into force on 22 June 2006, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>

³ Law No.66 of 30.03.2006 on the ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, published in the Official Gazette of the Republic of Moldova No. 66-69 of 28.04.2006, available at: <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=315880>

⁴ Please see: <http://indicators.ohchr.org/>

⁵ Please see: <http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/OPCATIndex.aspx>

The UN SPT is composed of 25 independent experts and is the largest human rights treaty body in the UN.

The Optional Protocol also provides that each State Party (including the Republic of Moldova) establishes, designates or maintains, at the national level, one or more bodies to visit places of detention in order to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter the National Preventive Mechanism).

Every State Party is required to allow unannounced visits to be carried out, in accordance with the Optional Protocol, by the OP CAT mechanisms, in any place under its jurisdiction and control, where persons are or may be deprived of their liberty.

1.2. Prevention of torture, inhuman or degrading treatment in the light of the OP CAT

States Parties to the Optional Protocol, reaffirming that torture, inhuman or degrading treatment are prohibited and constitute serious violations of human rights, and seeking to strengthen the protection offered to persons deprived of their liberty and the full respect for human rights, shall take effective measures aimed at preventing acts of torture and punishment or other cruel, inhuman or degrading treatment in any territory under their jurisdiction or control.

The OP CAT places more emphasis on prevention and cooperation with national authorities than on reaction and condemnation. Instead of responding once violations have been committed, the OP CAT bodies are pro-active and can visit any place of detention at any time, and no allegation of abuse/torture is necessary for them to do so.

The UN SPT draws attention to the fact ***that effective prevention of torture and punishment or inhuman or degrading treatment involve, first of all, education and a number of various legislative, administrative and judicial measures.*** However, the mere fact of complying with the national provisions and international standards is not enough to prevent torture effectively. Additional and other measures that cover or should cover the maximum number of things/actions that would reduce ***the likelihood of the risk of torture or ill-treatment*** are also necessary. Attention should also be paid to important factors in terms of the experience of persons deprived of their liberty and their treatment⁶.

⁶ UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, The approach of the Subcommittee on Prevention of Torture to the concept of prevention of torture and other cruel, inhuman or degrading treatment or punishment under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted at the 12th session (UN Doc.CAT/OP/12/6, 30 December 2010), available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CAT/OP/12/6&Lang=en

Thus, the OP CAT system implies that a preventive system of regular visits to places of detention by independent and functional (international and national) bodies, such as the UN SPT and the NPM, should be in place. Protection of people deprived of their liberty from torture and punishment or inhuman or degrading treatment can be strengthened by non-judicial preventive means based on regular visits and an ongoing dialogue with national authorities and international organizations.

1.3. What is a National Preventive Mechanism in the light of the OP CAT?

The Optional Protocol does not lay down a single/ideal formula for a National Preventive Mechanism for each State Party. States Parties may choose independently the model of independent National Preventive Mechanisms to prevent torture at the national level. Moreover, the States Parties may choose one or more national mechanisms within the meaning of the Optional Protocol, provided they comply with its provisions. *The States Parties shall guarantee the functional independence of the National Preventive Mechanisms and the independence of their staff.* The States Parties shall also provide the necessary resources for the National Preventive Mechanisms to function.

The mandate of the NPMs is to carry out regular preventive visits to all types of facilities where people are or may be deprived of their liberty. These visits should be followed by recommendations to improve the protection of people deprived of their liberty, as well as by the initiation and maintenance of an ongoing dialogue with the national authorities. The mechanisms can also provide comments on laws and draft laws, national regulations, and propose certain reforms.

In 2018, the Office of the United Nations High Commissioner for Human Rights (OHCHR) published a *Practical Guide on the role of National Preventive Mechanisms*⁷. The Guide draws attention to the issues that the States Parties of the OP CAT shall consider when establishing and developing a National Preventive Mechanism in the light of the Optional Protocol⁸.

There are several models of National Preventive Mechanisms including the following:

- ▶ separate independent institutions dealing only with prevention of torture (as seen in Germany, France, Italy, Switzerland, Tunisia, and Bolivia);
- ▶ assigning the torture prevention activities to an institution in charge of defence and promotion of human rights (such as an Ombudsperson's Office, as seen in Austria, Finland, Norway, Hungary, Czech Republic, and Albania);

⁷ OHCHR, Preventing Torture: The Role of National Preventive Mechanisms – A Practical Guide, Professional Training Series 21 (UN Doc. HR/P/PT/21, 2018), available at: https://www.ohchr.org/Documents/HRBodies/OPCAT/NPM/NPM_Guide.pdf

⁸ Please see Section II, 'Key Criteria for an Effective National Preventive Mechanism', available at: https://www.ohchr.org/Documents/HRBodies/OPCAT/NPM/NPM_Guide.pdf

- ▶ designating an institution of defence and promotion of human rights such as an Ombudsperson's Office with the involvement of civil society (the so-called 'Ombudsperson Plus' model, as seen in the Republic of Moldova, Denmark, Slovenia, and Serbia);
- ▶ several institutions whose mandate includes, but are not limited to, prevention of torture (such as in the United Kingdom, New Zealand, Netherlands, Brazil, and Malta)⁹.

1.4. What is a place of detention?

According to the Optional Protocol¹⁰ to the UN Convention Against Torture:

Deprivation of liberty

means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

Almost the same formula is also mentioned in the Moldovan Law on the Ombudsperson, as the concept of deprivation of liberty is defined as **any form of placing the person, by order of any judicial, administrative or other body, in a state or private place of detention, which he/she cannot leave at his/her will, as a punishment, sanction, procedural measure of coercion, safety measure, and as a result of dependence on care provided, or for any other reason**¹¹.

1.5. The Council for the Prevention of Torture as a National Preventive Mechanism (NPM)

The CfPT has a mandate of prevention rather than a mandate of response.

The Republic of Moldova, having ratified the Optional Protocol, reaffirmed that torture and punishment or inhuman or degrading treatment are prohibited and constitute serious violations of human rights. Therefore, the State Party is obliged to set up an independent and functional preventive mechanism.

⁹ Please see: <https://www.ap.t.ch/en/npm-models/>

¹⁰ Art. 4(2) of the Optional Protocol to the UN Convention Against Torture (OP CAT).

¹¹ Art. 30(4) of Law No. 52 of 03.04.2014 on the Ombudsperson. Please see: <http://lex.justice.md/md/352794/>

In 2007, the National Preventive Mechanism was established in accordance with the legislation in force at that time.

Originally, in the period 2007-2014, the Parliamentary Advocates were also fulfilling the duties of a National Preventive Mechanism. A Consultative Council was set up within the Centre for Human Rights (CpDOM) to provide advice and assistance in the exercise of the duties of the Parliamentary Advocates as a National Preventive Mechanism.

The NPM was established with two components: 1) Parliamentary Advocates – in their individual capacity, and 2) a collegial body – the Consultative Council (composed of 11 members, 10 of whom were mostly from civil society, and the 11th was a designated Parliamentary Advocate)¹².

By approving the new Law on the Ombudsperson (Law No. 52 of 03 April 2014¹³), a new model of the National Preventive Mechanism for the Republic of Moldova – the Council for the Prevention of Torture (CfPT) of the Ombudsperson's Office (OO), was defined and approved. Law No. 52 also contains a separate chapter (Chapter V) dedicated to the activity of the Council for the Prevention of Torture.

Currently, the Council is composed of 7 members, 2 Ombudspersons and 5 members from civil society. The Ombudsperson and the Ombudsperson for Children are members of the Council during their entire term of office. The other 5 members proposed by civil society are selected through a public competition organized by the Ombudsperson's Office. The selected members are appointed for a 5-year term that cannot be renewed. The Ombudsperson is the *ex officio* President of the CfPT.

**CfPT
is composed of
7 members**

- the Ombudsperson
- the Ombudsperson for Children
- 5 representatives of civil society

On **25 October 2016**, following the competition carried out by the Ombudsperson's Office, the first 5 members of the Council, representatives of civil society, were selected (according to the new formula)¹⁴. On 2 December 2016, the CfPT members carried out their first public activity, announcing the beginning of their work according to the mandate¹⁵.

In order to carry out the assigned duties, **the CfPT members are guided and plan their activity on the basis of the provisions of:**

¹² Please see: <http://www.undp.md/publications/doc/Baseline%2010%20mai%20final.pdf>

¹³ Please see: <http://lex.justice.md/md/352794/>

¹⁴ Please see: <http://ombudsman.md/ro/content/mecanismul-national-de-prevenire-torturii-creat-intr-o-formula-noua>

¹⁵ Please see the event dedicated to launching the CfPT activity, available at: <http://ombudsman.md/ro/content/membrii-consiliului-pentru-prevenirea-torturii-au-fost-prezentati-astazi-reprezentantilor>

- ▶ The OP CAT;
- ▶ Law No. 52 of 2014 on the Ombudsperson;
- ▶ The Regulation on the organization and functioning of the Ombudsperson's Office of 2015¹⁶;
- ▶ The Regulation on the organization and functioning of the Council for the Prevention of Torture of 2016¹⁷;
- ▶ The Principles relating to the Status of National Institutions (The Paris Principles) of 1993¹⁸;
- ▶ Report on the visit made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the purpose of providing advisory assistance to the national preventive mechanism of Moldova - Report for the State Party¹⁹;
- ▶ The Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) revised in 2015 by the UN General Assembly²⁰;
- ▶ The standards and other tools of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)²¹;
- ▶ other national/international regulations/standards.

Throughout the term of office, in order to perform the duties provided for in the OP CAT and Law No. 52, members of the CfPT work on the basis of the **principles of independence, impartiality, objectivity and confidentiality set out for the Ombudsperson**, and have official credentials for their functions²².

¹⁶ Law No.164 of 31.07.2015 for the approval of the Regulation of the organization and functioning of the Ombudsperson's Office. Please see: <http://lex.justice.md/md/361146/>

¹⁷ Regulation on the organization and functioning of the Council for the Prevention of Torture, approved by the Ombudsperson on 05.07.2016 and endorsed by the Committee for human rights and inter-ethnic relations of the Parliament of the Republic of Moldova. Please see: <http://ombudsman.md/ro/content/regulamentul-de-organizare-si-functionare-consiliului-pentru-prevenirea-torturii-fost>

¹⁸ Principles relating to the Status of National Institutions (The Paris Principles), adopted by General Assembly resolution 48/134 of 20 December 1993, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>

¹⁹ Report on the visit made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the purpose of providing advisory assistance to the national preventive mechanism of Moldova - Report for State party (UN Doc. CAT/OP/MDA/1, 13 March 2014), available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CAT%2fOP%2fMDA%2f2&Lang=en

²⁰ The revised Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), adopted by UN General Assembly (UN-Doc A/Res/70/175) on 17 December 2015, available at: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf

²¹ CPT standards and tools, available at: https://www.coe.int/en/web/cpt/standards?p_p_id=56_INSTANCE_rmo9MHZGnl46&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-4&p_p_col_count=1&_56_INSTANCE_rmo9MHZGnl46_languageId=ro_RO

²² Art. 3, 4, and 31 of Law No.53 on the Ombudsperson.

**Safeguards
of independence
for members
of the CfPT**

*Members of the CfPT are **independent of any public authority**, legal person, irrespective of the type of ownership and legal form of organization, and of any person holding a management position at all levels.*

*Members of the CfPT **cannot be subjected to any external imperative or other interference**. No one can force the members of the Council to comply with its instructions or provisions.*

*Members of the CfPT **shall not be required to provide explanations** or statements about the cases being examined or under procedure of examination unless they are for the benefit of the represented party or contain information of public interest.*

***Interference in the activities of the CfPT** and of the Institution of Ombudsperson, intentional ignorance by persons holding management positions at all levels of the Ombudsperson's recommendations, as well as obstruction in any form of the Council's activities **are subject to liability** under the applicable legislation.*

It is prohibited to order, apply, admit or tolerate any type of sanction and otherwise prejudice a person or an organization for communication of any truthful or false information to members of the CfPT and other persons accompanying them while exercising the function of torture prevention.

*Members of the CfPT **independently choose the places** to be visited and the persons they want to talk with. Preventive and monitoring visits do not need **any prior notification or permission from any authority**.*

**Inviolability
of members
of the CfPT**

Members of the CfPT cannot be prosecuted or brought to court for their opinions expressed and actions made in compliance with the law, during their term of office.

*During their term of office, members of the CfPT may be prosecuted and sued for deeds other than those provided for in para. (1) of Law No. 52, and members of the Council **cannot be apprehended, searched or arrested without the prior consent of the Parliament.***

Members of the CfPT arrested or brought before a criminal court shall be suspended until the final court decision remains final.

The inviolability of members of the CfPT covers their home and workplace, means of transport and telecommunications used, correspondence, documents and personal property.

In order to ensure protection of persons against torture and other cruel, inhuman or degrading treatment or punishment, **members of the CfPT carry out their activity, in particular, by fulfilling their duties related to:**

Regular conduct of preventive and monitoring visits

to places where people are or may be deprived of their liberty. The purpose of visits is to identify the systemic problems that prevent people deprived of their liberty from being protected.

Submission of systemic proposals/recommendations

(administrative, institutional or legislative proposals) to state institutions/decision makers to improve the situation of torture and other cruel, inhuman or degrading treatment or punishment.

Initiation and maintenance of a continuous dialogue with national and international institutions dealing with the protection and promotion of the respect for human rights.

In order to fulfil the mandate of the CfPT, the **State Party** to the OP CAT (the Republic of Moldova) undertakes to provide **the resources necessary for the National Preventive Mechanism to function**²³. It is also obliged to provide the NPM with human resources (through a supporting subdivision of the CfPT) and a separate budget line²⁴.

Human resources

- ▶ The CfPT shall be assisted by a specialized subdivision of the Ombudsperson's Office (OO). Currently, the CfPT's administrative/logistical assistance is provided through the OO's Directorate for Prevention of Torture (whose duties include prevention of torture as a whole). However, in 2018, to ensure a better functioning of the CfPT, the assistance offered to the CfPT needs to be improved in operational, methodological, informational, analytical and legal terms by the State;
- ▶ The CfPT can recruit specialists and independent experts from various fields, including lawyers, doctors, and psychologists, to carry out preventive and monitoring visits. In this respect, methodologies/procedures for the hiring and involvement of independent experts, including the responsibilities and internal procedures of the OO should be developed.

Financial resources

- ▶ According to UN SPT recommendations, the CfPT should have its own budget to fulfil its duties. Law No. 52 stipulates that the resources needed to carry out the CfPT's duties, to contract specialists and experts, shall be included in a separate budget line, which is an integral part of the Ombudsperson's Office budget. For 2017, 2018 and 2019, the OO included, as a matter of priority, all the CfPT minimum needs in the budget lines of the entire office. The CfPT's needs were presented and considered by the OO. However, during 2018, the procedure for adopting and submitting the CfPT budget by its members as a budget-line separate from the OO, or as a separate sub-programme for the implementation of the CfPT's mandate, was not elaborated.
- ▶ The members of the CfPT, except the members appointed by law (Ombudsperson and Ombudsperson for Child Rights), are entitled to a fee of 10% of the average monthly salary for each day on which they carried out preventive visits to places of detention or participated in the CfPT sessions.

²³ OHCHR, Preventing Torture: The Role of National Preventive Mechanisms – A Practical Guide, Professional Training Series 21 (UN Doc. HR/P/PT/21, 2018) 16-17, available at: https://www.ohchr.org/Documents/HRBodies/OPCAT/NPM/NPM_Guide.pdf

²⁴ Report on the visit made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the purpose of providing advisory assistance to the national preventive mechanism of Moldova - Report for the national preventive mechanism (UN Doc. CAT/OP/MDA/2, 30 May 2013), available at:

The period and resources for the further development of reports (which may take several weeks) and other activities covered by the NPM mandate and carried out by the members of the CfPT are not financially covered.

The CfPT budget is included in the general budget of the Ombudsperson's Office. Thus, there is no separate line for CfPT activity, at least, in the OO's budget. In 2018, the members of the CfPT developed proposals and accurate costs of the CfPT's needs to be included in the OO budget for the CfPT to function effectively in 2019. However, the members of the CfPT have not as yet had the opportunity to get acquainted and to approve the final version of the OO budget dedicated to the CfPT's activity.

CfPT budget		
	Planned funds	Spent funds
2017	500,000 MDL (30,000 USD)	159,719 MDL (9,700 USD)
2018	450,000 MDL (27,000 USD)	129,645 MDL (7,700 USD)
2019	392,400 MDL (23,000 USD)	

II

ACTIVITY OF THE COUNCIL FOR THE PREVENTION OF TORTURE IN 2018



Membership of the Council for the Prevention of Torture in 2018			
Mihail COTOROBAI	President	Lawyer	Ombudsperson
Maia BĂNĂRESCU	Member	Lawyer	Ombudsperson for Children
Ceslav PANICO	Member	Lawyer	Public Association 'Institute for Penal Reform'(IRP)
Svetlana DOLTU	Member	Doctor	Public Association 'Act For Involvement' (AFI)
Oxana GUMENNAIA	Member	Psychologist	Public Association 'Genderdoc-M' Information Centre
Mihail GORINCIOI	Member	Lawyer	Public Association 'Promo-LEX'
Dumitru RUSSU (since May 2018)	Member	Lawyer	Public Association 'Moldovan Institute for Human Rights' (IDOM)

2.1. Regular conduct of preventive visits to places of detention by the CfPT

Considering the definition of places of detention in the light of the Optional Protocol and Law No. 52 on the Ombudsperson²⁵, the Council for the Prevention of Torture determined several types of institutions to be covered by the NPM mandate.

Such **places of detention** are:

- ▶ **Prisons:** 17 prisons managed by the Department of Prison Institutions/National Prison Administration (DPI/NPA)²⁶, subordinated to the Ministry of Justice. The 17 prisons include 3 semi-closed prisons, 6 closed prisons, 1 prison for juveniles, 1 prison for women, 1 prison hospital and 5 criminal prosecution isolation units;

As of 1 January 2019, according to official information, 6,990 people were deprived of their liberty in prisons (7,635 people as of 01.01.2018), 5,729 of whom were convicted and 1,261 were remanded²⁷;

- ▶ **Police temporary detention isolators:** institutions subordinated to the General Police Inspectorate (GPI)²⁸ of the Ministry of Internal Affairs. The total number of isolators at the beginning of the year was 39; during 2018 the operation of 7 isolators was suspended. Thus, to date 32 facilities are still functioning, or partially functioning;

²⁵ See p. 1.4. of this Report.

²⁶ Please see: <http://penitenciar.gov.md/ro>

²⁷ Please see: <http://anp.gov.md/randomrapoarte-de-bilant-simestriale-anualerapoarte-de-bilant-simestriale-anualerapoarte-de-bilant>

²⁸ Please see: <http://politia.md/>

- ▶ Temporary placement centre for foreigners, managed by the Bureau for Migration and Asylum²⁹, and subordinated to the Ministry of Internal Affairs;
- ▶ Criminal prosecution isolator of the National Anti-Corruption Centre³⁰;
- ▶ Military garrison of the Ministry of Defence³¹;
- ▶ Psychiatric hospitals, 3 hospitals subordinated to the Ministry of Health, Labour and Social Protection³²;
- ▶ Temporary placement centres for persons with disabilities (former neuropsychiatric boarding houses) (4) and 2 boarding houses for children with mental illnesses (1 for girls and 1 for boys), subordinated to the Ministry of Health, Labour and Social Protection.

As of 1 January 2019, about 11,000 persons were deprived of their liberty in 61 places of detention (in all 7 types of institutions).

In 2018, the Council generally held 2 ordinary sessions per month on a regular basis. However extraordinary sessions were also held.

Between January-February 2018 the Council's members developed and then approved the Annual Plan of Visits 2018. They did so on the basis of the Council's Annual Report 2017, the Ombudsperson Annual Report 2017, the OO reports, the CPT reports (from 2011 and 2015), the Concluding observations on the third periodic report of Republic of Moldova from 2017, and reports of civil society and other national/international institutions. The NPM also took into account the existing statistics of state institutions and other types of detention facilities as well as other relevant information to develop and approve the **Annual Plan of Visits 2018**.

The Plan of Visits includes for each quarter a number of unannounced visits (from 2 to 3 visits per month), the type of visit (preventive monitoring, thematic, in-depth), and the type of institution, so that at least every 3 months each type of institution is visited by the CfPT, having also due regard to their geographical distribution. Subsequently, at each ordinary monthly session, the members of the CfPT set for the next month the number of visits, the exact institutions to be visited, the dates of visits, the composition of the monitoring team and the thematic content to be monitored. The CfPT can also carry out (and carried out) unplanned/ad-hoc visits in well-established situations and circumstances.

Each visit is planned and made on the basis of methodological principles recognized and previously approved by the members of the CfPT. The full methodology of planning and making preventive visits is to be improved and approved by the CfPT in 2019.

²⁹ Please see: <http://bma.gov.md/ro>

³⁰ Please see: <https://www.cna.md/index.php?l=ro>

³¹ Please see: <http://www.army.md/>

³² Please see: <http://msmps.gov.md/>

For the year of activity 2018, full/in-depth preventive visits were set and carried out 90% of the places of detention targeted under the Plan of Visits 2018

When planning and carrying out each visit, the members of the **CfPT are guided by a number of regulations**, in particular:

- ▶ International conventions and standards, which are also strongly recommended as a source of guidance for the national entities responsible for places of detention: *the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*³³; *Optional Protocol to the UN Convention for the Prevention of Torture (OP CAT)*; *revised Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)*³⁴; *Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules*³⁵; *UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*³⁶; and *the standards and tools of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)*³⁷, etc.;
- ▶ National regulations: *the Criminal Code; the Code of Criminal Procedure; the Code of Execution; GD No. 583 of 2006 'On the status of service of punishment by prisoners'; regulatory acts of monitored entities (orders, provisions, regulations and instructions), etc.*

In order to prepare each monitoring visit, and given the specificity of the place of detention to be monitored, the purpose of each preventive visit (which aspects shall be monitored), a **monitoring team** is established. Each monitoring team is made up of at least 2 members of the CfPT (and for a visit of larger institutions, at least 3-4 members of the CfPT are included in the team). For each CfPT meeting, a person in charge of coordinating the visits is appointed, who is also in charge of coordinating the drafting of the visit report. The duties of the monitoring team members are assigned depending on the place of detention, the composition of the monitoring team and the specificity of skills/area of expertise of each member of the CfPT.

³³ UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by General Assembly resolution 39/46 of 10 December 1984, entering into force 26 June 1987, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

³⁴ The revised Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), adopted by UN General Assembly (UN-Doc A/Res/70/175) on 17 December 2015, available at: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf

³⁵ Council of Europe: Committee of Ministers, Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules, 11 January 2006, Rec(2006)2, available at: <https://www.refworld.org/docid/43f3134810.html>

³⁶ UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted in UN Resolution A/RES/43/173 on 9 December 1988, available at: <https://www.un.org/documents/ga/res/43/a43r173.htm>

³⁷ CPT standards and tools, available at: <https://www.coe.int/en/web/cpt/standards>

The CfPT focuses not only on verifying the material conditions of detention, but also on a larger number of issues covered by the CfPT's preventive mandate.

The analysis of the available regulations/reports/recommendations, with due regard to the preliminary general methodology used in planning and conducting visits, enabled ***the CfPT to adopt a minimum set of issues to be checked during each visit:***

- ▶ the situation of torture in the place of detention;
- ▶ the treatment of detainees/prisoners/patients/residents;
- ▶ the safeguards against torture and other ill-treatment;
- ▶ the conditions of detention (including healthcare services);
- ▶ the vulnerable groups;
- ▶ other relevant aspects, depending on the institution;
- ▶ implementation of recommendations following previous CfPT visits.

During the visit, the members of the CfPT were allowed to enter any room in the places of detention inspected, to consult any register and requested records existing at the time of the visit, to choose with whom to talk (including to conduct confidential group and individual interviews with persons deprived of their liberty), and to photograph/document the rooms and registers, subject to Art. 32 of Law No. 52 on the Ombudsperson.

**In 2018, the CfPT carried out 31 visits to 26 detention institutions.
25 reports containing 650 findings and 500 recommendations
were developed.**

	Category of institution	Number of visited institutions	Number of visits	Types of visits (in general)	Types of visits (specific ones)	Categories of prisoners
1	2	3	4	5	6	7
1.	Prisons	8 institutions: Taraclia P No. 1 Lipcani P No. 2 Cricova P No. 4 Bender P No. 8 Goian P No. 10 Bender P No. 12 Chisinau P No. 13 Cricova P No. 15 48 % of prisons visited (8 of 17)	10 visits	2 ad hoc visits 8 planned visits	10 in-depth visits - situation of juveniles - situation of women - situation of prisoners on remand - situation of adults - situation of persons subjected to self-isolation or administrative sanctions - health of people in prisons - implementation of the CfPT's previous recommendations - NPA interaction with other detention institutions - situation of the NPA staff	- juveniles (14-18 years old) - women - (male) adults - foreign and stateless persons - prisoners on remand - persons with disabilities
2.	Temporary detention isolators subordinated to the MIA	11 institutions: Chisinau PD Bender PI Basarabasca PI Drochia PI Orhei PI Ocnita PI Stefan-Voda PI Causeni PI Anenii Noi PI Taraclia PI Comrat PI 35 % of functional isolators (11 of 32)	11 visits	1 ad hoc visit 10 planned visits	11 in-depth visits - situation of juveniles - situation of women - respect for the safeguards against torture during the initial detention periods - situation of prisoners on remand in TDI - situation of foreigners - implementation of the CfPT's previous recommendations - GPI interaction with other detention institutions - situation of the GPI staff	- juveniles (17-18 years old) - women - (male) adults - foreign and stateless persons - women - persons with disabilities
3.	Temporary Placement Centre for Foreigners (TPCF) of the MIA	1 institution 100 % of institutions visited	3 visits	1 ad hoc visit 2 planned visits	11 in-depth visits - situation of foreigners - situation of juveniles - situation of women - situation of people placed in TPCF - documentation of people - communication of people with the outside world, including from the country of origin - implementation of the CfPT's previous recommendations - TPCF's interaction with other detention institutions - situation of the TPCF staff	- foreign and stateless persons - women - (male) adults - persons with disabilities
4.	NAC isolator	1 institution 100 % of institutions visited	1 visit	1 ad hoc visit	1 ad hoc visit , including implementation of the CfPT's recommendations	(women, men, adults)
5.	Military Garrison in Chisinau mun.	1 institution 100 % of institutions visited	1 visit	1 planned visit	1 in-depth visit on the situation of remand adult prisoners (as a disciplinary sanction) in the Military Garrison	(women, men, adults)

1	2	3	4	5	6	7
6.	Psychiatric hospitals	<p>1 institution MMPHI Clinical Hospital of Psychiatry, Chisinau mun. Department No.31 Department No.12</p> <p>33 % of psychiatric hospitals visited (1 of 3)</p>	2 visits	2 planned visits	<p>2 in-depth visits</p> <ul style="list-style-type: none"> - situation of women - situation of adults - situation of persons subjected to self-isolation or administrative sanctions - patients' health - safeguards against forced and ,voluntary', including judicial admission - implementation of the CfPT's previous recommendations - interaction of the institutions with other detention institutions - situation of the institutions' staff 	(women, men, adults) with mental disorders
7.	Temporary Placement Centres for Persons with Disabilities	<p>3 institutions</p> <ul style="list-style-type: none"> - Psycho-neurological boarding house, Balti mun. - Temporary placement centre for persons with disabilities (adults), Balti mun. - residential centre for children with mental disorders (girls), Hincesti town - boarding house for children with mental disorders (boys), Orhei town <p>50% of boarding houses visited (3 of 6)</p>	3 visits	3 planned visits	<p>3 in-depth visits</p> <ul style="list-style-type: none"> - situation of juveniles - situation of women - situation of adults - situation of persons subjected to self-isolation or administrative sanctions - patients' health - implementation of the CfPT's previous recommendations - interaction of the institutions with other detention institutions - situation of the institutions' staff 	(women, men, juveniles)
Total 2018		26 institutions visited	31 visits made	- 26 planned visits - 5 ad hoc visits		

An important aspect to be mentioned is the case of 7 Turkish nationals (teachers) apprehended on 6 September 2018 by representatives of law enforcement bodies of the Republic of Moldova. The apprehended persons were then escorted to unknown locations. Consequently, 24 hours after their apprehension, their relatives and lawyers did not know of the location of the 7 persons in question and whether all safeguards and rights were respected during their apprehension. In such an exceptional situation, on 7 September, the CfPT made ad hoc visits to 4 institutions where, according to the law, foreign nationals can be deprived of their liberty after apprehension. However, in the 4 institutions (the Central Police Inspectorate in Chisinau municipality, Prison No. 13, National Anti-Corruption Centre and the Temporary Placement Centre for Foreigners), the CfPT regrettably determined that the 7 persons were not in the custody of those institutions³⁸.

³⁸ Please see: <http://tv8.md/2018/09/08/consiliul-pentru-prevenirea-torturii-cei-sapte-cetateni-turci-nu-s-au-aflat-in-institutii-de-detentie/>

Moreover, in addition to the CfPT's activities undertaken through the mandate of the **Ombudsperson, representatives of the Ombudsperson's Office (specifically the Directorate for Prevention of Torture) also made several visits to places of detention in 2018.** It bears noting that such visits of the Directorate for Prevention of Torture strengthen synergically the activities of prevention of torture in the Republic of Moldova. The Directorate for Prevention of Torture and the territorial offices of the OO thoroughly examine the material conditions of detention³⁹.

Total visits made by the CfPT November 2016 – December 2018				
Institutions	2016	2017	2018	Total
Prisons	2	6	10	18
Temporary detention isolators subordinated to the GPI of the MIA	1	10	11	22
Temporary Placement Centre for Foreigners of the BMA of the MIA	0	0	3	3
NAC isolator	0	1	1	2
Military Garrison of Chisinau mun.	0	0	1	1
Psychiatric hospitals	0	3	2	5
Temporary Placement Centres for Persons with Disabilities	1	2	3	6
Total institutions	4	22	31	57

2.2. Comments on relevant laws and draft laws

One of the important aspects in the activity of a mechanism for the promotion of the respect for human rights and international standards is helping to improve the national legal framework. In 2018, the CfPT primarily prepared its relevant proposals aimed at improving the legal framework and institutional regulations covered by the mandate of preventing torture through the reports drawn up following the CfPT's monitoring visits. Thus, the CfPT's reports of 2018 include a summary analysis of the needs to amend the regulatory and administrative framework for each type of detention institution with due regard to the problems revealed there. **Most of the CfPT's proposals to improve the legislation are also reiterated in the recommendations highlighted in the CfPT's Annual Report 2018.**

Additionally, in response to the direct requests of certain institutions, the CfPT made proposals and presented its vision, in particular, on the issues of escorts and transportation of persons (in relation to minimum standards) by the GPI of the MIA as well as the mechanisms for the protection of persons against acts of torture through the National Human Rights Action Plan (the Ministry of Justice).

³⁹ Please see: https://ombudsman.md/wp-content/uploads/2019/03/RAPORT_2018-1.pdf

The Ombudsperson also analyses the national laws and regulations in the field of prevention of torture and submits proposals to the institutions concerned to improve the legislation.

The CfPT plans to enhance the on-going process of analysing the legislative framework as well as other national regulations over the coming years of activity, including by developing thematic reports and recommendations to amend legislation in the areas connected to the prevention of torture. This decision has been taken in light of the experience gained so far, the information encountered by the CfPT and the understanding of the reality of different detention settings following visits as well as the Ombudsperson's wider responsibility (as President of the CfPT) to contribute to the improvement of human rights legislation. The activity will be carried out in cooperation with governmental partners, civil society and academic experts.

2.3. Contribution to the training of the staff of places of detention

The CfPT is aware that a well-empowered staff provided with effective working tools can substantially mitigate the risks of torture and ill-treatment in places of detention. For this reason, the CfPT as well as international institutions (CPT, UN CAT, UN SPT) draw particular attention to the training and capacity-building of the staff of places of detention. The CfPT's preventive visits and the exchanges conducted with detention facility staff during them provided an opportune moment for on-job training through the discussion of the CfPT's findings and possible related solutions aimed at improvement. This practice is to be continued throughout 2019 and extended to decision-makers with a view to finding solutions to systemic problems highlighted in the CfPT's and CPT's reports.

In its initial phase of activity, 2016-2018, the CfPT identified and noted the training needs of staff in places of detention. This conclusion was reached on the basis of the visits undertaken and an analysis of national and international reports as well as information received directly from the detention facilities concerned. Thus, various recommendations in the area of training were highlighted in the monitoring reports, which were subsequently sent to the institutions concerned.

Additionally, the members of the CfPT, in the up-coming period of activity (2019) intend to develop a plan of thematic training on the work of the staff responsible for the detention and supervision of persons deprived of their liberty (which would contribute to safeguards against torture and other ill-treatment). The CfPT intends to support the analysis and development of recommendations on training curricula for the staff of the detention institutions.

It is also noteworthy that the members of the CfPT are involved as experts (by state institutions or development partners) in the training of staff of the institutions

responsible for deprivation of liberty. The training is based primarily on international standards and CfPT/CPT/CAT recommendations, etc.

Furthermore, during 2018 the representatives of the Ombudsperson's Office conducted a series of training courses for the NPA representatives regarding the respect for the rights of prisoners⁴⁰.

2.4. Dialogue between the CfPT and the national institutions responsible for places of detention

By virtue of the CfPT's mandate, maintaining a continuous dialogue with the institutions responsible for deprivation of liberty is one of the crucial aspects of promoting the respect for and strengthening of the rights of persons held in state custody.

