

Council for the Prevention of Torture
National Preventive Mechanism
Republic of Moldova

ANNUAL ACTIVITY REPORT

2017



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Chisinau, 2018

The 2017 Activity Report of the Council for the Prevention of Torture (CfPT) was developed by the CfPT members (authors):

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ABBREVIATIONS

PA	People's Advocate
CAT	UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
NAC	National Anticorruption Centre
NHIC	National Health Insurance Company
NSIH	National Social Insurance House
CoE	Council of Europe
CC	Criminal Code
CCP	Code of Criminal Procedure
CfPT	Council for the Prevention of Torture
CPT	European Committee for the Prevention of Torture and Other Inhuman or Degrading Treatment or Punishment
DIPs	Department of Penitentiary Institutions/National Administration of Penitentiaries under the subordination of Ministry of Justice
TDI	Temporary Detention Isolator
GPI	General Police Inspectorate
MIA	Ministry of Internal Affairs
MoJ	Ministry of Justice
NPM	National Preventive Mechanism
MHLSP	Ministry of Health, Labour and Social Protection
PAO	People's Advocate Office
OP CAT	Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment
UN CAT	UN Committee against Torture and Inhuman and Degrading Treatment or Punishment
UN SPT	UN Subcommittee on Prevention of Torture and Inhuman and Degrading Treatment or Punishment

FOREWORD



The Council for the Prevention of Torture (CfPT) was established on 25 October 2016 under the People's Advocate Office as a national preventive mechanism, in accordance with the provisions of Law No.52 of 2014 on the People's Advocate and Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. CfPT consists of 2 Ombudsmen and 5 representatives of civil society, and the current structure was elected for a five-year mandate. The five members are human rights experts with legal, medical and psychological background. The CfPT mission is to ensure that people are protected against torture and other cruel, inhuman or degrading treatment or punishment through preventive and monitoring visits to places of detention, to identify systemic issues and deliver recommendations to competent authorities

to solve the problems. Although it is a newly established institution, the CfPT was successful during its first year of activity despite law's imperfections.

According to 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 has committed to publish and disseminate annual reports of preventive mechanisms. The 2017 Annual Activity Report reflects the common opinion of 7 members of the Council for the Prevention of Torture.

Mihail COTOROBAI,
Chairperson of the Council for the Prevention of Torture,
People's Advocate

EXECUTIVE SUMMARY

The CfPT members unanimously approved the 2017 Activity Report of the Council for the Prevention of Torture on 25 March 2018.

After many debates on the model of the National Preventive Mechanism (NPM), according to the provisions of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP CAT), the State **established the Council for the Prevention of Torture (CfPT) as a National Preventive Mechanism on 25 October 2016**, based on the Law No.52 of 2014 on People's Advocate.

The Council consists of 7 members: People's Advocate, People's Advocate for the Rights of the Child and 5 members representing the civil society. The duties of the CfPT include preventive and monitoring visits to places where persons are or may be deprived of their liberty; formulate systemic proposals/recommendations; initiate and maintain a continuous dialogue with specialised national and international human rights institutions.



In December 2016 – December 2017, the Council for the Prevention of Torture conducted **26 visits to 24 places of detention**, including 20 unannounced visits (**out of 61 places of detention existing in the Republic of Moldova**). As a result, **25 reports were drafted (with 416 findings and 332 recommendations)**. **23 reports** were sent to the institutions visited by the President of CfPT (People's Advocate).

The findings and recommendations refer mostly to:

- torture in places of detention;
- treatment of detainees/patients/residents;
- guarantees against torture and other ill-treatments;
- conditions of detention;
- healthcare assistance;
- situation of vulnerable groups;
- other relevant matters, depending on the profile of the institution.

The CfPT is not focused only on the verification of material conditions of detention but also on a wide range of matters, according to the preventive mandate of the CfPT. *The findings and recommendations are described in Chapter III of this Report.*

Building on the results of the visits made by the CfPT, we would like to state that **no progress has been registered in the matter of fighting torture in the places of detention in 2017 compared to previous years, moreover, some matters have even worsened.**

However, the **Council for the Prevention of Torture appreciates the efforts and intention of state institutions to improve the situation of human rights of detainees and would like to express its intention to support and contribute to the preventive actions and fighting against torture, as well as its related actions.**

INTRODUCTION



A photograph of a concrete wall topped with multiple strands of barbed wire. A dark sign is mounted on the wall, featuring the text 'TRECERE A INTERZISĂ' in white, bold, sans-serif capital letters. The sign is slightly tilted. To the left of the sign, a small, dark, cylindrical object is mounted on the wall. The overall scene suggests a restricted access point, such as a border crossing or a secure facility.

TRECERE A
INTERZISĂ

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

Having in mind the objective to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment, the General Assembly of the United Nations adopted the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (OP CAT)¹ on the 18th of December 2002.

The Republic of Moldova signed the Optional Protocol to the UN Convention (OP CAT)² on the 16th of September 2005 and ratified it by Law No.66 of 30.03.2006. The OP CAT has 87 State Parties and 14 signatory states.³

The Optional Protocol establishes a dual system consisting of international and national independent monitoring entities for unannounced and unrestricted visits to all existing places of detention in signatory State Parties. The UN Subcommittee on Prevention of Torture and Inhuman and Degrading Treatment or Punishment (UN SPT)⁴ was established according to the Optional Protocol. The Subcommittee has a dual mandate: a) monitoring the conditions of detention and treatment of persons deprived of their liberty by visiting signatory State Parties to the Optional Protocol; and b) counselling/

guiding the implementation of Optional Protocol by signatory states and especially, support the training and proper functioning of National Preventive Mechanisms. The UN SPT consists of 25 independent experts and is the biggest collegial UN human rights agency.

According to the Optional Protocol, each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).

Each State Party shall allow unplanned/unannounced visits in accordance with the Optional Protocol, by the OP CAT mechanisms, to any place under its jurisdiction and control where persons are or may be deprived of their liberty.

¹ Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OP CAT) (<http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>)

² Law No.66 of 30.03.2006 on the Ratification of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, published in the Official Monitor of the Republic of Moldova No. 66-69 of 28.04.2006 (<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=315880>)

³ <http://indicators.ohchr.org/>)

⁴ <http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/OPCATIndex.aspx>

1.2

Prevention of torture and inhuman or degrading treatment or punishment, according to OP CAT

The State Parties to the Optional Protocol reaffirming that torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment shall take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction.

OP CAT shall focus more on prevention and cooperation with the national authorities rather than on reaction and sentencing. Instead of reacting to the violations when these take place, the OP CAT entities shall be proactive and shall visit any place of detention at any given moment, without any allegation of abuse or torture.

The UN SPT reiterates that the **effective prevention of torture and inhuman or degrading treatment or punishment, first of all, requires training and a combination of different legislative, administrative and judicial measures.** However, the mere implementation of national provisions and international standards is not sufficient to effectively prevent the torture. Additional and other types of measures that cover or may cover maximum things or actions that would reduce the **probability or risk of torture or ill treatment** are necessary. Also, the important factors from the perspective of persons deprived of their liberty and their treatment⁵ should be considered.

Hence, the OP CAT system envisages the establishment of a preventive system for regular visits to places of detentions by functional and independent bodies (both internationally and nationally), such as UN SPT and NPM. The protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention and on-going dialogue with national authorities and international organizations.

⁵ The UN SPT approach to the prevention of torture and other cruel, inhuman or degrading treatment according to the OP CAT, formulated during the XII Session of the Subcommittee (15-19.11.2010) http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/OP/12/6&Lang=en

What is a National Preventive Mechanism, according to OP CAT?

1.3

The Optional Protocol does not envisage an ideal formula for the national preventive mechanism for each State Party. The State Parties may choose independently the model of national preventive mechanism to prevent torture at national level. Moreover, the State Parties may choose one or more national mechanisms according to Optional Protocol, provided that they comply with its provisions. **The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.** Also, the States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.

The mechanisms shall have the authority to make regular visits to all types of places where people are or may be deprived of their liberty. These visits shall make recommendations to improve the protection of persons deprived of liberty, as well as to initiate and maintain a continuous dialogue with national authorities. The mechanisms may provide comments on laws, national regulations and suggest certain reforms.

There are different models of national preventive mechanisms, such as:

- independent institutions specialised only in torture prevention (for instance, Germany, France, Italy, Swiss);
- embedding preventive activities into an institution that promotes and protects human rights (Ombudsman) (for instance, Austria, Finland, Norway, Georgia);
- institution that promotes and protects human rights (Ombudsman) and involvement of civil society (the so-called Ombudsman Plus model) (Moldova, Denmark, Slovenia, Serbia);
- more institutions that have their own mandate in torture prevention (the United Kingdom of Great Britain and Northern Ireland, New Zealand, Netherlands, Malta).⁶

⁶ <https://www.ap.t.ch/en/npm-models/>

1.4

What is a place of detention?

For the purpose of the Optional Protocol⁷ to 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.



Similar definition is provided in the Law on the People's Advocate – deprivation of liberty is any form of detention of a person in any judicial, administrative or any other setting, in a state or private place of detention, or a place that the person cannot leave at will, by punishment, sanction, procedural measure of constraint, safety measure, as well as because of care provided to or any other reason.⁸

⁷ Art. 4 para. 2 of the Optional Protocol to the UN Convention against Torture (OP CAT).

⁸ Art. 30 para. 4 of Law No. 52 of 03.04.2014 on People's Advocate (Ombudsman), <http://lex.justice.md/md/352794/>

Council for the Prevention of Torture as National Preventive Mechanism (NPM)

1.5

By ratifying the Optional Protocol, the Republic of Moldova has reaffirmed that torture and inhuman or degrading treatment or punishment are forbidden and represent serious violations of human rights. The State has the obligation to establish an independent and functional preventive mechanism.

The national preventive mechanism (NPM) was established in 2007, in accordance with legal provisions in force at that time.

Initially (in 2007-2014), the Parliamentary Advocates had the duties of national preventive mechanisms. A Consultative Council was established within the Centre for Human Rights in Moldova (CpDOM) to provide assistance and consultancy to Parliamentary Advocates as national preventive mechanism.

The NPM was established with 2 component elements: 1) Parliamentary Advocates – in their individual capacity, and 2) collegial body – Consultative Council (consisting of 11 members, 10 representatives of civil society, and 1 appointed Parliamentary Advocate).⁹

By adopting the new Law on People's Advocate (Law No. 52 of 2014), the new model of national preventive mechanism – Council for the Prevention of Torture (CfPT) was defined and approved under the People's Advocate Office (PAO). Law No. 52 has a separate chapter (Chapter V) on the activity of the Council for the Prevention of Torture.

The current Council consists of 7 members: 2 People's Advocates and 5 members of civil society. The People's Advocate and the People's Advocate for the Protection of the Rights of the Child are voting members of the Council during their entire mandate. The other 5 members proposed by the civil society are selected based on public contest

organised by the People's Advocate Office. The selected members are appointed for a five-year mandate that cannot be renewed. The People's Advocate is also the Chairperson of the CfPT.

CfPT consists of 7 members:

People's Advocate
People's Advocate for the Rights of the Child
5 representatives of civil society .

Following the contest organised by the People's Advocate Office, 5 members of the Council – representatives of civil society - were selected¹⁰ on **25 October 2016**.

The CfPT structure, at the time of its establishment, included:

- *Mihail Cotorobai*, People's Advocate;
- *Maia Bănărescu*, People's Advocate for the Rights of the Child;
- *Mihail Gorincioi*, Jurist, Lawyers' Law Centre Association;
- *Svetlana Doltu*, Physician, AFI Association;
- *Radu Nicoară*, Jurist, Institute for Human Rights in Moldova;
- *Oxana Gumennaia*, Psychologist, Member of the Council for the Prevention and Elimination of Discrimination and Ensuring Equality, Genderdoc-M Information Centre;
- *Ceslav Panico*, Jurist, Institute for Penal Reform.

The CfPT members had their first public event on the 2nd of December 2016, and announced the launching of their activity, according to the mandate.¹¹

In order to fulfil their duties, the CfPT members shall plan their activity and shall follow the

⁹ http://www.undp.md/publications/doc/Baseline_per_cent2010_per_cent20mai_per_cent20final.pdf

¹⁰ <http://ombudsman.md/ro/content/mecanismul-national-de-prevenire-torturii-creat-intr-o-formula-noua>

¹¹ Launching event of CfPT activity. <http://ombudsman.md/ro/content/membrii-consiliului-pentru-prevenirea-torturii-au-fost-prezentati-astazi-reprezentantilor>

provisions of:

- OP CAT;
- Law No. 52 of 2014 on People's Advocate;
- Regulations on the organisation and functioning of People's Advocate Office of 2015;¹²
- Regulations on the organisation and functioning of Council for the Prevention of Torture of 2016;¹³
- Principles relating to the Status of National Institutions (The Paris Principles) of 1993;¹⁴
- The UN SPT 2013 Recommendations regarding the NPM activity (independence, functionality and visibility of NPM);¹⁵
- Standard minimum rules for the treatment of detainees (Nelson Mandela's Rules) revised in 2015 by the UN General Assembly;¹⁶
- Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT);¹⁷
- Other national and international regulations/standards.

During the entire mandate, in order to fulfil the duties envisaged by the OP CAT and Law No. 52, the CfPT members shall carry out their activities based on the **principles of independency, impartiality, objectivity and confidentiality set forth for the People's Advocate**, as well as shall hold an employee ID card.¹⁸

¹² Law No.164 of 31.07.2015 on the Approval of the Regulations on the Organisation and Functioning of People's Advocate Office <http://lex.justice.md/md/361146/>

¹³ Regulations on the Organisation and Functioning of the Council for the Prevention of Torture approved by the People's Advocate on 05.07.2016 and endorsed by the Committee for Human Rights and Interethnic Relations of the Parliament of the Republic of Moldova. <http://ombudsman.md/ro/content/regulamentul-de-organizare-si-functionare-consiliului-pentru-prevenirea-torturii-fost>

¹⁴ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>

¹⁵ [http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT per cent2fOP per cent2fMDA per cent2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%20per%20cent2fOP%20per%20cent2fMDA%20per%20cent2f2&Lang=en)

¹⁶ https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf

¹⁷ 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

¹⁸ Art. 3, 4, 31 of Law No.52 on People's Advocate.