It should be noted that the members of the CfPT did not encounter any impediments (in relation to access to institutions, discussions with detainees, access to registers, rooms, etc.) on the part of the representatives of the visited detention institutions.

According to Art. 24 of Law No. 52, the Ombudsperson may submit his/her recommendations to the authority or the manager to improve the treatment of persons deprived of their liberty, to improve conditions of detention and to prevent torture. The authority or the manager who receives such notice is required to examine it within 30 days and to inform the Ombudsperson in writing about the steps taken to remedy the situation.

In the period April – May 2018, 4 round tables were held on the presentation of the CfPT Annual Report 2017⁴¹ through the support of the project 'Council for the Prevention of Torture (CfPT) – a key collegial institution in the system of prevention of torture and other ill-treatment in Moldova', which was implemented by the Institute for Penal Reform (IRP) with the support of the Special Fund of the Optional Protocol to the UN Convention against Torture (OPCAT Special Fund). The representatives of the institutions responsible for deprivation of liberty and those subordinated to them (Ministry of Justice, National Prison Administration, Ministry of Internal Affairs, General Police Inspectorate, and the Ministry of Health, Labour and Social Protection) were invited to discussions on the CfPT's findings and recommendations for each type of institution visited in 2017. These events had also an impact on improving the dialogue between the CfPT and the institutions concerned, in particular regarding the implementation of the CfPT's recommendations.

⁴⁰ Please see: http://ombudsman.md/wp-content/uploads/2019/03/RAPORT_2018-1.pdf

⁴¹ Please see: <http://irp.md/news/1078-societatea-civil-reprezentanii-instituilor-de-stat-au-purtat-un-ir-de-discuii-cu-reprezentanii-mecanismelor-naionale-de-aprare-i-promovare-a-drepturilor-omului-pe-marginea-constatrilor-consiliului.html>

Following the 31 visits undertaken by the CfPT, 26 reports were produced. Twenty-five reports (including 650 findings and 500 recommendations) were sent by the President of the CfPT (the Ombudsperson) to the institutions responsible for places of detention (Ministry of Justice, National Prison Administration, Ministry of Internal Affairs, General Police Inspectorate, National Anti-Corruption Centre, Ministry of Health, Labour and Social Protection, Ministry of Defence, and the Bureau of Migration and Asylum).

However, in 2018 **not all institutions responded to the CfPT's reports within the time frame set forth by the law, or some of the responses did not cover all the issues covered in the CfPT's reports.** Most of the CfPT's recommendations require systemic solutions and interventions at the ministerial level. Given the poor quality and insufficient nature of such responses, it can only be concluded that certain institutions responsible for deprivation of liberty **do not have clear mechanisms in the institutions concerned to analyse the CfPT's reports, implement the recommendations and provide clear and full responses.** It is also unclear who are the contact persons in the aforementioned institutions. Even in such situations, the members of the CfPT are always in direct contact with representatives of the institutions, especially to explain the CfPT's recommendations and possible ways to implement them. In this respect, the dialogue between the institutions and the CfPT will continue, in particular, by holding joint meetings at specified time intervals.

It is worth mentioning that certain members of the CfPT (as representatives of civil society in the Council) are part of several institutional working groups that also aim to improve the situation of persons deprived of their liberty in certain institutions (these bodies include the Advisory Group of the Strategic Council of the GPI of the MIA and the Working Groups on the Monitoring of the Implementation of the Prison Service Development Strategy).

During the visits, the members of the CfPT revealed several individual cases of alleged ill-treatment in places of detention. The Ombudsperson was informed of these situations and subsequently notified the General Prosecutor's Office. The cases were subsequently taken over by the OO.

An alarming issue for the CfPT was the lack of a constructive dialogue between the CfPT and the institutions responsible for the apprehension and detention of persons in connection with the cases of the 7 Turkish nationals (teachers) who were apprehended on 6 September 2018 by representatives of law enforcement bodies of the Republic of Moldova⁴². According to the OP CAT, the CfPT may request from state institutions any information related to the detention/deprivation of liberty of a person in the Republic of Moldova. **The CfPT condemns the actions of the state institutions who were responsible for the abusive apprehension, detention (and the related lack of transparency of the operational procedures) and lack of any**

⁴² Please see: <https://www.amnesty.org/en/latest/news/2018/09/moldova-seven-people-deported-to-turkey-despite-major-human-rights-concerns/>

information regarding the entire process of expulsion of the 7 Turkish nationals from the Republic of Moldova.

For 2019, the CfPT intends to enhance its dialogue with other institutions whose activity is connected to the mandate for prevention of torture, namely with institutions such as the Parliament, Government, Superior Council of Magistracy, General Prosecutor's Office, Customs Service, Unified Control Commission, Lawyers' Union, National Legal Aid Council, and the Equality Council, etc.

2.5. Dialogue between the CfPT and civil society

Representatives of civil society (NGOs, civic activists and academics) are for the CfPT some of the key partners in implementing the mandate of prevention of torture in the Republic of Moldova.

In this respect, in 2018 the CfPT made significant progress by establishing and maintaining a dialogue with civil society on issues connected to the CfPT's mandate. The most frequent interactions and dialogues were held with representatives of NGOs, including the Institute for Penal Reform (IRP)⁴³, Promo-Lex⁴⁴, Moldovan Institute for Human Rights (MIHR)⁴⁵, Amnesty International Moldova⁴⁶, Centre for Legal Resources (CLRM)⁴⁷, and the Rehabilitation Centre for Torture Victims' Memoria⁴⁸.

In particular, the Institute for Penal Reform (IRP) jointly with the Ombudsperson's Office and in partnership with the Office of the UN High Commissioner for Human Rights, with the support of the OPCAT Special Fund, contributed to improving the visibility of activity of the CfPT⁴⁹. On the basis of the **project 'Council for the Prevention of Torture (CfPT) – a key collegial institution in the system of prevention of torture and other ill-treatment in Moldova'**, the following activities were carried out:

- ▶ supporting the development of the Plan of Visibility/Promotion of the CfPT activities for 2018-2021;
- ▶ supporting the development of the CfPT's Annual Report 2017;
- ▶ presenting to the public the CfPT's findings and recommendations for 2017;
- ▶ launching a continuous dialogue with authorities/decision-makers responsible for deprivation of liberty/detention of persons in order to improve the situation in places of detention;
- ▶ the development and dissemination of 1000 mini-brochures on the CfPT's activity for 2017.

⁴³ Please see: <http://irp.md/index.php>

⁴⁴ Please see: <https://promolex.md/?lang=en>

⁴⁵ Please see: <https://idom.md/ted-wells/>

⁴⁶ Please see: <https://amnesty.md/en/>

⁴⁷ Please see: <https://crjm.org/en/>

⁴⁸ Please see: <https://memoria.md/#>

⁴⁹ Please see: <http://irp.md/news/978-institutul-de-reforme-penale-va-contribui-la-promovarea-activitilor-consiliului-pentru-prevenirea-torturii-cppt.html>

Due to these specific activities undertaken in 2018 confidence, in the CfPT's activity of society increased. Such actions included: the May 2018 Round Table dedicated to civil society/development partners on the presentation of the CfPT Annual Report 2017; the posting online of the CfPT visit reports; the creation and development of the CfPT's Facebook page; the involvement of the CfPT in the monitoring of the detention of the 7 Turkish nationals; and the CfPT's visits to Bender region, etc. As a result, the CfPT's expertise and reports are increasingly used by NGOs, which consider them to represent credible findings similar to those of different national and international institutions.

It bears noting that **the CfPT reports are employed by lawyers in cases in which arguments are made before a court for and against the detention of their clients.** The CfPT reports were also translated into English to be submitted to international/foreign courts. ***The CfPT reports even served as an argument in cases before the ECtHR, including in relation to the arrest of the 7 Turkish nationals, in which the CfPT's findings were submitted. It should be noted that the cases were subsequently won.***

However, the dialogue between the CfPT and civil society representatives is sporadic, and depends on the situation or the interest of civil society (there is also virtually no dialogue with academia). In this regard, the CfPT intends to establish continuous contact with representatives of civil society/development partners, by creating, *inter alia*, a platform for discussions and an exchange of information between the CfPT/OO and civil society. Another important aspect in the development of the dialogue may be the planning and conduct of joint visits as well as the development of joint reports (mainly thematic in nature).

2.6. Cooperation of the CfPT with national and international human rights institutions

One of the most important aspects of implementing the CfPT's mandate is the interaction with national and international human rights institutions, namely with the Ombudsperson's Office, CPT, UN Subcommittee on Prevention of Torture (UN SPT) and the UN Committee against Torture (UN CAT).

The CfPT's interaction with these institutions, especially with the international entities, was on the rise in 2018. In particular, this fact was due to the enhanced CfPT's visibility and active involvement in developing and submitting reports to international institutions.

An important dialogue for the CfPT aimed at making the NPM's work more effective is to continue its discussions with the ***UN Subcommittee on Prevention of Torture.*** In January 2013, the Republic of Moldova received a series of recommendations from the UN SPT on the functionality, independence and visibility of the National Preventive Mechanism. Some of these recommendations were implemented by

developing Law No. 52 and the CfPT Regulation⁵⁰, which is to be discussed and implemented over the next few years. In December 2017, a representative of the UN SPT undertook a visit to the Republic of Moldova. This visit was aimed at evaluating and following-up on the implementation of the UN SPT's recommendations from 2013. The UN SPT representative drew attention to issues that hindered the work of the CfPT, in particular the interaction between the OO and the Division for Prevention of Torture, a lack of clarity concerning separate budget-lines, the type of support provided by the Division for Prevention of Torture, the CfPT's visibility, the mechanism's working methodologies, and the lack of a database. Following the visit in December 2017, the UN SPT submitted an official letter containing 10 points to be put in place in order to improve the functionality, independence and visibility of the National Preventive Mechanism. However, the CfPT has concluded that no major progress with regards to the functionality and independence of the NPM was achieved in 2018 (about which the UN SPT Secretariat was notified through a letter dated September 2018).

It is also relevant to note that, **after an 8-year break, the Annual Report of the CfPT was submitted to the UN Subcommittee on Prevention of Torture⁵¹**, the previous report being submitted to and published by the UN SPT in 2009. Following the analysis of the Annual Report by members of the **UN SPT, in an official e-mail addressed to the CfPT the international body of experts welcomed the production of the report after such a long hiatus, appreciating the quality and comprehensive information provided in the report.**

After the presentation for the first time by the NPM of its **Alternative Report to the Report of the Government of the Republic of Moldova submitted to the UN Committee Against Torture (UN CAT) in 2017⁵²**, **in 2018 the CfPT provided additional information⁵³ on 3 issues not discussed during the examination of**

⁵⁰ Regulation on the organization and functioning of the Council for the Prevention of Torture; available at: http://old.ombudsman.md/sites/default/files/document/attachments/reg_in_intregime.pdf

⁵¹ Council for the Prevention of Torture/National Preventive Mechanism, Republic of Moldova, Annual Activity Report 2017, available at: https://www.ohchr.org/Documents/HRBodies/OPCAT/NPM/NPM_Moldova2017.pdf

⁵² Council for the Prevention of Torture - Republic of Moldova (Mechanism for the Prevention of Torture) Alternative Report on the 3rd Report of the Republic of Moldova on the implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (9 October 2017), available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2FCAT%2FCS5%2fMDA%2f29213&Lang=en

⁵³ Council for the Prevention of Torture - Republic of Moldova (Torture Prevention Mechanism), The report of the National Preventive Mechanism (NPM) on the status of implementation of recommendations from the Concluding observations on the third periodic report of the Republic of Moldova, recommendations put forward by the UN Committee against Torture as a result of the analysis of the country report during the meetings 1572 and 1575 held on 7 and 8 November 2017 (CAT/C/SR.1728 and CAT/C/SR.1575) on subjects to be reported by 06 December 2018 (27 November 2018), available at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2FCAT%2FNGS%2FMDA%2F33237&Lang=en

the third periodic report of the Republic of Moldova held in Geneva on 7 and 8 November 2017 (CAT / C / SR.1728 and CAT / C / SR.1575). This information was submitted as part of the UNCAT's one-year follow-up procedure. Information was submitted on the following paragraphs of the UNCAT's Concluding observations on Moldova: §16 (c) on the national preventive mechanism in the Republic of Moldova; §9 ensuring fundamental legal safeguards for persons deprived of their liberty; and §14 (i) about Andrei Braguta's death in detention. The CfPT will continue such practices that ensure the synergy of the mechanisms for protection of persons deprived of their liberty in the Republic of Moldova.

An important guiding institution for the activity of the Council for the Prevention of Torture is the **European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)**. In June 2018, the CPT made an ad-hoc visit to the Republic of Moldova, which targeted mainly prison institutions. During the visit, members of the CPT had 3 confidential meetings which were attended by the civil society members of the CfPT (1 joint meeting with the Minister of Justice, 1 joint meeting with the Ombudsman/OO and a special meeting with the members of the CfPT only). Following this visit, the CPT submitted its report to the Moldovan Government. Both the report and the Government's response have been made public⁵⁴. The CfPT will continue to monitor the implementation of the CfPT recommendations.

There were also a number of activities/interactions with national/international human rights institutions. At the level of the international organizations in the Republic of Moldova, several meetings were held with representatives of civil society, **OHCHR, UNDP-Moldova, and the Council of Europe**, at which were discussed the CfPT's operational challenges, the possibility of collaboration on a more regular basis, and the needs and support of the donor community. Communication and interaction with these organizations will also be enhanced in the years to come.

It is also worth mentioning that members of the CfPT also attended meetings with the **UN Special Rapporteur on the situation of human rights defenders, Michel Forst**, on the situation of human rights defenders in the Republic of Moldova during his mission to the country on 25-29 June 2018. In March 2019 the report of the visit to Moldova was made public⁵⁵.

⁵⁴ A list of all CPT reports and news items concerning its activities in relation to the Republic of Moldova is available at: <https://www.coe.int/en/web/cpt/republic-of-moldova>

⁵⁵ Visit to the Republic of Moldova Report of the Special Rapporteur on the situation of human rights defenders (UN Doc. A/HRC/40/60/Add.3, 15 January 2019), available at: http://ap.ohchr.org/documents/dpage_e.aspx?m=70&m=166



2.7. Strengthening the CfPT's capacity

Prevention of torture is under the constant spotlight of international organizations, the donor community, non-governmental organizations, and society as a whole. The interest of development partners in establishing a functional National Preventive Mechanism in the Republic of Moldova is unremitting, regardless of the formula chosen for the NPM by the State.

During 2016-2017, the CfPT and the Ombudsperson's Office determined a number of the CfPT needs for the activities of prevention of torture, which were discussed and proposed to be supported by development partners.

The needs of the members of the CfPT and the OO representatives for training on preventing and combating torture and other ill-treatment as well as related impunity were identified with the support of the **Council of Europe Office in Chisinau** as part of the project 'Supporting the Criminal Justice Reform in the Republic of Moldova', financed by the Government of Denmark⁵⁶. The members of the CfPT and the OO representatives also benefited from training in the field.

⁵⁶ For more information in Romanian please see: https://www.coe.int/ro/web/chisinau/news/-/asset_publisher/eJwXcY8gXKik/content/project-achievements-discussed-at-the-closing-conference-of-the-council-of-europe-project-support-to-criminal-justice-reforms-in-the-republic-of-moldo?inheritRedirect=false&redirect=https%3A%2F%2Fwww.coe.int%2Fro%2Fweb%2Fchisinau%2Fnews%3Fp_p_id%3D101_INSTANCE_eJwXcY8gXKik%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-4%26p_p_col_count%3D1

It is also worth mentioning that the CfPT **is the direct beneficiary of a new programme of the Council of Europe Office in Chisinau**, which was launched in 2018 – **'Promoting a human rights compliant criminal justice system in the Republic of Moldova'**⁵⁷. The programme will be implemented between 2018 and 2021. In 2018, a work plan was drawn up within this programme covering several activities aimed at strengthening the CfPT's capacity. Moreover, in order to identify more specific needs, in November – December 2018, the CoE experts analysed the CfPT's needs and the specific areas of activity that can be improved. The report of the experts was presented and discussed in March – April 2019.

At the initiative of the **Institute for Penal Reform (IRP)** and the Ombudsperson's Office, and with the support of the members of the CfPT, having due regard to the recommendations of the UN SPT from 2013 on the activity of the National Preventive Mechanism, in January 2018 – August 2018 the project **'Council for the Prevention of Torture – a key collegial institution in the system of prevention of torture and other ill-treatment in Moldova'**⁵⁸, funded by the **OPCAT Special Fund**⁵⁹, was implemented. The project was aimed at making the CfPT more visible. Through the CfPT Promotion/Visibility Strategy 2018-2021, the CfPT Activity Report 2017 (which is available in Romanian, Russian and English)⁶⁰ and a mini-brochure on the mandate and responsibilities of the CfPT (available in Romanian and Russian) were developed, while round tables were held within the context of the project with representatives of the institutions responsible for deprivation of liberty as well as civil society/development partners.

In 2019, the activities for building the capacities of the members of the CfPT are continuing, in particular, through the above-mentioned CoE programme, as well as through the project **'Development of a training module for the NPM members on monitoring, interviewing and reporting techniques'** implemented by the Rehabilitation Centre for Torture Victims **'Memoria'**⁶¹ with the support of the OPCAT Special Fund.

2.8. Prospects and future plans of the CfPT (NPM)

In order to strengthen the mandate of the Council for the Prevention of Torture as a key collegial institution in the system of prevention of torture and other ill-treatment in the Republic of Moldova, in 2016-2017 the members of the CfPT identified several strategic issues to be addressed during the next period of the institution's mandate, beginning in 2018.

⁵⁷ For more information about this initiative please see: <https://www.coe.int/ro/web/chisinau/human-rights-in-criminal-justice>

⁵⁸ Please see: <http://irp.md/news/978-institutul-de-reforme-penale-va-contribui-la-promovarea-activitilor-consiliului-pentru-prevenirea-torturii-cppt.html>

⁵⁹ A list of OPCAT Special Fund supported projects, including in the Republic of Moldova, is available at: <http://www.ohchr.org/EN/HRBodies/OPCAT/Fund/Pages/Grants.aspx>

⁶⁰ Please see: <http://irp.md/library/publications/1075-raportul-anual-de-activitate-pentru-anul-2017-al-consiliului-pentru-prevenirea-torturii-in-moldova.html>

⁶¹ Please see: <https://memoria.md/#>

Evaluation of the implementation of the CfPT plans for 2018	
Completing <i>the interaction/collaboration mechanism and delimiting the roles between the CfPT and the OO</i>	No changes
Improving <i>visibility of the CfPT activity</i>	Significant progress
Enhancing <i>dialogue with civil society</i>	Important progress
Enhancing <i>dialogue and diversifying development partners interested in preventing torture</i>	No changes
Enhancing <i>dialogue with international institutions</i> (UN SPT, UN CAT, CPT)	Significant progress
Completing <i>the set of methodologies and providing working tools for the CfPT</i> that would match its preventive mandate	No changes
Diversifying and increasing <i>the number of CfPT visits</i>	Significant progress: – 2017 – 22 visits to 5 types of institutions. 416 findings and 332 recommendations; – 2018 – 31 visits to 7 types of institutions, including to Bender region. 650 findings and 500 recommendations.
Enhancing dialogue with institutions <i>to implement CfPT recommendations</i>	Important progress: The number of significant recommendations implemented by institutions is increasing; The dialogue with the Parliament and the Government is still lacking.

Aspects to be further implemented:

- ▶ completing the interaction/collaboration mechanism and delimiting the roles between the CfPT and the OO;
- ▶ completing the CfPT Development Strategy 2019-2021;
- ▶ enhancing dialogue with international and national institutions (including with Parliament and civil society). In addition, facilitating the implementation of the CfPT's recommendations;
- ▶ completing the set of methodologies and providing working tools for the CfPT that would match its preventive mandate (to carry out visits, draft reports, analyse legislation, track the implementation of recommendations, collect data, and manage the budget);
- ▶ improving the visibility of the CfPT's activity.

The above aspects of activity will be proposed for implementation jointly with development partners starting in 2019.

III CURRENT SITUATION IN PLACES OF DETENTION IN 2018

3.1. General overview - systemic problems

In 2018, the issue of torture remained under the spotlight of both national organizations and media institutions and one of the primary issues, which international organizations/mechanisms focused on with regard to the respect for human rights.

Unlike in previous years, the situation regarding the fight against torture in the Republic of Moldova throughout 2018 did not show any progress; moreover in certain aspects the CfPT found that the situation had stagnated or even worsened.

The CfPT's appreciation is based on the results of the 31 CfPT preventive visits, the CPT findings and recommendations following its ad-hoc visit in June 2018, the events that took place in the second half of 2018 concerning the apprehension and expulsion of the 7 Turkish nationals as well as the increased number of complaints filed to the Prosecutor's Office about other ill-treatment (635 complaints were filed in 2018, compared to 569 in 2017, 538 in 2016, and 530 in 2015)⁶².

In June 2018, the CPT undertook an ad-hoc visit to the Republic of Moldova. The visit was aimed at assessing the progress achieved in implementing the CPT's previous recommendations on the situation in prisons, in particular as regards to the phenomenon of informal hierarchy among prisoners in prisons and the related problems of violence and intimidation, but also the conditions of male adult prisoners. The CPT found that the Republic of Moldova had not achieved much progress in this regard since its last visit in 2015. The CPT experts are concerned that, as a remnant of the Soviet past, the phenomenon of informal hierarchy of prisoners in the Moldovan prison system has flourished into a profit-oriented criminal enterprise. Another concern is that it seems that the authorities are not fully aware of the extent of the problem and do not appreciate the serious consequences that an informal hierarchy of prisoners can produce for the wider prison system as well as for society as a whole⁶³.

⁶² Report on the activity of the Prosecutor's Office for 2018 (in Romanian), available at: http://www.procuratura.md/file/2019-03-05_Raportul%20Public%20activitatea%20Procuraturii%20Generale%20anul%202018.pdf

⁶³ Report to the Government of the Republic of Moldova on the visit to the Republic of Moldova carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 11 June 2018 (CPT/Inf (2018) 49), available at: <https://www.coe.int/en/web/cpt/-/the-republic-of-moldova-should-put-an-end-to-informal-power-structures-among-prisoners-says-council-of-europe-anti-torture-committee>

The UN Senior Human Rights Expert, Thomas Hammarberg, visited Moldova in June 2018. In his follow-up report on the implementation of human rights in the Transnistrian region⁶⁴ the Senior Expert highlighted the high rates of arrest and detention as well as the conditions of detention as matters of concern. Hammarberg argued that priorities should be revised, and remand custody, custodial sentencing and conditions of detention should be reformed to reduce significantly the number of prisoners. The conditions for the identification and treatment of HIV and tuberculosis in prisons improved significantly, it was observed.

In 2018, the European Court of Human Rights (ECtHR) delivered 33 decisions concerning the Republic of Moldova relating to 46 violations of the European Convention on Human Rights (ECHR). Thirteen of the total 46 violations concerned Art. 3 of the ECHR (the prohibition of torture or inhuman or degrading treatment or punishment)⁶⁵. It bears noting that the rate of violation of Art. 3 of the ECHR found by the European Court of Human Rights in the decisions concerning the Republic of Moldova (in the period 1997-2018) is still quite high (comprising 27% of all convictions). Only the cases of violation of Art. 6 of the ECHR (the right to a fair trial) make up more, namely more than 29% of all cases⁶⁶.

Some of the most important systemic problems relating to the prevention and fight against torture, as revealed by the CfPT in 2018, are as follows:

- ▶ Disproportionate use of physical force or special means by police officers to apprehend persons.
- ▶ Holding persons in police detention for a period longer than those set forth in the national legislation (24/72 hours).
- ▶ High staff turnover and high number of vacancies impeding the adequate supervision in all custodial institutions.
- ▶ Medical examination of detainees/prisoners upon entry to and exit from the institution is not provided.
- ▶ Lack of independence of medical staff, failure to keep confidential medical data and lack of mechanisms for confidential reporting of bodily injuries.
- ▶ Non-standard registers at the institutional level and lack of training programmes on completion and drawing up of registers of persons deprived of their liberty.

⁶⁴ The press release of the report is available in English and Romanian at: <http://md.one.un.org/content/unct/moldova/en/home/presscenter/press-releases/the-un-human-rights-senior-expert--thomas-hammarberg-presents-hi/> and <http://md.one.un.org/content/unct/moldova/ro/home/presscenter/press-releases/the-un-human-rights-senior-expert--thomas-hammarberg-presents-hi.html>

⁶⁵ Annual Report of the European Court of Human Rights 2019, available at: https://www.echr.coe.int/Documents/Annual_report_2018_ENG.pdf

⁶⁶ Please see: <http://crjm.org/wp-content/uploads/2019/01/NA-CEDO-2018-fin.pdf>

- ▶ Lack of mechanisms for filing complaints and/or confidential information to prosecutors, Ombudsperson or NGOs.
- ▶ Material conditions of detention in the majority of custodial institutions are below both national and international standards.
- ▶ Conditions of detention are not adapted to the special needs of detainees and prisoners with disabilities.
- ▶ Prison institutions are still overcrowded.
- ▶ Documentation and reporting of bodily injuries in accordance with the (Joint) Order No.77 of 31.12.2013 of the General Prosecutor's Office for the most part is not carried out according to the Order.
- ▶ The total lack (de jure and de facto) of safeguards against torture or other ill-treatment in the temporary detention isolator of the Command of the Chisinau Garrison under the jurisdiction of the Ministry of Defence of the Republic of Moldova.
- ▶ Informal relationships among prisoners caused by the phenomenon of criminal subculture, which exists in most prison institutions.
- ▶ Placement of residents in psycho-neurological institutions/hospitals is sometimes arbitrary and is based on the personal non-objective perceptions of employees.
- ▶ There are no safeguards in the context of treatment and use of means of coercion in residential institutions.

However, some progress was made in the following regards:

- ▶ Conduct of a large number of training courses with the staff of the institutions responsible for deprivation of liberty.
- ▶ Provision of special means of transport for the secure and safe conveyance of detainees and prisoners.
- ▶ Conditions of detention in the NAC isolator improved considerably.
- ▶ Reduction in the number of prisoners in the prison system.
- ▶ Reduction in the number of prisoners in the prison system who went on hunger strike.
- ▶ The national remedy (as envisaged in the ECHR) for the settlement of complaints concerning the conditions of detention that seriously affect the rights of convicted or remanded persons entered into force on 1 January 2019⁶⁷.

⁶⁷ Please see: <http://lex.justice.md/md/371963/>

3.2. Legislative, administrative and judicial measures to prevent and combat torture and impunity

In recent years, many (legislative and administrative) efforts have been made in the Republic of Moldova to reduce the number of cases of torture, other ill-treatment and impunity.

Progress has been made, and continued in 2018, with respect to the following:

- ▶ Adoption of amendments to the Criminal Code with a view to increasing the number of punishments for acts of torture; introduction of criminal punishment for acts constituting inhuman or degrading treatment (Art. 166(1)); elimination of the statute of limitations for torture and ill-treatment (Art. 60) (8)); and adoption of provisions that no punishment less mild than that prescribed by law can be applied for acts of torture (Art. 60, 107 and 79);
- ▶ Amendment of the Code of Execution by completing it with a new Article – 1751, which states that ‘Detention for a term not exceeding 72 hours, as a procedural measure of coercion, shall be ensured in places of temporary detention ...’;
- ▶ Adoption of Law No. 52 on the Ombudsperson on 3 April 2014, and the creation of the Council for the Prevention of Torture as a National Preventive Mechanism based on the OP CAT on 25 October 2016;
- ▶ Establishment of the Division for Prevention of Torture within the Directorate for Criminal Prosecution and Scientific Investigation of the General Prosecutor’s Office on 4 May 2010;
- ▶ Adoption of the Law on the Prosecutor’s Office, as part of the reform of the justice system in August 2016;
- ▶ Adoption of the National Human Rights Action Plan 2018-2022;⁶⁸
- ▶ The new national remedy to settle complaints concerning the conditions of detention that seriously affect the rights of convicted and remanded persons entered into force on 1 January 2019⁶⁹;
- ▶ Approval of the Joint Order No. 77 of 31.12.2013 ‘On the approval of the Regulation on the procedure for the identification, registration and reporting of alleged cases of torture, inhuman or degrading treatment’;
- ▶ Approval of the National Mental Health Programme on 28 December 2012;
- ▶ Adoption of the Child and Family Protection Strategy 2013-2020 in 2013;

⁶⁸ Please see: <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=376768>

⁶⁹ Please see: <http://lex.justice.md/md/371963/>

- ▶ Approval and implementation of the Justice Sector Reform Strategy 2011-2016;
- ▶ Approval of the Police Development Strategy 2016-2020 and of the Action Plan for its implementation;
- ▶ Adoption in September 2017 of the Action Plan on the reduction of ill-treatment, abuse and discrimination against inmates held in police custody 2017-2020 to implement the Police Development Strategy 2016-2020, adopted in May 2016;
- ▶ Adoption of the Prison System Development Strategy 2016-2020 and the Action Plan for its implementation in December 2016;
- ▶ Approval of the National Programme for Social Inclusion of Persons with Disabilities 2017-2022, adopted in September 2017;
- ▶ Creation of the National Human Rights Council;⁷⁰
- ▶ Approval of the Joint Order of the MIA, MoJ, MoF, CNA, SIS, SPGS for the adoption of the 'Guide on professional intervention in the exercise of the function', which entered into force on 01.04.2018;
- ▶ The phrase 'or with a fine in the amount of ... up to...' was excluded from the sanctions set forth in Art. 166(1) and (2) of the Criminal Code by Law No.157 of 26.07.2018, entering into force on 14.10.2018.

Despite the measures taken by state institutions, the CfPT still considers it necessary to revise the regulations/practices in order to reduce the number of cases of torture, other ill-treatment and impunity.

For the year under review, according to the Police Activity Report 2018, 31 (33 in 2017) criminal cases of torture, inhumane or degrading treatment were opened against police officers⁷¹. This crime sits at the top of all criminal cases filed against police employees.

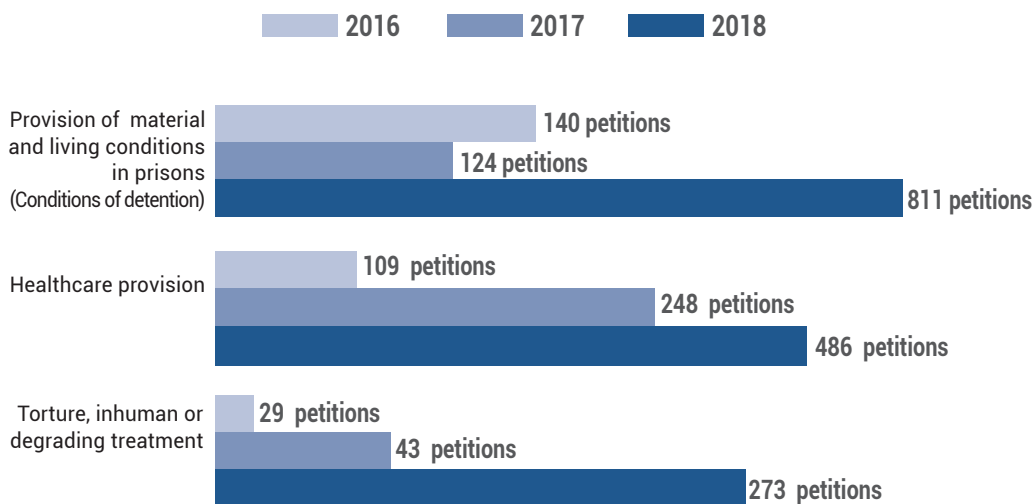
The *Summing-Up Report on the Activity of the Prison Administration System (NPA) 2018*⁷² with respect to petitions/requests submitted to the NPA shows a substantial increase (unlike in 2016 and 2017) in the number of petitions addressing issues relating to the following:

⁷⁰ Please see: <http://lex.justice.md/md/379272/>

⁷¹ Report on Police Activity 2018, available at: http://politia.md/sites/default/files/raport_activitate_igp_12_luni_2018.pdf

⁷² Summary Report on the Activity of the Prison Administration System 2018, available at: <http://www.anp.gov.md/randomrapoarte-de-bilant-simestriale-anualerapoarte-de-bilant-simestriale-anualerapoarte-de-bilant>

Situation regarding the prevention of torture in the Republic of Moldova



The CfPT is concerned about the substantial increase in the number of such petitions, underlining the need for a prompt investigation of each particular case in order to detect as quickly as possible acts that could be considered as (or might be connected to) acts of torture, inhuman or degrading treatment.

An analysis of the Prosecutor's Office Report 2018 reveals that the number of potential ill-treatment cases/complaints filed with the Prosecutor's Office regarding alleged acts of torture, inhuman or degrading treatment increased in previous years (from 622 in 2016, 639 in 2017, 687 in 2018). In contrast, until 2016, the annual indices had decreased. Out of the total 687 complains/notifications about potential ill-treatment cases, prosecutors detected and initiated investigations into 242 cases, which made up 35.2% of all instances. After examining the notifications about potential ill-treatment cases of torture and other ill-treatment, prosecutors ordered criminal prosecution in 93 cases.

During 2018, on the basis of Art.166/1 of the Criminal Code, courts of first instance delivered 17 sentences - covering 25 persons, 8 of which found guilty 12 persons (including 7 police officers).