Members CfPT

Mihail Cotorobai
People's Advocate

Maia Bănărescu
People's Advocate for the Rights of the Child

Mihail Gorincioi
jurist
Lawyers' Law Centre Association

Svetlana Doltu
physician
AFI Association

Radu Nicoară
jurist
Institute for Human Rights in Moldova

Oxana Gumennaia
psychologist
Member of the Council for the Prevention and Elimination of Discrimination and Ensuring Equality, Genderdoc-M Information Centre

Ceslav Panico
jurist
Institute for Penal Reform

Guarantees of independence of CfPT members

CfPT members are **independent of any public authority**, legal person, irrespective of ownership and legal form of organisation and of any other person in position of responsibility at any levels.

CfPT members **cannot be subject to any imperative or representative mandate**. Nobody can force the members of the Council to obey their instructions or provisions.

CfPT members **cannot be forced to provide explanations** or declarations on examined cases or cases under examination, except for situations when it is in the benefit of the represented party or contain information of public interest.

The interference in the CfPT and People's Advocate activity, intentional disregard of recommendations of People's Advocate by persons in positions of responsibility at all levels, as well as any form of hampering the activity of the Council **shall be held accountable** in accordance with the legislation in force.

Ordering, applying, admission or toleration of any type of sanction shall be prohibited as well as any other kind of prejudice caused to a person or organisation for the communication of any truthful or false information to the CfPT members and other associates in preventing torture.

CfPT members **choose independently the places** to visit and persons they want to talk to. **No preliminary notification or permission of an authority shall be required** to carry out preventive and monitoring visits.

CfPT members shall not be persecuted or held legally accountable for opinions expressed and actions performed in compliance with the law during their mandate.

During their mandate, the CfPT members may be criminally prosecuted and tried for other actions than those stipulated in para. (1) of Law No.52, art.4, and members of the Council shall not be arrested, searched or detained without preliminary consent of the Parliament.

The CfPT members who were arrested or are in trial shall be suspended from their position until a final judgment is delivered by the court.

Inviolability of CfPT members shall extend on their residence and office, means of transport and telecommunication used, correspondence, documents and personal wealth.

Inviolability of CfPT members

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

Conduct preventive and monitoring visits to places where people are or may be deprived of their liberty. The purpose of visits is to identify systemic issues that hamper the protection of persons deprived of their liberty;

Submit systemic proposals/recommendations (administrative, institutional or legislative proposals) to state institutions/decision-makers to improve the situation regarding torture and other cruel, inhuman or degrading punishment or treatment;

Initiate and maintain an on-going ***dialogue with national and international institutions*** specialised in protection and promotion of human rights observance/defence.

In order to comply with its mandate of CfPT (NPM), **the State Party** to the OP CAT (Republic of Moldova) shall provide all **necessary resources for the activity of national preventive mechanisms**. Also, it has the obligation to provide the NPM with human resources (support subdivision to CfPT) and a separated budget line.¹⁹

¹⁹ Report on the visit of the UN SPT to Moldova to provide consultative assistance to the national preventive mechanism. Report of 09.01.2013. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT per cent2fOP per cent2fMDA per cent2f2&Lang=en

Human Resources

- CfPT shall be assisted by a specialised subdivision of the People's Advocate Office. Currently, the administrative/logistics assistance of the CfPT is provided through the Torture Prevention Unit of the PAO (which has the duty to prevent torture, in general). However, for a better functioning of the CfPT, it is necessary to intensify the State's operational, methodological, informational, analytical and legal assistance;
- CfPT may involve independent specialists and experts from different fields, including jurists, physicians, and psychologists in preventive and monitoring visits. In this regard, it is important to develop methodologies/procedures to attract and involve experts.

Financial Resources

- According to the UN SPT recommendations, the CfPT should have its own budget to fulfil delegated duties. The Law No. 52 stipulates that the resources necessary to accomplish the CfPT duties, contracting of experts and specialists shall be included in a separate budget line, an integrated part of the budget of the People's Advocate Office. The PAO included all minimum needs of the CfPT for 2017 and 2018 into the budget lines. The CfPT needs were detailed and considered by the PAO. However, the procedure of adopting and submitting the CfPT budget as separate line by the PAO has not been cleared to the CfPT members;
- CfPT members, except for voting members, are entitled to a remuneration of 10 per cent of the average monthly wage for each day of conducting preventive visits to the places of detention or for participating in CfPT sessions. The period and resources necessary to draft reports (which can last for several weeks), as well as other activities of the NPM mandate carried out by the CfPT members shall not be covered financially.

The 2017 budget of the People's Advocate Office envisaged the amount of MDL 500,000 (about USD 30,000), of which MDL 159,719 (about USD 9,700) were actually spent to cover the needs of the CfPT.

The 2018 budget of the People's Advocate Office envisaged MDL 450,000 (about USD 27,000) for the CfPT activity.

**ACTIVITY OF
THE COUNCIL
FOR THE
PREVENTION
OF TORTURE IN
2017**





Preventive visits to places of detention carried out by CfPT

2.1

Taking into account the definition of places of detention provided by the Optional Protocol and Law No.52 on People's Advocate²⁰, the Council for the Prevention of Torture listed a number of institutions that fall under the incidence of the NPM mandate.

The **places of detention** are:

- **Penitentiaries:** 17 prisons under the Department of Penitentiary Institutions/National Administration of Penitentiaries (DPIs)²¹, in the subordination of the Ministry of Justice, including 3 half-closed, 6 closed, 1 for juveniles, 1 for women, 1 penitentiary hospital, and 5 criminal prosecution isolators. As of 1 January 2018, according to official information, there were 7635 detainees in prisons, of which 6294 convicts and 1341 were awaiting trial;²²
- **Preventive detention isolators:** institutions subordinated to the General Police Inspectorate (GPI)²³ under the Ministry of Internal Affairs. Total number of isolators – 39, of which 7 suspended and 32 active or partly suspended;
- **Centre for temporary placement of foreigners,** managed by the Bureau for Migration and Asylum²⁴, under the Ministry of Internal Affairs;
- **Criminal investigation isolator** of the National Anticorruption Centre;²⁵
- **Military garrison** of the Ministry of Defence;²⁶
- **Psychiatric hospitals.** 3 hospitals under the Ministry of Health, Labour and Social Protection;²⁷
- **Psycho-neurological boarding houses (4) and 2 boarding houses for children with mental disabilities (1 for girls and 1 for boys),** under the Ministry of

Health, Labour and Social Protection.

As of **1 January 2018, about 12,000 persons** were detained under some form of deprivation of liberty in **61 places of detention (in all 7 types of institutions).**

At the first meeting of the Council, the CfPT members agreed on monthly regular and extraordinary meetings, when necessary (11 monthly regular meetings and 3 extraordinary meetings took place during December 2016 – December 2017).

In January – February 2017, based on the 2016 Annual Report of the People's Advocate, PAO reports, CPT reports (2011, 2015), reports of civil society and all national/international institutions, as well as taking into account existing statistics of state institutions and other types of places of detention, other relevant information, the Council members developed and approved the **2017 Annual Visit Schedule.**

The visit schedule includes a number of unannounced visits for each quarter (from 2 to 3 a month), type of visit (preventive, monitoring, thematic, and detailed), and type of institution. Each institution can be visited every 3 months by the CfPT based on uniform geographic distribution. During each monthly regular meeting, the CfPT members shall determine the number of visits for the next month, what institutions have to be visited, visit dates, monitoring team, and the thematic content that has to be monitored.

Each visit is planned and conducted based on methodological principles recognised and approved by the CfPT members. The integral methodology for planning and conducting preventive visits will be developed and approved by the CfPT in 2018.

²⁰ See para. 1.4 of this Report.

²¹ <http://penitenciar.gov.md/ro>

²² <http://penitenciar.gov.md/ro/statistica>

²³ <http://politia.md/>

²⁴ <http://bma.gov.md/ro>

²⁵ <https://www.cna.md/index.php?l=ro>

²⁶ <http://www.army.md/>

²⁷ <http://msmps.gov.md/>

In the first year of activity, full/detailed preventive visits (about 90 per cent) were planned and made to most places of detention, according to the 2017 visit schedule.

CfPT members shall follow a set of regulations, when planning and conducting each visit, including:

- **International conventions and standards,** which are recommended insistently as guidelines to national entities responsible for places of detention: the UN Convention against torture and other cruel treatment and punishment (CAT);²⁸ *Optional Protocol to the UN Convention against torture (OP CAT)*; *revised Standard minimum rules for the treatment of detainees (Nelson Mandela's rules)*;²⁹ *Recommendation of the Cabinet of Ministers of Member States regarding the European Prison Rules REC (2006)2*; *UN Resolution No.43/173 of 09/12/1988 on the Protection of All Persons under any Form of Detention or Imprisonment*; *norms of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) etc.*;

- **National Regulations:** *Criminal Code; Code of Criminal Procedure, Enforcement Code; GD No. 583 of 2006 on the Status of serving the sentence by convicts, normative acts of monitored entities (orders, provisions, regulations and instructions), etc.*

A monitoring team shall be created for every monitoring visit based on the specifics of the place of detention to be monitored and the purpose of each preventive visit (what has to be monitored). Each monitoring team shall consist of at least 2 members of CfPT, who are accompanied sometimes by 1-2 representatives of PAO (and during the visit of larger institutions, the team shall consist of at least 3-4 members of CfPT). A responsible person for the coordination of visit schedule and preparation of visit report is appointed during each meeting of the CfPT. Duties of the monitoring team members are distributed depending on places of detention, structure of monitoring team and specifics of duties/field of experience of each Member

of CfPT.

The analysis of available regulations/reports/recommendations in corroboration with general preliminary methodology used to plan and conduct visits has allowed the **adoption of standard minimum matters that have to be verified during each visit by CfPT:**

- torture in places of detention;
- treatment of detainees/patients/residents;
- guarantees against torture and ill treatment;
- conditions of detention (including healthcare assistance);
- vulnerable groups;
- other relevant matters depending on the institution.

CfPT is focused not only on the verification of material conditions of detention but also on a wider number of matters, according to the preventive mandate of the CfPT.

²⁸ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

²⁹ https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf

Since the establishment of the Council for the Prevention of Torture, its members carried out 26 visits to 24 places of detention, of which 20 unannounced and 6 study visits during December 2016 – December 2017. Except for study visits, all visits conducted by the CfPT were unannounced.

	Type of institution	Number of visited institutions	Number of visits	Types of visits (general)
1.	Penitentiaries	8 institutions: - P. No. 3 Leova - P. No. 6 Sorooca - P. No. 7 Rusca - P. No. 10 Goian - P. No. 11 Balti - P. No. 13 Chisinau - P. No. 15 Cricova - P. No. 17 Rezina 48 per cent of visited prisons (8 out of 17)	8 visits	3 study visits ³⁰ 5 preventive visits
2.	Preventive/pre-trial detention isolators under the MIA subordination	11 institutions: - IDP Chisinau - IP Cahul - IP Cantemir - IP Hancesti - IP Ungheni - IP Sorooca - IP Orhei - IP Anenii Noi - IP Calarasi - IP Telenești - IP Sangerei 35 per cent of functional isolators visited (11 out of 32)	11 visits	1 study visit, 10 preventive visits
3.	NAC Isolator	1 institution 100 per cent visited	1 visit	1 preventive visit
4.	Psychiatric hospitals	2 institutions - IMSP Clinical Psychiatric Hospital, Chisinau, - IMSP Psychiatric and Phthisiopneology Hospital, Orhei 67 per cent of psychiatric hospitals visited (2 out of 3)	3 visits	1 study visit, 1 preventive visit, 1 follow-up/ repetitive visit
5.	Psycho-neurological boarding houses	2 boarding houses - Balti psycho-neurological boarding house - Badiceni psycho-neurological boarding house in Sorooca district 33 per cent visited institutions (2 out of 6)	3 visits	1 study visits, 1 preventive visit, 1 repetitive/follow-up visit
Total Dec 2016 – Dec 2017		24 visited institutions	26 visits	6 study visits 18 preventive visits 2 repetitive/follow-up visits

2017

26

visits to

24

places of detention

Types of visits (specific)	Categories of detainees
<p>8 detailed visits</p> <ul style="list-style-type: none"> - situation of minors in P. 10, P. 11, P. 13, P. 17 - situation of women in P. 7, P. 11, P. 13, P. 17 - situation of life-sentenced detainees, P. 17 - situation of persons in pre-trial detention (P. 13, P. 17) - situation of adults - situation of persons in isolators or under administrative sanctions - health of persons in prisons 	<ul style="list-style-type: none"> - minors (14-18 years) - women including with children up to 3 years - adults (men) - foreign and stateless persons - persons in pre-trial detention - life-sentenced persons
<p>11 detailed visits</p> <ul style="list-style-type: none"> - situation of minors - situation of women - situation of persons in pre-trial detention in PDI 	<ul style="list-style-type: none"> - minors (17-18 years) - women - adults (men) - foreigners and stateless persons
<p>1 detailed visit</p>	<p>(women, men, adults)</p>
<p>2 detailed visits 1 follow-up visit</p>	<p>(women, men, minors)</p>
<p>2 detailed visits 1 follow-up visit</p>	<p>(women, men)</p>

³⁰ Study visit (planned) carried out by the CfPT together with CoE expert embeds the practical analysis of matters (in places of detention) on how to organise monitoring visits under experts' guidelines.

In 2017, besides the activities of the CfPT under the mandate of the **People's Advocate, the representatives of People's Advocate Office (Torture Prevention Unit) conducted a number of visits to places of detention. 26 visits to 3 types of places of detention** (21 to TDIs, 4 to prisons and 1 to psycho-neurological hospital) were made. It is worth mentioning that these types of visits of the Torture Prevention Unit consolidate synergistically the prevention activity in the Republic of Moldova. Torture Prevention Unit and the territorial representatives of PAO examine in depth the material conditions of detention.

An important matter that has to be mentioned is the individual cases (for instance, the case of Braguta,³¹ the woman who was allegedly ill-treated in the psychiatric hospital Codru)³² and other incidents highlighted by the mass-media or petitions received by the PAO (such as, incidents with minors in Penitentiary No. 13, excessive searches and other incidents in most prisons that took place during the year). The CfPT has condemned the actions of institutions responsible for the abovementioned cases. **Bearing in mind the preventive mandate of the CfPT, which is not a reaction body, a fact mentioned by the OP CAT and Law No. 52, the CfPT established that these cases fall under the mandate of the People's Advocate.** It should be mentioned that the CfPT continues to follow-up closely on the results of investigations. Having analysed the reports of CfPT, People's Advocate and corroborating with the results of other institutions/NGOs, the CfPT has submitted systematic recommendations, including in the annual report, to improve the treatment of people in the State's custody in order to prevent such situations in the future.