3.3. Situation in the places of detention within the institutions subordinated to the Ministry of Internal Affairs

3.3.1. Treatment of detained/apprehended persons in places of detention within the institutions subordinated to the GPI of the MIA

a) Abuse by employees

During the preventive visits undertaken by the members of the CfPT in 2018, ***no routine abuse of persons deprived of their liberty by employees of the GPI of the MIA was observed. However, the CfPT identified at least 16 cases (approx. 5% of all analysed cases) with signs or allegations of acts of torture committed*** against apprehended/detained persons held in Stefan Voda TDI, Ocnita TDI, Basarabeasca TDI and Drochia TDI.

Signs of torture or allegations of acts of torture as identified in the medical registers of persons deprived of their liberty in the above-mentioned TDIs and as recorded in their statements, related to the following:

- ▶ Disproportionate use of physical force by police officers upon the apprehension of persons, causing bodily injuries to inmates;
- ▶ Disproportionate use of physical force and/or other types of injuries by police officers/staff members to persons during their detention in TDIs. In particular, *the CfPT draws attention to 2 cases entered into the medical registers where there existed a description of wounds caused by the putting of a hot item (a hot spoon) on the body of detained persons. The medical register contained an entry that 2 persons were treated in such way on the same day (in 2016). In these 2 cases, the signs of torture were known only to the medical staff who provided medical assistance to the persons deprived of their liberty who made entries in the registers without taking any further actions. According to the (Joint) Order No.77 of 31.12.2013 of the Prosecutor's Office General on the approval of the Regulation on the procedure for the identification, registration and reporting of alleged cases of torture, inhuman or degrading treatment, there is an obligation to notify the responsible district Prosecutor from the Anti-Torture Prosecutor's Office. The administration of Stefan Voda PI and representatives of the Prosecutor's Office from Stefan Voda stated that they were not made aware of these cases. In addition, the medical staff did not know who the prosecutor responsible for receiving such cases was and did not have his/her contact details.*

As for the accounting and keeping records of all cases of use of physical force and special means, the CfPT did not identify separate registers in this respect. As such, their absence did not permit a thorough analysis of all cases, including their compliance with minimum standards.

Abuses by the staff of apprehended/detained persons is also due to poor training/lack of knowledge on the part of police officers about the circumstances and the operational procedures for using physical force/special means and firearms.

The CfPT reiterates that physical force, special means and firearms shall be used as a measure of last resort after other methods of persuading people have been exhausted. Physical force and special means shall be used in a non-abusive manner in accordance with clearly established procedures by trained and qualified staff subject to adopted instructions, and only for short and necessary periods. Any use of force and special means shall be clearly recorded and reported as set out in the instructions, so that these cases can be identified.

The CfPT recalls the text of Art. 3 of the European Convention on Human Rights that states that: *"No one shall be subjected to torture or to inhuman or degrading punishment or treatment."* Any action and inaction of police officers aimed at violating this right

is a crime under the Criminal Code of the Republic of Moldova⁷³, which is regulated precisely to highlight the seriousness of the violation of this fundamental right.

b) Violence between apprehended/detained persons

During its visits, the CfPT did not encounter actual cases of violence among persons deprived of their liberty in TDIs. However, the CfPT's monitoring visits revealed ***systemic shortcomings in preventing violence among detainees and reporting incidents among them as well as in the procedures for interventions of employees in such situations.*** Thus, poor preventive measures to prevent conflicts between detainees were revealed:

- ▶ the screening system for placing apprehended/detained persons in cells (especially when there are insufficient places) is not based on any distinct criteria or clear requirements. As a result, smokers/non-smokers are placed together, persons with mental illness are accommodated with other detainees, while persons with obvious signs of disease (such as coughs and confirmed tuberculosis) are also placed among the wider detained population, etc.;
- ▶ lack of metal detectors in some isolators to prevent the use of sharp metal items;
- ▶ lack of effective/clear and standard mechanisms (from a technical and procedural point of view) enabling persons in cells to quickly alert supervisory staff, especially in critical situations. *In an isolator monitored by the CfPT, at the time of the visit there were no supervisors, while in another isolator the employee was too far away from the cells to be able to supervise the persons deprived of their liberty all the time.*

The duty of police officers to oversee the security and physical integrity of persons held in state custody can only be fulfilled by adequately supervising all aspects of detention, including during transportation.

The CfPT notes that adequate supervision can be carried out by, but is not limited to the following:

- i. Taking steps to ensure that persons held in police custody can call custodial staff at any time;
- ii. Placing apprehended/detained persons by category so as to avoid, as much as possible, real or eventual conflicts;
- iii. Video surveillance.

⁷³ Article 1661 of the CC 'Torture, inhuman or degrading treatment' states the following: "(1) The wilful causing of a pain or physical or mental suffering, which is inhuman or degrading treatment, by an official or a person who de facto exercises the powers of a public authority or by any other person acting officially or with the express or tacit consent of such persons."

c) Problems/impediments encountered by representatives of the Police Inspectorate

During the preventive visits, in addition to the basic aims expressly relating to prevention of torture and other ill-treatment, the CfPT holds discussions with the administrations of the institutions with a view to identifying issues directly concerning the functioning of the Temporary Detention Isolators. Major issues identified include:

- ▶ Limited access to, or even lack of, a mechanism accessible to representatives of the inspectorate enabling them to document apprehended persons who do not have identity papers or who are stateless persons, foreign nationals without identity papers, or who are suspected of having taken on another (false) identity. This issue leads to situations of holding persons in custody in TDIs for more than 72 hours, which may entail a higher risk of ill-treatment. Police Inspectorates do not have a budget-line for processing and obtaining identity documents for apprehended persons, if necessary;
- ▶ Failure by Prisons No. 13 and No. 5 to admit apprehended persons after 17:00 and on days off or on holidays. For this reason persons were still placed in Temporary Detention Isolators. This issue leads to a situation of holding persons in custody in TDIs for more than 72 hours, which may lead to a higher risk of ill-treatment;
- ▶ A pressing issue relates to the understaffing of human resources departments located in custodial institutions due to the large number of vacancies;
- ▶ As the TDIs do not currently have a single managerial focal point who is responsible for their operation, this issue should be addressed. Currently, TDIs are assigned to the heads of the operational management service, who lack capacity to effectively oversee the functioning of the TDIs;
- ▶ Lack of promptness on the part of lawyers of the National Legal Aid Council and on occasion a shortage of lawyers;
- ▶ Failure to provide food and drinking water to persons deprived of their liberty during escorts from prisons to courts;
- ▶ Poor provision of fuels and supervisory staff for the transportation/escort of apprehended/detained persons to prisons, which also leads to periods of detention longer than 72/24 hours;
- ▶ Lack of medical staff in isolators, which prevents detainees being medically examined when entering and leaving establishments.

3.3.2. Safeguards against torture and other ill-treatment during the outset of detention

Three rights of persons apprehended by police are considered by the CfPT of particular importance, including: the right of the person concerned to notify the fact of detention to a third party chosen by him/her (a family member, a friend, another relative); access to a lawyer; and the right to request a medical examination by a doctor chosen by him/her (in addition to any medical examination by a doctor called by police officers). In the CfPT's opinion, these rights are three fundamental safeguards against the torture and other ill-treatment of persons deprived of their liberty by police, which should be provided from the outset of the deprivation of liberty, regardless of how they are described in the legal system in question (arrest, detention etc.).⁷⁴

a) Access to the assistance of a lawyer

Access to a lawyer by persons in police custody should include the right to contact and to be visited by a lawyer (in both cases their talks should be treated confidentially) and, in principle, the right of the person concerned to have the lawyer present during the interrogation⁷⁵.

In order to be fully effective, the access to a lawyer shall be guaranteed from the outset of deprivation of liberty. The CPT has repeatedly noticed that the period immediately following the deprivation of liberty is when the risk of intimidation and physical ill-treatment is at its greatest. In addition, the right of access to a lawyer shall be exercised even from the very outset of deprivation of liberty, regardless of the precise legal status of the person concerned; i.e. that person shall enjoy this right from the moment he/she is officially declared a 'suspect'⁷⁶.

In this respect, the role of each lawyer will be emphasized in ensuring the respect for the rights of apprehended persons through both the provision of qualified assistance and the active role of pursuing any allegations of torture or other ill-treatment.

During the visits, the CfPT found that the right of apprehended/detained persons to be assisted by a lawyer is respected in most cases.

⁷⁴ Opinion based on European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) 2nd General Report on the CPT's activities covering the period 1 January to 31 December 1991 (Strasbourg, 13 April 1992) (CPT/Inf (92) 3) – section III, available at: <https://rm.coe.int/1680696a3f>

⁷⁵ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Access to a lawyer as a means of preventing ill-treatment - Extract from the 21st General Report of the CPT, published in 2011 (CPT/Inf(2011)28-part1), available in English at: <https://rm.coe.int/16806ccd25> and in Romanian at: <https://rm.coe.int/16806ccd1f>

⁷⁶ Please see above.

The CfPT cannot be certain that when lawyers receive specific information or find traces of violence on the body of apprehended persons, after a prior discussion with their client, notify the district Prosecutor's Office. This fact is supported by several cases which came to the attention of the CfPT that can be qualified as cases of torture. In such cases the lawyers did not notify the competent bodies for investigations to be carried out.

Another issue revealed by the members of the CfPT and also reported by officers of law enforcement bodies relates to the availability of and compliance/failure to comply with the work schedule of lawyers of the NLAC system⁷⁷. Often their work schedule is not complied with, and this can create obstacles, including when it comes to the provision of this safeguard: obviously the problem arises when the apprehended person does not have money to pay for a private lawyer and seeks legal aid of such a lawyer urgently.

After analysing various registers during the preventive visits, the CfPT found that **in some cases the interviewing of persons takes place in the absence of a lawyer, it begins in the absence of legal representation, or the hearing takes place after the lawyer's departure**, which is contrary to Art. 104 of the Code of Criminal Procedure. As a result of the visits, the CfPT found that **hearings in some isolators took place in rooms/spaces intended for other activities, such as in medical examination rooms or visit rooms**, which are not appropriate settings for important criminal justice related matters.

b) Safeguard of the access of apprehended persons to a medical examination

The CfPT notes with concern that the situation in 2017 with regard to the access of apprehended persons to a medical examination by a doctor as well as the recommendations on improving the situation did not change in 2018. Following its visit in 2009, the CPT emphasized that **effective caring of injuries by medical staff can contribute significantly to the prevention of ill-treatment of persons held in police custody**⁷⁸. The right to a medical examination by a doctor of one's choice, besides from being essential for persons who need healthcare, is one of the fundamental safeguards against ill-treatment for anyone in police custody. **It is therefore essential that this right is guaranteed at the outset of detention.**

⁷⁷ The main body administering the legal aid system is the National Legal Aid Council (NLAC or National Council) and its Territorial Offices. The Ministry of Justice is the policy making body in the field. The Bar Association cooperates with the NLAC for ensuring the delivery of legal aid. The system includes a list of lawyers who ensure legal aid in criminal cases; they are responsible to act when it is required by the legal bodies.

⁷⁸ Report to the Moldovan Government on the visit to Moldova carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 to 31 July 2009 (CPT/Inf (2009) 37) §9, available in English at: <https://rm.coe.int/16806975ac> and in Romanian at: <https://rm.coe.int/16806975ab>

The medical examination sheets used by doctors examining new detainees have not been revised. As a result, they remain obsolete and do not enable an adequate examination of the detainee's state of health or a timely documentation of the medical aspects of a person's stay during the entire period of detention at the TDI. The documentation and reporting of medical evidence of ill-treatment is thus still inappropriate.

Therefore, the medical examination of detainees for each entry and exit from the institution, continues to not be provided⁷⁹. The CfPT has expressed its concern about the casual attitude of the administration of police inspectorates regarding the need for medical examinations both upon the entry to and exit from the institutions. **According to the legal framework⁸⁰, the apprehended person is to be subjected immediately to a medical examination upon the entry to and exit from the detention facility,** but this provision is not complied with in practice. The Council has found that the TDI administration confuses the provision of the safeguard of the right to a medical examination by a doctor with the right to medical assistance, and often mistakenly provides only the latter, deeming that a medical examination has been carried out. **Similarly, the CfPT found practices whereby the criminal prosecution officer included entries referring to the health of apprehended persons and their medical examination in the apprehension report, often considering it a substitute for the medical examination itself.**

There continue to be shortcomings in the prompt identification and medical examination of persons with mental illness. Medical staff do not have sufficient professional knowledge to identify persons with mental illness, and no operational procedures are in place for employees if a referral to a specialized doctor is required, such as for detainees with different types of disabilities. This situation remained unchanged in terms of its dynamics during the 2017-2018 period. The monitoring visits to the institutions involved in the Braguta case⁸¹ found no effective procedures in place to prevent similar cases recurring in the future. The members of the CfPT are concerned about the fact, while the investigation of the Braguta case resulted in the imposition of sanctions on the employees at fault at the institutional level, the higher-level systemic problems have not been addressed. Thus, **no effective institutional mechanisms are being developed for how to deal and interact with persons with disabilities and for the implementation of these procedures in all TDIs to prevent similar situations in future. The systemic problem of the lack of independence of the medical proceedings** and poor provision of the TDIs with medical staff **has so far**

⁷⁹ During 2017-2018, in no TDI at national level have been ensured 100% of medical examination

⁸⁰ Order of the MIA No. 384 of 26 October 2006 on the medical examination of the persons apprehended and held in custody in the TDI of the CPR.

⁸¹ Reports on the visits to the Central TDI on 11.11.2017 and on 12.06.2018 and Chisinau Prison No. 13 on 20.05.2017 and 4.01.2018.

not been resolved. There is no national discussion to subordinate the medical staff employed in places of detention under the authority of the MIA to the Ministry of Health, Labour and Social Protection.

The procedure for recording the injuries of apprehended persons is still failing to play the key role of preventing ill-treatment, which makes it difficult to obtain a clear picture of the situation. In particular, such **examinations are usually carried out in the presence of non-medical staff (police officers), the explanations of apprehended persons about the origin of their injuries are usually neither requested nor recorded, and medical staff do not attempt to assess the degree of consistency between any causal explanations and the objective medical results.** The CfPT reiterates the CPT's recommendation that instructions be adopted for police officers and medical staff dealing with apprehended persons, which make it clear that **any medical examination should be subject to strict confidentiality – except at the express request by the medical staff concerned, in particular cases – without the presence of the non-medical staff.**

Bodily injuries are not adequately documented and reported due to the TDIs lacking medical staff and also due to poor knowledge of the Istanbul Protocol⁸² and of the obligation to report such injuries. Thus, in 2018, entries were found in the medical registers expressly highlighting potential acts of torture (such as traces of burns caused by a hot spoon) as well as statements of detainees alleging that they had been beaten by police officers upon apprehension. Nonetheless, the necessary measures were not taken in order to examine the reported circumstances by referring these cases to the Prosecutor's Office.

The functional connection between the prosecutor responsible for investigating acts of torture and other ill-treatment and the medical staff of the TDI frequently does not exist. The TDI staff are not informed of their obligation under the procedures laid down in the (Joint) Order No.77 of 31.12.2013 of the General Prosecutor's Office on the approval of the Regulation on the procedure for the identification, registration and reporting of alleged cases of torture, inhuman or degrading treatment. As a result, the medical staff who provide medical assistance to detainees and who make entries in the registers do not take any further measures according to Order No.77 of 31.12.2013.

Divided loyalty seriously affects the documentation and reporting of bodily injuries of apprehended persons by medical staff. Currently **there are no confidential reporting mechanisms for body injuries** as well as safeguards for the protection of medical staff against reprisals on the part of the administrations

⁸² Istanbul Protocol Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN Doc. HR/P/PT/8/Rev.1, 9 August 1999), available in English at: <https://www.ohchr.org/Documents/Publications/training8Rev1en.pdf> and Romanian at: <http://www.icarfoundation.ro/wp-content/uploads/2011/09/Istanbul-Protocol-in-Romanian.pdf>

of the detaining facilities or their colleagues. The job description of the position of medical assistant is also obsolete, containing unclear provisions regarding the documentation of cases of ill-treatment and the confidentiality of any medical proceedings. It therefore needs to be revised.

There is a practice of involving medical staff from the TDIs in searches of apprehended women or for other tasks of the inspectorate. The CfPT reiterates the recommendation that “...the doctor in the place of detention should not conduct the search or body examination at the request of an authority ... In exceptional cases when examination of body cavities cannot be avoided, it should be carried out by a doctor with appropriate medical training. However, in order to protect the doctor-patient relationship, this person should not be the doctor treating the inmate and providing healthcare⁸³”. Similarly, the TDI medical staff continue to provide medical services to the employees of the police inspectorates; this ***creates shortcomings in the relationship between the doctor and the patient and the documentation of alleged acts of torture of apprehended persons.***

The authorities do not provide basic or ***continuous training for medical staff*** on their duties and responsibilities to conduct medical examinations in a confidential manner as part of their work in the TDIs. In contrast, only occasional training courses organized by human rights NGOs are provided. The internal regulatory acts regarding medical matters, although obsolete, are still not known to medical staff or the administrations of the police inspectorates, and are therefore not complied with in practice.

c) Notification of detention

The right of a person in police custody to have the possibility to inform a close person or a third party about his/her detention, in principle, shall be guaranteed from the very outset of the detention. This right is expressly governed by Art. 173 of the CCP obliging the person who drew up the apprehension report to give the apprehended person, within at most 6 hours, the possibility to announce to one of his/her close relatives or another person about the place where he/she is held in custody. The CfPT emphasizes the need to comply with para. 2 of the same Article, which set forth the possibility of informing the embassy or consulate, in the case of apprehension of foreign nationals, if the apprehended person requests so. However, the CPT standards recognize that the exercise of this right may be subject to certain exceptions aimed at protecting the legitimate interests of the police investigation. Nevertheless, such exceptions shall be clearly defined and strictly limited in time, and recourse to such exceptions shall be accompanied by appropriate safeguards (e.g. any delay in informing a close person or a third party shall be recorded in

⁸³ This point is also highlighted by the World Medical Association in the Statement on Body Searches of Prisoners (17 February 2017), available at: <https://www.wma.net/policies-post/wma-statement-on-body-searches-of-prisoners/>

writing together with the reasons therefore and shall be subject to approval by a senior police officer who has no connection in this respect or by a prosecutor)⁸⁴.

Following the visits by the CfPT and after discussions with the administration of the institutions concerned, the members of the CfPT analysed the notification of detention in several aspects:

- ▶ **The notification of detention at the time of apprehension, in most cases, was carried out.** However, there is no clarity about a distinct, standard procedure in all isolators for informing relatives/third parties about the place of detention. In particular, how people should or can be contacted, who shall cover the expenses, the duration, restrictions concerning the duration and location (the country of stay of the recipient), including procedures in the case of apprehended/arrested hearing impaired foreign nationals. *Cases were identified in which the criminal prosecution officer offered personal mobile phones for the apprehended/detained persons to notify relatives of their apprehension.* Also, no means of recording all cases could be identified by introducing a register for the information on the notification of detention with sections for the date and time of the notification, the manner used and whether there were any limitations or difficulties.
- ▶ Some police officers confound the fact of detention (apprehension) and the place of detention. The analysis of the provision of this safeguard shows that apprehended persons are often given the possibility to notify their detention (as also specified in the apprehension report), and the notification of the place of detention sometimes is subsequent and cannot always be made by apprehended persons. Thus, even if the person notifies the relatives of their apprehension (when placed in the TDI), relatives are not informed about detention (this situation occurred when the detainee was escorted to another police inspectorate, which has a TDI).

d) Information about rights

The rights of persons deprived of their liberty are of no value if not known to persons deprived of their liberty. Consequently, it is imperative that persons in police custody are expressly informed of their rights without delay in a language that they understand. ***In particular, police officers should ensure that persons are not only informed about rights, but also understand them.*** The CfPT reiterates the CPT's recommendation that ***persons in police custody should in particular be informed without any delay of all their rights, any possibility of authorities to delay the exercise of one or another of the above rights in order to protect the interests of justice, its strict application***

⁸⁴ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Developments concerning CPT standards in respect of police custody - Extract from the 12th General Report of the CPT, published in 2002 (CPT/Inf (2002)15-part) §43, available in English at: <https://rm.coe.int/16806cd1ed> and in Romanian at: <https://rm.coe.int/16806cd1e6>

limited in time should be clearly defined. In particular, the right to have access to a lawyer and to request medical examination by a doctor other than the doctor brought by the police, the systems whereby lawyers and doctors can be chosen only from pre-established lists made with relevant professional organizations, should put an end to any delay in the exercise of these rights⁸⁵.

In most cases, the information on the rights of apprehended/detained persons is provided by handing out an A4 form/sheet containing the rights of the apprehended person, albeit in Romanian only. However, the members of the CfPT found at least 2 cases (at Chisinau TDI) when persons in custody said that they did not receive information on paper on their rights and obligations within the TDI, while most of interviewees stated that they were not explained their rights and responsibilities in custody, neither upon apprehension nor in detention.

The CfPT emphasized that the rights and obligations of apprehended/detained persons during both apprehension and detention shall be automatically explained to them. This safeguard derives from the need to inform persons of their rights who may be held in police custody for the first time, to ensure that all detainees are aware of their rights and any detention-related obligations, as well as to empower the main mechanisms aimed at protecting these rights.

e) Registers

An analysis of the accuracy of the registers in the Temporary Detention Isolators was a key-objective for the CfPT during the conduct and initiation of the preventive visits. It is worth mentioning that the CfPT had access at any given moment to all registers that were requested and available in the places of detention.

The CfPT re-evaluated the problem of non-standard registers at the institutional level and the lack of training programmes on completing and preparing registers of apprehended/detained persons. Thus, the registers used in most TDIs are not filled out accurately, and in some cases, they are missing, are poorly completed or are not filled out at all. In addition, omissions were observed in completing the registers with data on the time and date of apprehension (in the sense that in very many cases the time and date of apprehension were not recorded), and sometimes only the time of bringing the person to the isolator is fixed, and the actual time of apprehension is omitted. Furthermore, the time/date of bringing detainees out of the cell as well as to the location where the person is escorted, are not always specified. In some cases, it is impossible to ascertain the total period of detention in the isolator, which raises concerns including about keeping records of cases exceeding the maximum legal duration of stay of the person in places of temporary detention, namely 72 hours.

⁸⁵ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Developments concerning CPT standards in respect of police custody - Extract from the 12th General Report of the CPT, published in 2002 (CPT/Inf (2002)15-part) §37, available in English at: <https://rm.coe.int/16806cea2f>

The CfPT could not determine the staff who had the express duties to keep records and ensure the accurate completion of the registers, and found a shortage of internal and external checks in this respect.

f) Complaints procedure and communication with the outside world

In order to determine to what extent the access of apprehended/detained persons to the complaints procedure is guaranteed, it was noted that, on the one hand, complaints may be filed to the head of the Police Inspectorate concerned and, on the other hand, the apprehended/detained persons should be able to file complaints with the Prosecutor's Office, Ombudsperson, Parliamentary Committees, and President of the Republic of Moldova, etc.

Both following interviews with persons deprived of their liberty and discussions with police officers, the CfPT concluded that the right to file complaints to the head of the institution is respected in very few cases, and as for the actual possibility of filing complaints with other bodies, **there is no procedure/mechanism applicable to complaints/confidential information addressed to Prosecutors, Ombudsperson or NGOs.** Moreover, detainees are not provided with office supplies (pens, paper or envelopes) to execute their right to petition.

No accessible information boards or panels were found within the isolators on complaints/request procedures, both internal (addressed to the head of the isolator, or the head of the police inspectorate) and external ones (addressed to the Prosecutor's Office, Ombudsperson, Parliamentary Committees, and the President of the Republic of Moldova, etc.). The CfPT could not find any ways of communication with the outside world, the institutions to which complaints/information could be sent or their contacts, the existence of mailboxes, access to a phone, or information about who provides detainees with the possibility to exercise this right.

The CfPT found cases where persons detained in TDIs were deprived of the possibility to interact with the outside world, including with a lawyer (a lawyer was present only upon apprehension), prosecutor and family, so the detainees could not inform them quickly in the event of possible abuse by police officers or by other detainees (or even to prevent abuse). There were even more critical situations when persons were held in isolators for more than 72 hours.

g) Internal inspections

In order to ensure that the rules for protection of persons deprived of their liberty are complied with and the duties of police officers are fulfilled in temporary detention isolators/police inspectorates, the internal inspections/controls/monitoring within the GPI of the MIA are of particular importance. **The CfPT could not find a clear standard mechanism of carrying out inspections in isolators by the GPI of the MIA as well as any way to verify the execution of verbal instructions of the inspections carried out.**

The CfPT did not exhaustively maintain records showing the frequency of internal inspections. The statements of Police Inspectorate employees evidenced that isolators are more often checked by their administration, and in some cases by the prosecutor. However, the number of internal inspections/controls by the GPI of the MIA increased after the Braguta case (namely after August 2017). As the CfPT observed, most of the inspections/controls consisted of analysing material conditions of detention and holding discussions with detainees about their treatment or the existence of any allegations. In many cases such inspections were completed only with some verbal recommendations, which sometimes were not recorded.

h) Judicial safeguards

The CfPT appreciates the important role of the judicial bodies in contributing to the fight against torture and ill-treatment. According to Art. 11(4) of the Code of Criminal Procedure of the Republic of Moldova, the period of apprehension until an arrest warrant is issued shall not exceed 72 hours (24 hours for juveniles), and preventive arrest may be ordered only by the judge⁸⁶. Providing the possibility for an apprehended person to be brought before a judge within a maximum of 72 hours, which would also allow him/her to complain about specific allegations of torture or other ill-treatment, is crucially important. ***The temporary detention of a person for more than the prescribed period (72 hours) expressly provided for by both national law and international standards (maximum 48 hours) is a serious violation of human rights, which also has the effect of holding responsible the persons at fault.***

Throughout the monitoring period, the CfPT revealed abundant cases of failure to comply with the 72-hour period of temporary detention of a person. Cases were even found when persons were held in temporary detention for up to 4 months in Stefan Voda TDI⁸⁷. At the time of the visit, one of the adults held in custody in the isolator ***was detained for a period of 3 months***. Similarly, a juvenile was escorted to Stefan Voda TDI from Prison No. 13 to be tried, but previously, until being escorted to Prison No. 13, he was detained in Stefan Voda TDI for about 22 days (apprehended for 48 hours, and then arrested for 20 days; this information was based on information found in the registers and statements of the detainee). ***Juveniles were also confined in cells with adults***. Similar situations of the failure to observe the 72-hour term were also regularly encountered in Ocnita, Drochia, Comrat and Causeni TDIs.

⁸⁶ Art. 185(2) of the CCP states: "When dealing with the issue of remand, the examining judge or the court has the right to order home arrest, provisional release under judicial control or provisional release on bail".

⁸⁷ Please see: http://ombudsman.md/wp-content/uploads/2019/03/ip_stefan_voda_05.04.2018.pdf

3.3.3. Conditions of detention in places of detention in the institutions subordinated to the GPI of the MIA

a) Living conditions

During the preventive visits made in the period under review, the CfPT revealed several cases when cells in TDIs were not sealed/welded. This fact raises particular uncertainties about the use/non-use of these spaces and the purpose of their use.

In most isolators, the area standard was not complied with (7 m² with at least 2 m between walls and 2.5 m between the floor and the ceiling, not including the sanitary unit for one person). Even though certain detention cells hosted a number of persons that was in line with the required standards, the number of beds in the cells was much higher, which would suggest that they were used in violation of the minimum standards.

The natural and artificial ventilation of spaces (cells) is not provided uniformly in all cases. Although there is a cell ventilation system, the frequency of its operation is not clear (based on the statements of detainees it was concluded that the ventilation system is never turned on). Another issue is natural ventilation by opening windows: most often, windows are opened to the outside, and they are too rarely opened (in some cases windows cannot be opened for technical reasons).

In most cases, windows are small,⁸⁸ and their small size prevents natural light from getting into the cell. Artificial light is insufficient, both in terms of the number of light sources and intensity.

In most cases beds, mattresses and bed clothing are in an unsatisfactory condition.

The CfPT observed as a positive fact, the reorganization and regionalization of the TDIs in order to improve the conditions of detention of persons deprived of their liberty in line with international standards.

b) Hygiene and access to the bathroom by detainees

A problem revealed by the CfPT in most cases is the sanitation of spaces of detention and sanitary units. The alleged cases of inadequate hygiene include **the lack of employees with express duties of ensuring the sanitation of detention areas in the isolators.**

Another systemic problem is that the privacy of detainees is not provided, since the toilet in most of the TDIs is open and only separated from the rest area of the cell by

⁸⁸ Rule 14, United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) states: "The windows shall be large enough to enable the prisoners to read or work by natural light and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation; Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight." The document is available at: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf

a wall of about 1m high. The problem of toilets is even more severe when they do not function, like in Orhei TDI⁸⁹, and apprehended/detained persons have to request access to an outside toilet.

Access to the bathroom is provided by the staff of the isolators without any restrictions, as the isolators have a bathroom accessible upon request. A major problem, however, is that the persons in police custody are not provided with bed clothing and bath towels. **Newly arriving detainees are not provided with hygienic kits** (toothbrushes, toothpaste, towels, or soap), and often depend on the decision of the Prosecutor to allow them to receive parcels from their families in this respect.

c) Water and food

In all 10 visited institutions, the CfPT found contracts with companies providing catering services 3 times a day. Following the interviews with the detainees, it was noted that digressions related to food quality and the frequency of nutrition, suggesting that some detainees were provided with food only once a day, while others received bread only in the morning.

Another issue highlighted by the CfPT is that nutrition is not provided on days when the inmates are taken to trial. Complaints were recorded regarding cases when persons did not receive water and food between 09:00 and 18:00, and when returning to the isolator they were also refused food because they had missed the scheduled dinner-time slot.

d) Daily activities

Following the preventive visits, the CfPT concluded that the right of detainees to walk once a day for one hour is respected in most cases. However, cases were found when this right was restricted because of the large number of people held in the isolator that makes it difficult to allow every prisoner to walk for at least one hour, as there is only one courtyard for walks (such as at the temporary detention isolator of the Chisinau Police Department⁹⁰) or due to bad weather conditions, since most courtyards are covered only by a mesh, making it impossible to walk when it rains or snows.

The lack of standard registers for persons held in the TDIs documenting the exercise of the right of persons to undertake walks, including the refusals of persons to do so, makes it difficult to monitor the provision of the right to outdoor exercise.

e) Transportation of inmates

During the period under review, the CfPT found several cases of procurement of specially equipped vehicles for the transportation of detainees, including in accordance with the standards approved by the GPI in 2018. Nevertheless, there is

⁸⁹ Please see: http://ombudsman.md/wp-content/uploads/2019/03/ip_orhei_27.02.2018.pdf

⁹⁰ Please see: http://ombudsman.md/wp-content/uploads/2019/03/idp_dp_m.chisinau_12.06.2018.pdf

still no uniform practice of transporting detainees in compliance with the minimum transport standards. Although the vehicles were purchased for some TDIs, in other TDIs old vehicles that do not comply with the minimum transport standard are still used.

Most detainees complained that they did not have access to the bathroom during their escorts, while the transportation could last several hours; furthermore, they are not provided with water and food during the period of escort, which can last for a whole day (departure is at 06:00, before breakfast, and the return in some cases can be even after dinner).

For reasons of poor institutional planning of resources (fuel saving and the lack of escort staff), sometimes detainees are transported according to certain schedules, which often leads to their temporary detention for over 72 hours.

f) Access to healthcare provision by persons deprived of their liberty

Healthcare provision is offered to the detainees by the medical staff of the institution by escorting persons to a medical institution subordinated to the MHLSP or by calling the 112 service. **There are no clear procedures to guarantee the detainee's right to independent medical examination**, which limits the respect for this right at the institutional level. There is no standard record-keeping system for the requests of detainees, their families or lawyers with regard to this right, as well as the terms and method to resolve them.

Medical rooms in most of the TDIs do not meet the public health and hygiene requirements and the needs for equipment and consumables, and the safety of medical staff is not provided. Medical waste, contrary to Law No. 209 of 29.07.2016 on waste, is collected unsafely, and the institution does not have any waste management procedure in place. **The safety of medical staff is therefore not provided, and the health of detainees and officers is exposed to risk.**

The CfPT welcomes the renovation of medical rooms within the regionalization of the TDIs, but gives notice to the GPI administration about the compliance of the medical rooms with **the Public Health Regulation on hygienic conditions for medical service providers**⁹¹, which stipulates that: *"the surface of walls, floors and ceilings in the rooms shall be smooth, easily accessible for wet cleaning and resistant to treatment with detergents and disinfectants allowed to be used according to the established procedure; In dormitories, doctors' rooms, staff rooms, toilets, ..., medical treatment rooms, ... and auxiliary rooms, wash basins with hot and cold water provided with a mixer shall be installed; In medical examination rooms, wall lamps and furniture for the examination of patients shall be installed; The internal and external surface of the medical furniture shall be smooth and made of materials resistant to detergents, disinfectants and medicinal substances"*.

⁹¹ Public Health Regulation on Hygiene Conditions for Health Service Providers, approved by GD 663 of 23.07.2010, available at: <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=335428>

Apprehended persons can request medical assistance through the supervisory staff, who then contact medical staff by phone. Requests for medical assistance are not recorded in special registers, which does not make it possible to analyse and assess their fulfilment. Thus, the Council regretfully finds a possible barrier to the access to a doctor if ultimately the right to health is not respected.

Similarly, drugs that will soon expire and expired drugs were detected, but no procedures for record-keeping, settlement and their destruction are in place. The CfPT recalls the need for the (harmless) destruction of expired drugs in accordance with the current legislation, including the MHLSP Order No. 9 of 06.01.2006 'On harmless destruction of expired drugs, counterfeit drugs, drugs of poor quality or drugs without (accompanying) documents of origin'. **The Council expresses its concern about the quality of the treatment of detainees in the light of this finding and reiterates the inadmissibility of releasing expired drugs.**

The CfPT reiterates the lack of internal procedures of organizing the provision of continuity of treatment for apprehended/detained persons (with different pathologies) as well as compliance with prescriptions of doctors of the 112 service. At the same time, the CfPT received credible allegations of the failure to provide dental care in cases of acute toothache, which can be considered a form of physical and psychological torture. **The continuity of treatment of tuberculosis, HIV infection and opioid addiction is not regulated and is frequently interrupted, and therefore can be considered ill-treatment.**

There are shortages in providing detainees with drugs, and more often than not relatives have to provide them with the necessary drugs (for example, detainees with diabetes or for antiretroviral treatment). The sums paid for drugs range from 1000 MDL to 3000 MDL per year. **The list of drugs to be purchased, approved by the relevant MIA Order, is not complied with.** Moreover, the list needs to be thoroughly revised, drugs subject to rigorous record-keeping should be excluded from it, while other drugs should be included in the list based on the statistical prevalence of diseases of people detained in TDIs.

Psychotropic drugs and drugs subject to rigorous record-keeping are kept in unsafe conditions - not in a locked safety box, in keyless cabinets of common use, and without special registers of rigorous record-keeping. Thus, the Council expresses its concern about the practices of prescribing and distributing drugs to detainees. Without effective medical control on consumption of medications and without monitoring adverse reaction with ensuring fast and effective intervention, situation can degenerate in cases of ill-treatment.

The confidentiality of medical data of apprehended persons is still not respected: the register for the provision of medical assistance to apprehended and arrested persons, which is filled out by the feldsher of the institution and includes confidential medical data such as **assigning the responsibility for the distribution of drugs to supervisory staff**, is freely accessible in the TDIs to non-medical staff.

Inmates who go on hunger strike are not provided with the required medical assistance, and the management of such cases in the TDIs is not regulated. In 2018 the CfPT found at least 6 cases which were recorded as hunger strikes in medical registers; yet the TDI staff did not take the necessary monitoring and management measures to respect the rights of the hunger strikers⁹². The CfPT recalls in this respect Recommendation No. R (1998) 7 of the Committee of Ministers, which lays down the basic principles in addressing hunger strike-related matters⁹³. In the case of a hunger strike, the authorities shall ask the doctor to intervene in order to prevent death, as soon as the patient shows a serious change in his/her consciousness. Moreover, there may be arbitrary situations of forced feeding, which in some circumstances are considered inhuman and degrading treatment.

Supervisors in the TDIs are unaware of the safe search rules, the concept of needing equipment for individual perquisition and the procedures to follow in case of accidental injury to prevent HIV infection and infection with other blood-borne diseases. Moreover, this is also provided in the Methodological Instruction on the intervention of the police in the prevention and control of HIV infection in the environment of high-risk infection groups, approved by GPI Order No.54 of 27 March 2015.

As in the previous Annual Report, the Council concludes that although there are medical registers in the TDIs, **the collection of primary data and a statistical analysis of the medical data at is not carried out at the institutional and central levels.**

The organizational safeguards and checks related to the medical assistance provided to detainees in the TDIs, including through the 112 service, are not in place. The Register of Visits to Higher Authorities does not contain entries on healthcare audits. **The quality of the prescribed treatment as well as the observance of the clinical diagnostic and treatment protocols applied to persons in isolators is not subject to regular checks by the medical service of the Ministry of Internal Affairs or by other competent institutions.** Accordingly, **the Council considers that the rights of detainees to quality healthcare provision are seriously violated and the Ministry of Internal Affairs does not provide any organizational safeguards in this regard.**

⁹² European Court of Human Rights, Factsheet – Hunger strikes in detention (August 2015), available at: https://www.echr.coe.int/Documents/FS_Hunger_strikes_detention_ENG.pdf

⁹³ Council of Europe, Committee of Ministers, Recommendation No. R (98) 7 Concerning the Ethical and Organisational Aspects of Health Care in Prison (Apr. 8, 1998) §62 and 61, available at: <http://hrlibrary.umn.edu/instree/coerecr98-7.html> These paragraphs state:

“(1) Hunger strikers should be given an objective explanation of the harmful effects of their action upon their physical well-being, so that they understand the dangers of prolonged hunger striking.

(2) The clinical assessment of a hunger striker should be carried out only with the express permission of the patient, unless he or she suffers from serious mental disorders which require the transfer to a psychiatric service.”

3.4. Situation in the places of detention at the Temporary Placement Centre for Foreigners, the Bureau for Migration and Asylum of the MIA



The Temporary Placement Centre for Foreigners (hereinafter referred to as the Centre) is a specialized agency subordinated to the competent authority for foreigners (the Bureau for Migration and Asylum), and deals with the temporary accommodation of foreigners declared unwanted or subject to a measure of return or expulsion and held in public custody⁹⁴. Foreigners in public custody are placed in the Centre subject to a court ruling, until the measures of expulsion from, readmission to, or return from the Republic of Moldova are taken.

The Centre can admit 120 detainees. It is funded from state budget allocations approved for the Ministry of Internal Affairs as well as from other sources of funding that are not contrary to the legislation in force.

In the period under review, the Council for the Prevention of Torture made 3 preventive visits to the TPCF. Overall, during the visits, the CfPT found that all visited spaces were clean. Detention spaces comply with the minimum standards of detention in terms of size, natural/artificial ventilation and artificial/natural light etc.

⁹⁴ REGULATION of the Temporary Placement Centre for Foreigners, available at: <http://lex.justice.md/md/339402/>

a) Treatment of detainees

The CfPT found a **formal system of explaining the rights of detainees** and how to submit complaints/notices to the authorities. The CfPT draws attention to ensuring compliance with the standard on the explanation of the rights and responsibilities of the TPCF detainees in a language that they understand, including on the explanation of how to submit/send complaints to the Ombudsperson, Prosecutor's Office and other institutions.

Another finding of the CfPT is **the quality of translations**, and the existence of allegations of informal payments for interpreters' services⁹⁵ (after trial, detainees were charged with interpretation fees notwithstanding that the criminal investigation authority was obliged to provide interpretation services in accordance with the Code of Criminal Procedure of the Republic of Moldova).

The Council notes shortcomings reported by the detainees as regards the issue of **their detention, lack of apprehension report, inappropriately furnished offices of regional divisions of the Bureau for Migration and Asylum or their location in the offices of the Border Police Department**. Detainees stated that they had to sleep on chairs⁹⁶ and no explanation/reason for their apprehension or placement in temporary detention was given⁹⁷.

People shall not be held in the Centre for more than 6 months. **Nevertheless, there were cases, when the authorities failed to solve the issues of documentation/repatriation within this 6-month period and the person had to be released.** In this context, the CfPT expresses its concern about such cases involving the detention of a person for 6 months without reasonable justification.

b) Safeguards against torture and other ill-treatment in the isolator of the military garrison

Notification of detention:

All placed persons were able to inform a third party about their detention and the place of detention. Everyone has access to a phone. Telephone devices are available in each hall and on each floor. Mailboxes are also available and are installed on stairs

⁹⁵ In the case of *Luedicke v. the Federal Republic of Germany* the Court recalled that the right protected by Article 6(3) ... entails, for anyone who cannot speak or understand the language used in court, the right to receive the free assistance of an interpreter, without subsequently having claimed back from him the payment of the costs thereby incurred. See: *Luedicke, Belkacem and Koç v. Germany* (App no. 6210/73; 6877/75; 7132/75) 10 March 1980.

⁹⁶ *Erdogan Zagiz v. Turkey* the Court found that the applicant had complained that he had been forced to sit down on a chair for three days.

⁹⁷ In the case of *Fox, Campbell and Hartley v. United Kingdom* the Court pointed out that paragraph 2 of Art. 5 of the Convention sets out an elementary guarantee: any arrested person shall know why he/she was deprived of his/her liberty by being informed in a simple, accessible language of the factual and legal grounds for his/her arrest. See: *Fox, Campbell and Hartley v. The United Kingdom*, (App. No. 12244/86; 12245/86; 12383/86), 30 August 1990.

on the way to the courtyard used for walking. The practice of the administration to provide residents with the possibility to contact the family in their home country including through electronic means of communication such as Skype, Viber, Facebook, etc. is welcome. However, the CfPT notes that there are no registers in this respect.

Access to a lawyer:

During the discussions with the residents and officers, the CfPT found that **access to a lawyer was provided during both apprehension and detention**. Lawyers' services are contracted through the NLAC and are also co-facilitated by certain NGOs. No complaints about the failure to provide this safeguard were received.

Access to a medical examination

Since 30.11.2013, **medical assistance for persons held in custody of the Centre is provided by the medical service of the Border Police Department**. Thus, persons placed in the Centre are accompanied by the staff of the medical and public health department of the Centre for Supply and Maintenance of Buildings of the Border Police Department of the MIA and benefit from medical consultations and laboratory investigations according to the doctor's instructions and the state of health. If treatment is needed, prescriptions are issued and drugs are released to the resident free of charge by the pharmacy of the institution.

The Centre has a medical room and a medical isolation unit, which has been recently renovated, and is provided with necessary furniture and equipment. The medical documentation is kept securely in a lockable cabinet. Quarterly and annual statistical reports are submitted on the health condition of foreigners and the diagnosed diseases to the Centre's management and the Bureau for Migration and Asylum.

The positions of the medical staff in the Centre were reduced, and therefore access to a medical examination upon each entry to and exit from the institution is not provided and is replaced by a medical check-up similar to that one for employment, which is carried out within the Border Police medical service located outside the TPCF.

Bodily injuries are not documented and reported according to the (Joint) **Order No. 77** of 31.12.2013 of the Prosecutor General's Office on the approval of the Regulation on the procedure for the identification, registration and reporting of alleged cases of torture, inhuman or degrading treatment.

Only 69% of persons placed in the Centre, for example in 2017, passed an x-ray examination for tuberculosis, which is a compulsory examination under the MIA Order No. 345 of 24.11.2014 regarding the approval of the instruction on the manner of referral, reception, medical examination and treatment of asylum seekers, beneficiaries of humanitarian protection and foreigners placed in the Centre for Placement of Foreigners.

The investigation of HIV infection is included as a mandatory criterion for placement in the Centre⁹⁸, which is contrary to both the current legislation of the Republic of Moldova and international recommendations. Principle 9 of the United Nations Basic Principles for the Treatment of Prisoners states: “Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation”, and health services in prisons shall have professional, ethical and technical standards equivalent to those applicable to public health services in community.⁹⁹ Thus, international recommendations expressly provide for detainees to have access to HIV testing, viral hepatitis and sexually transmitted infections at any time during detention. The mandatory nature of infectious disease control in places of detention is more connected to the administration’s commitment and the imposition of standard operational procedures, without limiting the patient’s rights.

Confidentiality of personal medical data is not provided, as all the MIA’s orders stipulate that the medical examination shall be carried out in the presence of medical staff and entries in the medical registers shall be countersigned by non-medical staff.

There is still a practice of entering the results of medical consultations and/or injuries only in the ambulatory medical record, without making any entries of the same in separate registers. The primary medical examination sheet of newly arriving persons is not completed despite the obligation to do so as laid down in the MIA Order.

c) Material conditions of detention

Living spaces are large and spacious, well arranged and equipped. The courtyard for walks is large and accessible and persons enjoy long walks.

Dietetic nutrition of the residents is not provided in accordance with their disease. Nutrition is provided by catering service providers. At the same time, there is the problem of the lack of a regulatory act that would stipulate nutritional standards for residents as well as the way of providing nutrition in special circumstances (dietetic nutrition of diseased persons and/or with due regard to religious beliefs).

The Centre’s residents may use a bathroom as well as watch TV. There are spaces specially arranged for religious rituals (separately for Christians and Muslims).

⁹⁸ The provisions of §13(4) of the MIA Order No. 354 of 31.12.2015 on the approval of the Internal Instructions of the Temporary Placement Centre for Foreigners as well as § 3 of the MAI Order No. 345 of 24.11.2014 on the approval of the instruction regarding the manner of referral, receipt, medical examination and treatment of asylum seekers, beneficiaries of humanitarian protection and foreigners placed in the Placement Centre for Foreigners, expressly stipulate the performance of the mandatory primary medical examination for the purpose of prophylaxis of diseases that are a threat for public health (tuberculosis, HIV infection, viral hepatitis) with their recording in the ambulatory medical card of the patient and subsequent medical supervision.

⁹⁹ UN Basic Principles for the Treatment of Prisoners, adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990 accessible at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/BasicPrinciplesTreatmentOfPrisoners.aspx>

d) Asylum seekers

A problem identified by the CfPT relates to the detention of asylum seekers. Given that placing in public custody in the TPCF of a person is a measure of restricting the freedom of movement and a measure of removing foreigners from the Republic of Moldova, and the asylum institution is an exceptional measure of protecting persons who report a persecution in their country of origin, **placement or extension of detention of asylum seekers in the TPCF is both a procedural and error in substance.**

Thus, Law No. 270 on asylum in the Republic of Moldova¹⁰⁰ provides for the following:

- ▶ Art. 11(1): 'No asylum seeker shall be expelled or returned from the border or from the territory of the Republic of Moldova';
- ▶ Art. 9(2): 'Asylum seekers shall not be punished for illegal entry to or stay in the Republic of Moldova';
- ▶ Art. 28: 'The asylum seeker shall have the following rights: a) not to be returned or expelled until the asylum application has been resolved, b) to stay in the Republic of Moldova until the expiration of 15 days from the date on which the decision to reject the application has become final, unless the application for asylum has been rejected under an accelerated procedure, in which case the foreigner shall leave the Republic of Moldova on the date on which the decision to reject the application for asylum remains irrevocable.'

e) Medical assistance

The classificatory of medical registers as well as the approval of the ambulatory medical record, of standard models, are subject to the MIA Order No. 354 of 31.12.2015 *on the approval of the Internal Instructions of the Temporary Placement Centre for Foreigners.*

There are inconsistencies between the legal provisions with respect to HIV infection applied within the MHLSP and the departmental healthcare institutions subordinated to the MIA, which seriously affect the rights of the person. Residents of the TPCF are automatically subjected to HIV testing, but there are no mechanisms to ensure antiretroviral therapy. There are no provisions in the institution that explain the mechanism of providing the antiretroviral therapy and other HIV support and prevention services to persons held in custody.

The consent form attached to the ambulatory medical record is frequently not signed by the person being examined, and is available only in Romanian, making **it a formality in view of the fact that the citizens placed in the institution are not Romanian native speakers.**

The CfPT welcomes the existence of the well-equipped medical isolation unit for the placement of persons with infectious diseases. However, practices of segregating HIV-positive persons are found, which is worrying from the point of

¹⁰⁰ Please see: <http://lex.justice.md/md/330978/>

view of discrimination based on health status. Persons should be isolated due to a risk of infection in the institution exactly in the same way as in the community and the isolation of inmates on the grounds that they suffer from HIV or hepatitis B and C¹⁰¹ is not justified.

The **morbidity analysis** as well as the investigations for the residents are carried out quarterly and annually by the Border Police medical service, informing the management of the Centre and the BMA. **Indicators specific to places of detention are not collected, such as the documentation of bodily injuries and persons on hunger strike.**

The quality of medical assistance, including compliance with clinical protocols and national guidelines, is not audited by the competent authorities. Accordingly, there are elements of the failure to respect the right to health of the TPCF's residents on the part of the medical service of the Border Police of the MIA.

3.5. Situation in the places of detention of the National Anti-Corruption Centre



¹⁰¹ Council of Europe, Prison health care and medical ethics: A manual for health-care workers and other prison staff with responsibility for prisoners' well-being (2014), available in English at: <https://rm.coe.int/prisons-healthcare-and-medical-ethics-eng-2014/16806ab9b5> and in Romanian at: <https://rm.coe.int/manual-on-prisons-healthcare-and-medical-ethics-rom-2016/16806ab9b4>

Representatives of the National Anti-Corruption Centre/isolator also showed themselves to be responsive during the visit of the CfPT in 2018 and thereafter, as they provided the requested information. Employees of the National Anti-Corruption Centre are informed about the mandate and the duties of the Council for the Prevention of Torture. Information on the CfPT's mandate is also available on the notice board at the entrance to the isolator.

During the visit of the CfPT in 2018, significant improvements were noted in the NAC Isolator in respecting the rights of persons deprived of their liberty, in particular due to putting in place most of the CfPT 2017 recommendations.

Unlike in 2017, conditions of detention improved in 2018. As a result of the previous CfPT recommendations submitted to the NAC, several changes were made including:

- ▶ Total insulation of the sanitary unit in each cell (up to the ceiling), and installation of a sealed tight door.
- ▶ Adaptation of beds for the elderly by installing metal stairs to reach the top of each double-bunk bed.
- ▶ Equipping cells with centralized ventilation systems, including with inverter air conditioning units.
- ▶ Adaptation of spaces for walks in rainy weather for prisoners.
- ▶ Procurement of specialized vehicles for the escort of apprehended/detained persons.

However, there are still areas which can be improved. There is no clear mechanism of correspondence, as letters are collected by representatives of the NAC Isolator and then posted. These issues should be revised in the light of the confidential complaints' procedure. Likewise, the procedure of confidential telephone conversations should be revised. The location of the telephone receiver on the premises of the NAC isolator does not allow for confidentiality.

The access to confidential medical examination of apprehended persons and the security of personal medical data require greater attention.

The CfPT also emphasizes that persons held in NAC custody should be aware about what is happening to them, what they can expect in terms of procedures, and what are the limits of their action.

3.6. Situation in the places of detention in the Chisinau Garrison Command within the Ministry of Defence



The Isolator of the Chisinau Military Garrison is located in the city of Chisinau and is intended for disciplinary isolation of service members from all over the Republic of Moldova, both conscripts and enlisted service members, for misconduct while performing tasks arising from their enlistment and conscription.

Arrest is one of the most severe sanctions, and should only be applied if the measures taken by the commander (chief), within the limits of his/her competence, will not have the intended results. Arrest is applied to service members on various grounds, including for an attempt to go absent without leave, for the refusal to show required identification documents (misconduct), immoral behaviour, drunkenness, hooliganism and other serious violations, or repeated offences (misconduct).

If a service member breaches military discipline or public order, the commander (chief) shall remind him/her of the military service obligations and, if necessary, may impose a disciplinary sanction for up to 7 days. Within his/her disciplinary authority, he/she may impose any sanction which, in his/her opinion, can have a maximum educational effect on the service member who committed the offence (misconduct). If the commander (chief) considers that his/her disciplinary authority does not match the seriousness of the offence committed by the subordinate, he/she submits a request to a senior commander (chief) to impose a sanction subject to the disciplinary

authority of the senior commander (chief). Soldiers and sergeants may be subject to a disciplinary sanction of arrest for up to 7 days¹⁰², which, depending on the position of the superior, can last a different number of days. The company commander may impose a period of arrest for up to 3 days, the battalion commander - for up to 4 days, the commander of regiment and the brigade commander - for up to 5 days. Subordinates may be subject to disciplinary sanction of arrest for up to 5 days. The battalion commander has the right to impose a period of arrest for up to 3 days, and the regiment commander and brigade commander for up to 5 days. Officers are not subject to the disciplinary sanction of arrest.

When determining the type of disciplinary sanction and its severity, account shall be taken of the nature of the offence, the circumstances in which it was committed, its consequences, the previous behaviour of the guilty person, and the length of service and his/her knowledge about the internal rules.

The service member may appeal the sanction by petitioning a hierarchically higher commander (chief) within 30 days from the date of its imposition. If his/her challenge is not resolved, the service member may challenge the disciplinary sanction in court as provided for in the legislation in force.

a) Ill-treatment of detainees

The disciplinary isolator has 10 cells for the detention of soldiers and sergeants (20 places) and a cell for enlisted service members (4 places). Detention conditions in these spaces are substantially different on the basis of differences in military grade.

Following a preventive visit in 2018, **the CfPT did not directly receive specific allegations of acts of torture or violence by detainees/soldiers while serving their disciplinary sanction.** Based on the discussions with the unit administration representatives, it was concluded that in recent years there have been no complaints or cases of violence/torture of service members subjected to disciplinary sanction.

The Council determined, however, that there exists a system of sanctions of arrest which is imposed arbitrarily on subordinates by superiors for violations of discipline or internal order, as the sanction of the arrest is imposed differentially on soldiers, non-commissioned officers and officers. In the opinion of the CfPT members, these situations can lead to abuses and should therefore be eliminated and a single criterion for the imposition of sanctions should be introduced.

Another feature of the treatment of prisoners is their relatively short period of detention (not longer than 5 days), during which prisoners still engage in military exercises, carry out military educational activities and comply with a pre-defined daily schedule.

¹⁰² LAW No. 52 of 02.03.2007 on the approval of the Military Discipline Regulation, available at: <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=325144>

There is, however, no clarity about the differentiated treatment of various detainees (namely, enlisted service members and conscripts) with regard to the daily regime (differences are noted in the schedule of activities for these 2 categories of service members).

The reasons for the imposition of the disciplinary sanction of arrest are many, and in the cases encountered in the first 6 months of 2018, included 41 cases of use of alcohol and other prohibited substances. In 33 other cases the reason for arrest was the use of mobile phones and leaving the military base without permission, while in 22 cases the stated reason was bullying.

Other reasons behind the disciplinary sanction of arrest imposed on both conscripts and enlisted service members are:

- a) Unauthorized absence from the military unit, post, or desertion;
- b) Violation of the guard service rules;
- c) Violation of the internal service rules;
- d) Violation of the daily schedule, the fire safety rules;
- e) Use of alcoholic beverages, narcotic substances, smoking in inappropriate places;
- f) Bullying;
- g) Delayed return from leave, unjustified absence, theft of military property;
- h) Violation of rules of custody, simulation, disobedience, insulting the guard staff.

The severity of the imposed disciplinary sanction increases when the person committed several violations or was engaged with others in a violation of military discipline, public order, committed a violation during a mission, during the day service/activity, or in a state of alcoholic or drug intoxication. The Council also considers that there is discrimination based on health status (i.e. drug or alcohol addiction), as this leads to a more severe punishment for an offence committed by people in such a condition. In the absence of treatment programmes for addiction to psychoactive substances, or at least of adequate medical assistance, these situations can potentially degenerate into ill-treatment cases. Imposing a disciplinary sanction on intoxicated service members as well as requesting explanations from them should be carried out once they have sobered up or after the elimination of the influence of drugs. For this purpose, they may be, as appropriate, held in custody or in a cell for temporarily apprehended persons for up to 24 hours, before a decision is made about their legal responsibility. The CfPT considers that this is ill-treatment due to a lack of adequate medical assistance/supervision coupled with the lack of medical staff in the Garrison.

b) Safeguards against torture and other ill-treatment in the isolator of the military garrison

The Council for the Prevention of Torture finds that the legal framework and the regulatory acts do not expressly provide for the provision of fundamental safeguards for people subject to the disciplinary sanction of arrest.

Access to a lawyer

The lack of a mechanism enabling the detainee to access a lawyer is a concern. Therefore, ***access to a lawyer is not guaranteed.*** In particular, this aspect is important when the decision seeks to challenge the legal document/decision whereby the disciplinary punishment of isolation in the Isolator of the Military Garrison is imposed. The lack of real and direct means to challenge the measures, whereby the deprivation of liberty is applied, is a violation of human rights.

Informing relatives/friends about the fact and place of detention

Detainees are unable to notify others of the fact of detention. This problem is fuelled by the fact that detainees were not given the possibility to contact a family member to notify them of the place and the fact of detention, as well as ***the absence of the possibility for detainees to meet a family member during detention.***

There is no possibility for the detainees to communicate through postal services. The administration representatives reported that such a service is not available to detainees, precisely because they are held in isolation, and given the nature of the imposed punishment, any communication with the outside world shall be forbidden.

In the light of the above, the CfPT considers that the person subjected to such a disciplinary sanction is virtually totally isolated.

The CfPT could not determine if there existed in the isolator a clear procedure/mechanism applicable in cases of confidential complaints filed to prosecutors, Ombudsperson or other competent authorities about ill-treatment/allegations of torture in the isolator or at the time of apprehension.

Access to a medical examination

The medical examination at the time of placement in and exit from the isolator is not carried out due to the empty vacancy of the position of feldsher since 2015.

c) Situation of detainees within the isolator

The CfPT noted that, as a whole, the spaces for the disciplinary isolation of service members were clean and met the international standards of detention for a short period of time. In most cells, artificial light was adequate for reading. The ventilation system was operational, but it was not possible to determine the hours of its operation. Sanitary units were located in separate spaces and inmates had to ask the supervisor to allow them to enter the units in order to meet their personal needs. Nutrition was provided according to the schedule and the food was cooked by another subdivision of the Military Commander and delivered depending on the number of detainees (at least 3 times a day).

The CfPT did not find any internal or external mechanism for the inspection or monitoring of the respect for the rights of persons deprived of their liberty.



3.7. Situation in the places of detention within the National Prison Administration subordinated to the Ministry of Justice

During 2018, the Council for the Prevention of Torture focused on 8 institutions subordinated to the National Prison Administration of the Ministry of Justice. Following the visits, 9 reports on the visits undertaken by the Council were produced. The CfPT visited Chisinau Prison No. 13¹⁰³, Lipcani Prison No. 2, Cricova Prison No. 4, Taraclia Prison No. 1, Leova Prison No. 3, Bender Prison No. 12, Bender Prison No. 8, and made 2 visits to Cricova Prison No. 15 (in May, December), and Goian Prison No. 10 for juveniles.

Furthermore, in the period from 5 June to 11 June 2018, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) made an ad-hoc visit to the Republic of Moldova. The visit was focused exclusively on the prison system¹⁰⁴.

3.7.1. Situation of adults in prison institutions

A) Treatment of adult prisoners in prison institutions

a) Interaction of adult male prisoners with the administration and employees of places of detention.

During the monitoring visits, **the CfPT did not receive any allegations of torture and other ill-treatment by prison staff against adult male prisoners**, except for the cases in Prison No. 8 and Prison No. 12 in Bender municipality. It should be noted that in 2018 (as in 2017) **the CfPT received numerous allegations of verbal abuse of male prisoners (in all visited prisons)**.

As in the previous Annual Report, the CfPT notes that relationships between certain prisoners and staff members are quite tense, on the other hand, the relationships between other prisoners and prison staff are overly good. The latter enjoy better living conditions (larger cells and private meeting rooms), which suggest a differentiated treatment of prisoners and corruption in some prisons.

At the same time, **the CfPT finds another growing phenomenon - attacks by prisoners on officers** (18 cases in total, including 4 cases of attacks by juveniles). For all cases, appropriate materials were drafted, and criminal cases were opened only in 15 such cases. In all revealed instances prisoners were subjected to disciplinary sanction(s). In such situations, **the CfPT notes the absence/ineffectiveness of the mechanisms of bringing detained offenders to accountability, and highlights several causes of this**

¹⁰³ Report on the preventive visit to Chisinau Prison No.13, available at: http://ombudsman.md/wp-content/uploads/2018/10/raport_p1304012018_0.pdf

¹⁰⁴ Report to the Government of the Republic of Moldova on the visit to the Republic of Moldova carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 11 June 2018 (CPT/Inf (2018) 49), available at: <https://rm.coe.int/16809022b9>

phenomenon. During the monitoring visits, the CfPT received information from many staff members of the prison system that they are often insulted and intimidated by prisoners. After each case, they produce reports, according to the legislation in force, which, however, do not result in any disciplinary sanctions, **creating the impression of corruption in some prisons.** Even if disciplinary proceedings or criminal cases are instituted, they do not result in the imposition of specific sanctions.

The CfPT is concerned about staff shortages in most prisons in Moldova. This situation is particularly alarming at night-time in some prisons where more than 400-500 prisoners are supervised by 4-5 guards only. This leads to enhanced criminal subculture in the prison system and sometimes to the dependence of staff members/ heads of some prisons on informal leaders among prisoners. This fact and concern was also noted by the European Committee for the Prevention of Torture in June 2018¹⁰⁵.

The CfPT is concerned about the number, the manner of conduct, recording and the consequences of searches in prison institutions in the country. During the monitoring visits, the prisoners in Taraclia Prison No. 1 and Chisinau Prison No. 13 alleged that during searches in 2017, with the specialized support of the 'Pantera' special forces unit ('Pantera' Detachment), a number of the prisoners were taken out of the cell aggressively. Some prisoners fell down in the process. Other prisoners stated that, none of them were left in the cells during these searches, and thereafter they could not locate their personal belongings. The searched persons did not submit any complaints to the administration, stating that their complaints were not related to the prison staff, but to the employee of the 'Pantera' special forces unit. The latter were masked and the prisoners could not identify the persons who assaulted them. According to the allegations of several previously searched prisoners, on occasion searches are carried out as a 'prophylaxis'.

The CfPT draws the attention of the employees of subdivisions of the National Prison Administration that, acceding to the Nelson Mandela Rules,¹⁰⁶ searches shall be conducted with respect to the inherent human dignity and the privacy of the person being searched, as well as with the principles of proportionality, legality and necessity. The Council urges the NPA to minimize 'prophylactic' searches as much as possible.

b) Relations between prisoners - violence among prisoners

The CfPT further notes the existence of informal relationships among prisoners caused by the phenomenon of criminal subculture, which persists in most of the institutions concerned, and which augments the intimidation and violence

¹⁰⁵ Report to the Government of the Republic of Moldova on the visit to the Republic of Moldova carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 11 June 2018 (CPT/Inf (2018) 49), available at: <https://rm.coe.int/16809022b9>

¹⁰⁶ The Romanian version of the revised Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) (2015) is available at: http://www.avp.ro/mnp/legi/ansamblu_reguli_mnp.pdf

of prisoners, especially those with hierarchically much lower status in the prison subculture due to their categorization as being 'humiliated', 'in-determined' or for having turned their backs on unofficial prison subculture law. In particular, the CfPT's concern refers **to the assumption of a 'tacit acceptance' by the prison administration of this phenomenon. The CfPT received many allegations involving informal prison leaders in maintaining order among prisoners in the facilities.** A significant number of prisoners met in Cricova Prison No. 15, Taraclia Prison No. 1, Lipcani Prison No. 2, Cricova Prison No.4, Chisinau Prison No. 13 claimed that they were threatened, harassed or physically assaulted by other prisoners. The CfPT found indirect evidence of these statements in almost all prison institutions supported by medical documentation (such as medical files and registers of traumatic injuries). For example, in 2017, in Cricova Prison No. 15, 82 cases of medical examinations for traumatic injuries were recorded (including 19 self-inflicted injuries), and until 18 December 2018 - 57 cases (including 16 cases of self-harm). **The authorities' response did not contain the steps needed to find solutions to create a safe environment for prisoners, including for an effective investigation to be undertaken into the reasons and causes of the injuries of prisoners.** At the same time, entries evidencing violence were found, such as periorbital ecchymosis, fractures of the paranasal bone, mandibular fracture, upper limb trauma, politraumatism, traces of suicidal attempts of strangulation, and trauma to external genitalia. All these findings point to shortcomings in the documentation and recording of cases of traumatic injuries in prisoners and possible acts of violence as well as the absence of effective investigations into their causes by authorities.

The Council notes that the CPT, after visiting the Republic of Moldova in September 2015, found the existence of criminal subculture and evidence of violence among prisoners in Soroca Prison No. 6 and, to a lesser extent, in Chisinau Prison No. 13 and Rezina Prison No.17.¹⁰⁷ **After the visit in June 2018, the CPT found that the Republic of Moldova had made little or no progress in the areas concerned in the previous reports. This encountered reality is predominantly** related to the widespread informal hierarchy among prisoners and interpersonal violence¹⁰⁸.

It is relevant to note that during 2017, a team of international and national experts, supported by the Council of Europe (CoE), developed and submitted to the Ministry of Justice and the Department of Prison Institutions, a report titled Baseline Study into Criminal Subculture in Prisons in the Republic of Moldova¹⁰⁹.

¹⁰⁷ Report of the Government of the Republic of Moldova on the visit to the Republic of Moldova by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 14 to 25 September 2015 (CPT/Inf (2016) 16) §52-57, available in English at: <https://rm.coe.int/16806975da>

¹⁰⁸ Report of the Government of the Republic of Moldova on the visit to the Republic of Moldova by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 11 June 2018 (CPT/Inf (2018) 49) available in English at: https://www.ecoi.net/en/file/local/1454825/1226_1545136703_2018-49-in-eng-docx.pdf

¹⁰⁹ Council of Europe, Baseline study into Criminal Subculture in Prisons in the Republic of Moldova (2018), available in English at: <https://rm.coe.int/criminal-subculture-md-en-/1680796111>

The CfPT notes that the existence of the problem of violence among prisoners was also recognized by the staff of the prisons concerned. Prevention of violence among prisoners is often reduced only by separating from the wider prison population certain categories of prisoners (such as hierarchically lower status prisoners, as previously explained). ***Prisoners who are potentially exposed to the risk of being physically assaulted are, in most cases, separated from the other prisoners, according to Art. 206 of the Code of Execution. The CfPT notes that this practice can solve the prisoner's problems in the short-term, but has long-term negative effects.***

The CfPT expresses its concern about the fate of persons placed in safe conditions set apart from the wider prison population, as the entry made in registers states that this occurs 'on their own initiative'. Most often, they are placed in a disciplinary isolation unit until their release or transfer to other institutions. A return to the common regime is rare. The vast majority of prisoners claimed that the reasons for self-isolation are conflicts with the criminal subculture in the institution and the threat to their personal security.