31 <http://ombudsman.md/ro/content/pozitia-celor-5-representanti-ai-societatii-civile-membri-ai-consiliului-de-prevenire-0>

32 http://unimedia.info/stiri/foto-Avocatul-Poporului-a-sesizat-Procuratura-Generala-in-cazul-unei-fete-care-ar-fi-fost-maltrata-in-Spitalul-de-Psihiatrie-din-Codru-139808.html?utm_source=rss&utm_medium=rss&utm_campaign=rss



2.2

Comments on relevant legislation

One of the important matters of the human rights observance and promotion mechanism and international standards is the contribution to improve the national legal framework.

In its first year of activity, the CfPT members formulated tangential proposals to improve the legal framework and institutional regulations that fall under the incidence of preventive mandate that should be made through monitoring visit reports of the CfPT. Hence, **the 2017 reports of the CfPT envisage a summary needs analysis to amend the normative and administrative framework for each type of detention institution and based on identified issues. The proposals to improve were found in the recommendations made to the institutions.**

Also, the People's Advocate makes an assessment of national legislation and regulations in the field of torture and submits proposals to relevant institutions to improve the legislation.

Based on accumulated experience, discovered information and general situation in the places of detention, as well as taking into account the duties of the People's Advocate (as Chairperson of the CfPT) to contribute to the improvement of legislation on human rights and freedoms, **the CfPT plans to intensify the evaluation process of the legal framework and other national regulations in its following years of activity, including by developing specific reports/recommendations directed to amend the legislation in the torture-related fields.** The activity is carried out in cooperation with government partners, civil society and academia.

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

2.3

The CfPT is aware that skilful and well-equipped personnel with viable instruments may reduce substantially the risks of torture and ill treatment in places of detention. For this purpose, the CfPT, as well as international institutions (CPT, UN CAT, UN SPT), pays special attention to training and capacity building of the staff in places of detention. The monitoring visits of the CfPT, combined with discussions held with the employees of places of detention during monitoring visits, will provide an innovative on-the-job training instrument centred on explaining the identified findings/specific problems, as well as eventual improvement solutions. This practice has to be continued in 2018, and extended to the level of decision-making factors to provide solutions to systemic problems mentioned in the CfPT and CPT reports.

In the first year of activity (2016-2017), based on the results of performed monitoring visits and analysed information reports (national, international), and replies received from institutions, the CfPT identified and mentioned training needs and working instruments necessary to the staff in the places of detention. Hence, some recommendations regarding training fields were provided in the monitoring reports forwarded to relevant institutions.

Also, for the following period of activity, the CfPT members seek to develop a thematic training plan on the activity of the personnel responsible for detention and supervision of persons deprived of their liberty. CfPT has the intention to contribute to the analysis and development of recommendations on training curricula within the places of detention.

It should be mentioned that the representatives of Torture Prevention Unit of the PAO continued the human rights training in the places of detention in 2017. A total of 11 training sessions were delivered to the representatives of prisons and other detention institutions.

2.4

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

Based on the CfPT mandate, maintaining an on-going dialogue with institutions responsible for places of detention is one of the crucial matters in promoting observance and consolidation of human rights of persons in State's custody.

It should be mentioned that the members of CfPT did not face any impediments during the visits (access to institutions, discussions with any detainee, registers, cells, etc.) caused by the representatives of mentioned places of detention. However, during the first visit, the representatives of places of detention were not aware of the CfPT and its mandate. Only in the second half of 2017, the awareness of the representatives of visited places of detention regarding the CfPT mandate has improved. The CfPT members had access to any cell, register and record requested and existing at the time of the visit of the places of detention (including group and individual interviews with persons deprived of liberty); they could take pictures/document the cells and registers, in accordance with the provisions of Art. 32 of Law No. 52 on People's Advocate.

According to the provisions of Art. 24 of Law No. 52, the People's Advocate may provide the authorities or person in high position with its recommendations to improve the treatment of persons deprived of their liberty, improve the conditions of detention and prevent torture. In turn, the authority or person in high position who receives the notification shall consider it within 30 days and inform in written the People's Advocate about the measures taken to resolve the situation.

Following the 26 visits, the CfPT developed 25 reports. 23 reports (including 416 findings and 332 recommendations) were sent by the Chairperson of the CfPT (People's Advocate) to the institutions responsible for places of detention (Ministry of Justice, Department of Penitentiary Institutions, Ministry of Internal Affairs, General Police Inspectorate, National Anticorruption Centre, Ministry of Health, Labour and Social Protection.

It should be mentioned that **not all institutions reacted to the CfPT reports within the deadline set by the law or some replies did not refer to all matters indicated by CfPT.** Most often, the CfPT reports were sent to the visited institution (TDIs, prisons, etc.), hierarchically superior institution (DPIs, GPI etc.) and relevant ministry. The vast majority of recommendations expressed by the CfPT require systemic solutions and interventions at ministerial level. Based on the quality and insufficient volume of answers it can be concluded that **relevant institutions are missing clear mechanisms to consider CfPT reports, implement recommendations and provide clear and comprehensive answers.** Also, it is not clear, who the liaison persons are in the abovementioned institutions. The interaction/mechanism matters should be clarified with CfPT by building and conducting an on-going dialogue and meetings.

During their visits, the CfPT members discovered some individual cases of alleged ill treatment in the places of detention. These situations were brought to the attention of the People's Advocate who notified the General Prosecutor's Office. The cases were taken over by the PAO.

Cooperation between the CfPT and national and international human rights protection institutions

2.5

One of the most important matters in implementing the CfPT mandate is the interaction with national and international human rights protection institutions and namely, People's Advocate Office, CPT, UN Subcommittee against Torture (UN SPT), and UN Committee against torture (UN CAT). The interaction with these institutions is still at its incipient phase, especially due to reduced 'visibility' of the CfPT, overlapping preventive activity of the PAO, and lack of clear procedures within CfPT/PAO on how to interact with national/international institutions and how to inform the CfPT. Some matters have to be improved during the current CfPT mandate and have been identified as priorities for 2018.

The CfPT has to continue the dialogue regarding good functioning of the NPM with the **UN Subcommittee against Torture (UN SPT)**. In January 2013 the Republic of Moldova received a number of recommendations from the UN SPT regarding the functioning, independency and visibility of the National Preventive Mechanism. Some of these recommendations were implemented by Law No. 52 and CfPT Regulation, and the rest have to be discussed and implemented during the following years. The representative of UN SPT conducted a support visit to the Republic of Moldova in December 2017. The visit was carried out as follow-up on the implementation of 2013 UN SPT recommendations. The UN SPT representative drew the attention to certain matters that hamper the activity of the CfPT, especially the interaction with PAO and Torture Prevention Unit, ambiguities regarding separated budget line, type of support provided by the Unit, 'visibility' of CfPT, working methodologies and absence of a database.

The National Preventive Mechanism developed and sent its **first Alternative Report to the UN**

Committee against Torture (UN CAT).³³ The report was developed by the five members of CfPT representing the civil society. This report was discussed during the periodic review by the UN Committee against Torture, Cruel, Inhuman and Degrading Treatment (UNCAT) on November 7-8, 2017. Some findings of the Council for the Prevention of Torture were found in the final conclusions/recommendations of the Committee³⁴ addressed to the Republic of Moldova.

An important guiding institution in the activity of the Council for the Prevention of Torture is the **European Committee for the Prevention of Torture, and Inhuman or Degrading Treatment of Punishment (CPT)**. In 2016 – 2017 the CfPT did not have any direct interactions with the CPT, but in its monitoring activities, the CfPT shall follow the standards developed by the Committee, as well as the recommendations of the CPT as a result of visits to the Republic of Moldova. A permanent dialogue between CfPT and CPT has to be established during the mandate.

Also, a number of activities/interactions with national/international human rights protection institutions took place. The representatives of civil society of the Republic of Moldova had several meetings with the **Office of the High Commissioner**

³³ Alternative report of CfPT (of members of the civil society) submitted to the UN CAT [http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT per cent2fCAT per cent2fCSS per cent2fMDA per cent2f29213&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fCSS%2fMDA%2f29213&Lang=en)

³⁴ Committee against Torture (UN CAT), the third periodic report of the Republic of Moldova (CAT/C/MDA/2), final observations. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/MDA/CO/3&Lang=en

for Human Rights (OHCHR), UNDP-Moldova,³⁵ and the Council of Europe,³⁶ to discuss the challenges faced by the CfPT, possibility of continuous cooperation, needs and support from donor community. The communication and interactions are to be intensified in the following years.

Cooperation with civil society. The dialogue with a number of representatives of Non-Governmental Organisations was launched in 2017 and will be amplified in 2018. The cooperation is focused on many fields, such as cooperation mechanisms/methodologies at the mutual information phase regarding torture/conducting thematic joint visits or developing joint monitoring reports, as well as monitor the implementation of national/international recommendations; common mechanisms to improve the legal and related frameworks in the field of torture prevention.

³⁵ In October 2017 the members of CfPT had a meeting with the Delegation of UNDP Regional Office in Istanbul. The key objective of the mission was to assist the UNDP Moldova in rethinking and redefining their programming approaches in such fields as rule of law, justice, security and human rights, including by fighting gender and sexual violence, for efficient implementation of new UNDP Country Programme for the Republic of Moldova (2018-2022).

³⁶ In September 2017 the CfPT had working meetings with the CoE experts to assess the implementation of Justice Sector Reform Strategy (chapters 6.4 and 6.5 that stipulate certain actions regarding the prevention and fighting torture). During the meeting, opinions were exchanged regarding human rights protection in places of detention, implementation of actions included in the Strategy. The CoE experts showed interest in the activity of the CfPT and the members expressed their vision on the functionality of the NPM.

CfPT capacity building

2.6

Torture prevention activity is constantly monitored by the international organizations, donor community, and non-government organisations. The development partners show continuous interest in the establishment of a national preventive mechanism in the Republic of Moldova, irrespective of the model chosen by the State.

In 2016 – 2017, the CfPT and People's Advocate Office have identified a number of needs of the CfPT regarding preventive activity, needs discussed and suggested to be supported by the development partners.

The training needs of the CfPT members and PAO representatives in fields of fighting and preventing torture, ill treatment and impunity were discussed. Hence, the **Office of the Council of Europe in Chisinau** within the Criminal Justice Reform Project funded by the Government of Denmark³⁷ assisted with the organisation of different types of training, general study visits to places of detention together with the CoE experts and Moldova Institute for Human Rights (MIHR), exchange of best practices during the study visit to Georgia on the activity of preventive mechanism.³⁸

Also, with the support of CoE, the experts developed and suggested supporting materials to the CfPT members on how to organise monitoring visits to places of detentions, matters that have to

be monitored and reflected in visit reports, as well as the Code of Ethics of the CfPT, pilot documents of the CfPT members that need to be improved and developed during the CfPT activity.

At the initiative of the Institute for Penal Reforms (IPR) and People's Advocate Office and with the support of the CfPT members, taking into account the recommendations of UN SPT of 2013 on the activity of the National Preventive Mechanism, the initiative *Council for the Prevention of Torture – key collegial institution in prevention of torture and other ill treatment in Moldova*³⁹ was launched and accepted by the **Special Fund of OP CAT**. The project has the goal to increase the visibility of the CfPT and is implemented in January-June 2018. Hence, the project will develop the Visibility/Awareness Strategy of the CfPT, the 2017 Activity Report of the CfPT (this report), a brief description of the mandate and duties of the CfPT, as well as will organise round tables with institutions responsible for detention of people.

³⁷ 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

³⁸ <http://ombudsman.md/ro/content/vizita-de-studiu-la-institutia-ombudsmanului-din-georgia-privind-functionarea-mnpt?language=ro>

³⁹ <http://www.ohchr.org/EN/HRBodies/OPCAT/Fund/Pages/Grants.aspx>

2.7

Prospects and future plans of the CfPT (NPM)

In order to consolidate the mandate of the Council for the Prevention of Torture as key collegial institution in the system of prevention of torture and other ill treatment in the Republic of Moldova, the CfPT members have pinpointed some strategic matters that have to be developed during the following mandate.

The following matters have to be developed:

- finalize the interaction/cooperation mechanism and define the roles of CfPT and PAO;
- finalize the Development Strategy of CfPT for 2018-2021;
- enhance the dialogue with international and national institutions (including with the Parliament and civil society). Also, streamline the implementation of CfPT recommendations;
- finalize the methodologies and equip the CfPT with working instruments that would correspond with its preventive mandate (to organise visits, develop reports, analyse the legislation, monitor the implementation of recommendations, collect data, and manage the budget);
- improve the visibility of the CfPT activity.

These matters are suggested to be implemented together with the development partners starting from 2018.

**SITUATION IN PLACES
OF DETENTION
IN 2017 AND
RECOMMENDATIONS
OF THE COUNCIL FOR
THE PREVENTION OF
TORTURE**





Generalities. Systemic problems

3.1

The phenomenon of torture in the Republic of Moldova has been in the spotlight of national organisations/institutions and is one of the key matters considered by the international human rights organizations/institutions.

The situation on fighting torture in places of detention in 2017 has not improved compared to previous years; on the contrary, some matters have worsened, according to the CfPT. This assessment is based on the events that took place in the second half of 2017 (case of Braguta, the woman who was allegedly ill-treated in the Codru Psychiatric Hospital), as well as the growing number of complaints addressed to Prosecutor's Office related to inhuman and degrading treatment (569 complaints in 2017, compared to 538 in 2016, and 530 in 2015), corroborated with the increased number of criminal proceedings initiated based on the complaints lodged with the Prosecutor's Office regarding inhuman and degrading treatment (85 cases initiated in 2017 compared to 70 in 2016).⁴⁰

In November 2017, the Committee against Torture (UN CAT) analysed the Third Periodic Report of the Republic of Moldova (CAT/C/MDA/2) during the meetings 1572 and 1575, which took place on 7 – 8 November 2017 (CAT/C/SR.1728 and CAT/C/SR.1575).⁴¹ Previously, the Republic of Moldova was heard at the UN CAT in 2009 and in 2004.