The seriousness of situation on holding prisoners under Article 206 of the Code of Execution can be appreciated by simple comparison with persons held in temporary police isolation detention. In such conditions persons can be held for no longer than 72 hours due to the isolated nature of detention. Yet prisoners held under Article 206 experience comparable conditions of detention, namely restrictions are imposed on their ability to exercise and they are not free to move throughout the prison facility, including no access to certain teaching, psychological or spiritual activities, and to be allowed to walk only one hour a day. ***The CfPT draws the attention of the responsible authorities that the separation of persons at the risk of being physically assaulted is not in itself an effective remedy to mitigate the criminal subculture in the prison environment.***

The CfPT further encourages the responsible authorities to take all necessary steps in order to develop dynamic security throughout the prison system in the Republic of Moldova, according to the Recommendation Rec(2003)23 of the Committee of Ministers of the Council of Europe to member states on the management by prison administrations of life sentence and other long-term prisoners. Dynamic security means that frontline prison staff are trained and encouraged to develop good personal relationships with prisoners, to know and understand them as individuals, to treat them with sympathy, help to solve their personal problems, and to have good dialogues with them. Prisoners have the most frequent ongoing contacts with frontline staff. The nature of these daily interactions with this level of staff greatly influences the behaviour and attitudes of prisoners. Positive interactions tend to reduce destructive behaviour and attitudes, and to facilitate constructive work with prisoners. In addition, dynamic security provides the possibility of a warning before an

unwanted incident occurs. In this way, the prison staff can take preventive measures to prevent an imminent incident¹¹⁰.

A positive aspect identified by the members of the CfPT is the low level of criminal subculture influenced informal relationships among prisoners in Prisons No. 8 and No. 12 in Bender municipality. The low level of informal relationships in these prisons is due, in the Council's opinion, to a number of factors including: (1) the relatively small number of prisoners in the prison versus the number of available places; (2) the adequate number of supervisors/staff members versus the number of prisoners; (3) the majority of prisoners come from socially vulnerable groups of the population; and (4) the lower possibility of bringing prohibited items into the prisons due to the location of the institution and the external monitoring by militia police of the *de facto* Transnistrian authorities. Due to the sufficient number of prison staff members, tensions/violence between prisoners are visibly relaxed and escalations are quickly resolved by the administration, even without the specialised support of the 'Pantera' special forces unit. Thus, the CfPT did not find any complaints about violence among prisoners.

c) Disciplinary procedures applied to adult prisoners

The CfPT further notes the excessive application of the sanction of limiting the contact with the external world (such as the suspension of the right to visits, receive parcels, and to make telephone calls). Prisoners in Taraclia Prison No. 1, Chisinau Prison No. 13 and Cricova Prison No. 4 highlighted this problem. Following the consultation of the registers, the CfPT confirmed the statements of the prisoners. The CfPT found direct evidence of these statements almost in all prison institutions, confirmed by activity reports of the institutions concerned. For example, in 2018 in Cricova Prison No. 4, 812 disciplinary sanctions were imposed on prisoners, the number of disciplinary sanctions was twice as high as officially documented. The prevailing number of disciplinary sanctions included the suspension of the right to visits for up to 3 months - 299 cases, and the suspension of the right to receive parcels - 184 cases. Analysing the Summing-Up Activity Report on the activity of the prison administration system for 2018¹¹¹, the CfPT notes that *the disciplinary sanction by suspending the right to visits for a period of up to 3 months (2,791 times) was imposed on the prisoners 3 times more often than the permission to have short- and long-term additional visits (895 times).*

¹¹⁰ Recommendation Rec(2003)23 of the Committee of Ministers to member states on the management by prison administrations of life sentence and other long-term prisoners §73, available at: <https://pjjp-eu.coe.int/documents/3983922/6970334/CMRec+%282003%29+23+on+the+management+of+life+sentence+and+other+long+term+prisoners.pdf/bb16b837-7a88-4b12-b9e8-803c734a6117>

¹¹¹ The Romanian version of the Summing-Up Activity Report is available at: <https://drive.google.com/file/d/1toZqSF7C1ZwAT5Adm-CB7bq8x-TX6RpS/view>

In this regard, the CfPT once again draws the attention of the prison staff to the CPT standards¹¹²: “[...] It is very important for inmates to keep reasonably good contact with the outside world. Above all, inmate should be given the possibility to keep their relationship with family and close friends. The basic principle should be promoting the contact with the outside world; any limitation of such contact should be based solely on serious security considerations or on available resources. [...]”. The revised Minimum Standard Rules for the Treatment of Prisoners (Nelson Mandela Rules) should be also taken into account¹¹³.

The Council draws the NPA’s attention to the CPT’s recommendation drawn up in response to its June 2018 visit¹¹⁴: “[...] Ensure that the disciplinary punishment of inmates does not lead to a total prohibition on family contacts and that any restrictions on family contacts as a form of disciplinary punishment are applied only when the offence relates to such contacts [...]”.

d) Other exceptional situations

The CfPT is concerned that **the phenomenon of suicide attempts and self-harm among prisoners still exists in the prison administration system**. Analysing the Summing-Up Activity Report of the prison administration system for 2018¹¹⁵, the CfPT notes a positive trend due to **the reduction in the number of cases of self-harm**. During the period under review 610 cases (2017-739) were recorded. Thus, an increase in suicide cases - 6 (2017-3) and suicide attempts - 15 cases (2017-13) was revealed.

The CfPT notes that measures taken to reduce self-harm and suicide attempts among prisoners by specialists in prisons are not sufficient. The CfPT emphasized that to overcome this widespread problem, consolidated systemic efforts are needed, encompassing new approaches relevant to the context of the institution as well as the emotional needs and individual problems of prisoners at risk of suicide.

The CfPT further notes that conditions in most of the visited prisons are a source of stress that can lead to further suicidal thoughts. Conditions of detention in prisons do not provide a therapeutic environment for prisoners. Moreover, **prisons have no rooms for individual and group activities of psychotherapy**. It is clear for the CfPT that, despite a number of positive initiatives, psychologists **do not have the standard tools to diagnose the risk of self-harm and suicide attempts among prisoners**.

¹¹² CPT Standards, Romanian version available at: <https://www.coe.int/en/web/cpt/standards?>

¹¹³ Revised Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), available at: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf

¹¹⁴ Report of the Government of the Republic of Moldova on the visit to the Republic of Moldova by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 11 June 2018 §57 (CPT/Inf (2018) 49), available in English at: https://www.ecoi.net/en/file/local/1454825/1226_1545136703_2018-49-in-eng-docx.pdf

¹¹⁵ The Romanian version of the Summing-Up Activity Report is available at: <https://drive.google.com/file/d/1toZqSF7C1ZwAT5Adm-CB7bq8x-TX6RPS/view>

Psychologists in prisons do not have necessary training in psychotherapy and therefore cannot provide quality services to prisoners prone to self-harm and suicide.

The CfPT expresses its concern about the practice of imposing disciplinary sanctions on self-harming prisoners (self-aggression)¹¹⁶ which is internally considered to be a very serious transgression, and, as such, prisoners are subject to disciplinary sanctions under Art. 245 of the CE of the Republic of Moldova. The CfPT is concerned about this situation since self-harm is a complex phenomenon and can be a protest, a failed act of suicide, and an unconscious action resulting from depression or mental illness. Accordingly, the imposition of disciplinary sanctions owing to these considerations can be interpreted as abusive and a practice requiring a legislative review to exclude its use. The Council draws the NPA's attention to the Bangkok Rules¹¹⁷ of 21 December 2010, namely Rule 6 (2) "[...] Studies of prisoner suicides have also indicated that long-term sentences, single-cell use, mental disorders, substance abuse and a history of suicidal tendencies are associated with an increased suicide risk [...] Thus, prisoners who harm themselves may be considered at higher risk of attempting suicide than others [...]. The Council draws the NPA's attention to the CPT's recommendation developed following the June 2018 visit: [...] Revision of the approach to persons who cause bodily harm to themselves (recommendation for the whole prison system) [...]"

Another concern of the CfPT is **the phenomenon of refusing food (hunger strike) by prisoners in the prison system.** Analysing the Summing-Up Activity Report of the prison administration system for 2018¹¹⁸, the CfPT notes a positive trend as revealed by the **decreasing number of hunger strikes namely 779 cases** in the year in question (as opposed to 866 cases in 2017). The most frequent cases were recorded in Rezina Prison No. 17 - 106 cases, Balti Prison No. 11 - 113 cases and Chisinau Prison No. 13 - 81 cases.

The CfPT notes that the most frequent reasons invoked by prisoners to go on hunger strike are specifically related to certain procedures governing the activity of the prison system: transfer to another prison or refusal to be transferred to another prison, and disagreements with the conditions of detention.

¹¹⁶ The Code of Execution of the RM, Art. 2422(8). The Romanian version is available at: <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=336538>

¹¹⁷ The Romanian version available of the Bangkok Rules is available at: https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf

¹¹⁸ The Romanian version of the report is available at: <https://drive.google.com/file/d/1toZqSF7C1ZwAT5Adm-CB7bq8x-TX6RpS/view>

B) Safeguards against torture and other ill-treatment of adult prisoners in places of detention in prison institutions

a) Access to a lawyer.

The CfPT considers access to a lawyer as a fundamental safeguard, including against torture and other ill-treatment. In this respect, the role of each lawyer in ensuring that the rights of prisoners are respected both by qualified assistance and the active role of challenging/denouncing any allegations of torture or other ill-treatment is underscored. *In this respect, the CfPT cannot be certain that, when lawyers receive information or find traces of violence on their client's body, they notify immediately the regional prosecutor's office.*

During the monitoring visits, the CfPT received no allegations from prisoners that they had restricted access to a lawyer's services. However, due to the existing 'isolation' and 'obstacles' of/at Prisons No. 8 and No. 12 in Bender (the access is hindered/difficult due to the presence in Bender municipality of militia representatives from the left bank of the Nistru river), the services of a lawyer are not always available, so the access of prisoners to such services could be considered hindered, and remote contact of a lawyer is not always effective/possible in these cases.

The CfPT reminds the NPA that, according to Rule 61 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)¹¹⁹ and Point 23 of the European Prison Rules¹²⁰, the prison administration shall facilitate access of prisoners to the services of a lawyer or legal advice (at the expense of the prisoner or of the state, where appropriate). In addition, any restrictions by the authorities of the exercise by prisoners of their right of access to a lawyer could be considered a violation of the right to a fair trial under Article 6 of the ECHR.

b) Informing relatives/friends

Although the CfPT received selected complaints from prisoners about the manner of their transfer from other prisons and the lack of information about the new prison to which they were being transferred, ***once the prisoners entered the newly allocated prisons, they were able to inform their relatives/friends of the new place of detention.*** However, the Council did not find any mechanism or formal register on how to make phone calls/inform relatives about the detention of persons in prison institutions.

¹¹⁹ The Nelson Mandela Rules are available at: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf

¹²⁰ Please see: <https://rm.coe.int/16804c8d9a>. Please also see the Revised Commentary to Recommendation Cm/Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules (PC-CP (2018) 1 rev 2), 22 May 2018, available at: <https://rm.coe.int/pc-cp-2018-1-e-rev-2-epr-2006-with-changes-and-commentary-22-may-2018/16808add21>

c) Access to telephone conversations

During the monitoring visits, **the CfPT did not receive any allegations from prisoners that the access to telephone conversations is somehow restricted.** However, the existing practice in Prisons No. 8 and No. 12 in Bender of telephone conversations by prisoners does not ensure full access of prisoners to them. They can call only from a mobile phone (through the mobile phone provider *Unite*) provided by the prison administration. This reality is due to the technical impossibility of installing a landline phone. In these circumstances, the costs of mobile phone calls are higher than the costs of those made from a landline phone (such landline phones exist in all other prisons in the Republic of Moldova, except for Prisons No. 8 and No. 12 in Bender).

d) Mechanisms of complaints within the prison institutions

As the administrations of all visited prisons report, prisoners can at any time address/file complaints to the prison administration or through the prison staff to the prosecutor/ ombudsman//family and other close persons. **In all the prisons visited by the CfPT, except for the prisons located in Bender (Prisons No. 8 and No. 12), mailboxes are available and accessible to representatives of 'Posta Moldovei'.** The mechanism for filing a complaint/petition addressing recipients outside of Prisons No. 8 and No. 12 in Bender consists of prison staff collecting letters from prisoners and sending them to representatives of 'Posta Moldovei' from the town of Varnita. On the other hand, in discussions with prisoners, the CfPT learnt that letters are censored by the prison administration, and confidential letters cannot be sent. The Council notes the positive trend regarding the installation of mailboxes on all premises of the visited prisons (for example, a mailbox accessible to all prisoners was installed in Building I of Cricova Prison No. 15 as a response to the Council's recommendation). However, certain prisoners in all prisons complained that their petitions or requests remained unanswered, or their examination is unreasonably delayed, in particular for those letters addressed outside of prison to the Ombudsperson, Prosecutor's Office or NGOs. **The Council could not find out/identify in the prisons a clear procedure/mechanism for the dispatching of confidential complaints to Prosecutors, Ombudsperson or public associations** about allegations of torture or other ill-treatment suffered in prison or during the transport of persons.

e) Access to medical examination

The basic recommendation of the CfPT and international organizations **with respect to the transfer of responsibility for the health of prisoners from the Ministry of Justice¹²¹ to the MHLSP was disregarded.** The medical staff are not independent of the prison authorities in fulfilling their duties and are involved in conflicts of loyalty

¹²¹ The same reference exists in the document published in 2013 by the United Nations Office on Drugs and Crime and the WHO Regional Office for Europe, Good governance for prison health in the 21st century - A policy brief on the organization of prison health (2013), available at: http://www.euro.who.int/__data/assets/pdf_file/0017/231506/Good-governance-for-prison-health-in-the-21st-century.pdf?ua=1

between making sound medical decisions on prisoners' health and the efforts of the administration to maintain the discipline and impose sanctions on prisoners. **The Council notes the efforts of the MoJ to strengthen the management of the medical service in the prison system, but both major financial investments and investments in the human resources involved in the reorganization are needed.**

The poor provision of medical staff affects the prisoners' access to a medical examination. The CfPT notes that the **reorganization** of the Department of Prison Institutions in the National Prison Administration in May 2018 **deepened the crisis of the provision of prisons with medical staff.** Thus, following the reorganization, 19 medical staff positions, mainly in Chisinau Prison No. 13, and several psychiatrist positions were reduced. Additionally, as a result of the change in the legal framework, civilian doctors who previously held certified positions cannot now be employed. By the end of 2018 (see the table below), eight prisons had vacant positions of therapists (6 prisons), psychiatrists (6 prisons, and in 1 institution this position was reduced), and dentists (3 prisons, and in 1 prison for juveniles this position was reduced). Healthcare provision in these institutions is delivered by an unsatisfactory number of middle-level staff and by escorting prisoners to civilian institutions or the central prison hospital. In this regard, the CfPT notes that the statutory provision¹²² **under which every prison shall have the services of at least a general practitioner, a dentist and a psychiatrist** is not complied with in practice.

Institution	Positions, vacancies requiring a university degree, as of 01.01.2019				
	management	therapist	psychiatrist	dentist	others
Lipcani Prison No. 2	head of medical department 1.0	therapist 1.0	psychiatrist 0.5	dentist 0.5	0
Leova Prison No. 3	head of medical department 1.0	therapist 1.0	psychiatrist 0.5	dentist 0.5	0
Soroca Prison No. 6	head of medical department 1.0	therapist 1.0	psychiatrist 0.5	0	0
Bender Prison No. 12	head of medical department 1.0	therapist 1.0	psychiatrist 0.5	dentist 0.5	0
Rezina Prison No. 17	head of medical department 1.0		psychiatrist 0.5	0	0
Goian Prison No. 10 (juveniles)	0	0	0	reduced position 0.5	reduced position 0.5 pharmacist
Branesti Prison No.18	0	0	reduced position 0.5	0	0
Pruncul Prison No. 16 (hospital)	0	therapist 1.0	psychiatrist 1.0	0	anaesthesiologist – 4,0 doctor on duty – 2,0
	5	6	4	1,5	6

¹²² Art. 231(1) of the Code of Execution.

The same serious situation was reported during the visit of the CPT in 2018¹²³ in one of the prisons of the Republic of Moldova, and is considered **unacceptable, having due regard to the fact that the prison hosted many prisoners suffering from chronic diseases such as diabetes and cancer. Such a state of affairs also violates the national laws that require that each prison has at least one general practitioner. The CfPT is also worried that there were no arrangements in this prison to ensure the presence of a psychiatrist even on a part-time basis.** Given the increasing number of prisoners and the low number of medical staff members, the Council expresses its concern about the access of prisoners to quality medical services. **The Council reiterates the importance of ensuring a medical examination upon arrival, whose main purpose is the early detection of serious health conditions, which may require immediate actions to protect the health of the new prisoner and, in the case of communicable diseases, to protect the health of the population of the prison.**

Another consequence of the reorganization, which is not favourable to the prison medical system, was the reduction to the rank of non-commissioned officer,¹²⁴ the failure to pay the related specialized internship of the mid-level medical staff¹²⁵ (the feldsher became a medical assistant), which lead to **the loss of the salary increment** and consequently staff withdrawal from the system. Following the amendment of the legislation¹²⁶ on the unified pay system in the public sector, the application to civil servants with special status of medical specialty of the provisions of Annex No. 6 to Law No. 270 from 23.11.2018, the salary rank is 52 (prison staff, certified medical staff), and in the case of civilian medical staff the remuneration is carried out according to Annex No. 9 (similarly to the MHLSP medical staff), the salary rank is 72. Thus, there is a problem of differentiated salaries for medical staff working in prisons depending on their special status. Similarly, in the case of medical staff without special status, the salary increments which were established based on the area of specialty and harmful working conditions are not offered in full. In this regard, **the CfPT notes that the MoJ/NPA did not develop an effective motivation and incentivization system to provide prisoners in the prison with the health services of medical staff.**

A successfully implemented recommendation is the improvement of procedures for the documentation of medical examinations upon the entry to/exit from the

¹²³ The Committee was surprised that at Soroca prison, which had a population of about 800, there had not been a doctor for more than a year. A team of four feldshers were present 24 hours a day in the institution, who tried to respond to the primary care needs of the prisoners.

¹²⁴ <http://lex.justice.md/md/374276/> The Law on the Prison Administration System, No. 21.12.17

¹²⁵ According to Art.57 m) of Law No. 300, the length of service in the civilian branch of employment for any given position is calculated on the basis of one year of service for two years served with an upper limit of ten years of service).

¹²⁶ In accordance with the provisions of Art. 12(2) of Law No. 270 of 23.11.2018 on the unified pay system in the public sector, the base salary shall be determined according to the salary coefficients stipulated in Appendices No. 3-10, taking into account the position held, the level of education, category of qualification, teaching degree, length of service or salary step, as the case may be, under that Law.

prison in cases of bodily injuries as well as the unifying of records of various types of traumas (cases of self-aggression, traumatic injuries, after the application of physical force, etc.). The Council appreciates the NPA's efforts to implement this recommendation by developing the NPA Order No.169 of 06.09.2018 on the increase of efficiency of medical documentation of bodily injuries in the prison system. The introduced **standard traumatic injury reporting questionnaire** includes a description of the circumstances of the occurrence, the inmate's explanations and a detailed description of the injuries as well as the medical opinion on the consistency between the facts reported by the prisoner and the trauma suffered. Thus, in the event of inconsistencies, the doctor may establish alleged ill-treatment and report the case under the legislation in force. The medical staff need continuous training in the documentation of bodily injuries and alleged acts of torture and the provisions of this Order and the Istanbul Protocol ('Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment'). In the coming period, the Council will monitor the practical implementation of these regulations. **The CfPT notes various approaches to the regulations concerning the obligation to report injuries. According to the Statute of Service of Punishment by Prisoners, reporting should be undertaken by the prison administration, yet on the other hand, in terms of Order No.77 of 31.12.2013, this task should be undertaken directly by the prosecutorial services. As a result, the divided loyalty of medical staff subordinated to the prison administration results in the non-recording of bodily injuries. There therefore exists an absence of a real safeguard against abuse.**

Another implemented recommendation was the introduction of the register for medical examinations upon the entry to and exit from the prison, subject to the provisions of the Execution Code of the Republic of Moldova.

The Council welcomes the improvement of the coverage of services for detecting communicable diseases in prisoners upon their entry to the prison system, which was previously deemed to be insufficient. Thus, the number of HIV tests increased from 1140 (2017) to 2,276 (2018), and 15 and 30 new cases of HIV infection were detected accordingly. Thus, the number of prisoners who passed through the prison system in 2018 amounted to 13,815 persons (3,234 newcomers and 3,846 prisoners who left) and 16.5% of them were voluntarily tested for HIV infection compared to 16,407 persons (in 2017) when only 6.9 % were tested. The x-ray examination of newcomers in the prison, as part of the minimum compulsory medical examination, was not performed for more than 6 months in Chisinau Prison No. 13 (since October 2017) due to the malfunction of the x-ray equipment, and the vast majority of the prisoners newly arriving in the prison system through Chisinau Prison No.13 did not pass the x-ray examination for tuberculosis. As a result, the provisions of the Regulation on the treatment and management of cases of prisoners suffering from

tuberculosis, approved by Order of the Minister of Justice No. 278 of 17.07.2007¹²⁷, which expressly sets out that ***in the criminal prosecution isolators the micro-radiographic investigation shall be carried out within the first 3 days after entering the prison***, were not implemented. Thus, the Council urges that detailed information on the performance of the x-ray examination upon the entry to the prison system, as well as statistics of detected diseases, are provided. ***It is therefore necessary to continue efforts to detect HIV infection, viral hepatitis and tuberculosis and other diseases upon entry to the prison system in order to control infectious diseases and treat them appropriately.***

The confidentiality of medical examinations is not provided properly, including due to the lack of separate premises for the examination by a doctor upon the entry to the prison and/or the practice of medical examination of prisoners in the presence of supervisory staff. These situations raise concerns about the possibility of documenting body injuries or reporting of other confidential complaints by prisoners. Moreover, the members of the Council also revealed ***the practice of audiovisual recording of the medical examination. The Council reiterates the need to include standard operational procedures to ensure the confidentiality of the medical actions, as well as indicators of monitoring and sanctioning for the failure to comply with them.***

The medical examination of persons placed in disciplinary isolation is carried out in violation of the principles of medical ethics in prisons. Thus, the recording of 'good' health before the decision is taken to place a person in an isolation unit is a widespread practice in prison. The Council recalls the recommendation of the Council of Europe¹²⁸ that the medical staff shall never be involved in decision-making which ends with any kind of solitary confinement unless the measure is applied for medical reasons. Moreover, after placement in isolation, the medical staff shall visit the person on a daily basis to determine his/her health condition and, possibly, to discontinue or postpone detention for medical reasons. ***No separate registers on the medical examination of persons placed in disciplinary isolation are available.*** The medical staff record the medical visits in the joint register of visits to the disciplinary isolator, thus disclosing the personal data of prisoners.

¹²⁷ Available at: <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=324706>

¹²⁸ Please see: Council of Europe, Prison health care and medical ethics: A manual for health-care workers and other prison staff with responsibility for prisoners' well-being (2014), available in English at: <https://rm.coe.int/prisons-healthcare-and-medical-ethics-eng-2014/16806ab9b5> and in Romanian at: <https://rm.coe.int/manual-on-prisons-healthcare-and-medical-ethics-rom-2016/16806ab9b4> According to this document, the healthcare staff should be informed of every such placement and should visit the prisoner immediately after placement and thereafter, on a regular basis, at least once a day, and provide him/her with prompt medical assistance and treatment as required. They should report to the prison director whenever a prisoner's health is being put seriously at risk by being held in solitary confinement.

C) Conditions of accommodation in places of detention for adult prisoners in prison institutions

The material conditions of detention in cells¹²⁹ in Chisinau Prison No. 13 remain far from satisfactory. Hygiene in many cells is not satisfactory. Access to natural light is limited due to small windows and external objects that prevent natural light from entering into the cells. Artificial ventilation does not work in most prisons. The cells are in a poor hygienic condition, beds are narrow, screened by a curtain, often with worn mattresses. As a whole, sanitary facilities (sinks, toilets) are not clean. The personal belongings of prisoners are kept in bags and under beds. Prisoners often sleep on dirty and sometimes empty mattresses. There are also shortcomings related to their clothing. **The level of overcrowding noted by the CfPT in a number of cells is unacceptable.** In Taraclia Prison No. 1, in most cases, there was natural light in the cells, the windows were suitable and double glazed. However, in at least 2 cells windows were broken, and, as prisoners reported, they were not repaired for more than 3 weeks. The sanitary unit in each cell was separated by a wall up to the ceiling and had a door providing minimum privacy. Prisoners in Bender Prison No. 12 are placed in cells of 1-5 persons. The cells have natural and artificial light that is sufficient for reading with the naked eye. The cells are also well ventilated (naturally and artificially) and are provided with sufficient heat during the cold period of the year. The requirement of allocation of prisoners in these 2 prisons (P 8, P 12), in the light of the 4m² area standard, was met in full.

Material conditions in barrack type cells¹³⁰ **differ considerably. The CfPT was unable to find a system on which basis persons are distributed in cells. Some persons are accommodated in common cells of 2 - 4 persons (larger than 4 m²), however rooms/cells were identified with 20 and more prisoners.** The CfPT noted a particular situation in Lipcani Prison No. 2, where a prisoner had a personal cell of about 20 m² available only to him/her. The material conditions in this cell were the best in the whole prison. The cell was also provided with leather furniture. There was a kitchen and a repaired sanitary unit next to the cell with hotel-type conditions. Other cells larger than in most prisons were in an unsatisfactory condition. Beds were covered with mattresses and screened by a curtain. The personal clothes of prisoners were kept under beds. In these cells the minimum requirement of 4 m² was not complied with. In cells where conditions were more decent, the prisoners stated that the repair work was carried out at their own expense and all electrical appliances (TV sets, refrigerators, water heaters, etc.) were purchased by prisoners' relatives. Prisoners in Bender Prison No. 8 are placed in large cells (up to 20-25 persons). **Most cells do not meet the minimum standard of 4 m² per inmate.** The cells were unhealthy premises and were not repaired. **The cells are cold and are not warm enough during the cold**

¹²⁹ Chisinau Prison No.13, Bender Prison No. 12 and Taraclia Prison No.1.

¹³⁰ Prisons No. 15 and No. 4 in Cricova, Lipcani Prison No. 2, Bender Prison No. 8.

period of the year. All the cells are heated by improvised furnaces, and prisoners are provided with just with one bucket of coal (7-8 kg) per day for each 50-60 m² cell. The prisoners complained that they were using their old clothes to keep alight the fire in the furnace. There are gas cylinders in living premises. The rooms (kitchens) are provided with gas leak detectors. The CfPT expresses its concern that it found gas cylinders in rooms (kitchens) that are not provided with gas leak detectors in several prisons, and this can become a dangerous source of fire inside prisons.

The CfPT draws the NPA's attention to the fact that most of the visited disciplinary isolators are in a deplorable state and could be qualified as inhuman and degrading conditions. The CfPT also notes some progress in this regard. According to the previous recommendation of the CfPT and following the visit to the NPA's Prison Inspection Directorate, with regard to ceasing to use cells in Sector No. 1, it was found that, under the order of the Director of Cricova Prison No.15 the following changes were made: the use of cells No. 2, 4, 5, 6, 21, 23, 24 was halted; the purpose of cells No. 1, 16, 17, 18 was changed; repair work was carried out in the cells No. 3 and No. 19, and cell No. 20 was turned into a storage room. The CfPT welcomes this decision of the NPA and encourages the administration of Cricova Prison No.15 to continue efforts to improve conditions in this sector.

The Council recalls that the CPT stressed that the state of the living areas for prisoners should be examined not only in terms of the number of prisoners in the cells of the prison institutions at a particular moment, but also having due regard to the official occupation rates (number of beds per cell), based on the standard of at least 4 m² of living space per prisoner, and the official capacity of prison institutions should be revised accordingly. The space occupied by additional sanitary buildings/toilets should not be included in this calculation. In addition, the 4 m² standard should include common cells. As regards to individual cells, each cell smaller than 6 m², should be decommissioned or enlarged.¹³¹

The access of prisoners to the bathroom is mainly provided by the prison administration according to the established schedule, at least once a week. Most prisoners stated they want to take a shower more frequently. Almost all prisoners complain that washing personal clothes is a major problem for them, as there are not appropriate facilities, including for drying clothes. The CfPT points out that the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) stipulate that the personal hygiene needs of prisoners shall be met; for this purpose, they shall have water and toiletries necessary to be healthy and clean.

¹³¹ Reports of the Government of the Republic of Moldova on the visits to the Republic of Moldova by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 10 June 2011 (CPT/Inf (2012) 3) and from 14 to 25 September 2015 (CPT/Inf (2016) 16) both available at: <https://www.coe.int/en/web/cpt/republic-of-moldova>

Water supply in some prisons is a problem. The worst situation was found in Cricova Prison No. 15, Taraclia Prison No. 1 and Bender Prison No. 8. In Cricova Prison No. 15 water is supplied from the artesian well of Cricova Prison No. 4 at low pressure (during the visit, the water supply to the upper floors stopped). In Taraclia Prison No. 1 prisoners complained and explained that water was virtually impossible to drink. Bender Prison No. 8 is not connected to a local water pipe, and drinking/household water is extracted from improvised wells in the prison. Sometimes water from these wells smell and taste like diesel. In all prisons, plastic bottles and other improvised tanks (from 1.5 to 50 litres) were observed in dwelling buildings, cells, kitchens, sanitary units and bathrooms. Water is supplied according to certain schedules, and during the warm period of the year the problem of water supply becomes more acute¹³².

In all prisons, the CfPT found problems related to the **quantity and quality of nutrition**. Several prisoners said they preferred to prepare their own dishes with products they had received from their families. The basic problems faced by the prison system are outdated infrastructure and poor funding. Prison kitchens are not provided with necessary equipment and utensils. Cooking in most prisons is carried out using (wood and coal) solid fuel boilers. Nutrition for inmates is organized according to the MoJ Order No. 512 of 12 December 2007, GD No. 609 of 29 May 2006 and the MoJ Order No.100 of 07.03.2007 on the approval of the nutrition standards for inmates for exceptional cases when the provision of prisoner with hot dishes is not possible, and on the rules for the replacement of some foodstuffs by others. The CfPT notes that these rules do not take into account special diets of inmates with health disorders, such as diabetes, or (religious or other) convictions of the prisoner.

Daily activities. The CfPT further found that almost all prisoners in the prisons like the criminal prosecution isolators and persons placed under the initial and disciplinary regime (in quarantine) are subject to a regime consisting of one or two hours of outdoor exercise per day in small courtyards¹³³. Prisoners spend the rest of the day in their cells, which are often overcrowded.

Small exercise rooms and areas are located in those prisons where persons are detained. Prisoners (transferred to the resocialisation prison regime) are enrolled in 14 educational, psychological and social programmes, most of which are optional. The CfPT notes that the possibilities for employment and spending free time are poor, and most prisoners spend their days watching TV or walking in the courtyard.

The CPT stressed that purposeful activities are of crucial importance for the welfare of each prisoners in order to make their term of detention meaningful¹³⁴. At the

¹³² In Cricova Prison No. 15 and Taraclia Prison No. 1.

¹³³ Some of them contain basic sports equipment such as weightlifting bars and punch bags.

¹³⁴ Report of the Government of the Republic of Moldova on the visit to the Republic of Moldova by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 14 to 25 September 2015 (CPT/Inf (2016) 16), available at: <https://rm.coe.int/16806975da>

same time, Nelson Mandela Rule 4 on preventing recidivism and using the term of detention for purposeful ends is not complied with to ensure that persons are reintegrated into society after release so that they can lead a law-abiding and self-supporting life. ***The CfPT recalls the obligation of the prison administration to provide sufficient opportunities for education, training and work, as well as other types of support, including of a corrective, moral, spiritual, social, medical and sport nature. All these programmes and activities/services shall take into account the individual need to re-educate prisoners. Thus, the current practice of isolating prisoners from their community without focusing on their re-education and re-socialization should be changed.***

D) Healthcare provision in the prison system

We mention the plans of the Council of Europe which, in 2019-2021 within the framework of the project 'Promotion of the criminal justice system in the Republic of Moldova', will develop a major component regarding the healthcare provision in prisons. Thus, two working groups were set up in 2018 with the involvement of national and international experts for the revision of the legal framework in the field of health, and to bring it into line with the current medical standards and ethics in prisons. The project is also aimed at building institutional capacities and interacting with the MHLSP in order to transfer good practices of medical management, possibly to reorganize the service. ***The CfPT emphasizes the importance of the Council of Europe's expertise in preventing ill-treatment and providing prisoners with high quality medical services.***

Funding from the public budget of the medical services increased almost twice (2016-2018)¹³⁵. The Council notes the progress achieved in providing prisoners with quality drugs and medical services. The planned 2019 budget (about 15 million MDL) was distributed as follows: 21% for procurement of medical equipment, 50% for procurement of drugs and 29% for the contracting of consultative, diagnostic and treatment services in the institutions subordinated to the MHLSP.