The UN CAT appreciated some progress registered by the Republic of Moldova since previous report. However, the Committee submitted a long list of **subjects of concern regarding torture in Moldova**, which refer most of all to:

- practical application of fundamental legal guarantees;
- duration and conditions of pre-trial detention;
- impunity for torture and ill treatment;
- functionality of national preventive mechanism;
- conditions of detention;
- healthcare assistance provided in prisons;
- deaths and violence in places of detention;
- measures to initiate legal proceedings by victims of torture and ill treatment;
- treatment of persons in psychiatric, psycho-neurological and other residential institutions.

In 2015 the Republic of Moldova was visited by the representatives of *European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)*. As a result, a report on preventing and fighting torture was developed in 2016 and submitted to the Government of Moldova.⁴² **2 years since the CPT visit (2015) and report, the CfPT has established that most recommendations made to the Government are still in force and have not been implemented by the institutions responsible for the places of detention.** Some recommendations are found in the next Chapter and are reiterated by the CfPT in the reports submitted to relevant authorities.

In 2017 the European Court of Human Rights (ECtHR) delivered 16 judgments regarding the Republic of Moldova, of which 8 referred to the violation of Art. 3 ECHR (prohibition of degrading,

⁴⁰ Report on the Activity of the General Prosecutor's Office in 2017. http://procuratura.md/file/2018-03-12_Raportul_per_cent20Procurorului_per_cent20General_per_cent202017.pdf

⁴¹ http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/MDA/CO/3&Lang=En

⁴² Report to the Government of the Republic of Moldova on the visit made to the Republic of Moldova by the European Committee for the Prevention of Torture and Inhuman or Degrading Punishment or Treatment (CPT), of 14-25 September 2015. <https://rm.coe.int/16806975da>

inhuman treatment and torture) in 3 cases and violation of Art. 5 ECHR (right to freedom and safety) in other 5 cases.⁴³

It should be mentioned that the number of violations of **Art.3 ECHR (prohibition of degrading, inhuman treatment and torture) found out by the European Court of Human Rights in judgements regarding the Republic of Moldova (1997-2017) is enormous (25 per cent of total convictions)**. Only cases challenged based on the violation of Art. 6 ECHR (right to a fair trial) account for more than 31 per cent.⁴⁴

3.1.1 Systemic problems identified by the Council for the Prevention of Torture (CfPT) in 2017

Systemic problems in places of detention under the subordination of the Ministry of Internal Affairs

Excessive and disproportionate use of physical force during the apprehension by the MIA employees, even when the physical force is not required. Lack of distinctive records on use of force and special means;

Insufficient information of arrested/detained persons (understandable to everyone) on their rights during the police/TDI custody;

Lack of standard operational procedures within TDI regarding the interaction/behaviour of persons with disabilities (physical and/or mental) during arrest and detention;

Deficient internal mechanism of searching the females;

Lack of efficient procedure/mechanism in case of complaints/confidential information addressed to prosecutors, People's Advocate or other institutions;

Deficient systems to prevent violence between

apprehended/arrested/detained and insufficient incident reporting mechanisms, especially informing the Prosecutor's Office according to Order PG No.77 of 2013;

Detaining the persons in preventive/pre-trial isolators for longer than prescribed period (24/72 hours), expressly specified by national law and international standards;

The registers of the TDI are not standard and not filled in with accuracy. In some cases, the registers are missing or are not filled in accordingly;

Insufficiently trained personnel;

Lack of clear and standard mechanism to inspect the isolators of the GPI of the MIA (efficiency of internal inspections);

Uncertainty regarding the regime/destination of cells declared dysfunctional;

The material conditions of the cells in most isolators visited by the CfPT are unsatisfactory. The area norm is partly observed, the access of natural light and artificial illumination are insufficient, natural and artificial ventilation of cells is insufficient, the level of humidity is higher than the admitted norm in the cells;

Insufficient insurance of minimum detention conditions and human treatment of transported/ escorted persons to/from criminal investigation isolators of the MIA. Insufficient operational procedures;

Insufficient insurance of minimum conditions of detention and human treatment of the apprehended/detained persons involved in proceedings that took place outside criminal investigation isolators;

Medical examination is defective. The mandatory medical check-up of those apprehended in many cases is not provided or is formal. The description of body injuries does not meet the requirements of medical evidence of ill-treatment documentation and reporting. The medical check-up of the apprehended is done in front of the policeman;

Medical records and special forms for documenting traumatic injuries are not filled in accordance with the standards;

⁴³ https://www.echr.coe.int/Documents/Annual_report_2017_ENG.pdf

⁴⁴ <https://crjm.org/wp-content/uploads/2018/01/CRJM-NA-Activitatea-CtEDO-2017.pdf>

Insufficient medical personnel at the TDI, as well as lack of quality control of healthcare assistance provided to those apprehended by the medical staff of the MIA and MHLSP;

Lack of operational procedures and physician-patient confidentiality standards, including of spaces for a confidential medical check-up performed by the medical personnel of the TDI or outside the TDI;

Continuous treatment is frequently not provided. Lack of standard operational procedures to refer the detainees to anti-tuberculosis, antiretroviral, opioid dependency or other long-term treatment.

Systemic issues in places of detention under the subordination of the Department of Penitentiary Institutions (DPIs)/ National Administration of Penitentiaries (Ministry of Justice)

Differentiated and discriminatory treatment of detainees by the administration of prisons. Tensioned relations between juvenile detainees and the staff of penitentiary institutions;

Existing criminal subculture in prisons that persists in most visited institutions and favours the intimidation and violence of detainees, a fact mentioned in the Baseline Study into Criminal Subculture in Prisons of the RM, developed by the Council of Europe in 2017;⁴⁵

Insufficient security/safety measures of persons exposed to risk of physical aggression in prisons;

Excessive application of sanctions against detainees by limiting the contact with outside world (family);

Lack of applicable and standard procedure/mechanism to lodge complaints/allegations at institution/system level as well as outside the system with lawyers/prosecution/People's

⁴⁵ https://www.coe.int/en/web/chisinau/home/-/asset_publisher/3HUJCCIIY2MGH/content/baseline-study-into-criminal-subculture-in-prisons-in-the-republic-of-moldova?inheritRedirect=false&redirect=https%3A%2F%2Fwww.coe.int%2Fen%2Fweb%2Fchisinau%2Fhome%3Fp_p_id%3D101_INSTANCE_3HUJCCIIY2MGH%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_count%3D5

Advocate/NGOs;

Insufficient procedures to carry out, register, report and uncertainty of consequences to perform searches in prisons;

Inacceptable level of overcrowding; the 4 m² per prisoner standard is not met in most cases;

Most visited disciplinary isolators are deplorable and can be qualified as providing inhuman or degrading conditions;

Insufficient educational, psychological and social programmes that have to meet the needs of convicts, including minors, women, persons with disabilities. The programmes for juvenile detainees are more optional and do not meet their needs;

The rate of suicide attempts and self-mutilation among detainees is growing, which shows insufficient psychological support provided;

Conditions of detention in all prisons are not adapted to the special needs of the detainees with disabilities;

There is insufficient medical staff, which influences the access of convicts to medical examinations. The confidentiality of medical check-up is not sufficiently provided including due to lack of separated spaces for examinations;

Insufficient possibilities to discover communicable diseases among detainees when admitted into the penitentiary system; mandatory check-ups of body injuries are applied occasionally;

There are no clear procedures to ensure the right of detainee to independent medical examination, which limits the observance of this right in the institution;

Medical records regarding the documentation of injuries are not standard, including with separated registration of different types of trauma and amended by the violation of provisions of Istanbul Protocol;

The juveniles are kept in criminal investigation isolators in the same block with adult detainees;

Unsatisfactory quality of medical records (initial data) regarding the health and diseases of prisoners, hunger strikers, and medical examination

at admission into and release from the institution;

Provision of medicine to detainees is insufficient, as well as the validity, storage and record management procedures are insufficient;

No departmental (territorial, sectoral) TB, HIV/AIDS and STDs control plans are approved within the Ministry of Justice (Department of Penitentiary Institutions);

Practical application of compassionate release of seriously ill detainees is limited and causes high mortality rate of detainees;

Gender specific aspects in prisons are not sufficiently provided. The detained women often do not receive consultation of gynaecologist and other gender specific services;

Detainees do not benefit from the provisions of National Health Programmes implemented in the RM (for instance, mental health, cancer, diabetes, and cardiovascular diseases).

Systemic issues in places of detention under the institutions subordinated to the Ministry of Health, Labour and Social Protection

Lack of proper means and procedures and regulations for immobilization of agitated patients in psychiatric hospitals and psycho-neurological boarding houses;

Increased death rate in psychiatric hospitals shortly after admission;

Patients claim abuse and violence by employees of psychiatric hospitals;

Staff resources of residential institutions are insufficient and do not have corresponding professional category;

Medical personnel has insufficient knowledge in documenting body injuries and special interventions with persons with mental health issues (communication abilities, behaviour analysis in case of suicide attempt and violence);

Lack of efficient cooperation mechanisms between hospitals and mental health community centres in the behaviour of person with mental disability centred on his/her needs;

Improper application of national legislation by the psychiatric hospitals in cases when they refuse to admit persons referred based on Art. 99 CP RM;

Staff of psycho-neurological boarding houses does not have efficient procedures, methods, and means to prevent and reduce cases of violence, as well as the lack of a special register to describe the calming down methods applied;

Beneficiaries who breach the discipline or are aggressive are placed in closed units, which they cannot leave at will;

Lack of an independent and efficient mechanism for the patients of psychiatric hospitals and residents of psycho-neurological boarding houses, to lodge complaints with national human rights protection institutions (People's Advocate, Council for the Prevention and Elimination of Discrimination and Ensuring Equality) or law-enforcement entities (police, Prosecutor's Office);

Insufficient medical personnel affects the quality of services provided to beneficiaries, which is indirectly proved by a large number of deaths in psycho-neurological institutions, classified as a rule, as 'cardiorespiratory failure';

Beneficiaries of psycho-neurological institutions are obstructed or deprived of information on the right to have own family;

Overcrowded wards and sections with closed regime in psycho-neurologic institutions;

In 2017, more tuberculosis cases were diagnosed late and were treated improperly (including by violating the principle of direct supervision of the treatment).

3.1.2 Systemic (common) healthcare-related issues in all places of detention

→ The responsibility for healthcare in places of detention is assigned to departmental healthcare institutions, which are not under the *Ministry of Health, Labour and Social Protection*. In accordance with the Order of the Minister of Health No. 894 din 25.11.2015 'About the List of Departmental Healthcare Institutions', *the only responsibility assumed by the Ministry of Health is the exclusive correctness of the list without any other specific responsibilities for the only central specialised health authority*. Enjoyment of the right to health in places of detention refers mostly to interdependent and essential elements regarding the access, availability, acceptability, quality, and equity.⁴⁶ **Access** envisages the availability of healthcare services to all detainees, accessible free of charge or at a fee, at any request. **Availability** envisages the existence of proper infrastructure for healthcare assistance, sufficient provision with medicines, reagents, diagnosis equipment and well-trained staff, sufficient in number and capable to provide healthcare services, including screening, counselling, primary care and mental health services. **Acceptability** stipulates healthcare services provided with dignity and respect, without discrimination, based on gender, age, culture, language and HIV status and observance of ethics and confidentiality. **Quality** means that all healthcare, quality and adequate services are provided by trained medical personnel, when requested and in a safe environment, centred on person's needs, and the medicine and basic products should meet the quality standards. **Equity** results from the fact that the detainees cannot take care of themselves in detention and it is the responsibility of the State to provide healthcare services and a healthy environment (at least equal to that provided to outside population), and based on the vulnerability of detainees, the needs for healthcare and psychosocial services

⁴⁶ <http://www.euro.who.int/en/health-topics/health-determinants/prisons-and-health/publications/2013/good-governance-for-prison-health-in-the-21st-century-a-policy-brief-on-the-organization-of-prison-health-2013>

in detention are much higher than those in community and requires proper investments. Art. 3 of the Convention stipulates that in any situation, the State shall protect physical integrity of persons deprived from their liberty, especially by ensuring necessary healthcare that might prevent an unfortunate outcome.⁴⁷ Healthcare services provided to persons deprived of their liberty represent, at the same time, relevance in preventing ill treatment. **An improper level of healthcare assistance may lead quickly to situations covered by the term 'inhuman and degrading treatment'.**

It is unacceptable to force the detainees to stay in a space, where they cannot get proper treatment due to lack of staff or because these employees refuse to see them. In many situations, the European Court of Human Rights found out a violation of the European Convention of Human Rights (ECHR),⁴⁸ relevant also to the Republic of Moldova, in the light of healthcare provided in places of detention, such as:

insufficiency or lack of healthcare assistance for different diseases, including mental condition;⁴⁹

holding a non-smoker with Asthmatic Bronchitis in an overcrowded cell with smokers for twenty three hours a day, without healthcare and without corresponding sanitary conditions, who is dependent on his family to supply him with medicines;⁵⁰

failure to observe positive commitments of the State – some led to the suicide of a detainee suffering from mental disorder in solitary confinement;⁵¹

weak organisation of treatment process, which probably contributed to the fact that the claimant committed suicide during an acute event; lack of daily monitoring of medicine use provided to the

⁴⁷ Rivičre v. France, No. 33834/03, Tad's v. France (No. 39922/03), Anguelova versus Bulgaria (No. 38361/97).

⁴⁸ Khudobin v. Russia (No. 59696/00), Mouisel v. France (No.67263/01), Kaprykowski v. Poland (No.23052/05).

⁴⁹ Arseniev v. Moldova, Huylu v. Turkey (No. 52955/99), Stan v. Romania (No. 6.936/03), Şarban v. Moldova (No.3456/05).

⁵⁰ Ostrovar v. Moldova (No. 35207/03).

⁵¹ Renolde v. France (No. 5608/05).

claimant led to his death;⁵²

omissions and irregularities in supplying prescribed medicines necessary for the treatment of ill detainees;⁵³

failure to ensure conditions of detention that meet specific needs of the persons with disabilities;⁵⁴

refusal of the administration to let the detainee to be examined by a physician of his choice and not in the presence of the medical personnel of detention institution;⁵⁵

lack of an effective investigation in case of death of a detainee, who did not meet essential requirements such as promptness, diligence, initiative of authorities and public control imposed by positive obligation to initiate criminal investigation;⁵⁶

failure to provide proper healthcare and in general, detention of a sick person in improper conditions;⁵⁷

denial of an independent medical examination;⁵⁸

incompatibility of detention in the TDI and psychological state of apprehended person;⁵⁹

catching tuberculosis during detention, as well as late diagnosis of the disease;⁶⁰

release from detention due to serious illness (cancer).⁶¹

Final observations on the third periodic report of the Republic of Moldova submitted to the Committee against Torture (2017) contain many findings and recommendations on different health

matters. The most crucial recommendation refers to the **transfer of accountability for the health of detainees to the MHLSP**. Based on the complexity of the departmental medicine, it is relevant to have a comprehensive approach in solving the health problem in places of detention.

Maintaining and amplifying health issues in places of detention, for instance, made known in the case of Braguta, discovered many systemic and inter-sectoral issues in observing the right to health.⁶²

Analysing the latest situation of torture and ill treatments and related activities, the Council is concerned about the current deficient healthcare practice in the following issues/situations in the entire detention system:

➔ **medical staff is not independent of penitentiary authorities** in exercising their professional duties and is involved in conflicts of interest when making correct medical decisions regarding the health of detainees and efforts of the administration to maintain discipline and to sanction detainees. According to the WMA Declaration of Tokyo, *a physician must have complete clinical independence in deciding upon the care of a person for whom he or she is medically responsible, irrespective of other considerations, including the indications of employees, prison administration or security forces.*⁶³ In accordance with international law,⁶⁴ denial of medical treatment and/or absence of access to healthcare in custodial situations may constitute cruel, inhuman or degrading treatment or punishment as well as violation of the principles of medical ethics;

➔ • there are insufficient medical workers due to inefficient existing hiring mechanisms. Hence, because of this insufficiency, the lack of staff or late medical examinations, consultations or healthcare may determine an inhuman and degrading

⁵² Renolde v. France, 2008.

⁵³ Sakkopoulos v. Greece (No. 61828/00).

⁵⁴ Farbtuhs v. Leetonia (No. 4672/02), Price v. Great Britain (No. 33394/96).

⁵⁵ Șarban v. Moldova, 4 October 2005 (No.3456/05).

⁵⁶ Troubnikov v. Russian Federation, 5 July 2005, Aktaş v. Turkey (No.24351/94), Slimani v. France (No.57671/00),

⁵⁷ Vincent v. France (No. 6253/03), Gennadi Naoumenko v. Ukraine (No. 42023/98), Farbtuhs v. Leetonia (No. 4672/02).

⁵⁸ Khudobin versus Russia (10/26/2006).

⁵⁹ Rupa versus Romania, 16.12.2008.

⁶⁰ Vasyukov versus Russia, 04.05.2011.

⁶¹ Mouisel v. France, 11.14.2002.

⁶² <http://ombudsman.md/sites/default/files/document/attachments/raportspecial.pdf>

⁶³ http://unhcr.org.ua/img/uploads/docs/Protocolul%20de%20la%20Istanbul_1.pdf, page 19

⁶⁴ The UN Human Rights Council. Report of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Doc. UN A/HRC/10/44. 14.01.2009, para. 71.

treatment.⁶⁵ Deficit of medical personnel causes failure to observe the **United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)**⁶⁶ which require *healthcare service, including psychiatric treatment of all other prisoners without discrimination and those who are in need of such treatment.*

The staff in places of detention (including medical) is not sufficiently trained in the field of torture, according to Istanbul Protocol, as well as clear institutional procedures that are correlated directly to the functional responsibilities regarding this subject are missing. Hence, the recommendation of CPT,⁶⁷ which imposes the *need for special training of physicians who work in prisons or other long-term places of detention is not implemented in the RM. In addition to enhancing the skills related to the documentation and interpretation of body injuries and ensuring full understanding of the obligation and reporting procedure, this training should include the technique of questioning persons who might have been ill-treated;*

→ the qualifications of medical personnel is not sufficient, which causes gaps in documentation and reporting of alleged torture, and prompt healthcare assistance to prisoners. This determines failure to implement Rule 25 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules),⁶⁸ which stipulates that the *healthcare service shall consist of an interdisciplinary team with sufficient **qualified personnel** acting in full clinical independence and shall encompass sufficient expertise in psychology and psychiatry;*

→ healthcare in places of detention differs based on accessibility, availability and quality, and respectively is not similar to that available in the community because the places of detention face insufficient human and financial resources, scarce material and technology basis, limited access of

detainees to diagnosis and treatment services, failure to include the detainees in the mandatory healthcare system. This situation contravenes with the Nelson Mandela Rules (R24), which stipulates that the provision of health care for prisoners is a State responsibility and that the prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary healthcare services free of charge without discrimination on the grounds of their legal status.

The internal reaction system in case of alleged torture is not sufficient due to formal, insufficient skills of the staff to pro-actively identify the alleged cases of torture, inhuman and degrading treatment and ineffective investigations of circumstances by the hierarchically superior bodies. Respectively, these determine improper implementation of Art. 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which obliges the RM to ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction. It requires the revision of existing procedures of the RM to implement the CPT recommendations. If a prisoner has injuries showing clear ill-treatment (...), and he/she refuses to indicate the cause or provides a reason that is not related to ill-treatment, his/her declaration should be recorded thoroughly and forwarded to relevant authority accompanied by a full report on objective medical observations;

→ the quality of healthcare provided is not verified systematically by the Ministry of Health, Labour and Social Protection or by other authorities in the field because the national quality audit mechanisms, necessary standards/procedures, as well as monitoring and evaluation indicators of healthcare in places of detention are missing. Respectively, the implementation of the principle according to which irrespective of the institutional measures for regulating healthcare in prisons is not ensured, and it is essential for clinical decisions of physicians in prisons to be governed by medical criteria only and the quality and efficacy of their activity should be evaluated by a qualified medical

⁶⁵ Pavalache v. Romania (No.38746/03); Khudobin v. Russia (No.59696/00), Hummatov v. Azerbaijan (No.9852/05).

⁶⁶ https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf

⁶⁷ <https://rm.coe.int/16806ccc3b>

⁶⁸ http://www.avp.ro/mnp/legi/ansamblu_reguli_mnp.pdf

authority;

→ the healthcare in places of detention is not monitored by the relevant ministry (MHLSP) and is not reflected in the state health policies and strategies, which leads to the isolation of departmental medicine and failure to observe the international commitments of the RM in preventing torture, inhuman and degrading treatment. This is a failure to comply with the Nelson Mandela Rules (R40), according to which, the *health policy in prisons shall be integrated and compatible with the national health policy, while the prisoners shall have access to national health system, without discrimination on the grounds of their judiciary status*;

→ sector policies to improve departmental healthcare services failed many times and were not finalized: Action Plan for the implementation of Justice Sector Reform Strategy for 2011-2016, approved by the Parliament Decision No.6 din 16.02.2012,⁶⁹ para. 6.4.5. Effective combating of acts of torture and ill-treatment, requires the action: *'Develop the draft amending the regulatory framework to ensure professional independence of medical workers in the detention places by their transfer under the subordination of the Ministry of Health'*. The Action Plan for the reorganisation of healthcare services in prisons in 2015-2016, approved by Government Decision No. 901 of 27.10.2014;⁷⁰

→ reorganisation of health system was included as a priority action of Prison System Development Strategy 2016-2020⁷¹ and its Action Plan for its implementation, approved by Government Decision No. 1462 of 30.12.2016, but has considerable delays in the implementation of healthcare-related activities due to the complexity of interventions and insufficient involvement of the MHLSP in drafting inter-sector policies. This situation does not favour the achievement by the RM of the

objectives of the *EU Health Policy 2020*,⁷² as well as recommendations of the Council of Europe regarding the health in places of detention, which reiterates that the *management and coordination of activities, resources involved in prisoners' health and wellbeing is the responsibility of the State, and the Ministry of Health shall be the responsible party for healthcare services provided in places of detention*.

⁶⁹ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=343439>

⁷⁰ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=355261>

⁷¹ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=368928>

⁷² http://old2.ms.gov.md/sites/default/files/health2020_rom.pdf

Legislative, administrative, and judicial measures to prevent and fight torture and impunity

3.2

The Republic of Moldova has made many recent efforts to decrease the incidence of torture, other ill treatment and to reduce the impunity.

The international institutions have recognised the following achievements:

Legislative measures

- the amendments to Criminal Code to upgrade the punishment for torture, to introduce criminal prosecution for actions considered inhuman or degrading treatment or punishment (Art.166 para.(1)), to remove the statute of limitation for torture and ill treatment-related offences (Art. 60 para. (8)) and provisions that no softer punishment unless stipulated by law shall be applied for torture (Art. 60, 107 and 79) were adopted;
- the Enforcement Code was amended by adding a new article 1751, which stipulates that 'detention for a period less than 72 hours as procedural measure of constraint shall be served in temporary detention facilities...';
- the Law No.52 on People's Advocate (Ombudsman) was adopted on the 3rd of April 2014 and the Council for the Prevention of Torture as national preventive mechanism, according to OP CAT was established on the 25th of October 2016;
- Torture Prevention Unit within the Criminal Prosecution and Forensics Division of the General Prosecutor's Office was established on the 4th of May 2010; the Law on General Prosecutor's Office as part of the justice sector reform was adopted in August 2016.

Administrative measures

- Torture Prevention Unit within the Criminal Prosecution and Forensics Division of the General Prosecutor's Office was established on the 4th of May 2010; the Law on General Prosecutor's Office as part of the justice sector reform was adopted in August 2016;
- the Joint Order No. 77 of 31.12.2013 'For the Approval of the Regulations on Identifying, Registering and Reporting Alleged Cases of Torture, Inhuman or Degrading Treatment'⁷³ was approved;
- the National Human Rights Action Plan for 2012-2014 was approved on 07.03.2012 and implemented, and the National Human Rights Action Plan for 2018-2022 was drafted;
- the National Mental Health Programme was approved on the 28th of December 2012;
- Child and Family Protection Strategy 2013-2020 was adopted in 2013;
- the Justice Sector Reform Strategy for 2011-2016 was approved and implemented;
- Police Development Strategy 2016-2020 and its Action Plan;⁷⁴
- the Action Plan to reduce ill treatment, abuse and discrimination of persons in police custody for 2017-2020 was adopted in September 2017 to implement the Police Development Strategy 2016-2020 that was adopted in May 2016;
- the Prison System Development Strategy 2016-

⁷³ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=353245>

⁷⁴ <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=364882&lang=1>

2020 and the Action Plan for its implementation,⁷⁵ were adopted in December 2016;

- the National Programme for Social Inclusion of Persons with Disabilities for 2017-2022,⁷⁶ was approved in September 2017.

Despite measures taken by the state institutions, **the CfPT considers necessary to revise the regulations/practices to reduce the phenomenon of torture, other ill treatment and impunity.**

According to the **2017 Activity Report of the Department of Penitentiary Institutions (DPIs),⁷⁷** the rate of petitions/complaints lodged by the prisoners increased substantially (compared to 2016). The petitions refer most of all to alleged actions of prison administration (from 168 in 2016, to 248 in 2017), violation of the rights of prisoners (174 in 2016 compared to 260 in 2017), ensuring personal security (26 in 2016 and 54 in 2017), application of torture, inhuman or degrading treatment (25 in 2016 compared to 34 in 2017), and healthcare provision (91 in 2016 compared to 188 in 2017). These four subjects account for about 30 per cent of total 2615 petitions received from detainees by the DPIs in 2017. ***The CfPT worries about the substantial increase of the number of such petitions, underlining the need for a prompt investigation of each case in part to discover the acts that might be considered (or might relate to) torture, inhuman or degrading treatment.***

Also, an increase by 283 per cent of the number of official investigations from 54 in 2016 to 207 in 2017 has been attested.

In the year of reference, the **2017 Police Activity Report,⁷⁸** mentioned that 33 criminal cases related to torture were initiated against the policemen.

According to the **2017 General Prosecutor's Report,⁷⁹** the **number of complaints/petitions lodged with the Prosecutor's Office regarding alleged torture, inhuman or degrading treatment has increased compared to previous year (from 622 in 2016 to 639 in 2017).** Before 2016, the annual indicators were decreasing. Based on a total number of 639 complaints, the prosecutors started independent investigations in 221 cases, which accounts for 34.5 per cent. After examining the complaints on torture and other ill treatment, the prosecutors initiated criminal prosecution in 103 cases (which accounts for 16.1 per cent of the number of complaints).

However, the UN CAT mentions the low rate of criminal prosecution of alleged torture and ill treatment cases during pre-trial detention, based on article 166 (1) of the Criminal Code, which accounts for less than 20 per cent of the cases and very low number of convictions of the culprits.⁸⁰

Also, **criminal prosecution was initiated against 20 persons in 2017 (of which 16 policemen) as a result of investigations initiated in the case of Braguta.**

⁷⁵ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=368928>

⁷⁶ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=371431>

⁷⁷ <https://drive.google.com/file/d/1kg8hZLnWqybPzP8uPbuM Gjkfa6GmfHlm/view>

⁷⁸ http://politia.md/sites/default/files/raport_de_activitate_12_luni_2017_var_finala.pdf

⁷⁹ http://procuratura.md/file/2018-03-12_Raportul%20Procurorului%20General%202017.pdf

⁸⁰ http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fCO%2fMDA%2fCO%2f3&Lang=en

In 2017 the courts delivered 20 sentences in relation to 25 persons: 3 sentences against 3 persons – imprisonment, in other 10 sentences delivered in relation to 12 persons the imprisonment was conditionally suspended (Art.90 of the Criminal Code), 1 conviction sentence by applying a sanction against a person, and in other 2 sentences delivered in relation to 5 persons – the criminal proceedings were concluded, including 1 case was settled by applying the Law on Amnesty and the other 4 persons were acquitted.