The Council notes the progress in initiating the process of accreditation of prison medical services. Thus, the NPA Order No. 140 of 06.08.2018 on the organization of the self-evaluation process of the medical services within the prison system instigated the self-evaluation of the medical departments within the prison system, and capital repairs began in all medical services to comply with the national

¹³⁵ It increased in 2018 to 13 million MDL (compared to 6.5 million in 2016) and for 2019 to about 16 million MDL. The distribution of financial resources in 2018 was as follows: procurement of medical equipment - 1,222,300 MDL (2018) compared to 5,000,000 mln (2017); procurement of drugs - 7,258,300 MDL (2018) compared to 5,133,600 MDL (2017); and contracting consultative, diagnostic and treatment services - 4,568,600 MDL (2018) compared to 1,975,000 MDL (2017).

accreditation standards¹³⁶. By the end of 2018, 4 medical services received public health authorization from the public health service. **The Council will further monitor these steps towards accreditation in 2019. The physical accessibility of the medical services for persons with disabilities shall be ensured.**

There is a constant turnover of medical staff, which is the greatest challenge for the provision of prisoners with access to healthcare. Following the reorganization of the prison system, medical positions were reduced in number. The requirements for employment of doctors are subject to the general prison rules, and previous medical staff who were employed as certified positions were dismissed and deprived of the possibility of re-employment. Mid-level certified medical staff (such as feldshers and medical assistants) were reduced in standing from the rank of officer to non-commissioned officer and respectively lost a part of their salary. Finally, the calculation of the length of service in certain fields now relates only to officers, disadvantaging certified medical staff. **The Council notes that, as compared to 2017, the medical staff in the prison system were reduced in terms of numbers and positions; more than 5 prisons do not have a doctor and the sectoral reform worsened the overall situation.**

The Council expresses its concern about the lack of access of prisoners to healthcare due to the shortage of staff and the overwork of existing personnel. Several prisoners said that they requested a doctor, but were not consulted for more than 7 days. Medical assistants work 24 hours every 2 days (48 hours), which creates an excessive workload and violates the provisions of the labour code (stipulating a minimum of 72 hours). **Overwork and the number of working hours are additional reasons that cause medical staff to leave the system.**

The Council found that prisoners were not informed of the possibility and procedure for examination by a private doctor as well as the bureaucratic impediments in arranging the consultation by a doctor outside the institution (especially in Prison No. 13), which often results in arbitrary decisions of refusal and delay, and excessive costs in providing an escort service. This is especially true for specialized medical consultations, such as those of a neuropathologist, endocrinologist or traumatologist, namely those positions not included in the general medical staffing of the prison system. **One noted recommendation is to develop clear procedures to ensure that prisoners enjoy the right to an independent medical examination within a reasonable time, including while on remand.**

¹³⁶ By the NPA Decree No.33d of 26.10.18 on the implementation of the process of evaluation and accreditation of the medical services in the prison system, 1,364,000 MDL were allocated for the provision of furniture, computer equipment, boilers, air conditioners, psychometers, and the establishment of medical departments for the creation of sanitary conditions according to the provisions of GD No.663 of 23.07.2010 for the approval of the Public Health Regulation on hygienic conditions for medical services providers.

The provision of prisoners with drugs improved. At the same time, upon examination expired drugs were found, suggesting that the drug management scheme in the prison system needs to be strengthened. The antituberculosic drugs which were distributed in prisons (not only for treatment of tuberculosis) were collected in the pharmacy of the Medical Directorate and safely destroyed. **The Council reiterates that, in order to avoid drug resistance among prisoners, that antituberculosic drugs be used solely for the treatment of tuberculosis under strict supervision. At the same time, prisoners in institutions have to purchase drugs, which points to the insufficient coverage by the state of the needs of prisoners for drugs and other medical consumables.** Thus, the practice of purchasing vital drugs (such as asthma inhalers and antihypertensive and antidiabetic drugs) by prisoners can be considered a failure of state responsibility.

The approval of the Tuberculosis Control Programme 2016-2020 in the prison system, by the NPA Order No. 168 of 6 September 2018, including the budget with the gradual assumption of expenses from the donor, is a positive step towards the sustainability of measures to control tuberculosis in prisons. The budget for 2018 amounted to 978,800 MD, and for 2019 to 1,741,500 MDL. At the same time, **the Council is concerned about the poor management of tuberculosis control** due to the lack of a specialized doctor in the staffing of the Medical Directorate (this position was cut in 2011). Thus, in 2018, the Medical Directorate faced problems in planning the procurement of antituberculosis drugs, their improper management, completion of the national database SIMETB and the lack of a specialized doctor in the staffing of the Medical Directorate. **The Council considers that the capacities of the Medical Directorate should be built in order to establish more effective organizational management including in the control of tuberculosis, through, but not limited to, the long-term training at the School of Public Health Management.**

The Council welcomes the issuance by the NPA of Order No. 102 of 09 July 2018 on the documentation of primary medical records used in prison medical services, including **the centralized provision of medical services with standard registers.** However, the poor quality of completion of medical registers (with primary data) on the health and diseases found in prisoners needs to be improved.

There is a syringe exchange and condom distribution system for prisoners in 15 prisons, including in Bender region, which has been put in place by involving volunteers from among prisoners. **The Council welcomes these preventive interventions and is seeking additional information on the functioning of these activities in different institutions and to make this information publicly available.**

Similarly, there is a **programme of pharmacotherapy with methadone** in the prison system, which is in place in 13 prisons. By the end of 2018, there were 66 drug addicted prisoners subjected to treatment, 40 new beneficiaries were included during the year, and 26 beneficiaries abandoned treatment. In the institutions, methadone

treatment for opiate drug users is available, but there are a large number of cases of its discontinuation immediately after placement in detention, which suggests that the psychosocial support offered is not sufficient. Additionally, 25 prisoners have been ensured with the methadone treatment what they start to received in liberty under the MHLSP advise. **The Council expresses its concern about the small number of patients enrolled in treatment and the high rates of abandonment** (especially in Prison No. 13). Prisoners who accept the methadone treatment are frequently subject to isolation because of the influence of the criminal subculture, which may be a reason for the refusal of the treatment. Accordingly, the Council considers that the problem of under-use of treatment programmes for opioid addiction has not been addressed, and persons seeking treatment have to be isolated, i.e. separated from the general mass of prisoners. **The CfPT is concerned about the administration's inaction in ensuring access of prisoners placed in the general prison population to effective treatment for opioid addiction.**

By the end of 2018 there were 130 patients with HIV in the prison system, including 30 new cases and 7 reconfirmed cases or transfers from other states. Currently antiretroviral treatment is provided to 105 prisoners, including 34 new patients.

There is limited use of the possibility to release prisoners based on compassionate grounds due to a serious disease. The NPA's Special Medical Commission received requests for the release of 12 prisoners under the Regulation on the presentation of severely diseased prisoners for the relief from punishment¹³⁷. The files of the 12 persons were submitted to court, of whom 6 prisoners were released, 4 died in the course of examination of their cases, and 2 persons were awaiting a decision. The Council repeats its decision on preventing and eliminating discrimination and ensuring equality,¹³⁸ as well as the ECtHR¹³⁹ jurisprudence, which stated that: **the failure to apply health protection measures to a person suffering from a serious disease simply because he/she is remanded in custody and the procedures are applied only to convicted prisoners, constitutes discrimination, not least as remanded and convicted persons are in similar situations.**

Cases of deaths among prisoners decreased considerably from 42 cases (2017) to 28 cases (2018). **The Council is concerned about the high rate of suicides**, which is the second highest cause of death after cardiovascular disease. **The Council is concerned about the lack of psychiatrists and the mental health strategy in the prison system, which is an environment where complex medical and psychological interventions are needed to exclude the suffering of prisoners and to ensure that**

¹³⁷ Please see: <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=319609>

¹³⁸ Please see: https://promolex.md/wp-content/uploads/2018/11/Decizia_Consiliu_discrimin_CosovanCauza129.18.pdf

¹³⁹ Please see the case, *Gülay Çetin c. Turquie* (App. No. 44084/10) ECHR 5 June 2013, available at: <https://hudoc.echr.coe.int/fre#%7B%22fulltext%22:%5B%22G%C3%BClay%22%22%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%22CHAMBER%22%22itemid%22:%5B%22001-116946%22%22%7D>

the authorities fulfil their positive obligation to provide persons throughout their detention with medical monitoring and the prescribed treatment.

Specific gender issues in the prisons are not adequately addressed. Women who are frequently deprived of their liberty are not being consulted by a gynecologist, nor are they provided with other appropriate gender-related services. There is no specific medical records and reporting for women and juveniles. At the same time, the CfPT notes the progress in carrying out the cervical cancer screening in women in accordance with the national standards in the prison system for the first time.

Dental care is poor due to the acute shortage of medical staff and dental consumables. The institutions reduced their positions of dentist (including in the prison for juvenile), failing to take into account that dental problems are major problems among prisoners. ***The Council finds limited access to dental prosthetic services, including to private consultation due to excessive escort prices.***

The confidentiality of the medical documentation is not ensured, as the cabinets and tables in the medical service are largely not lockable.

In the discussions with the supervising staff, the members of the CfPT came to the conclusion that they do not know the safe search rules, the concept of individual perquisition set, and the procedures to follow in case of accidental injury in order to prevent HIV infection and infection with other blood-borne diseases. Regretfully, the institution is not provided with perquisition sets, although this is stipulated in the regulatory acts in force. Safe search procedures are not in place in the institution to prevent infection of the staff with blood-borne diseases; the members of the CfPT are concerned about the lack of protection for staff against the risk of infection with blood-borne diseases during searches. From the discussions with the administration of the prison, it was established that the provisions of the regulatory acts on this issue are not known, and the individual perquisition sets are missing. The CfPT's recommendation had not been implemented, and there is an urgent need for repeated training to ensure that the employees work in safe conditions.

In many institutions, the term of quarantine is not observed, and this fact can contribute to the spread of infectious diseases. New prisoners in the institution are not quarantined for 14 days but are held in common living spaces. ***The Council considers that this practice can contribute to the spread of infectious diseases, especially in the absence of medical isolation units, and shall be therefore eliminated.***

The CfPT notes that the phenomenon of self-harm and hunger strike among prisoners is on the increase. The practice of imposing disciplinary sanctions, including for self-harm, was found, which can be considered excessive and inhuman because sanctions are being imposed on persons suffering from mental health illness (instead of subjecting them to proper treatment).

The conditions for detaining prisoners who go on hunger strike are inadequate, as frequently they are placed in disciplinary isolation units intended for disciplinary sanction. The registers are completed with minimal data and the reasons for the hunger strike and the resolution of the situation are not indicated. Supporting information materials for prisoners about the development of their health and the consequences of their actions, and the rules in force concerning the hunger strike are not available. Similarly, prisoners are not aware of the regulations regarding the refusal to eat in detention. The Council considers it important to revise the legal framework on the conduct of hunger strikes in the prison system, including the housing of such prisoners and a system regulating their conduct.

The CfPT find the practice problematical that lower level medical positions are **currently held by prisoners** in order to ensure the good functioning of the medical department. Likewise, maintaining good conditions of public health and hygiene in an institution requires the cleaning of medical rooms and training nurses in this regard, including ensuring their proper certification. **We reiterate that it is important not to involve prisoners in key medical activities (such as in completing medical records upon admission of persons, distributing drugs, and nursing).**

3.7.2. Situation of juveniles in prison institutions

A) Treatment of juvenile prisoners in prison institutions

a) Interaction of juvenile prisoners with the administration and staff of places of detention.

During the monitoring visit, the CfPT **did not receive any allegations from the prison staff of torture of juvenile prisoners;** this suggests an improvement in the situation as a whole. However, **the CfPT received numerous allegations of verbal abuse of juvenile prisoners.**

In the previous Annual Report, the CfPT drew attention to tense relations between juvenile prisoners and the prison staff, which can lead to violent incidents and mass riots of juvenile prisoners, as faced by prison institutions in 2015 and 2016. In 2018, the CfPT notes a similar situation, which resulted in 2 cases of failed attempts to undertake violent actions by certain groups of convicted juveniles (in May and August 2018), followed by attacks on the institution's staff.

In this respect, the National Prison Administration should pay heed to the standards of the European Committee for the Prevention of Torture (CPT) in order to improve the treatment of juveniles detained in prisons, namely: "[...] The custody and care of juveniles deprived of their liberty is a particularly difficult task. It should be taken into consideration that many of them were subjected to physical, sexual or psychological violence. The staff that should fulfil this task shall be carefully selected on the basis

of maturity, professional integrity and ability to deal with the challenges of working with this age group and to ensure the well-being of these young people.[...] and moreover, [...] All staff members, including those with custodial duties, who are in direct contact with juveniles, shall be trained both during and after employment, and receive adequate external and supervisory support while exercising their function. Particular attention should be paid to staff training in the field of control of violent incidents, particularly in settling verbal conflicts and professional techniques of immobilization [...]¹⁴⁰.”

b) Disciplinary procedures applied to juvenile prisoners.

The CfPT notes, and is deeply concerned by the excessive application of the sanction of disciplinary isolation of juvenile prisoners. During the visit to Goian Prison No. 10 for juveniles, the CfPT found direct signs of frequent imposition of the disciplinary sanction of isolation in both the register of prisoners in the disciplinary isolation unit and the register of reports of breaches of prison rules. Under the register heading ‘short description of violation’ for which juvenile prisoners are subject to solitary confinement for several days, the following cases were also recorded: ‘Categorical refusal to appear on call’, ‘Use of foul language, speaking loudly after blackout’. ***Another situation that always results in solitary confinement for several days is the committal of self-harm by juvenile prisoners.***

Having examined the activity reports of Goian Prison No. 10 for juveniles and of Chisinau Prison No. 13, ***the CfPT was alarmed by the sizeable number of cases in which the measure of disciplinary isolation was imposed on juveniles in these 2 institutions.*** During 2018 this disciplinary measure was imposed on juvenile prisoners ***71 times*** in Goian Prison No. 10 for juveniles and ***30 times*** in Chisinau Prison No. 13.

At the same time, ***the CfPT expresses its concern that in August 2018, on the premises of Goian Prison No. 10 for juveniles, a disciplinary isolation unit was opened, which is not provided with a separate observation post, and the isolation unit does not have a register of placed prisoners.*** Prison officers reported that juvenile prisoners are not held in this isolator, and those who committed a transgression, are confined in a separate cell for up to 3 days. Moreover, the officers stated that this ***disciplinary isolator*** was created in order to have ‘additional room for temporary isolation in case of riotous conduct’. The Council sees no reasonable grounds for opening this isolation unit on the premises of the prison for juveniles. Moreover, ***the Council notes that the presence of this non-regulated ‘additional temporary detention isolator’ is a possible source of psychological torture of juvenile prisoners.***

The CfPT draws the attention of the NPA, the director of Goian Prison No. 10 for juveniles and the director of Chisinau Prison No. 13 to the fact that, after the visit to the Republic

¹⁴⁰ CPT Standards, Romanian version available at: <https://www.coe.int/en/web/cpt/standards>

of Moldova in June 2018¹⁴¹, the CPT recommended the following: “[...]reference should be made to the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (“Nelson Mandela Rules”) which were adopted in 2015 by a unanimous Resolution of the General Assembly and which stipulate in Rule 45 (2) that solitary confinement shall not be imposed on juveniles as disciplinary sanction”¹⁴².

The CfPT draws the attention of the NPA as well as the directors of Goian Prison No. 10 for juveniles and Chisinau Prison No. 13 to the UN Rules for the Protection of Juveniles Deprived of their Liberty and to the 24th General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published in 2015 concerning discipline and security¹⁴³: “[...] 128. Any form of isolation of juveniles is a measure that can compromise their physical and/or mental well-being and should therefore be applied only as a means of last resort. In the CPT’s view, solitary confinement as a disciplinary measure should only be imposed for very short periods and under no circumstances for more than three days. Whenever juveniles are subject to such a measure, they should be provided with socio-educational support and appropriate human contact. A member of the health-care staff should visit the juvenile immediately after placement and thereafter on a regular basis, at least once per day, and provide him/her with prompt medical assistance and treatment. 129. As regards solitary confinement for protection or preventive purposes, the CPT recognises that such a measure may, in extremely rare cases, be required in order to protect particularly vulnerable juveniles or to prevent serious risks to the safety of others or the security of the prison, provided that absolutely no other solution can be found. Every such measure should be decided by a competent authority, based on a clear procedure specifying the nature of the confinement, its duration, the grounds on which it may be imposed and providing a regular review process, as well as the possibility for the juvenile concerned to appeal against the decision to an independent external authority. The juveniles concerned should always be provided with appropriate human contact and benefit from daily visits by a member of the health-care staff. Likewise, the placement of a violent and/or agitated juvenile in a calming-down room should be a highly exceptional measure. Any such measure should not last for more than a few hours and should never be used as an informal punishment. Mechanical restraint should never be used in this context. Every placement of a juvenile in a calming-down room should be immediately brought to the attention of a doctor in order to allow him/her to look after the health-care needs of the

¹⁴¹ Report of the Government of the Republic of Moldova on the visit to the Republic of Moldova by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 11 June 2018, English version, para. 56; available at: https://www.ecoi.net/en/file/local/1454825/1226_1545136703_2018-49-in-eng-docx.pdf

¹⁴² The Revised Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (2015), available at: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf

¹⁴³ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Developments concerning CPT standards in respect of police custody - Extract from the 25th General Report of the CPT, published in 2015 (CPT/Inf (2015) 1-part) §128, available in English at: <https://rm.coe.int/16806ccb96> and in Romanian at: <https://rm.coe.int/16806ccb91>

juvenile concerned. In addition, every such placement should be recorded in a central register as well as in the juvenile's individual file. [...]."

The CfPT notes with concern the excessive imposition of the sanction of limiting contact with the outside world (through the suspension of the right to visits and suspension of the right to receive parcels) on juvenile prisoners. Several juvenile prisoners reported the existence of this problem in Goian Prison No. 10 for juveniles. The conclusions made following the consultation of the registers and the activity report of the institution monitored by the CfPT, confirmed the statements of the juvenile prisoners. According to the statistical data given in the activity report of Goian Prison No. 10 for 2018, **36 prisoners committed a misdemeanour.** The total number of **imposed disciplinary sanctions makes up 181.** The number of cases of disciplinary misconduct that were not sanctioned (information based on conversations) is 5. **Disciplinary sanctions, such as suspension of the right to receive packages and parcels with foodstuffs for a period of up to 2 months, were imposed 36 times on juvenile prisoners, the suspension of the right to short- and long-term visits for up to 3 months - 58 times.**

The Council draws the attention of the NPA as well as the administration of Goian Prison No. 10 to the UN Rules for the Protection of Juveniles Deprived of their Liberty and the 24th General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)¹⁴⁴, which states: "[...] 127. The CPT wishes to stress that a juvenile's contact with the outside world should never be denied as a disciplinary measure; nor should it be limited unless the disciplinary offence relates to such contact [...]."

The Council draws the attention of the NPA to the CPT's recommendation, drawn up in response to the June 2018 visit¹⁴⁵: "[...]Ensure that disciplinary punishment of prisoners does not lead to a total prohibition on family contacts and that any restrictions on family contacts as a form of disciplinary punishment are applied only when the offence relates to such contacts [...]."

B) Safeguards against torture and other ill-treatment of juvenile prisoners in places of detention in prison institutions

a) Internal complaints mechanisms in Goian Prison No. 10 for juveniles

The CfPT further wishes to draw the NPA's attention to the procedure of sending and receiving petitions addressed to persons outside of Goian Prison No. 10 for juveniles.

¹⁴⁴ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Developments concerning CPT standards in respect of police custody - Extract from the 25th General Report of the CPT, published in 2015 (CPT/Inf (2015) 1-part) §127, available in English at: <https://rm.coe.int/16806ccb96> and in Romanian at: <https://rm.coe.int/16806ccb91>

¹⁴⁵ Report of the Government of the Republic of Moldova on the visit to the Republic of Moldova by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 11 June 2018 (CPT/Inf (2018) 49) §57, available in English at: https://www.ecoi.net/en/file/local/1454825/1226_1545136703_2018-49-in-eng-docx.pdf

Even if prisoners say they send petitions and letters to different institutions, they do not receive any response from them. Similarly, there are practices of sending prisoners' letters through employees, as confirmed in interviews.

The Council notes that during 2018 the Ombudsperson for Children received 3 petitions from prisoners, requesting the Ombudsperson's support to give them the right to stay at Goian - Prison No. 10 for juveniles, instead of being transferred to prisons for adults. Representatives of the Ombudsperson for Children visited the prison facility, but without result. In the light of the negative evaluations of the persons concerned by the NPA the court refused all requests.

The CfPT appreciates the NPA's and prisons' efforts to install mailboxes in places of detention, however the CfPT did not find any viable, standard and secure mechanism for the submission of complaints/allegations both at the institution/system level and outside of the system, namely to lawyers/prosecutor's office/Ombudsperson/NGOs.

The CfPT draws the attention of the prisons' administration that, in the light of the Nelson Mandela Rules¹⁴⁶, any prisoner should be allowed to address, without censoring, a request or claim about his/her treatment, to the central prison administration, judicial authority or other competent authorities, including to the authority empowered to review or remedy. There shall be safeguards to ensure that prisoners file their requests or claims safely and at, the request of the person who submits the request or the claim, the confidentiality is ensured.

C) Conditions of detention of juvenile prisoners.

A problem highlighted by the CfPT in its previous Annual Report related to the detention of juveniles in the same building as adult prisoners in Chisinau Prison No. 13, Balti Prison No. 11 and Rezina Prison No. 17; this state of affairs has not been resolved to date. The CfPT found that juveniles cannot be and are not totally isolated from adults. The adults and juveniles interact with each other by communication/discussions through cell windows.

The CfPT draws attention of the National Prison Administration that the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)¹⁴⁷ stipulate that different categories of prisoners should be placed in institutions or divisions of institutions separately, taking into account their gender, age, background, the legal reasons for their detention and treatment needs.

¹⁴⁶ The revised Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), adopted by UN General Assembly (UN-Doc A/Res/70/175) on 17 December 2015, available at: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf

¹⁴⁷ The Romanian version of the Nelson Mandela Rules is available at: http://www.avp.ro/mnp/legi/ansamblu_reguli_mnp.pdf

At the time of the visit of the CfPT, there were 28 juvenile prisoners (boys) in Goian Prison No. 10 for juveniles. They were placed 1-3 persons in large, well-lit and clean rooms. The problem of heating highlighted in the previous Annual Report was solved. It should be recognized that the administration complies with the rules on the prohibition of smoking throughout the prison. Thus, there is a semi-closed smoking area outside the prison for the staff of the institution. The CfPT did not receive any allegations from juvenile prisoners regarding the quality and quantity of the food.

The use of the bathroom in Goian Prison No. 10 for juveniles is subject to a pre-determined schedule, twice a week, but during winter the prisoners may use it only once a week.

(D) Daily activities

In Goian Prison No. 10 for juveniles, some juvenile prisoners completed courses of specialization and are even involved in specific economic activities. Juveniles are hired on the basis of employment contracts and are able to manage their own personal accounts. They have access to a large courtyard for exercise for up to two hours a day and an indoor gym as well as a recreation room provided with a TV set and a video game console. Juveniles can enrol in 14 different educational, psychological and social programmes. At the same time, specific programmes such as a life skill programme are also needed given their early placement in detention age-wise. ***The CfPT further notes that programmes for juvenile prisoners are more optional in nature, do not fully meet the needs of juveniles, and do not lead to changing destructive into positive, adaptive behaviour.***

A number of students attended general education classes. In the previous Annual Report, the CfPT deemed that the educational programmes for Russian-speaking minors were not sufficient. The Council ***did not provide any educational programmes for Russian speakers*** in 2018, as there were no Russian-speaking juvenile prisoners. However, the question of how this problem will be resolved when the time comes when at least one juvenile Russian speaker is placed in Goian Prison No. 10' remained without an answer, in the view of the CfPT.

Another concern is the quality of education provided to juvenile prisoners. From the discussions with the administration of Goian Prison No. 10, the CfPT found that a juvenile with special educational requirements (who had an individual education programme at a school located in his/her place of residence) completed 9 grades (the 'gymnasium' programme) in Goian Prison No. 10 without a support teacher and individual education plan. This raises reasonable suspicions about the poor or superficial quality of the general education which is provided to juvenile prisoners. At the same time, the educational process is delayed or even interrupted when juveniles are transferred from one prison to another.

More generally, the CPT has expressed misgivings about the policy of placing remanded juveniles in prisons for adults. In the CPT's opinion¹⁴⁸, it would be preferable for all juvenile prisoners, whether they were detained prior trial or convicted, to be held in detention centres specially designed for people of this age by providing regimes tailored to their needs and staffed by persons trained specifically for working with young people.

3.7.3. Situation of persons with special needs in prison institutions

A major concern of the CfPT is the situation of persons with disabilities in places of detention. **The CfPT continually finds that conditions of detention in all visited prisons are not tailored to the special needs of prisoners with disabilities.** For example, in Cricova Prison No. 4, the in-patient facility of the prison's medical service for temporary placement for a period of 14 days for treatment, is used as a permanent living place for persons with disabilities. Thus, at the time of the visit there were 11 persons in the in-patient facility, including 8 for more than 3 months (including one person for about one year). Moreover, the CfPT found that the conditions of the medical service are not adapted to the special needs of prisoners with disabilities.

Prisoners with locomotor disabilities cannot independently access exercise areas, areas for cultural and educational activities (libraries and cultural halls), sectors or rooms for meetings, and kitchens. Moreover, sanitary units (with Asian-type toilets) in cells, barrack type spaces, quarantines and medical rooms are accessible neither to prisoners with locomotor disabilities, nor to elderly prisoners. Low-level care staff (nurses) are not included in the staffing of the prison institutions and as a result these tasks are assigned to the household work division composed of other prisoners. A situation has been created where prisoners take care of other prisoners or where goods (such as cigarettes, clothes and foodstuffs) are requested from other prisoners to help persons with disabilities. This situation applies to the prison administration system as a whole.

The CfPT welcomes the fact that a cell in Chisinau Prison No. 13 was adapted for persons with locomotor disabilities. The sanitary unit in this cell meets the minimum standards to be used by persons with disabilities so that they are able to move in a wheelchair independently. The cell and the sanitary unit were adapted following the Council's decision to prevent discrimination and ensure equality in Moldova¹⁴⁹. However, the CfPT repeatedly finds that the cell is not used as intended, but to separate the prisoners, according to Art. 206 of the Code of Execution or Law No. 105 of 2008 on the protection of witnesses and other participants in the criminal proceeding, although several persons with special needs are continually held in detention in Chisinau Prison No. 13.

¹⁴⁸ Report of the Government of the Republic of Moldova on the visit to the Republic of Moldova by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 14 to 25 September 2015 (CPT/Inf (2016) 16) §82.

¹⁴⁹ Decision of 11.12.2014 in the Case No. 155/14 (M.T. v. Department of Prison Institutions, Prison No. 13, the National Social Insurance House) on discrimination by refusal of reasonable accommodation on the basis of disability, available at: <http://old.egalitate.md/index.php?pag=news&id=836&rid=583&l=ro>

The European Court of Human Rights¹⁵⁰ states, through its decisions, that the state is obliged to provide adequate conditions of detention for prisoners with physical disabilities and shall not deviate from this obligation by assigning this duty of care to other prisoners. The conditions of detention of prisoners in the light of their physical disability and, in particular, their inability to access independently various prison spaces, including the sanitation facilities, combined with the lack of any assistance to facilitate their mobility in their daily lives, reaches the threshold of severity required to constitute degrading treatment.

According to the recommendations of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)¹⁵¹, the prison administration shall take all reasonable measures of accommodation and adjustments to ensure that prisoners with physical disabilities, mental illness or other disabilities can equally benefit from the full and effective access to life in the prison.

3.8. Situation in places of detention within the institutions subordinated to the Ministry of Health, Labour and Social Protection

There are 3 functioning psychiatric hospitals as well as 6 Temporary Placement Centres for Persons with Disabilities (TPCPDs) directly subordinated to the Ministry of Health, Labour and Social Protection that are managed by the National Social Assistance Agency. Until May 2018, these institutions were known as psycho-neurological boarding houses. Out of the 6 Centres, 4 are intended for adults and two for children (for girls and boys accordingly).

The 9 mentioned institutions host approximately 3,225 persons, including 1,300 in 3 Psychiatric Hospitals and 1,925 in 6 TPCPDs. Annually, about 16,500 persons are admitted to psychiatric hospital with an average duration of hospitalization of 28 days. The population in the TPCPDs is relatively uniform and certain persons live in residential institutions some 5, 10, 20 or even 30 years.

During the year, the CfPT carried out 4 visits to the institutions subordinated to the MHLSP, of which 1 was a psychiatric hospital, 2 visits were TPCPDs and 1 visit was to the Psychiatric Examination Department of the Centre of Forensic Medicine.

¹⁵⁰ See *Vincent v. France* (App. No. 6253/03) 24 October ECHR 2006; *Mouisel v. France* (App. No. 67263/01) ECHR 14 November 2002; *Khudobin v. Russia* (App. No. 59696/00) ECHR 26 October 2006; *Xiros v. Greece* (App. No. 1033/07) ECHR 9 September 2010; *Kupczak v. Poland* (App. No. 2627/09) ECHR 25 January 2011; *Groni v. Albania* (App. No. 25336/04) ECHR 7 July 2009; *Logvinenko v. Ukraine* (App. No. 13448/07) ECHR 14 October 2010; *Jasinskis v. Latvia* (App. No. 45744/08) ECHR 21 December 2010; *Raffray Taddei v. France* (App. No. 36435/07) ECHR 21 December 2010; *Arutyunyan v. Russia* (App. No. 48977/09) ECHR 10 January 2012; *Grzywaczewski v. Poland* (App. No. 18364/06), ECHR 31 May 2012; *Grimailovs v. Latvia* (App. No. 6087/03) ECHR 25 June 2013; and *D.G. v. Poland* (App. No. 45705/07) ECHR 12 February 2013,

¹⁵¹ The Romanian version of the Nelson Mandela Rules is available at: http://www.avp.ro/mnp/legi/ansamblu_reguli_mnp.pdf



Instituția Medico Sanitară Publică
Spitalul Clinic de Psihiatrie

SECȚIA 12

PROGRAM :

11.00 - 12.30 : orele de vizită a pacienților
12.30 - 13.00 : ore de primire ale medicilor
ZILNIC
13.00 - 14.00 : PAUZĂ LA MASĂ
14.00 - 15.00 : ore de primire ale șefului secției
LUNI, MIERCURI, VINERI

SALA DE
ERGOTERAPIE

3.8.1. Situation with regard to the phenomenon of torture, inhuman and degrading treatment in the TPCPDs

Under Government Decision No. 454 of 16.05.2018 on the reorganization of the National Social Assistance Agency¹⁵², the Psycho-Neurological Boarding Homes were renamed *Temporary Placement Centres for Persons with Disabilities* (hereinafter the *Centre/TPCPD*), which are managed by the National Social Assistance Agency. The latter is an administrative authority subordinated to the Ministry of Health, Labour and Social Protection. The goal of the Centre¹⁵³ is to provide care and support services to develop skills of personal autonomy, self-service and socialization of residents in order to facilitate their inclusion in the community¹⁵⁴.

At present, 1,925 persons are living in the 6 TPCPDs for 5, 10 or even 30 years. Of the total number of residents, 250 persons are placed in the TPCPD for children (girls) in the town of Hincesti, and 204 in the TPCPD for children (boys) in the town of Orhei. In fact, only 83 children live in Centres for children, and the others are adults.

a) Involuntary placement procedure

Law No. 1402 of 16.12.1997 on mental health, provides for the ***involuntary placement procedure***. According to Article 40, the institutionalization of a person against his/her will is only possible under paragraph (1)(c), subject to the opinion of a medical commission with the participation of a psychiatrist, which shall be issued at the request of the guardian of the person suffering from mental disorders, for whom the guardianship is established¹⁵⁵. ***In legal terms, since 2 June 2018, all persons in the Republic of Moldova re-acquired their full legal capacity, and protection measures in the form of guardianship or wardship cease to exist ipso jure¹⁵⁶. Therefore, no one in the institution can be deprived of liberty or isolated without informed consent.***

In practice, in the Placement Centres, people are deprived of their liberty by being placed in closed departments for 'strict supervision'. This practice is used, including when residents leave the institution without permission. In such cases the administration notifies the police in order to find the person concerned and bring him/her back to the institution jointly with employees of the Centre.

¹⁵² GD No. 454 of 16.05.2018 on the reorganization of the National Social Assistance Agency, available at: <http://lex.justice.md/md/375489/>

¹⁵³ Order of the MLSPF No. 204 of 01.11.2016, available at: https://msmps.gov.md/sites/default/files/skmbt_22316110709050.pdf

¹⁵⁴ P. 9 of the Framework-Regulation

¹⁵⁵ Law No. 1402 of 16.12.1997 on mental health, version LP66 of 13.04.17, OG171-180/02.06.17 Art.297, available at: <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=312970&lang=1>

¹⁵⁶ Law No. 66 of 13.04.2017 on the amendment and completion of some legislative acts, Art. XVII(1) and (4), available at: <http://lex.justice.md/md/370424/>

The CfPT considers that, in the absence of placement policies, the placement of residents in the institution is arbitrary, and is based on the personal perceptions of staff. In practice there exists a distinction between persons detained in a 'strict supervisory regime' and those held under normal conditions or 'normal regime'. Persons subject to 'strict supervision' are placed in closed departments. **The Council finds that the placement in closed departments takes place in cases of severe mental disorder, 'manifested aggressiveness', 'alcoholic intoxication' or as a form of other informal punishment.**

The members of the CfPT could not find a clear practice of separate accommodation for persons with mental disorders from those with learning disabilities. At the same time, there are individual cases when patients are accommodated together, but this possibility is only an option in the general regime, rather than in the more severe regime.

b) Verbal and physical abuse

Another situation of concern is related to **the existence in the institution of verbal and physical abuse, both between residents and by employees.** This results in verbal humiliation and the excessive application of physical force. In some cases, employees slap the backs of the heads of residents or involve other residents in the immobilization of agitated residents. Employees do not always intervene promptly in incidents, do not employ non-violent de-escalation techniques and do not properly record such incidents. Registers of incidents are filled out superficially and do not contain a brief description of the nature of the incident, staff involved, procedures used, duration, and the outcome of any post-intervention counselling.