At the same time, the **Courts of Appeal, in the reference files, delivered 37 judgements in relation to 68 culprits.**

The CfPT stresses out that although the prosecutors registered 108 complaints regarding the violence on the **7th of April 2009, very few persons were held accountable (up to 10 persons).**⁸¹

⁸¹ <http://amnesty.md/wp-content/uploads/AIR-2017-18-book.pdf>;
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fMDA%2fCO%2f3&Lang=en;
<http://procuratura.md/md/newsst/1211/1/5688/>

THE COUNCIL FOR THE PREVENTION OF TORTURE

shall provide the

**Parliament
Government
Superior Council of Magistracy
General Prosecutor's Office
Ministry of Justice
Ministry of Internal Affairs
Ministry of Health, Labour and Social Protection
Ministry of Defence
National Anticorruption Centre
Public Services Agency
National Social Insurance House
National Health Insurance Company**

*with the following **RECOMMENDATIONS***

***in order to solve systemic issues and undertake
necessary measures to:***



RECOMMENDATIONS

RECOMMENDATIONS:

- **implement the recommendations of international institutions on preventing and fighting torture in the Republic of Moldova** (UN Committee against Torture and Other Cruel Treatment or Punishment (CAT), UN Subcommittee against Torture and Other Cruel Treatment or Punishment (UN SPT), European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT);
- **develop and prove the integrated inter-sector evaluation and monitoring indicators on efficient implementation of international torture prevention commitments of the Republic of Moldova;**
- **implement recommendations of national torture prevention institutions in the Republic of Moldova** (People's Advocate, Council for the Prevention of Torture (CfPT), General Prosecutor's Office);
- **create internal mechanisms (and appoint responsible persons) to receive, implement and monitor the recommendations of international/national institutions on the prevention of and fight against torture in the Republic of Moldova;**
- **establish the Council for the Prevention of Torture (CfPT) as national preventive mechanism (NPM), to ensure good functioning and its independence;**
- **facilitate and ensure the access of the CfPT to existing places of detention in the Eastern region of the Republic of Moldova;**
- **identify the mechanisms to involve representatives of civil society, CfPT members in developing, implementing and monitoring legislative, administrative and judiciary measures to prevent and fight torture (including sector strategies);**

- **develop and approve institutional ethical procedures in cases of alleged torture**, inhuman and degrading treatment in order to institute standards for the staff of places of detention (including medical) to observe the guarantees against torture and effective investigation, **including the revision of application practice by all institutions mentioned in the Joint Order No. 77 of 31.12.2013 and setting sanctioning measures** for failure to apply this Order;
- **at the institutional level, to identify/improve the documentation procedure of the arrested/apprehended persons in the shortest period of time** (up to 72 hours) to make possible the transfer to penitentiaries including after 17.00 and during the weekends;
- develop/improve and enforce an **efficient and standard mechanism that can guarantee the right of detainees/prisoners to lodge confidential complaints/petitions (complaint mechanism)** with specialised authorities (internal and external);
- **develop and implement efficient and independent internal control mechanisms (internal inspections)**;
- **ensure the independency of medical personnel in all places of detention** by transferring the responsibility for the health of detained persons to the Ministry of Health, Labour and Social Protection in order to ensure an independent and confidential medical examination as a guarantee against torture and ill treatment. Develop and approve urgently a Plan to provide the penitentiary institutions and temporary detention isolators with medical personnel, with policies to attract and maintain the staff to ensure fundamental guarantee of medical examinations;
- **ensure access of detainees to quality services** to prevent, support and treat them in the same manner as outside people, without discrimination on the basis of their legal status;
- **develop procedures to ensure reasonable interaction of police with representatives of vulnerable groups when taken into custody/arrested/detained** (children, elderly, national/ethnic minorities, LGBT etc.), so these meet the special needs of the persons from each category;
- **improve detention conditions to meet the international standards** (including the issue of overcrowded prisons).

Places of detention under the institutions subordinated to the Ministry of Internal Affairs

3.3

3.3.1 Treatment of detainees/apprehended persons in places of detention under the subordination of the MIA institutions

Abuse committed by employees

Based on preventive visits, interviews with persons in state custody and examined registers, the Council for the Prevention of Torture **has indirectly recorded many allegations regarding abuses or cases of torture committed by the employees of visited institutions or other competent bodies.** At the same time, different ill treatment matters were mentioned as failure to ensure decent conditions of detention and fundamental legal guarantees. The CfPT acknowledges that at the onset of detention the vast majority of detainees does not understand or acknowledge the violation of their rights, which has to be solved by intensifying these people's awareness.

CfPT received allegations regarding:

- *excessive use of physical force by the policemen or representatives of other competent bodies when taking people into custody, causing body injuries to apprehended persons;*
- *treatment of apprehended persons/detainees during their transportation to temporary place of detention or penitentiary (sometimes farther than 60-70 km). There were many cases when the detainees reported hostile attitude of the police staff when they asked to use the bathroom or asked for water, food, etc.;*
- *treatment of persons apprehended/detained involved in proceedings outside the criminal prosecution isolators.* Persons apprehended/detained are removed from the TDIs for many hours (sometimes from 9.00 to 18.00), during which they do not always receive proper treatment (use of bathroom, water, food, etc.). Also, the procedure lacks clarity (or the custodians are not properly

trained) regarding where, how, and for how long the detained/apprehended persons may be involved in proceedings outside the places of detention. **This attitude may be labelled as abuse caused by staff and can be included in the category of ill treatment, if decent conditions of detention/transportation of persons are not met.**

CfPT mentions progress, with small exceptions, regarding the time of detention in TDI by reducing the time of persons in police custody transferred from penitentiaries to TDIs for procedural reasons or trials. In such situations, **the persons that come from penitentiaries are detained as a rule only during the day, and are escorted back to the penitentiaries for the night.** The CfPT did not identify the detention of persons from penitentiaries during the night in TDIs; such abusive practices being mentioned by the CPT in visits to the Republic of Moldova in 2011 and 2015.

RECOMMENDATIONS :

- set clear procedures regarding decent treatment of persons in police custody during their transportation, including use of bathroom, drinking water and food provided to escorted detainees. Train the staff to apply these procedures;
- set clear procedures regarding decent treatment of persons in police custody during the involvement of apprehended/detained persons in procedural actions outside criminal prosecution isolators with direct involvement of detainees/apprehended persons. Train the staff to apply these procedures;
- continue and harmonize the practice of detaining the persons from the penitentiaries in the TDIs only during day time, and sending them back to penitentiaries for the night.

Use of physical force and special means

During the monitoring period, CfPT did not receive any allegations from persons in police custody regarding the abuse caused by the use of physical force and special means.

Most employees of MAI institutions declared that no incidents or exceptional cases were registered in a long period of time, except for the case of Braguta. As for the use of special means and physical force, these are used rarely, following strict legal provisions. Despite what have been said at institution level, **the CfPT has not identified special registers to monitor use of physical force and special means**, , hence, there is no certainty about proper use of physical force and special means, as well as the frequency of these measures.

In this context, CfPT identified a case when a detainee destroyed some objects in a cell and set fire to the bedding, after which physical force and handcuffs were applied. Unfortunately, the matters regarding the duration, proportionality and medical examination of the person after applying this measure could not be analysed due to missing register on the use of physical force and special means. The behaviour of the person was agitated and no clear handling procedures were described,

including referral to psychologist/psychiatrist to receive necessary medical treatment.

The CfPT acknowledged situations when some detained persons exposed cases of **excessive and un-proportional use of physical force when being taken into custody by the MIA collaborators**.

In order to apply the Law on using physical force, special means and fire arms,⁸² as well as to implement the Regulations on the procedure of identifying, registering and reporting alleged cases of torture, inhuman or degrading treatment, **the Joint Order to Approve the Guide on Professional Intervention on Duty was signed in January 2018 at the inter-institutional level** by the Minister of Internal Affairs, Minister of Justice, Minister of Finance, Director of National Anticorruption Centre, Director of Security and Information Service, Director of State Security and Protection which entered into force as of 1 April 2018.⁸³

The CfPT would like to draw the attention to the fact that physical force, special means, and fire arms should be applied as a final resort after all methods of convincing are used up. Physical force and special means should be used non-abusively, in accordance with clearly established procedures, by staff trained and empowered according to adopted instructions and only for short and necessary periods of time. Any use of force and special means should be registered and reported in a clear set of instructions to be able to identify these cases!

⁸² Law No.218 of 19.10.2012 on Use of Physical Force, Special Means and Fire Arm <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=345846&lang=1>

⁸³ http://politia.md/sites/default/files/ghid_privind_interventia_profesionala_in_exercitiul_functiei.pdf

RECOMMENDATIONS :

- develop or adjust institutional or departmental acts that would detail at institutional level the procedures and algorithm of applying physical force and special means depending on the phase (apprehension, arrest, detention, transportation, trial, etc.) and person (adult, minor, woman, person with disabilities, elderly and sick person);
- create/fill in registers on use of physical force and special means by the police stations to systematize and record the cases of urgent measures of constraint use;
- set an on-going training mechanism for MIA personnel to apply correctly physical force and special means at all phases of police interaction with persons apprehended/arrested/detained as well as correct documentation of consequences of applying physical force and special means.

Violence among detainees

During its visits, the CfPT did not discover cases of violence among detainees in TDIs. However, the monitoring visits carried out by the CfPT, corroborated with the case of Braguta, revealed **systemic deficiencies regarding the reporting of violence among detainees and incidents involving detainees, as well as the intervention algorithm of the employees in such situations.** Hence, insufficient preventive measures to stop the conflicts between the detainees were identified:

- the algorithm of placing the apprehended/detained persons in cells (especially when there are not enough spaces) is not always clear – for instance, placing smoking persons with non-smoking persons, persons with mental disabilities with other detainees, persons with evident signs of illness (coughing, confirmed tuberculosis) etc. with healthy persons;
- some isolators are missing metal detectors to prevent cases of use of sharp metallic objects;
- lack of some efficient/clear mechanisms and standards (from technical and procedural point of view) when persons in cells may have quick

contact with the custodians, especially in critical situations. In one isolator monitored by the CfPT at the time of the visit the custodians were missing, and in another isolator the custodian was too far from the cells to be able to supervise permanently the detainees;

- insufficient video surveillance and/or that does not cover risky spaces of interaction between detainees.

The obligation of the police to ensure the safety and physical integrity of persons in the custody of the state is materialised through adequate supervision of detention spaces, including during the transportation.

CfPT would like to mention that proper surveillance can be achieved by:

undertaking measures to guarantee that the persons in police custody can address to the police custodians at any time;

placing the apprehended/detainees by categories in order to avoid possible existing conflicts or potential conflicts between apprehended/detained persons;

video surveillance.

RECOMMENDATIONS :

- identify solutions for all functional isolators of the MIA to supervise the persons detained by the custodians (including video surveillance);
- identify and apply clear and standard algorithm regarding placing of apprehended/detainees in cells according to the multitude of categories of persons;
- equip the isolators with technical devices to verify/search the persons held in isolators (including metal detectors);
- improve and standardize the procedures (from technical and operational point of view) through which the persons in cells may quickly contact the custodians, especially in critical situations;
- setting a continuous training mechanism for MIA staff with a view to coordinating the actions of MIA staff in the field of critical situations of violence among detainees.

3.3.2 Guarantees against torture and other ill treatment during the initial period of detention

The CPT attaches particular importance to three rights for persons detained by the police: the right of the person concerned to have the fact of his detention notified to a third party of his choice (family member, friend, consulate), the right of access to a lawyer, and the right to request a medical examination by a doctor of his choice (in addition to any medical examination carried out by a doctor called by the police authorities). They are, in the CPT's opinion, three fundamental safeguards against the ill-treatment of detained persons which should apply as from the very outset of deprivation of liberty, regardless of how it may be described under the legal system concerned (apprehension, arrest, etc.).⁸⁴

Access to a lawyer

The possibility for persons taken into police custody to have access to a lawyer is a fundamental safeguard against ill-treatment. The existence of that possibility will have a dissuasive effect upon those minded to ill-treat detained persons. Further, a lawyer is well placed to take appropriate action if ill-treatment actually occurs. To be fully effective, the right of access to a lawyer should be guaranteed as from the very outset of a person's deprivation of liberty. Indeed, the CPT has repeatedly found that the period immediately following deprivation of liberty is when the risk of intimidation and physical ill-treatment is greatest. Further, the right of access to a lawyer should apply as of the moment of deprivation of liberty, irrespective of the precise legal status of the person concerned; more specifically, enjoyment of the right should not be made dependent on the person having been formally declared to be a "suspect".⁸⁵

Guaranteeing access to a lawyer to persons taken into custody/arrested/detainees represents a very important criterion for the observance of human rights and fundamental freedoms of persons in the State's custody. For this reason, ensuring the access to a lawyer represents a positive obligation of the State governed inclusively by the provisions of Art. 6 para. (3) let. c) of the European Convention of Human Rights.

Persons who are entitled to qualified legal assistance in the Republic of Moldova are also the persons who need legal assistance when taken into custody during a criminal trial or a contravention procedure.⁸⁶

In the Republic of Moldova, the national Council for State Guaranteed Legal Aid and its territorial offices) is the institution responsible for providing state guaranteed legal aid (hereinafter referred to as – NACJGS⁸⁷).

Based on the discussions with the

⁸⁵ <https://rm.coe.int/16806ccd1f>

⁸⁶ Art. 19 para. (2) of Law No. 198 of 26.07.2007 on State Guaranteed Legal Aid, <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=325350&lang=1>

⁸⁷ <http://www.cnajgs.md/ro/>

⁸⁴ Excerpt from the II General Report [CPT/Inf (92) 3].

representatives of police stations, the monitoring team had in general a great cooperation with the AJGS lawyers and in tough situations.

The administration states that the Anenii Noi Police Inspectorate has issues with ensuring the access to a lawyer by delaying legal aid and providing it formally only. Lack of lawyer in the AJGS system was underlined in the case of Cantemir Police Inspectorate when the employees reported cases when they had to call lawyers from Leova or Cahul on their own account to provide the formal access of persons in police custody to a lawyer, in accordance with the Code of Criminal Procedure.

The unavailability of lawyers during night and weekends is also an issue that delays the application of the provisions of the Code of Criminal Procedure. This matter was discussed by the representatives of Telenești Police Inspectorate because the lawyers do not observe the timetable created based on the list of lawyers on duty.

Having analysed some registers during monitoring visits, the CfPT found out that **in some cases, the questioning of persons takes place in the absence of lawyers or starts in his or her absence, or the questioning takes place after he/she leaves**, which is in contradiction with the provisions of Art. 104 of the Code of Criminal Procedure.⁸⁸

Following its visits, the CfPT established that **the questioning in some police isolators/preventive detention isolators takes place in rooms/spaces meant for other activities, such as doctor's office or visit room**, which are not adapted to criminal proceedings.