The Council could find no entries on the practical implementation of the Order for the approval of the Regulation on the procedure for the identification, registration and reporting of alleged cases of torture, inhuman or degrading treatment¹⁵⁷. It is required by medical staff that they ensure that complaints, statements or other information about alleged acts of torture, inhuman or degrading treatment are transmitted to the prosecutor. Contrary to the Regulation, there is no register of receipts and transmissions of complaints, statements or other information about alleged torture, or inhuman or degrading treatment.

c) Means of coercion

In the institutions, physical constraint (immobilization by the staff of a resident by using physical force – 'manual control'), chemical constraint (forced drug administration to control patient behaviour), and/or isolation (by involuntary placement of the patient in a locked section of the facility) is used. **There is no legal basis for using means**

¹⁵⁷ Order No. 1589 of 31.12.2013, of the Ministry of Health, available at: <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=353245>

of involuntary coercion in the institution. In reality, the psychiatrist or medical assistants decide on the use of isolation. The use of physical force or means of chemical immobilization is decided by medical assistants or lower-level staff, who are, in turn, informed by the medical assistant.

There are no rules concerning the maximum application of any coercive measure. Cases were identified where people were placed in isolation units for very long periods of time exceeding several consecutive months. For example, without any reasonable justification a resident was held in such a unit for more than 7 months, while being constantly sedated. The staff are not adequately trained and are not familiar with techniques of non-physical de-escalation and reduction of aggressiveness.

The CfPT found that there is no special register in cases of use of chemical constraints. Cases were identified where sometimes other residents are involved in immobilizing an agitated resident. As a result, the application of immobilisation measures is sometimes visible to other residents. In such cases, residents are not monitored continuously and directly through human supervision, while video/audio surveillance cameras are absent, including in the hallways and living areas of the institution.

d) Safeguards in the context of involuntary placement

According to the Law on Mental Health, a decision to hospitalize a person against their will (involuntary hospitalization) in a psycho-neurological institution is based on the opinion of a medical commission with the participation of a psychiatrist. This decision is issued on the basis of an application filed by the guardian of the person suffering from a mental illness¹⁵⁸.

The Framework Regulation¹⁵⁹ provides additional safeguards against the abusive placement of persons¹⁶⁰. Many residents were involuntarily placed in institutions until the adoption of the Framework Regulation and new amendments to the Law on Mental Health. In this respect, previously a request of the guardian of the person declared legally incapacitated, or the request of the relative caring for the person, was a sufficient reason for the institutionalization of that person. **The CfPT notes**

¹⁵⁸ Please see: Article 40(1).

¹⁵⁹ Note: The Regulation uses the concept of 'boarding house'.

¹⁶⁰ The examination of eligibility for placement is carried out by the Multi-Sectoral Working Group within the MHLSP (hereinafter - the Working Group) based on the set of documents submitted by the territorial social assistance structures. The decisions of the Working Group are the basis for the issuance of referrals for the placement in the boarding house. Beneficiary's admission to the Centre is subject to the referrals issued by the MHLSP, to which the beneficiary's set of documents is attached. The director of the boarding house completes the order of admission of the beneficiary to the institution and indicates the placement period, following the examination of the file by the multi-disciplinary team within the institution.

that such a placement is not subject to judicial control and does not involve a second medical opinion of a doctor. Only the MHLSP has the right to change the placement period.

One month before the end of the placement period, the Centre's administration informs the territorial social services, which referred the case to the MHLSP, about the need to take over the resident in order to reintegrate the resident into their biological/extended family or community, as appropriate. Representatives of territorial social services, who referred the case to the MLSPF, are obliged to take over the resident and ensure his/her reintegration into the biological/extended family or community until the end of the placement period, informing the 'residential centre' about the protection measure concerned. ***In the absence of local protection measures (such as the biological/extended family or social services at the community level), the territorial social services, which referred the case, submits to the MHLSP the request for the examination of the possibility of extending the placement period, accompanied by a set of documents containing all the measures taken to date***¹⁶¹. ***In practical terms, no effective measures are taken to find an effective measure of reintegration into society of the institutionalized person, which was supposed to be a short term arrangement.*** Therefore, the person remains institutionalized without any hope of rapid deinstitutionalization, not least including in the light of the National Programme for Disinstitutionalization of Persons with Disabilities 2018-2026, whereby the Government plans to integrate 60% of institutionalized residents into the community by 2026.

The multi-sectoral working group for the examination of placement applications within the MLSPF, based on the resident's set of documents provided for in Annex No. I of the Regulation, makes a decision for or against the extension of the period of placement by submitting the decision concerned to the local level authorities for a solution to be adopted. According to the Law on Mental Health, the psycho-neurological institution may be left subject to: a) the request or the will and feelings of the admitted person, expressed in any form, which suggests that the admission is against his/her will. When the person's will is to be determined, a trustworthy person shall be necessarily present, who will facilitate its determination; b) the request of parents, relatives, legal representative or, as the case may be, of the person in charge of protection (the assistant, the healthcare agent acting under a healthcare proxy for

¹⁶¹ The set documents includes: 1) reports of comprehensive evaluation of the biological/extended family; 2) informative note on the existing local and regional services and actions taken by local public authorities during the placement in order to create and develop alternative community services (draft decisions, proposals to the Local Council, District Council, donors, partnership agreements with public associations, etc.); 3) informative note on the actions taken by the territorial structure of social assistance, LPA I and LPA II in order to implement the recommendations of the MLSPF, which were submitted at the stage of the issuance of the referral for the placement; and 4) Action Plan for the next 6 months including the measures to be taken locally to ensure the resident's inclusion in the biological/extended family or social services at the community level at the end of the placement period.

the future, the temporary protector, the guardian, the members of the family council), who undertake to care, after the discharge, for the child or for the person that is subject to the contractual protection measure (assistance contract, healthcare proxy for the future) or judicial protection (temporary protection, wardship, guardianship).

Residents of institutions are not informed about the procedures to leave the institution and about the possibility of filing such a request and appealing a negative decision. During an appeal or court proceedings, residents are only heard by the court in exceptional circumstances.

Formally, no procedures were found in the institution to turn the voluntary stay into an involuntary stay. In the CfPT's opinion, these procedural arrangements do not preclude the possibility of persons being placed in institutions against their will.

e) Safeguards in the context of involuntary treatment

In the institution, free and informed consent to medical treatment is not requested. Residents are subjected to medical treatment without being told what substance is being administered, why it is needed, as well as without their consent. As a result, the express consent of the resident is not secured or recorded.

f) Safeguards for persons who are deprived of their legal capacity

1. Procedure for deprivation of legal capacity and appointment of a guardian

Under Article 24 of the Civil Code, 'a natural person who, as a result of a mental illness or physical, mental or psychological disorder, cannot fully understand his/her actions or express his/her will, may be subject, under a court decision, to the measure of judicial protection in the form of wardship, temporary protection or guardianship'. The CfPT acknowledges situations where the person is unable to express his/her will long term. At the same time, this rule is ambiguous, as it makes it possible to deny the individual will and preference of the person concerned as a consequence of the introduction of the above judicial protection measure. On this basis a subjective evaluation can be made of the person's ability to be 'fully' aware of his/her actions.

In most cases, residents are not personally heard during the process of limiting their legal capacity and appointing a guardian. Most often, they are not handed the copy of the decision, nor are they informed about the possibility and the means of appeal. The term for the introduction of the judicial protection measures in the form of wardship and guardianship can be up to 5 years¹⁶². By way of derogation, in the case of guardianship, the court, based on the psychiatric examination report confirming that, given the stage of development of science, there are no obvious indications that the condition of the person will improve, may establish, by a reasoned decision, a term of up to 10 years. At the same time, the court can renew the judicial

¹⁶² Article 4839 of the Civil Code.

protection measure for a period equal to the original term. By way of derogation, in the case of renewal of guardianship, the court, based on the psychiatric examination report confirming that there are no obvious signs that the condition of the person will improve, may establish, by a reasoned decision, a term of up to 20 years.

Decisions on the removal of legal capacity, under the law, are not subject to regular review by the court. The person concerned may initiate a procedure for the restoration of legal capacity. When designating a guardian in cases of both wardship and guardianship, the court will take into account the will and feelings expressed by the protected person, his/her usual relationships, interest shown by the candidates, as well as possible recommendations of parents, relatives and persons generally supporting the protected person.

2. Safeguards in the context of admission

Currently, the decision on the placement of the person in an institution includes those multiple safeguards listed above in the document, 'Safeguards in the context of involuntary placement'. At the same time, upon admission, the guardian does not have to sign a contract with the institution, as his/her application is adequate. Such an admission of a person does not have any official status of being 'voluntarily' or 'involuntary', even though the will of residents to leave the institution is ignored in practice.

g) Safeguards in the context of treatment and use of means of coercion

There are no safeguards in the context of treatment and use of means of coercion. The guardian is not involved and informed about the treatment measures applied, and no approval of an external body is required.

h) Material conditions

The material conditions in the accommodation rooms remain below the satisfactory threshold. We can see the practice in the institutions of accommodating large groups of 5-10 persons together, with individual beds. Bedrooms have sufficient natural and artificial light, but they are poorly ventilated. The smell of urine in some bedrooms suggests that some residents are neglected by the care staff. Sanitary facilities are only available in common areas per department. Since the common toilets and the shower spaces have no doors, the privacy of the physiological process is not ensured.

The bathroom, toilet, and the physical structure of the buildings are not adapted to the special needs of the inhabitants. The institutions do not have mattresses for persons with special needs, such as with spinal problems. Personal hygiene items are not always available.

Residents do not have individual and lockable cabinets to keep their personal belongings. During the day the access for the residents to their rooms is limited.

The leisure activities of the residents are limited to the outdoor walks. Bedridden residents with locomotor disabilities are not helped to access the outside. Some of them have not been outside for several years.

The access ways inside the institution are not adapted for persons with disabilities, although persons with special needs are permanently admitted in the Centre. Moreover, for the same reasons, they are not provided with a daily walk according to the schedule of the department.

The medical assistance for the resident is provided both in the institution and through hospitalization in medical institutions. The residents are mainly hospitalized in psychiatric hospitals, and less so in district hospitals. Currently, no shortcomings of cooperation are reported, while previously there were cases of delayed provision of medical assistance to residents of the residential centres.

The lack of access to dental assistance is still a major problem. In most cases teeth are extracted, even though preservation treatments are possible.

Used syringes are collected selectively in safe and unsafe containers (not in disposable ones)¹⁶³, being previously disassembled - this exposes the medical assistants to an additional risk of accidental injury and possible infection with blood-borne diseases.

The Centre's residents have health insurance policies, but the institution does not have access to compulsory medical insurance funds, because it has no service contract with the National Health Insurance Company. The quality of the medical services provided to the residents is not audited by the Ministry of Health, Labour and Social Protection, while the healthcare provision to the residents varies in terms of quality and availability from the healthcare available in community.

The medical staff do not have the necessary skills to document bodily injuries of the residents, nor the provisions of the Istanbul Protocol, and the national regulatory acts in force are not complied with in practice. Some medical assistants attend training courses organized by non-governmental organizations.

Compulsory medical examination upon each entry to and exit from the institution is not carried out; most institutions do not have a register for this purpose.

i) Other aspects

Only the residents placed under the ordinary regime maintain contact with the outside world. For this purpose they use mail, mobile phone or visits. Personal mobile calls are a preferred means of contact. Persons under the strict regime do not enjoy these rights.

¹⁶³ According to Art. 55 (3) ?, Packaging of medical waste, including hazardous waste, is only carried out in packaging made of materials that allow it to be disposed of with minimal risks to the environment and public health. The packaging used for collection and which comes into direct contact with hazardous waste resulting from medical activity is disposable and is eliminated with the content. The legislation is available at: <http://lex.justice.md/md/368030/>

From time to time the institutions are monitored by independent mechanisms such as the Ombudsperson for Children, the Council for the Prevention of Torture, OHCHR, Moldovan Institute for Human Rights and Keystone Moldova.

The institutions do not have transparent complaints procedures. The confidentiality of the correspondence is not ensured, or there is no mailbox accessible only to the postman, except for the employees' intervention. Also, there is no legal counselling system, such as 'lawyers of residents'; the institutions also do not have a psychologist.

The residents are not informed about the routine activities in the institution and about their rights, including the complaints procedures. They are unaware of the procedures for discharge and challenging the treatment. Moreover, lawyers provided by the state do not coordinate their strategy with the residents, or the registers do not contain entries of their visits.

3.8.2. Situation in the Temporary Placement Centres for Persons with Disabilities (Juveniles)

In the Republic of Moldova there are 2 Temporary Placement Centres for Juveniles (aged 4 to 18) with Disabilities - in the town of Hincesti¹⁶⁴ (the former boarding house for children (girls) with mental disorders) with a capacity of 315 places, and in the town of Orhei¹⁶⁵ (the former residential centres for children (boys) with mental disorders) with a capacity of 350 places.

The placement of a resident in the institution is based on a referral issued by the Ministry of Labour Social Protection and Family (currently the MHLSP) and lasts a duration of 12 months. At the same time, after the expiration of this term, the decision to extend the resident's stay in the boarding house is made by the administration of the boarding house, more frequently after the LPA from his/her place of residence reports about the lack of social conditions for integration into the family/community. **Thus, the CfPT notes that the provisions of the Practical Guide on the evaluation, de-institutionalisation and social inclusion of persons with mental disorders, approved by MLSPF Order No. 130 of 06.08.2013¹⁶⁶, are not properly implemented.**

The members of the CfPT found that the psychological climate in the Temporary Placement Centre for Persons with Disabilities (girls) in Hincesti is good, and the atmosphere is friendly. The staff of the institution make all efforts to provide the residents with effective psychosocial rehabilitatory treatment.

¹⁶⁴ Report of the CfPT on the preventive visit to the Boarding House for children with mental disorders (girls) in Hincesti town from 16 March 2018, available at: http://ombudsman.dascoding.md/wp-content/uploads/2018/10/casa_internat_copii_hincesti.pdf

¹⁶⁵ Report of the CfPT on the preventive visit to the Boarding House for children with mental disorders (boys) in Orhei town from 20 March 2018, available at: http://old.ombudsman.md/sites/default/files/document/attachments/casa_internat_copii_orhei.pdf

¹⁶⁶ Please see: http://msmps.gov.md/sites/default/files/document/attachments/ordin_nr_130_din_6.08.2013.pdf

The CfPT found staff shortages, including shortages of specialists such as social workers and psychologists, who are necessary to ensure that residents in both institutions enjoy effective psychosocial rehabilitatory treatment. The institutions do not have any psychologist; there is only one social worker and only one speech therapist who has to provide assistance to about 300 residents. The staff shortage is covered by means of the cooperation with national and international non-governmental organizations, which provide the institution with massage therapists, ergotherapists, kinetherapists and other qualified staff. **The CfPT is concerned about the sustainability of such collaborations and the failure of the state to provide concrete guarantees in this respect.**

The CfPT welcomes the fact that care of the residents in the Temporary Placement Centre for Persons with Disabilities (boys) in Orhei is provided at a suitable level. As the care and rehabilitation of the residents is the basic duty of the institution, it is implicit that there is a need to provide such facilities with the required number of specialists who are competent to carry out the psychosocial rehabilitation activities for the residents. The latter should be provided with an adequate level of remuneration.

Safeguards against torture and other ill-treatment

The CfPT notes **that there is no clear procedure for the submission of complaints** to or outside the administration. **No mailbox was found on the premises of both institutions.** The discussions with the staff of the Temporary Placement Centre for Persons with Disabilities (girls) in Hincesti suggest that most of the residents are illiterate and cannot write¹⁶⁷. **It is not clear for the members of the CfPT how the residents are informed that they can complain in the event of a dangerous situation** (e.g. aggression on the part of the staff or other residents), how they can file complaints objectively and independently, without any adverse consequences for them. These facts raise concern for the CfPT, as the existence of effective complaints procedures constitutes a fundamental safeguard against ill-treatment.

The residents can only call home/their relatives/friends from their personal mobile phones or a landline phone of a social worker. At the same time, **the telephone register highlighting the calls made is not available, and conversations are not confidential, as they are held in the presence of the staff of the institution (except when a personal phone is used).**

The compulsory medical examination upon placement in the institution, as well as upon each entry to/exit from institutions is not carried out. The CfPT did not find a Register of Medical Examinations and compulsory medical examination

¹⁶⁷ According to the information presented by the administration in March 2018: 7 children out of 267 were hearing impaired, 8 children were visually impaired, 169 children spoke with difficulty and 77 children were unable to speak.

forms to document bodily injuries and/or alleged acts of torture. The medical record contains only entries about leaving for/returning from vacation. **Medical staff do not have the necessary skills to document bodily injuries of the residents, and therefore the provisions of the Istanbul Protocol and the national regulatory acts in force are not complied with.** These findings impose the need for additional training of the medical staff regarding the provisions of the Regulation on the procedure for the identification, registration and reporting of alleged cases of torture, inhuman or degrading treatment.

Conditions of accommodation

a. Material conditions

The conditions of accommodation in both institutions are good, the premises are satisfactorily clean, residents are cared for and dressed according to the weather with decent clothes. All the beds were covered with clean and new bed cloths. Lighting is sufficient and the windows are large and allow the sun to enter the room. All rooms are well ventilated. However, there are accommodation areas where the 4m² standard is not complied with. **Therefore, the CfPT concluded that are no legal provisions of national standards on accommodation in rooms where patients live.**

In the Temporary Placement Centre for Persons with Disabilities (girls) in Hincesti, the CfPT noticed that each towel, toothbrush, towel, and closet is marked with the photo, surname and name of girls. The residents take a shower at least once a week, or as necessary. Sanitary towels for girls, pampers for bedridden residents are purchased regularly, but sometimes they are also received from donations. **The members of the Council welcome the efforts made by the staff of the institution to provide reasonable accommodation for the benefit of the residents, and ensure personal hygiene and self-care. The infrastructure and the 1st floor are adapted for persons with locomotor disabilities.** In the building, where the medical department is located, bedridden girls with the most serious disabilities are accommodated. The Council welcomes the fact that girls are not permanently bedridden, but are placed in bean bag chairs where they can sit upright. As for the access to the infrastructure for persons with locomotor disabilities, the administration of the institution did everything that is necessary to facilitate such access on the first floor for residents in wheelchairs, including to dining facilities.

The CfPT notes that **in the Temporary Placement Centre for Persons with Disabilities (boys) in Orhei, about 30% of the residents of the institution need permanent care, which requires adequate human resources; about 80% of the residents of the institution are adults, older than 18 years. The CfPT notes the problem of staggered provision of care services to the residents during nutrition due to the shortage of lower-level staff (such as nurses and child carers).**

b. Daily activities

The CfPT found that, in order to carry out the process of deinstitutionalisation in the facilities, residents may be placed with their biological family, in a community house or in a protected dwelling. The residents are involved in different psycho-pedagogical activities (ludo-therapeutic activities with residents of all groups, egrotherapy, educational activities) according to a person's individual abilities. At the same time, in accordance with the Minimum Quality Standards of Care, Education and Socialization of Children in Residential Institutions, approved by GD No. 823 of 04.07.2008¹⁶⁸, an individual service programme is prepared for each child on the basis of the initial evaluation/re-evaluation of the services provided to the child as well as of the staff involved in its implementation. Thus, the Individual Service Programme includes the following intervention components: (1) the individual care plan (home care, nutrition, personal hygiene, health surveillance and maintenance, etc.), (2) individual socialization and family reintegration plan, (3) individual service suspension plan, and (4) individual rehabilitation plan, as appropriate. The CfPT expresses its concern about the practical implementation of legal provisions with respect to providing the institution with qualified and care staff, as needed, as the failure to do so impairs the proper implementation of individual plans. No standard institutional indicators for measuring the quality of provided services exist.

The residents have access to the open air. Those persons who are able to walk independently are accompanied by educators. Bedridden residents are brought out on wheelchairs by the child-carers.

The Temporary Placement Centre for Persons with Disabilities (girls) in Hincesti has an improvised school for 26 residents with individual plans and school curriculum for each resident group (the girls are divided into 3 groups). Three subjects are taught: Romanian language, mathematics and science. The Council welcomes these efforts, but it cannot overlook the fact that the curriculum, according to which girls are taught, is not approved by the Ministry of Education, which is an impediment for the residents to becoming enrolled in mainstream schools.

Various socio-cultural activities (competitions, concerts, excursions, national and international festivals, sales exhibitions, etc.) are organized on a regular basis. Parent meetings are organized 6 times a year.

For the transport of the residents the institution uses vehicles that are not suited to the needs of disabled persons, and in the absence of stretcher bearers, it is rather difficult to accompany persons with special needs.

¹⁶⁸ The legislation is available at: <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=328489>

Healthcare provision

Certain residents have health insurance policies, but the institution does not have access to mandatory health insurance funds, as it has not signed a service contract with the National Health Insurance Company. A differentiated practice of maintaining health insurance policies for a part of previously admitted residents (about 100 persons) **was found**, and the vast majority of newcomers in recent years and those older than 18 years old do not have insurance policies. According to the Law on compulsory medical insurance, the Government also provides 'insured' status to persons with severe, accentuated or middle-ranging disabilities who reside in the Republic of Moldova and are registered with the competent institutions of the Republic of Moldova. **At the same time, the CPT carefully examines the living conditions and the treatment of persons with mental disorders, as any inconsistencies in these areas can quickly lead to situations that resemble those of 'inhuman or degrading treatment.'** The state has a positive obligation to provide persons held in its custody with adequate and prompt medical assistance. **Regrettably, the CfPT finds that this issue is not resolved, even if the Ombudsperson for Children has submitted documents to remedy this state of affairs with the National Health Insurance Company (in 2017).**

The CfPT notes that the number of medical specialists is much higher than the number of social protection specialists (social worker, psychologist, psychotherapist, psycho-pedagogue, educator, speech therapist), but **the quality of the medical services provided to the residents is not audited by the MHLSP. The Council also found shortcomings in keeping records of psychotropic preparations.**

Registers of bedridden residents, as well as operational procedures, are not in place.

3.8.3. Situation with regard to the phenomenon of torture, inhuman and degrading treatment in psychiatric hospitals

Psychiatric hospitals are self-financing, non-profit state medical and public health institutions, included in the mandatory health insurance system and are subordinated to the MHLSP. Psychiatric hospitals play the role of monitoring, evaluating and integrating psychiatric care service in the country through the National Coordination Centre for Psychiatric Care. The 3 psychiatric hospitals in the Republic of Moldova host about 1,300 persons, with over 16,000 admissions per year and an average length of hospitalization of 28 days.

a) Involuntary placement procedure

The national legal framework sets forth 3 forms of institutionalization in psychiatric hospitals: with the free expressed consent, without the consent in civil proceedings, and as a medical measure of coercion in criminal proceedings. Law No. 1402 of

16.12.1997 on mental health provides for involuntary placement. According to Art. 28, the institutionalization of a person against his/her will is possible under provisions .a) and c), if the person represents a direct social danger or if the person is at a risk of seriously harming him/herself unless provided with psychiatric care.

The procedure of institutionalization under Art. 28 of the Law includes convening the commission of psychiatrists of the in-patient facility, which assesses the reasons for the hospitalization within 48 hours and then files the request for institutionalization to the examining judge accompanied by the commission's opinion. Within 24 hours the judge decides on the grounds for hospitalization.

In criminal proceedings, suspects, the accused or defendants may be subject to medical measures of coercion provided for in Art. 99, 100 of the CC and Art. 490 of the CCP. The general rule requires that individuals are placed separately from institutionalized patients subject to informed consent. The court, regularly, but not less than once every 6 months, checks the need to continue medical measures of coercion¹⁶⁹.

The provisions of Art. 28(a) of the Law, whereby a person may be subjected to forced institutionalization if his/her state of health gives rise to a 'direct social danger' should be repealed. The element of 'direct social danger' encompasses the notion of 'attempt', and is therefore subject to criminal proceedings with the possibility of applying medical measures of coercion. The UN Committee on the Rights of Persons with Disabilities recommended that the State revise and repeal the legal provisions authorizing forced psychiatric treatment and non-consensual psychiatric treatment on grounds of mental illness.

The CfPT notes that the shortcomings established by the ECHR in the David¹⁷⁰ and Gorobet¹⁷¹ cases still exist. ***Patients do not participate in court hearings and are not offered legal aid to file an initial or further appeals and do not receive copies of medical opinions and court judgments.*** Appointed ex officio lawyers appear exclusively at the court hearing where questions of forced hospitalization are decided. Moreover, patients are not informed about the procedures for leaving hospital and the possibility and the ways of filing a court petition.

b) Verbal and physical abuse

During the visits, there were no complaints about the application of physical force. However, members of the Council noted the harsh treatment by nurses of patients manifested in unkind words, which might be interpreted as elements of verbal violence. The staff are not adequately trained, do not know techniques of non-physical de-escalation and reduction of aggressiveness.

¹⁶⁹ Article 501 of the CCP.

¹⁷⁰ David v. Moldova (App. no. 41578/05) ECHR 27 November 2007.

¹⁷¹ Gorobet v Moldova (App. no. 30951/10) ECHR 11 January 2012.

The Council notes that the records and description of injuries do not meet the requirements of the Regulation on the procedure for the identification, registration and reporting of alleged cases of torture, inhuman or degrading treatment, which is contrary to the Ministry of Health (Joint) Order No. 1589 of 31 December 2013. However, the failure of the supervising staff to inform the Prosecutor's Office within 24 hours about bodily injuries due to the absence of the reporting requirement laid down by this Regulation, was revealed.

c) Means of coercion

In the institution, physical constraint (immobilization by the staff of a resident by applying physical force – 'manual control'), chemical constraint (forced administration of drugs to control patient behaviour) and mechanical constraint (with towels) are used. Law No. 1402 allows the applying of such physical immobilization¹⁷² and isolation measures of lasting duration only in situations when in the opinion of the psychiatrist it is impossible to prevent by any other methods actions of a person who is a direct danger to him/herself or to others. The forms and duration of application of physical immobilization or isolation measures shall be recorded in the medical documentation.

The Council notes that in practice ***pharmacological immobilization is used more frequently.*** At the same time, there were no entries in the register of cases of immobilization during the period 2014-2018 in department no. 12 of the Psychiatric Clinical Hospital Codru.

In cases of the application of immobilization measures in the presence of other patients the residents are not continuously and directly monitored through human observation. Moreover, video/audio surveillance cameras are absent, including in the halls of the department or in living areas.

d) Safeguards in the context of involuntary treatment

The free and informed consent for medical treatment is not in reality a requirement complied with in the institutions. Residents receive medical treatment without being told what substance is administered, why it is needed and without their consent. Moreover, consent is not always secured or recorded.

e) Safeguards regarding persons who are deprived of their legal capacity

Under Article 24 of the Civil Code, *'a natural person who, as a result of a mental illness or physical, mental or psychological disorder, cannot fully understand his/her actions or express his/her will, may be subject, under a court decision, to the measure of judicial protection in the form of wardship, temporary protection or guardianship'*. The CfPT acknowledges situations where the person is unable to express his/her will long term.

¹⁷² Article 29 of Law No. 1402.

At the same time, this rule is ambiguous as it makes it possible to deny the individual will and preference of the person concerned as a consequence of the introduction of the above judicial protection measure. On this basis a subjective evaluation can be made of the person's ability to be 'fully' aware of his/her actions.

In most cases, residents are not personally heard during the process of limiting their legal capacity and appointing a guardian. Most often, they are not handed the copy of the decision, nor are they informed about the possibility and the means of appeal.

Judicial protection measures in the forms of wardship and guardianship can be applied for up to a period of up to 5 years¹⁷³. By way of derogation, in the case of guardianship, the court, based on the psychiatric examination report confirming that, given the stage of development of science, there are no obvious indications that the condition of the person will improve, may establish, by a reasoned decision, a term of up to 10 years.

At the same time, the court can renew the judicial protection measure for a period equal to the original term. By way of derogation, in the case of renewal of guardianship, the court, based on the psychiatric examination report confirming that there are no obvious signs that the condition of the person will improve, may establish, by a reasoned decision, a term of up to 20 years. Decisions on the deprivation of legal capacity are not subject to regular review by a court. The person concerned may initiate a procedure for the restoration of legal capacity. When designating the guardian in case of both wardship and guardianship, the court will take into account the will and feelings expressed by the protected person, his/her usual relationships, interest shown by the candidates, as well as possible recommendations of parents, relatives and persons generally supporting the protected person.

f) Safeguards in the context of treatment and use of means of coercion

There are no safeguards in the context of treatment and use of means of coercion.

The guardian is not involved in and informed about the treatment measures used, and no approval of an external body is required.

g) Material conditions

The Council notes that the roof of the building of the department 12 of PCH Codru (the division for persons subjected to measures of coercion) was repaired, and repairs in the medical room as well as in other common use rooms began.

Beds, on which patients sleep, are in a bad condition. The rooms for patients are not fully equipped with bedside cabinets and cabinets for personal belongings. Even if patients are not forbidden to have personal belongings, there are no places to keep them.

¹⁷³ Article 4839 of the Civil Code.

The number of beds in a dormitory varies. The area of a bed in general corresponds to the 6m² standard, laid down in the Public Health Regulation on the hygienic conditions for the medical and public health institutions, approved by the Government Decision of the Republic of Moldova No. 663 of 23.07.2010. Halls, sanitary units, canteens and dormitories are cleaned by patients who are provided with disinfectants and necessary equipment.

The CfPT further notes that the patients of the department are not engaged in any occupations during their stay in the institution. There are no activities in the gym and no instructive, ergotherapy activities are carried out. The patients spend their day in dormitories or in the halls of the department, where they can only read books, which suggests that there have been no positive changes in such conditions compared to the CPT report of 2011 and the CfPT findings of 2017.

h) Healthcare provision of residents

There are shortcomings related to the obligation to document and report injuries to the Prosecutor's Office within 24 hours. The registers do not contain sufficient information on the origin of injuries, their consistent description as well as the consistency of the injuries described with their cause (in the view of the medical staff). Medical assistants are not aware of the obligation to report to prosecutors the detected injuries, reporting them only to the doctor during the morning sessions of shift handover.

Cases of bodily injuries, deaths, suicide attempts and other incidents are notified in the form of a report to the senior medical assistant of the Republican Hospital in accordance with the Order of the Clinical Psychiatric Hospital No.75 of 13.08.2018 'On the provision of continuous communication with the Ombudsperson's Office'.

Used syringes are collected in disposable safe containers, namely there has been an improvement in this respect.

3.8.4. Situation with regard to the phenomenon of torture, inhuman and degrading treatment in the in-patient division of psychiatric examination of the Centre of Forensic Medicine

The in-patient service of psychiatric and forensic examination of the PCH Codru was transferred to the Centre of Forensic Medicine of the MHLSP by the Minister of Health Order No. 166 of 01 March 2017¹⁷⁴. It is a separate 2-storey building (1st floor), located about 2 km away from the central territory of the Clinical Psychiatric Hospital in the town of Codru. The territory is enclosed along the perimeter following the model of prison institutions and has a separate courtyard for walks.

¹⁷⁴ Establishment of the service of psychiatric-forensic examination within the Centre of Forensic Medicine is governed by the Law on forensic examination adopted in 2016, available at: http://www.ms.gov.md/sites/default/files/legislatie/ordin_166.pdf

The institution is guarded by the National Prison Administration subject to the Order of the Director of the National Prison Administration No. 63 of 11 June 2018. During the visit, the guard service was provided by 2 guards of the Guard and Escort Service of Chisinau Prison No. 13.

The placement of persons shall be ordered by a court ruling in order to determine the mental state of the accused/defendant in in-patient conditions for up to 30 days, with the possibility of extending the term of stay by means of a court ruling. The department has 6 rooms, four with a capacity of 3 beds and two with a capacity of 5 beds. The patient-support activity during the visit was provided by a medical assistant and a male nurse.

a) Placement procedure

Under Article 152 of the CCP, if the forensic or psychiatric examination of a person requires that he or she be observed longer term, the person may be admitted to a medical institution. This is set forth in the order or the ruling ordering the forensic examination. The admission of the persons (whether as a suspect or someone accused of a crime) in the medical institution for the purposes of undergoing a forensic examination is subject to the authorization of the examining judge, based on the prosecutor's request, according to Art. 305 of the CCP, which can be appealed against under Art.311 of the CCP.

In order to carry out the forensic examination in in-patient conditions, the suspect may be hospitalized for a period of 10 days, while an individual accused of a crime can be detained for a period of 30 days with the possibility of extending this period for up to 6 months. Each extension shall not exceed 30 days and shall be ordered by the examining judge upon the prosecutor's request. This request for an extension is submitted on the basis of the written reasoned request of the doctor who has encountered difficulties in carrying out the forensic examination, requiring additional time to do so.

b) Verbal and physical abuse

During the visits, no direct allegations of violence among patients or against patients by the staff were received. At the same time, the staff are not properly trained, they do not know techniques of non-physical de-escalation and reduction of aggression.

The CfPT notes that the records and description of injuries do not meet the requirements of the Regulation on the procedure for the identification, registration and reporting of alleged cases of torture, inhuman or degrading treatment, which is contrary to the Ministry of Health (Joint) Order No. 1589 of 31 December 2013, and the staff do not report the detected bodily injuries to the Prosecutor's Office within 24 hours.

c) Means of coercion

It appears, from what the department staff stated, that physical force or special means are rarely used. Most frequently verbal persuasion, towels for short-term immobilization (up to 30 minutes) and antipsychotic medication are used.