RECOMMENDATIONS :

- fortify the cooperation between the NACJGS and lawyers to enhance the notification methods of lawyers by the police in emergencies; the lawyers on duty should observe the timetable drafted by territorial offices of NACJGS, including ensure the independence of police/prosecution;
- stop the practice of interrogating the persons taken into custody/arrested/detained without a lawyer, even for a short period of time. Exceptions stipulated in the Code of Criminal Procedure should be well justified following the law;
- identify, create spaces in all isolators to be used for criminal proceedings related actions – interrogation/interview of detained persons. These spaces will be used for confidential meetings between the persons taken into custody/detainees and lawyers.

Medical examination

The violation of detainees right to medical examination made in confidentiality by an independent physician in the first 24 hours from their arrival to the place of detention has a systemic character and was mentioned by the CfPT and previous reports of CPT (of 2011, 2015), as well as in observations regarding the third periodic report of the Republic of Moldova submitted to CAT⁸⁹:

- **compulsory medical examination of detainees is not ensured in many cases**, according to the CPT recommendations⁹⁰ and instructions approved by the MIA Order, the persons taken into custody should be *questioned and physically examined by a qualified physician within 24 hours from the onset of detention to guarantee that any injury of the persons and any declarations related to circumstances of its appearance are recorded without delay*. The key cause of failure to ensure medical examination is

⁸⁸ The questioning of a suspect, accused, defendant is made only in the presence of a lawyer chosen or a lawyer who provide state guaranteed legal aid immediately after being taken into custody or depending on the case, after being charged, if he or she accepts to be interrogated.

⁸⁹ http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fMDA%2fCO%2f3&Lang=en, <https://rm.coe.int/16806975da>

⁹⁰ Documentation and reporting of medical evidence of ill-treatment. <https://rm.coe.int/16806ccc3b>

lack of average medical staff (interns, nurses, etc.), and the position of a physician in the temporary detention isolators is not included in the organisational chart. Moreover, there are practices of substituting medical examination with notes made by police officers in the custody report which are frequently accompanied by the remark of lack of complaints towards the authorities, signed by the person taken into custody;

- **medical examination of persons taken into custody in most cases is formal** or is limited to questions of medical assistant if the detainee has any illness or whether he or she is healthy;

- **description of body injures does not meet the standard requirements** regarding the documentation and reporting of medical evidence of ill-treatment being formal and superficial, the explanations of persons on how he/she acquired the injures are not recorded versus medical findings or any other made affirmation;

- **the template of medical examination for each new inmate is obsolete and does not allow adequate documentation of health of the person taken into custody and timely monitoring of medical matters for the period of person's detention in the TDI** (for instance, check-up when being released from TDI, notes of private physician or other referrals, enclosing the information on discovered body injures, etc.). **Documentation and reporting medical evidence of ill-treatment⁹¹ is inappropriate**, because the CPT recommends that *medical report should contain additional medical examinations, detailed specialised conclusions, and a description of treatment of injures or any other treatment provided* (including medical records of traumatic injures);

- **the medical examination in front of the**

police officer continues,⁹² which is a big concern regarding the possibility to document body injures or expose the detainees to other complaints of confidential/medical matters. At the same time, the medical files and records have a compulsory field for signature by a third party (police officer) present during medical examination;

- medical staff does not have sufficient knowledge to identify the persons with mental disabilities, because the operational procedures for referral to specialised healthcare assistance in situations of interaction with detainees with different types of disability are missing.

At the same time, **situations when the criminal investigator includes notes regarding the health of persons taken into custody and medical examination in the custody report, as a measure to substitute the so-called medical examination have been identified.** *CfPT considers such practices as inadmissible because this is serious violation of the right of detainees to medical examination provided by qualified medical staff in conditions of confidentiality!*

⁹¹ <https://rm.coe.int/16806ccc3b>

⁹² If, generally speaking, no indicator of presence of custodian or guard is noted in the medical records, the majority of interviewed detainees affirmed that they were examined in front of the personnel who has no medical or healthcare connection. The CPT recommends to adopt new instructions for the police officers and medical staff that stipulate that each medical check-up should be made in confidentiality, except for express requests of interested medical staff in particular cases – without the presence of the personnel who has no connection to medicine or healthcare. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806975cc>

RECOMMENDATIONS :

- ensure confidential medical examination of detainees by medical staff at admission, release from TDI and at request;
- review and approve the Nomenclature of Medical documentation within TDI, including monitoring and reporting indicators;
- develop standard operational procedures for persons with disabilities including referral to specialised services;
- develop and implement standard medical records and files of detainees, including from the point of view of follow-up on health issues and volume of healthcare assistance provided through the entire period of detention in the TDI (including the check-ups at the admission and release from institution, requests for healthcare assistance, medical examinations and follow-up treatment, etc.).

Notification of detention

A detained person's right to have the fact of his/her detention notified to a third party should in principle be guaranteed from the very outset of police custody. This right is also found in Art. 173 CCP that obliges the person who drafted the custody report to provide the person taken into custody with the possibility to notify within 6 hours one of the relatives or a third party about the place where he or she is held. The CfPT emphasises the need to observe para. 2 of this article which stipulates that in the case of foreigners taken into custody, the Embassy or Consulate shall be informed only at the request of the person in custody.

Of course, the CPT recognises that the exercise of this right might have to be made subject to certain exceptions, in order to protect the legitimate interests of the police investigation. However, such exceptions should be clearly defined and strictly limited in time, and resort to them should be accompanied by appropriate safeguards (e.g. any delay in notification of custody to be recorded in writing with the reasons therefor, and to require the approval of a senior police officer unconnected

with the case or a prosecutor).⁹³

In all preventive visits, based on the declarations of interviewed persons, the CfPT concluded that **the right to notify a relative about detention is observed**. In all cases, the notification of persons took place via telephone calls made by the police collaborators.

However, CfPT **could not identify clear standard procedure in all isolators regarding the notification of persons/third parties by persons taken into police custody about his or her detention// custody**. Especially, what is the method to notify the persons, who covers the expenses, duration, restrictions on duration and location (country of recipient), including the procedures regarding the persons with speaking/hearing deficiencies taken into custody/arrested, and foreign persons? There were cases when the criminal prosecutors would provide the detainees with their own mobile phones to notify their relatives about their custody. Also, no registers that keep the record of notification of detention with fields for date and hour of notification, applied method, and limitations or difficulties were identified.

RECOMMENDATIONS :

- identify or adapt/standardize the procedures on notification of relatives/third parties about the persons taken into police custody/detention;
- identify a method to record all the cases by creating a register of notification of detention that would contain sections regarding the date and hour of notification, method of notification and any difficulties or limitations regarding the countersignature of the person taken into custody.

⁹³ <https://rm.coe.int/16806cd1e6>

Information about rights

Rights for persons deprived of their liberty will be of little value if the persons concerned are unaware of their existence. Consequently, it is imperative that persons taken into police custody are expressly informed of their rights without delay and in a language which they understand. The police officers have to ensure that the persons actually understand their rights and are not only informed about their rights.

In most cases, the information of persons taken into custody/detained about their rights takes place only after signing an A4 form/statement with the rights of persons taken into custody written in Romanian language only.

However, based on the interviews carried out by the CfPT with persons taken into police custody, at least 4 cases were registered when the information about the rights of persons taken into custody was given incompletely and not in accordance with Art. 64 para.(2) of the Code of Criminal Procedure:⁹⁴ these persons did not receive the statement attesting their rights. At the same time, this statement does not provide information on the right to medical examination and continuation of treatment, including the right to be check-up by an independent doctor.

CfPT would like to draw the attention to the fact that all persons who are in police custody have to be clear/certain about what is going on and what they can expect, what are their limits. The simple fact of handing in a statement on the onset of detention with rights and obligations of persons arrested/detained does not guarantee the understanding of rights and that the behaviour has to be within the limits mentioned in the statement. It is important to explain the rights and obligations to persons (and not only at the time of taken into custody or handing in the information) in a language they understand (the language they speak or methods

⁹⁴ art. 64 para.(2), 2) of the Code of Criminal Procedure that stipulates that 2) immediately after being taken into custody or after being recognised as suspect, the person shall receive written information about his/her rights in accordance with this article, including the right to remain silent and the right to avoid self-incrimination as well as to receive explanations of all his/her rights from the prosecution.

they understand).

RECOMMENDATIONS :

- inform and explain permanently about the rights of persons taken into custody/detained in a language they understand based on Art. 64 of Code of Criminal Procedure, including the right to remain silent and the right to avoid self-incrimination;
- provide forms to the detainees informing about the right to medical examination, including by a private physician.

Registers

The analysis of the registers of Temporary Detention Isolators was an important objective for the CfPT during preventive visits. It should be mentioned that the monitoring team of the CfPT had access to all registers requested and available in the places of detention.

General issues discovered:

- **registers are not standard and are not filled in accurately.** In some cases, the registers are missing, are filled in superficially or are not filled in at all;
- missing registers with information on hour and date of custody (the date and hour were missing in most cases); sometimes only the hour of transfer into the isolator is put down without putting down the hour of actual custody; not all cases have the hour and date of release of detainees as well as the place of transfer to;
- in some cases it is impossible to determine the total period of detention of persons in isolators, which is very questionable, including the cases when the maximum legal period of 72 hours of the person in temporary detention has been exceeded.

It is not acceptable to not have registers required by the MIA Orders in force. There were cases when the visitors' register or medical examination register,⁹⁵ register on the application

⁹⁵ Report CfPT TDI Anenii Noi of 04.07.2017. <http://ombudsman.md/sites/default/files/2017-09-13-0009.pdf>

of special means,⁹⁶ register of body injuries discovered and incident report within the TDIs, etc. would miss completely.

The registers cannot be kept properly due to lack of personnel with express duties to keep registers, failure to have one institutional template and insufficient guidelines on how to keep the registers of persons taken into custody/detained, as well as the insufficiency of internal inspections in this field.

RECOMMENDATIONS :

- develop/adapt and approve standard registers regarding the activity of temporary detention isolators, when necessary, consolidate the registers. Also, appoint persons responsible for filling in the registers based on a job description, as well as implement the monitoring and evaluation indicators based on each register;
- centralised training of employees of isolators on how to keep a register.

Lodging a complaint and communication with outside world

In order to establish the level of guaranteeing the access of detainees/inmates to lodge a complaint, it has been discovered that on one side, there is a possibility to lodge a complaint with the manager of the Police Inspectorate, and on the other hand, the detainees should benefit from opportunities to lodge the complaints with the Prosecutor's Office, People's Advocate, specialised NGOs, etc. (judiciary/procedural and extra-judiciary methods).

Following the interviews with detained persons and discussions with police officers, the CfPT concluded that the right to lodge complaints with the manager of the institution was observed in very few cases, and as for the possibility to lodge a complaint with other institutions, **there is no applicable mechanism/procedure regarding confidential complaints/information addressed**

to prosecutors, People's Advocate or NGOs. Furthermore, the detainees do not have stationary (pen, paper, and envelope) to enjoy the right to petitioning.

No accessible information boards were identified inside the isolators regarding the procedures to lodge complaints/petitions within the institution (Head of isolator, Head of Inspectorate) or with external institutions (Prosecutor's Office, People's Advocate, and specialised NGOs). The CfPT could not identify the communication channels with the outside world: institutions and their contacts, mail boxes, access to telephone, including who ensures the detainees with this right.

CfPT identified cases when the persons detained in TDIs did not have any interaction with outside world for days, including with the lawyer (the lawyer was present only when the person was taken into custody), prosecutor, family, being deprived of the possibility to inform rapidly about an eventual abuse of the police or other detainees (or to prevent an eventual abuse). More critical situations are registered when the persons are detained for more than 72 hours in isolators and they do not interact with outside world.

RECOMMENDATION :

- develop/improve and apply an efficient and standard mechanism to guarantee the right of detainees/persons taken into custody to lodge confidential complaints/petitions with competent authorities (internal and external).

Internal inspections

In order to observe the norms regarding the protection of detainees and ensure the official duties of the police officials in temporary detention isolators, the internal inspections/monitoring visits/audits play a special role in the GPI of the MIA.

CfPT did not see any exhaustive proof of the periodicity and frequency of internal inspections. Based on the declarations of police inspectors, it was determined that the isolators were checked more often by the isolator management, and in some cases – by the prosecutor. However, an

⁹⁶ Report CfPT TDI Telenești of 22.09.2017. http://ombudsman.md/sites/default/files/raport_cpt_ip_telenești_22.09.2017.pdf

increase of the number of internal inspections/controls of the GPI of MIA based on the case of Braguta (after August 2017) has been observed.

Based on observations of the CfPT, most inspections/controls resumed to analysis of material conditions of detention and discussions with detainees about their treatment or existence of any allegations. In many cases, such inspections ended with some verbal recommendations or sometimes without being registered.

CfPT could not identify any clear and standard isolator inspection mechanism within the GPI of the MIA, as well as the method to verify the implementation of verbal indications of inspections.

CfPT would like to draw the attention to some matters that should be taken into account during regular inspection/monitoring by the representatives of the GPI of MAI in the places of detention under the subordination of the MIA:

- existence of internal regulations on the activity of inspections. Regulations are known by both inspectors and detainees;
- periodicity of inspections;
- structure of inspection/monitoring team, including the opportunity to invite representatives of civil society;
- types of inspections and matters that have to be verified;
- inspection planning, organisation and registration methodologies/tools;
- coordinate inspections/audits with other internal (for instance, internal safety) and external structures (for instance, Council for the Prevention of Torture);
- draft inspection reports and discuss the results with the leadership of inspected police inspectorate;
- monitoring mechanisms to improve monitoring/inspection matters and efficiency analysis.

Judicial guarantees

CfPT has appreciated the important role of judiciary bodies to contribute to the observance of human rights. According to the Code of Criminal Procedure, Art.11 para.(4): *Holding a person in custody until the arrest warrant is issued shall not exceed 72 hours (24 hours for minors), and preventive arrest may be approved by judges only.*⁹⁷ It is very important for a person held in custody to be brought before a judge within 72 hours, to be able to lodge complaints regarding certain allegations of torture or ill treatment.

Holding a person in temporary/pre-trial detention for more than required (72 hours) mentioned expressly by national law and international standards is a serious violation of human rights, which has to result in the accountability of responsible persons!