In exceptional cases, the intervention of the security service provider BERCUT-GRUP is requested. As department staff informed the CfPT, employees of BERCUT-GRUP enter the facility for a maximum of 5-10 minutes. This intervention, however, can be an interference with the right to confidentiality of medical data.

As no female guards are employed in the facility, conducting searches on female detainees is not possible, as such searches conducted by men could lead to potential abuse.

d) Safeguards in the context of using measures of coercion and ill-treatment

There are no safeguards in cases of when measures of coercion are used. Trustworthy people, relatives or the guardian are not involved and are not informed about the application of such measures. No approval of an external body is required.

Patients do not have access to correspondence or are permitted to make telephone calls during their stay in the department. The only way to communicate with the outside world is through a lawyer or a close relative. For such exchanges there is a special office for meetings located outside the department.

The interior of the department and the living areas are covered by video surveillance cameras. The video images are viewed by the guards at the control station located in a specially arranged unit outside the department.

g) Material conditions

The general state of hygiene was satisfactory, the bed clothes were clean, and the halls, sanitary units and doctors' rooms were cleaned by nurses. There are still similar shortcomings as reported by the CPT missions to Moldova from 2007 and 2011, as toilets in dormitories are still not fully closed, being separated only up to mid-height. Moreover, they are visible from the corridor, which does not provide full privacy.

The courtyard for walks should be provided with a cover for protection of the patients in wet and hot weather conditions. The daily activities of the patients are reduced to reading books and having discussions with admitted persons or with medical staff, suggesting that there have been no positive changes compared with the CPT report of 2011.

The patients are allowed to take a shower only once a week in a specially arranged room, which is located outside the department. The bathroom is equipped with four open shower units and, as a result, full privacy for persons is not provided.

h) Medical assistance

The CPT's finding of 2011 that the institution is not included in the comprehensive, compulsory health insurance system remains unchanged. This fact has resulted in financial difficulties which have impacted on the provision of healthcare as well as on the remuneration of medical staff.

The department faces a shortage of mid- and low-level medical staff (such as nurses). As a result of reforms, the average monthly salary decreased by about 600 MDL, while annual leave was reduced by 10 days. At the same time, the training plan is not adapted to the specifics of the activity in the department.

The recording and completion of the register regulating patient immobilizations is not properly maintained, and there exist no documents regarding requests for and interventions by the 'Bercut' external security group, raising concerns about the abusive use of special means.



IV

RECOMMENDATIONS OF THE COUNCIL FOR THE PREVENTION OF TORTURE

Following the work undertaken in 2018, the Council for the Prevention of Torture provides the following Recommendations.

To the Parliament

To the Government

Become more actively involved in the monitoring and facilitation of the implementation of the recommendations of the relevant international and national institutions with regard to the respect for the rights of people not to be subjected to torture and other ill-treatment.

To the Ministry of Justice

To the National Prison Administration

1. Provide equal and non-differentiated treatment for all persons detained in prisons. Inform prisoners and explain, on a regular basis, their rights and legal opportunities in places of detention (including detaining phases, living conditions, involvement in activities, work, etc., and how decisions are made by the administration).
2. Stop treating/approaching persons isolated under Art. 206 of the Code of Execution, or persons with hierarchically lower status within the prison population (due to their 'humiliated' or 'in determined' designation by other prisoners), or who have abandoned 'informal prison laws', as persons who have been subjected to disciplinary sanctions. Provide opportunities/rights to these persons equal to the opportunities/rights available to the wider prison population. Identify/diversify effective long-term measures for the security of prisoners.
3. Improve the specialized training of prison staff, in particular, in the field of negotiation of conflicts in the prison environment and non-violent communication. Eliminate any (physical or verbal) abuse by prison staff against prisoners. Prison

staff who interact directly with prisoners (especially with juveniles) should be informed about, and take into account, the needs and requests of prisoners (including juveniles).

4. Enhance efforts to increase prison staffing levels. Provide also the necessary number of properly trained psychologists. Ensure the necessary number of psychiatrists and provide them with the necessary psychotherapy training and standard tools to determine the risk of self-harm and suicide among prisoners.
5. Find solutions of effective employee protection mechanisms.
6. Enhance efforts to develop a policy (and practices) of zero tolerance to corruption of prison staff, based on the CPT's strategies on combating impunity¹⁷⁵.
7. Strengthen efforts, in particular, by enhancing departmental controls for the detection and elimination of hostile relationships between different categories of prisoners, intimidation between prisoners and criminal subculture in prisons, including by establishing separate areas equally accessible to all categories of prisoners.
8. Remove any practice of involving prisoners (as informal leaders) in maintaining order among the prison population, and/or in managing prisons as a whole.
9. Scheduled and unexpected searches shall be carried out in accordance with international standards and with due respect for the dignity and rights of persons being searched.
10. Provide the rights of prisoners to telephone conversations according to the Code of Execution, the Statute of Service of Punishment by Prisoners and the Rules on the number, frequency and duration of telephone conversations that can be made or received by such persons¹⁷⁶.
11. Re-evaluate the complaints mechanisms throughout the prison administration system to ensure that each prisoner (including juveniles, illiterate persons, persons with disabilities, and foreigners) is able to address confidential complaints to the competent institutions and outside the prison system.
12. Identify special resources and procedures to provide prisoners with stationery (sheets of paper, pens, envelopes, and stamps) to enable them to enjoy the right to file complaints both within and outside the system.
13. Inform all prisoners about the procedures for filing complaints and provide them with the addresses and contacts of the Ombudsperson, Ombudsperson for

¹⁷⁵ : European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Combating impunity - Extract from the 14th General Report of the CPT, published in 2004 (CPT/Inf(2004)28-part), available at: <https://rm.coe.int/16806cd08c>

¹⁷⁶ Order of the Minister of Justice No. 730 of 08.09.2017 on the approval of the Rules regarding the number, frequency and duration of telephone conversations that can be made or received by prisoners, available at: <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=371456>

Children, Prosecutor's Office and relevant NGOs, etc. (namely, those institutions referred to in Art. 210(2) of the Code of Execution).

- 14.** Enhance efforts to bring conditions of detention to an acceptable level for all cells within the prison system. Re-evaluate, as soon as possible, all disciplinary isolation units according to international standards. Close isolators that do not meet international standards and find new disciplinary isolation spaces that meet international standards.
- 15.** Ensure the necessary conditions to keep prisoners' clothes clean. At the same time, the prison administration should make efforts to provide prisoners with the possibility to use the bathroom more frequently, at a temperature appropriate to the climate, and if possible, on a daily basis, but at least twice a week (or more frequently, if necessary).
- 16.** The water supply and nutrition of prisoners shall conform to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Each prisoner shall have drinking water available whenever necessary. Each prisoner shall receive from the prison administration, at regular hours, meals of enough value to maintain his/her health and strength, of a very good quality and which are well cooked and served.
- 17.** Distribute juveniles in separate cells depending on their age, so that they are included in the same age group, in order to prevent unwanted negative influences, domination and abuse.
- 18.** The prison administration shall make efforts to allow juvenile prisoners to use the bathroom more frequently at a temperature appropriate to the climate, if possible, on a daily basis, but not less than twice a week (or more frequently, if necessary).
- 19.** Find solutions to substantially extend the out-of-cell time of juveniles at weekends.
- 20.** Take the necessary measures to revise the educational, psychological and social programmes in line with the needs and interests of juvenile prisoners that shall bring positive effects in their cognitive-behavioural change.
- 21.** Determine the needs and develop a plan for the whole prison administration system on the adaption of prison institutions for prisoners with disabilities, including through the provision of care staff.
- 22.** Develop and implement educational, psychological and social programmes that meet the specific needs of prisoners.
- 23.** Implement a strategy to provide all prisoners with the opportunities of work and, in particular, offer more employment opportunities, taking into account the specialisms of prisoners.

- 24.** Find solutions for the separation of juvenile prisoners from adult prisoners. In particular, identify mechanisms so that juveniles are not detained in prisons other than Goian Prison No. 10.
- 25.** Develop and implement a comprehensive mental health strategy to prevent self-harm actions and attempted suicide among prisoners; procure standard tools to determine the risk of self-harm and suicide among prisoners.
- 26.** Reorganize the health system in prisons in order to ensure the independence of the medical action and the access of prisoners to affordable, acceptable, available and quality medical services.
- 27.** Re-evaluate the medical staff in prison institutions and develop a mechanism/strategy to attract and maintain medical staff in places of detention in order to prevent/exclude ill-treatment.
- 28.** Increase staffing levels (including medical staff) and ensure that vacancies are filled in order to comply with the requirements of national laws and international recommendations, and to avoid situations of excessive workload and of risks to the staff.
- 29.** Adjust the regulatory framework by implementing express provisions of the procedure for the exercise of the right of prisoners to independent (private) medical consultation, in addition to the safeguards of compulsory medical examination provided by the authorities. Ensure the availability in each prison of a medical room for the confidential medical examinations of prisoners entering and leaving the prison, and in any other cases when bodily injuries are found, or upon request of the prisoner. Ensure the confidential storage of medical documentation.
- 30.** Develop jointly with the Prosecutor's Office an effective mechanism for the protection of the medical staff who report alleged cases of torture, inhuman or degrading treatment, in the manner laid down in the Order No. 77 of the Prosecutor General's Office/572 of the Minister of Justice of 31.12.2013. Harmonize the provisions of regulatory acts to ensure the confidential reporting by medical staff of detected bodily injuries and safeguards for the protection of medical staff against reprisals by the administration or colleagues. Develop an independent and confidential mechanism for reporting of traumatic injuries by prisoners, their relatives and lawyers. Implement integrated electronic systems for maintaining medical records and reports of bodily injuries which provides a general overview of alleged acts of torture, inhuman and degrading treatment as well as response mechanisms.
- 31.** Establish a register of daily medical examinations of persons held in detention in disciplinary isolators, excluding the practice of breaking confidentiality through the placement of medical data in the common register. Revise the Order of the

Minister of Justice No. 529 of 26.11.2004 on the approval of the Instruction regarding the conditions of detention in prisons of persons who go on hunger strike and the procedure for their enteral feeding in the event of a hunger strike. Develop and distribute information materials for and to prisoners on the refusal of nutrition.

- 32.** Establish the effective mechanism for the exemption from the preventive measures in the form of arrest and at level of execution of punishment, applicable to all prisoners without making differences regardless of their procedural status and the moment when a disease was contracted.
- 33.** Revise the Regulation on the treatment and conduct of prisoners with tuberculosis, approved by the Minister of Justice Order No. 278 of 17.07.2007 and other relevant regulatory acts, and make it consistent with the latest national and international recommendations. Ensure the training of medical management staff in the field of public health management. Train prison staff to conduct safe security searches and implement risk mitigation programmes.
- 34.** Provide prisoners with sufficient quantities of drugs according to the range of diseases commonly encountered and in line with National Protocols and Guidelines, and avoid situations where prisoners are forced to procure drugs and other supplies at their own expense.
- 35.** Develop a strategy on the reduction of the influence of criminal subculture in order to ensure safe conditions of detention, including adequate access to treatment programmes for drug addiction as well as access to a doctor¹⁷⁷.

To the Ministry of Internal Affairs To the General Police Inspectorate

- 1.** Develop and approve institutional procedures of conduct in alleged cases of torture, inhuman and degrading treatment for the standardization of actions of staff in places of detention in order to respect the safeguards against torture and effective investigation, including revision of the practice of application by all concerned institutions of the Joint Order No. 77 of 31.12.2013, and set out measures to sanction the failure to implement the Order.
- 2.** Develop or improve the regulatory acts/operational procedures that would detail the basis for the application of physical force/special means and firearms at the institutional level, depending on the stage within the criminal justice process (apprehension, arrest, detention, transportation, trial, etc.), person (adults, juveniles, women, persons with disabilities, elderly and diseased persons), and the need to apply them.

¹⁷⁷ Annual Report of the CfPT 2017, available at: <http://irp.md/library/publications/1075-raportul-anual-de-activitate-pentru-anul-2017-al-consiliului-pentru-prevenirea-torturii-in-moldova.html>

- 3.** Train police officers on operational procedures for the application of physical force/ special means and firearms according to international and national standards. Introduce or draw up a register or protocol on the use of physical force and special means by the Police Inspectorates for the systematization and recording of cases of urgent measures of constraint.
- 4.** Identify and apply a clear and standard system for the placement of apprehended/ detained persons in cells, taking into account their distinct categories.
- 5.** Find solutions for all functional isolators within the MIA to ensure that the persons held in the isolators are constantly overseen by supervisors (including through video surveillance) and the privacy of prisoners is respected.
- 6.** Improve and standardize procedures (from a technical and operational point of view) enabling persons in cells to quickly alert supervisors, especially in critical situations.
- 7.** Strengthen collaboration between the police bodies and the NLAC to improve lawyer appointment procedures.
- 8.** Identify and adapt in all isolators special areas to be used only for the purposes of criminal justice related matters, such as the hearing and interviewing of persons and of ensuring confidential interviews between such persons and their lawyers.
- 9.** Eliminate the practice of hearing/allowing the hearing of apprehended/arrested/ detained persons in the absence of the lawyer.
- 10.** Guarantee the right of access to a doctor, including to examination, if the apprehended person wants so, by a doctor chosen by him/her (in addition to the medical examination by the doctor requested by the police authorities).
- 11.** Ensure confidential medical examination of prisoners upon each entry to and exit from TDIs. The medical examination of persons held in police custody shall be carried out outside the hearing of, and preferably not in the presence of police officers, unless the specialized doctor concerned explicitly requests their presence.
- 12.** Ensure the security of personal medical data and the medical examination of apprehended/detained persons in confidential conditions upon the entry to and exit from TDIs and the strict confidentiality of medical records. Take actions so that persons, who do not have medical or care duties, have access only to the medical information that is strictly necessary for the fulfilment of their duties in the light of this observation. The results of each examination, the relevant statements of the inmate and the doctor's conclusions should be formally registered by the doctor and made available to the inmate and his/her lawyer.
- 13.** Provide the documentation of bodily injuries in accordance with the Istanbul Protocol as well as national regulations. The CfPT also reiterates its recommendation to ensure that records made following the medical examination

of the apprehended persons contain: (i) the statement of the person subjected to the medical examination (including a description of his/her state of health and any allegations of ill-treatment); (ii) a full description of objective medical findings based on a thorough examination, and (iii) comments of the medical staff in the light of (i) and (ii), indicating the consistency between any statements made and objective medical findings. The CfPT once again encourages the authorities to take the necessary steps to extend the practice of regular medical examination to newly admitted prisoners in all TDIs.

- 14.** Train, on a regular basis, the medical staff of TDIs (initially and continuously) on the medical activity in TDIs; revise and approve the job descriptions of the TDI medical staff to expressly include the duties of reporting body injuries, and the respect for the confidentiality of medical data of apprehended persons (maintained recommendation); exclude the duties related to other activities of the inspectorate and the health of employees, as well as exclude the practice of involving medical staff in activities that are inconsistent with medical ethics, including searches.
- 15.** Standardize the procedures for informing persons/a third party by persons held in police custody about the fact and place of their apprehension/detention.
- 16.** Identify a method of recording all cases by introducing a register for information on the notification of detention containing sections on the date and time of the notification, the manner of notification, and limitations or difficulties countersigned by the prisoners.
- 17.** Communicate and provide informational support in writing upon the first interaction in the language that the inmate understands, and explanation thereof under Art. 64 of the Code of Criminal Procedure, including the right to silence and not to testify against him/herself.
- 18.** Develop and implement clear procedures for the provision of fundamental safeguards, including the access to a lawyer and medical examination by a doctor other than that the doctor offered by the police.
- 19.** Develop/amend and approve the list/organisation of standard registers on the activities of temporary detention isolators, including record-keeping instructions. Designate and train staff on the correction, completion and management of registers.
- 20.** Develop/improve and put in place an effective and standard mechanism that guarantees the right of apprehended/detained persons to file confidential requests/complaints to related bodies such as the Prosecutor's Office, Ombudsperson and NGOs, etc.
- 21.** Ensure that internal inspection regulations are in place and are known not only to those involved in the inspection, but also to those inspected. Ensure that

methodologies/instruments for planning, performing and recording inspections are in place.

22. Prepare inspection reports and discuss the results with the administration of inspected police inspectorates. Introduce mechanisms to monitor the improvement of the monitored/inspected aspects of detention and to evaluate effectiveness.
23. Exclude cases of holding persons in temporary detention for more than 72/48 hours.
24. Periodically inform all MIA officers involved in the activities relating to the criminal prosecution isolators of the inadmissibility of holding apprehended/arrested persons for more than 72 hours in custody in such MIA units and exclude such practice in future.
25. Identify/improve, at the inter-institutional level, a procedure for documenting persons in the shortest possible time (within 72 hours) so that they can be escorted to prisons, including by disseminating the positive practice in this field from other Inspectorates (Chisinau, Calarasi).
26. Provide minimum material conditions of detention in TDIs by rearranging beds in cells according to standards (7m² with at least 2m between walls and 2.5m between the floor and the ceiling, not including the sanitary unit per person/bed). Beds that are not used as such, should be removed from the cells.
27. Delimit in full, from the floor to ceiling, sanitary units in cells to ensure the privacy of prisoners;
28. Provide prisoners with bed clothes and hygienic kits (for shaving, toothpaste/toothbrush, soap) from the moment of their placement in TDIs. Re-evaluate the cells in all isolators in terms of their compliance with national and international standards.¹⁷⁸. Provide cells with sufficient artificial lighting so that reading is possible.
29. Regulate the status of (technical/operational) spaces currently used in some police inspectorates to hold in custody apprehended/detained persons until they are transferred to cells/rooms of accommodation. In particular, eliminate the practice of holding apprehended/arrested persons in metal rooms/with bars for more than 3 hours, and allow them to go to toilets during this period. Furthermore, ensure that the time of placement in these rooms is recorded in registers.

¹⁷⁸ The calculation of accommodation space shall be carried out as follows: a) for the detention of 1 person – at least 7 m², without the area of the sanitary unit; b) for the detention 2 or more persons, for 2: 7 m² + 4 m², for 3: 7 m² + 4 m² + 4 m², etc. not including the area of the sanitary unit.

- 30.** Provide TDIs with service staff to ensure sanitary and hygienic conditions fitting for a public institution.
- 31.** Provide permanently apprehended/detained persons with drinking water and quality food 3 times a day and ensure sanitary conditions, including prisoners during transportation and in court;
- 32.** Find solutions to provide outdoor walks for at least one hour for all prisoners, including in bad weather by arranging a shelter in the courtyards for walks. Introduce a specialized register for documenting the exercise undertaken by prisoners, including the notification of a refusal to do so.
- 33.** Continue purchasing special vehicles adapted to the minimal standards of transportation of prisoners¹⁷⁹ with respect to material, security, safety and health conditions for all isolation units within the MIA. Escort prisoners whenever appropriate so that the rule of 72-hour temporary detention period is complied with in practice.
- 34.** Revise the MIA Order No. 31 of 27.01.2004 regarding the establishment, arrangement and equipping of the medical offices of the district police commissariats, and provide for their functionality (including finding the necessary space) in order that they can provide confidential medical examinations in hygienic conditions in the TDIs. Revise and approve the basis for medical documentation within the TDIs, including the monitoring and reporting of indicators. Develop and introduce standard medical registers and medical documentation sheets for prisoners.
- 35.** Develop the concept of ensuring the independence of all medical activity as well as the guarantee of medical examinations and the right to health within TDIs and of the Implementation Plan. Exclude the practice of involving medical staff from TDIs in conducting searches of prisoners, providing medical assistance to officers, or in other activities of the inspectorate.
- 36.** Ensure organizational safeguards and regular checks of healthcare provided by the medical service of the Ministry of Internal Affairs or other competent institutions. Develop and approve institutional management procedures for alleged cases of torture, inhuman and degrading treatment in order to standardize the staff's operational procedures in places of detention (including the medical staff) and to ensure respect for the safeguards against torture and effective investigation. In addition, revise the practice of application by all concerned institutions of the Joint Order No. 77 of 31.12.2013 and set out measures to sanction the failure to apply it.

¹⁷⁹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Factsheet - Transport of detainees (CPT/Inf(2018)24), June 2018, available at: <https://rm.coe.int/16808b631d>

- 37.** Develop and implement legal provisions for the confidential reporting of detected bodily injuries as well as safeguards for the protection of the medical staff against reprisals by the administration or colleagues. Develop a mechanism for the independent and confidential reporting of traumatic injuries for prisoners, relatives and lawyers. Develop and introduce protocols for the conduct of medical examinations in the presence of non-medical staff, with the criteria for their use and procedures for documentation.
- 38.** Develop and implement case management procedures as well as registers for persons on hunger strike.
- 39.** Develop and approve medical waste management procedures, according to the provisions of Law No. 209 of 29.07.2016 on waste, and develop the Framework Management Plan.
- 40.** Develop and put in place a drug management system within TDIs, including procedures for ordering, distributing, storing and safely destroying such items. Exclude the practice of drug distribution by non-medical staff.
- 41.** Ensure that the TDI staff are informed of the provisions of the Methodological Instruction on the intervention of the police in the prevention and control of HIV infection among groups at high risk of infection, approved by the PGI Order No.54 of 27 March 2015, including the safe search measures

To the Ministry of Internal Affairs

To the Bureau of Migration and Asylum

To the Temporary Placement Centre for Foreigners

- 1.** Take the measures required by Article 64² of Law 200/2010 for the release of asylum seekers from TPCF, whenever necessary, and avoid requests to extend the periods in detention of asylum seekers.
- 2.** Avoid the practice of requesting from beneficiaries, payment for interpretation services.
- 3.** Take actions to notify specialized bodies about compliance with apprehension procedures in accordance with the Code of Criminal Procedure, to observe the mandatory 3-hour term of apprehension, and about the drawing up of an apprehension report. The CfPT expresses its concern about the existence of cases of apprehension/placement in temporary detention of persons without drawing up an apprehension report.
- 4.** Find urgently measures to stop placing in detention persons in inadequate spaces within the regional offices of the BPD and the BMA by creating specially arranged spaces or referring such persons to institutions specifically designated for temporary detention.

- 5.** Find solutions to display information on the CfPT's mandate on the information panel of the Institution.
- 6.** Revise the MIA Order No. 345 of 24.11.2014 on the approval of the instruction regarding the way of referral, reception, medical investigation and treatment of asylum seekers, beneficiaries of humanitarian protection and foreigners placed in the Temporary Placement Centre for Foreigners and the MIA Order No. 354 of 31.12.2015 on the approval of the Internal Instructions of the Temporary Placement Centre for Foreigners in order to ensure the confidential medical examination and the mandatory HIV testing upon placement as well as their management according to the national legislation.
- 7.** Amend the legal framework to ensure that all migrants, affected by socially conditioned diseases such as HIV infection and tuberculosis, have access to treatment and support services (including illegal migrants or persons in the process of being documented).
- 8.** Enhance the collaboration with the MHLSP and other institutions responsible for specialized medical fields in order to ensure the equivalence of medical services, and check the quality of the medical services rendered to the beneficiaries.
- 9.** Develop and approve nutrition standards for the Centre's residents, including with due regard to their diseases or religious beliefs.
- 10.** Provide confidential medical examination upon placement to/exit from the Centre by trained medical staff.
- 11.** Ensure the proper completion of medical registers, according to the classification as well as medical examinations according to the approved model of the Medical Examination Sheet.
- 12.** Ensure availability of informed consent for medical examinations in the English/Russian languages so that they are able to understand the medical services provided and the need for any samples collected.
- 13.** HIV and viral hepatitis testing should only be undertaken on a voluntarily basis, with counselling and voluntary testing - with exclusion of mandatory testing practices.
- 14.** Include in registers relevant information about exchanges with relatives concerning the exercise undertaken by detainees.
- 15.** Exclude the practice of segregating HIV-positive persons within the medical isolation unit.

To the Ministry of Health, Labour and Social Protection
To psychiatric hospitals
To Temporary Placement Centres for Persons
with Disabilities (juveniles)

1. Ensure the effective implementation of the National Programme for Disinstitutionalization of Persons with Disabilities 2018-2026, including the Action Plan, according to which 60% of residents will be reintegrated into the community by 2026. Immediately evaluate all residents placed in 'closed' departments in order to ensure the liberty or, as the case may be, their placement in psychiatric hospitals by applying medical measures of coercion on the basis of criminal law, or by applying the provisions of Art. 28 of Law 1402 on mental health. Introduce a moratorium on the practices of placing residents in closed departments. Initiate the procedure for changing the status of patients from voluntary into involuntary in all cases where treatment was applied against the will of the patient or if means of coercion was used.
2. Develop a common standard operational instruction with the GPI and psychiatric hospitals to manage crisis situations, including cases of violence and violence related to the abuse of alcohol or other prohibited substances. Train the staff on the implementation of safe intervention methodologies.
3. Develop and implement the register of receipts and transmissions of complaints, statements or other information about alleged torture, inhuman or degrading treatment in accordance with point 14 of the Ministry of Health Order 1589 of 31 December 2013 (standard model).
4. Train the medical staff with regard to the provisions of Order No. 1589 of 31.12.2013 on the approval of the Regulation on the procedure for the identification, registration and reporting of alleged cases of torture, inhuman or degrading treatment, and set out a mechanism for reporting to the Prosecutor's Office.
5. Transpose, at the national level and in practice, the CPT's standards on the use of measures of coercion, as revised in 2017, by developing regulatory procedures/mechanisms on this issue. Install mailboxes accessible to all residents, and exclude the possibility of breaching the confidentiality of correspondence.
6. Install a video surveillance system covering all common areas in the institution. To carry out activities to inform the residents in an accessible language about their rights and responsibilities, on how to leave the institution, to raise awareness on the risks of leaving of the institution in an unplanned manner, to inform persons about the need to receive drug treatment, as well as the possible adverse risks/reactions, to ensure that legal documents are handed over to them, and they are informed in an accessible language about their content.

- 7.** Exclude practices of institutionalization against the will and preferences of concerned persons. Commence the procedure of transforming voluntary into involuntary status in all cases where treatment was applied against the will of a person or was applied a means of restraint. Set up a mechanism to register and keep records of expressed consent. Develop an instruction and set up a mechanism for the recording of verbal consent, including safeguards preventing the administration of drugs without the informed consent of the patient. Install mailboxes accessible to all residents in order to exclude the possibility of the confidentiality of their correspondence being breached.
- 8.** Ensure the effective participation of persons in court hearings by examining the application of judicial protection measures, and the access to quality legal aid, and ensure the contestation of court decisions, if the resident so wishes. Set up an additional safeguard for cases of limitation of legal capacity whereby persons subject to a measure of judicial protection will be re-examined every 12 months in the light of the need to maintain the measure. Amend Art. 24 of the CC by limiting the range of situations in which judicial protection can be introduced, being possible only if the person cannot express his/her will. Ensure that persons with disabilities who are charged with an offence have the right to a fair trial equally with others.
- 9.** Inform immediately trustworthy persons and guardians of situations in which residents received treatment against their will or were subjected to means of coercion. Repeal Art. 28(a) of Law 1402, which authorizes non-consensual treatment. Increase the number of employees to assist residents. Introduce the position of psychologist and sessions of psychological counselling.
- 10.** Provide conditions of physical accessibility in the institutions by complying with the standards of the Practical Building Code with regard to persons with disabilities.
- 11.** Ensure the medical examination of residents upon each institutionalization and de-institutionalization, and introduce a medical register in this context.
- 12.** Provide conditions for the safe storage of drugs and confidentiality of medical papers.
- 13.** Develop and implement infection control and medical waste management plans.
- 14.** Provide patients with beds adapted to their special needs. Ensure dental prosthetic and preservation treatments for all residents concerned.
- 15.** Ensure that patients are personally heard by the judge ordering admission, that judges request the opinion of a psychiatrist and that such decisions may be contested.

- 16.** Develop and introduce a register of receipts and transmissions of complaints, statements or other information about alleged torture, inhuman or degrading treatment in accordance with point 14 of the Ministry of Health Order 1589 of 31 December 2013. Transpose at the national level and in practice the CPT standards on the use of measures of coercion, revised in 2017¹⁸⁰. Train staff in using measures of coercion in line with the CPT standards revised in 2017. Enter immediately all cases of immobilization in the register.
- 17.** Install a video surveillance system in all common areas in the institution. Develop and approve an internal order to ensure the confidentiality of personal data (including video images) and the responsibility of the staff in this regard.
- 18.** Provide conditions of physical accessibility in the institutions by complying with the standards of the Practical Building Code with regard to persons with disabilities.
- 19.** Ensure the medical examination of residents upon each entry to and exit from the institution.
- 20.** Enter immediately into a register all cases of immobilization/use of force.
- 21.** Ensure the recruitment of female staff to the guard unit. Ensure the supervision/guarding of the department for persons admitted under criminal law exclusively with supervisory personnel from the relevant state institutions.
- 22.** Revise the training plan in order to adapt it to the specific activity in the department.
- 23.** Develop and approve a regulation on the functioning of the institution and its interaction with the 'BERCUT_GRUP' guard service in order to ensure the safety of the staff and the confidentiality of medical data in the light of the CfPT's recommendations from 2011. Inform the General Prosecutor's Office and Ombudsperson of any intervention of such private security services. Develop standard operational procedures for the interaction of the medical and guard staff (the staff of the NPA and for Bercut private service) in cases of exceptional situations. Introduce a register of requests for interventions of the guard service, specifying the date/time of the request/execution; the reason for the request (brief description), persons involved, measures taken, the use of means of coercion or special means, and the person in charge.

¹⁸⁰ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Means of restraint in psychiatric establishments for adults (CPT/Inf(2017)6), March 2017, available in English at: <https://rm.coe.int/16807001c3> and in Romanian (unofficial translation) at: <http://idom.md/wp-content/uploads/2017/12/MIJLOACELE-DE-CONSTRUC%C3%82NGERE-%C3%8EN-INSTITU%C8%9AIIILE-PSIHIATRICE-PENTRU-ADUL%C8%9AI-STANDARDELE-CPT-2017.pdf>

- 24.** Revise, by common agreement with the MHLSP, staff policy and establish the necessary staffing in accordance with the provisions of the Framework Regulation in order to ensure a sufficient number of specialized staff (social assistants, psychologists), and efficient treatment of psychosocial rehabilitation for residents.
- 25.** Develop a clear and accessible mechanism of filing complaints by residents. Install a mailbox on the premises of the Centre. Residents should be informed of the bodies competent to receive complaints.
- 26.** Take actions to access the NHIC funds in order to provide residents with quality medical services and to increase the salaries of the medical staff.
- 27.** Ensure the medical examination of the residents upon each entry to and exit from the institution and introduce a medical register in this context.
- 28.** Revise the Minimum Quality Standards for Care, Education and Socialization of Children in Residential Institutions, approved by GD No. 823 of 04.07.2008 to expressly include space for the accommodation of a resident and for the nutrition of immobilized persons.
- 29.** Develop, approve and introduce standard registers for the documentation of bodily injuries in accordance with the Istanbul Protocol and the Regulation on the procedure for the identification, registration and reporting of alleged cases of torture, inhuman or degrading treatment. Provide the medical staff with training in the field of the proper documentation of cases of bodily injuries and ensure compliance with the provisions of the Order on the approval of the Regulation on the procedure for the identification, registration and reporting of alleged cases of torture, inhuman or degrading treatment, registered with the Ministry of Justice of the Republic of Moldova No. 969 of 20 March 2014 (the Ministry of Internal Affairs Order No. 408 of 31.12.2013).
- 30.** Develop and implement infection control and medical waste management plans. Ensure the completion of the register of psychotropic drugs in accordance with the RM MH Order No. 71 of 03.03.99 on keeping, recording and release of narcotic, toxic and psychotropic products and substances.
- 31.** Introduce registers of immobilization as well as operational procedures to exclude ill-treatment.
- 32.** Take actions to ensure that the institutions have vehicles adapted to the special needs of residents.

To the Ministry of Defence

1. Revise the legislation to expressly include the compliance with basic safeguards upon the placement of a person in an isolator.
2. Set up and make available to the service members under arrest a clear and pre-established mechanism of notification of the place and the fact of detention.
3. Urgently develop and submit proposals to amend legislation so as to introduce means of regulating clear procedures of contesting the disciplinary sanction of arrest and establish a relevant timetable for contesting and examining such requests - finalised with decisions.
4. Urgently install mailboxes on the premises of the Isolator and make postal services available to service members in order to ensure their contact with the outside world, and put in place a transparent mechanism of sending complaints to the competent institutions dealing with protection of human rights.
5. Initiate a procedure for the procurement of special vehicles for the escort of service members subjected to the disciplinary procedure of arrest.
6. Ensure the medical examination upon each entry to and exit from the isolator and introduce a distinct register.
7. Ensure the implementation of the provisions of the Regulation on the procedure for the identification, registration and reporting of alleged cases of torture, inhuman or degrading treatment, approved by Order No. 77 of 31.12.2013.
8. Re-evaluate the conditions of detention of service members by excluding the differences in the conditions of placement of conscripts and enlisted service members.

To the Union of Lawyers

To the National Legal Aid Council

1. Strengthen cooperation between police bodies and the NLAC to improve the lawyer appointment procedures.
2. Ensure that on-duty lawyers observe the schedule prepared by the NLAC territorial offices. Furthermore ensure that lawyers travel independently of police officers and prosecutors in cases where they represent apprehended persons.
3. Strengthen the NLAC's capacities to represent persons with mental illness.
4. The NLAC should ensure that designated lawyers coordinate and manage the case strategy taking into account the will of the beneficiary and that the client benefits from state-guaranteed legal aid.
5. The NLAC should ensure that designated lawyers contest decisions that are contrary to their clients wishes.

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