CfPT identified more cases of failure to observe the 72 hour period at least in 6 out of 11 isolators monitored by the CfPT and many persons held for more than 72 hours were identified! Representatives of PAO identified similar situations in other isolators. For instance, the visits of Orhei TDI discovered a person who was in police custody for more than 2 weeks.⁹⁸ Similar situations were discovered at the Ungheni TDI,⁹⁹ where many persons were held in temporary detention for about 1-2 months (including a minor, who became an adult during the detention), and at the Hancesti TDI,¹⁰⁰ which held into custody an elderly for more than 25 days. Similar situations were registered in isolators of Telenești, Sangerei and Chisinau. Furthermore, a situation was identified when a convicted person was detained at the TDI due to safety measures,

⁹⁷ Art. 185 para. (2) CCP: The matter of preventive arrest may be changed by the investigative prosecutor or court to house arrest, temporary release under judiciary supervision or temporary release on bail.

⁹⁸ Report CfPT Orhei TDI. http://ombudsman.md/sites/default/files/document/attachments/orhei_7_martie.pdf

⁹⁹ Report CfPT Ungheni TDI. http://ombudsman.md/sites/default/files/document/attachments/raport_cpt_idp_ungheni_26.09.2017.pdf

¹⁰⁰ Report CfPT Hancesti TDI. http://ombudsman.md/sites/default/files/document/attachments/raport_cpt_ip_hincesti_30.05.2017.pdf

which was considered inadmissible by the CfPT.

CfPT identified **3 causes that lead to failure to observe the 72 hour term:**

- lengthy processing time and documentation of persons taken into custody/arrested who have no identification or are foreigners or stateless persons. Missing the identity papers delays the transfer of persons to penitentiaries (the penitentiaries refuse to accept people without identification). In most cases there is no clear mechanism to process such persons, and the representative of the police have to make independent decisions beyond their competence. It is not clear who should cover the expenses for drafting the papers of persons held into custody (including the transport and payment of services to the SC CRIS Registru), or what the period for issuing documents is. However, the representatives of temporary detention isolator of the Police Department of Chisinau Municipality and representatives of Calarasi Inspectorate identified sources and procedures for rapid drafting of documents (couple of hours) necessary for the transfer of persons held for more than 72 hours to the penitentiaries.

- procedural actions that are carried out by criminal investigators or prosecutors against persons in temporary detention which lasts more than 72 hours. Sometimes, in such situations, the criminal investigators or prosecutors order verbal detention of prisoners for more than 72 hours from being taken into custody for actions related to the investigation.

- penitentiaries refuse to receive persons after 17.00 during working days or weekdays or holiday.

CfPT draws the attention to the fact that TDIs are not adapted or planned to detain persons for more than 72 hours, and a longer detention may be considered inhuman or degrading treatment.

According to the Enforcement Code, the temporary detention isolators shall hold persons taken into custody in accordance with Art. 166 CCP for a 72 hour period from the moment of apprehension, persons who are under preventive arrest should be transferred to half-closed penitentiaries for detention.

RECOMMENDATIONS :

- periodic information of all MIA employees involved in the activity of criminal investigative isolators about the inadmissibility of holding the persons taken into custody/arrested for more than 72 hours in criminal investigative isolators of the MIA and termination of such practice;
- identify/improve at inter-institutional level the documentation procedure of persons in the shortest period of time (during the 72 hour period) to be transferred to penitentiaries including by disseminating the positive practice of other inspectorates (Chisinau, Calarasi);
- jointly with Department of Penitentiary Institutions, identify solutions to transfer to / accept persons under preventive arrest by the penitentiaries (after the expiry of 72 hours from taken into custody) and after 17.00 and during the weekdays.

Other guarantees

Video recording of police questioning is another useful safeguard measure against ill-treatment of persons taken into custody. The monitoring visits identified many stations equipped with video surveillance equipment. For instance, Cantemir TDI¹⁰¹ and Cahul TDI¹⁰² have separated rooms equipped with video surveillance systems, but without audio recording. The CfPT was not certain if the rooms were used frequently or what was the method of keeping the videotapes, so it was not clear if those guarantees could be considered.

The situation in detention isolators of Orhei and Hancesti is much complicated; they have no spaces for questioning in confidentiality.

CfPT points to the importance to identify solutions to build a space for confidential questioning within temporary detention isolators, equipped with video surveillance and proper storage of video

¹⁰¹ Report CfPT Cantemir TDI. http://ombudsman.md/sites/default/files/document/attachments/cantemir_raport_13_apr17.pdf

¹⁰² <http://ombudsman.md/sites/default/files/document/attachments/raprt5.pdf>

recordings, including video surveillance of places vulnerable to violence among detainees and contact of detainees with representative of isolators.

3.3.3 Conditions of detention in places of detention under the subordination of the MIA

Living conditions

In its visits, the CfPT could not identify the sealed cells that were not functional in some isolators. **The regime/purpose of non-functional cells is not clear** – which cells are used to detain persons (including in the eventual detaining of adults, females, minors, persons with disabilities). CfPT had the impression that some cells declared non-functional were still used to detain persons (some of them were not sealed/had the seal broken or had traces of recent accommodation).

CfPT is concerned about the modality/procedure of taking persons into custody/detaining persons for several hours (recently taken into custody or transferred from penitentiaries to court/other procedural actions), especially when there are no sufficient cells in the isolator. In many cases, the persons are detained in spaces/metallic cages of 1 m² or other sizes. These spaces, depending on police stations, are placed at the entrance of or even within the detention isolator. The distribution procedure or detention status of these persons in such spaces (named holding cells) are not clear (it can last up to 7-8 hours). The existence of such spaces raised the suspicion of the CPT.

Sanitary and hygiene status of cells in most isolators visited by the CfPT is unsatisfactory.

The surface standard (norms envisage 7 m² having at least 2 m between walls and 2.5 m between flooring and ceiling, without the in-cell toilets for one person) is partly observed. Even if some cells had an actual number of persons according to the norms, the number of existing beds was much higher (there were 6 beds in an area of 20 m²).

Some isolator cells monitored by the CfPT **do not have adequate natural light, and the artificial light is not enough** to read. The natural light was obscured by the following factors: small window in the cell, too many bars at the window, presence of some objects outside the cell, by the windows (outer walls, trees, bushes, etc.). Also, there is an isolator which cells have no windows (TDI Soroca).

A major problem in some TDIs is the **lack of natural ventilation** due to the fact that the windows are immobilised and are not functional. As for artificial ventilation, in most cases there is no ventilation, and even if it exists, it produces a loud noise and is not used with regularity; there is no timetable for its use, which proves it is not used and in at least 3 cases, the ventilation was missing.¹⁰³

Another issue refers to **exaggerated humidity in cells** due to location of isolators in the basement. For instance, due to high humidity, the reparation of cells is insufficient because of rapid deterioration in the Calarasi TDI.¹⁰⁴

¹⁰³ Temporary detention isolators of Ungheni, Hancesti and Orhei did not have artificial ventilation systems.

¹⁰⁴ Report CfPT Calarasi TDI. http://ombudsman.md/sites/default/files/document/attachments/raport_cpt_idp_calarasi_26.09.2017.pdf

¹⁰⁵ Calculation of accommodation space should be made as follow: a) to detain 1 person: minimum 7 m², without the space for in-cell toilets; b) to detain 2 or more persons: 7 m² + 4 m²; for 3 persons: 7 m² + 4 m² + 4 m² etc., without including the in-cell toilets.

RECOMMENDATIONS :

- revisit all cells in all isolators and evaluate their correspondence with national and international standards. Seal and stop using the cells that are not in correspondence with national and international standards ;
- prohibit the practice to detain persons in custody/arrested in metallic spaces/with bars for more than 3 hours and provide access to WC during this time, including registration of time when placing in such spaces;
- adapt functional cells to national and international standards (including ensure access to natural/artificial light and ventilation).

Hygiene and access to shower facilities of detained persons

Another issue identified by the CfPT in most cases refers to cleaning of places of detention and in-cell toilets. The cases of non-corresponding hygiene include the lack of employees with duties to clean the places of detention within the isolator.

Another systemic matter is failure to ensure persons' intimacy because the in-cell toilet is open and is separated from the rest of the cell by 1 m high wall. The issue of WCs is acute in the situation when these are broken as in the case of TDI Orhei, and the detainees/persons in custody have to request the access to an outside toilet. Also, some cells do not have in-cell toilets, and the physiological needs are done outside the cell, in the common bathroom/WC of the isolator (Hancesti TDI).

The access to bathroom is ensured by employees of isolators without any restrictions; the isolators have bathrooms that are accessible at the request of persons. A major issue, however, is the fact that the persons in police custody do not receive bedding, hygienic sets and towels.

RECOMMENDATIONS :

- identify solutions to involve the auxiliary personnel responsible for cleaning the isolator;
- ensure the intimacy of detainees by installing walls and doors in all in-cell toilets;
- distribute clean water and sanitation system in the cells;
- ensure the detainees with mattresses, bedding and hygienic products.

Water and food

The CfPT acknowledged the existence of contracts with catering companies for 3 meals a day in all 11 visited institutions. Based on interviews with detained persons, some deviations from food quality, periodicity and frequency were discovered – some detainees received food only once a day, others received only one slice of bread in the morning.¹⁰⁶ A serious situation refers to access to drinking water, which in some cases represents a huge problem. For instance, at the TDI Hancesti the detainees have no access to drinking or any kind of water.

Another matter discovered by the CfPT was that detainees do not receive food when they are in court. There were complaints when the persons were in court between 09:00-18:00 and did not receive water or food, and at the return to isolator, they also did not receive water or food because they missed the dinnertime.

RECOMMENDATIONS :

- ensure permanently the persons in custody/detained with drinking water and quality food 3 times a day, by observing sanitary conditions;
- identify solutions to ensure the detainees in court with food and water 3 times a day.

¹⁰⁶ Report CfPT TDI Hancesti. http://ombudsman.md/sites/default/files/document/attachments/raport_cpt_ip_hincesti_30.05.2017.pdf

Healthcare in places of detention under the subordination of MIA

Right to healthcare is ensured by the national legislation. Most of interviewed police officers mentioned the obligation of the TDI to provide the detained persons with access to independent healthcare and check-up.¹⁰⁷ Besides the systemic problems described above, the TDIs have specific matters. **CfPT would like to emphasise the right to medical examination of every person placed in isolator on the onset of his/her admission and release, as well as the right to access to a doctor, including the right to be checked by a doctor of his/her own choice (additionally to medical examination made by the doctor requested by the police).**

- **Medical records and special files to document traumatic injuries are not kept accordingly,** and have different standards, although the recommendations of the CPT indicate expressly that *a special register for traumatic injuries has to be kept, and the traumatic injuries discovered during medical examinations should be registered in a special file available for this purpose, with body charts that would indicate the injuries and kept in the medical record of the detainee.*

- **The operational procedures and standards to ensure the confidentiality of medical data, including the spaces for such confidential medical examinations made by the physicians of the TDIs or outside doctors are missing** (private doctor or emergency healthcare service). Unfortunately, the CPT recommendation *to take measures so only persons with medical or care skills should have access to medical files, strictly necessary for their duties, in the light of this remark* has not been implemented. Also provisions of Art.7 (3) of Law No. 133 of 08.07.2011 on protection of personal data that stipulates that *personal health data can be processed (...) by or under the supervision of a medical employee based on professional secret or by any other person with similar obligation regarding the professional secret.*

- **Standard operational procedures for detainees with mental issues are missing in the TDI.** Severe

gaps in this field are highlighted by the case of Braguta, mentioned in the Special Report of the People's Advocate.¹⁰⁸ Despite the severe incident which ended in the death of the person in custody, the Ministry of Internal Affairs has not provided measures/mechanisms for compulsory medical examinations of persons in custody to prevent such situations (for instance, to delegate from other subdivisions or contract services from private or public medical institutions).

- The MIA does not have internal mechanisms to verify the medical examination of persons in custody, quality of the treatment, insurance of confidentiality of initiated treatment before detention, as well as observance of treatment and clinical protocols of detainees in the TDIs.

- The continuation of treatment of detainees is not often ensured, standard operational procedures to refer the detainees to anti-tuberculosis, antiretroviral, opioid dependency or any other long-term treatment are missing. The Council established that the CPT recommendation has not been implemented.

At institution and national levels, there are no data/statistics about health matters of detainees (based on injuries discovered during check-ups, illnesses suffered and treatment continuation, requests for emergency healthcare or for a private doctor).

¹⁰⁷ Art.187 al CPP. Obligations of the management of places of detention of persons in custody or detained (2) include to ensure the detained persons with access to independent medical assistance and check-up. <http://lex.justice.md/md/326970/>

¹⁰⁸ <http://ombudsman.md/sites/default/files/document/attachments/raportspecial.pdf>

RECOMMENDATIONS :

- develop and implement standard operational procedures to observe the confidentiality of personal health data and to ensure that all medical examinations of persons in police custody are made out of ear and sight of police officers, and medical data are not accessible to personnel other than medical staff;
- develop standard operational procedures to refer to/accompany/ensure promptly the continuity of treatment in accordance with Methodological Guidelines of Police Intervention in Preventing and Control of HIV Infection in Highly Risky Environment, approved by GPI Order No.54 of 27 March 2015;
- develop standard operational procedures for persons with mental issues in TDI custody;
- ensure the availability including public display of statistical reports on health matters among the detainees (the injuries discovered during check-ups, illnesses registered and continuation of treatment, requests for emergency healthcare or for a private physician).

Daily activities

Based on its preventive visits, the CfPT concluded that the right of detainees to walk at least once a day for one hour is respected in most cases. However, there were cases when this right was limited due to the following reasons:

- the number of persons held in isolator is too high to ensure the right to walk for an hour for each detainee in one courtyard (temporary detention isolator of Chisinau Police Department);
- lack of supervision staff during the walks (Hancesti TDI);
- lack of standard registers of persons in TDI and to ensure the right to walks including the refusal of detainees;
- overcast weather because most courtyards are covered with a wire net only which is impossible to use when the weather is bad.

RECOMMENDATIONS :

- identify solutions to ensure outdoor walks for more than one hour for all detainees;
- build a protective roof for walking courtyards to ensure their use in overcast weather;
- develop walking courtyards on the ground;
- standard requirements for walking courtyards including based on the number of detainees in the TDIs to identify the supervision staff.

Transport of detained persons

The transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited.¹⁰⁹ Most special vehicles of the isolators used to transport the detained persons did not meet the technical or minimum standards. The vehicles were not equipped with heating or ventilation systems; most of them were re-equipped with detention space consisting of a metal construction with bar, with metal or wooden benches of very small sizes (25 x 100 cm) and which can transport more than 4 persons.

¹⁰⁹ Rule 73, Standard Minimum Rules of the United Nations for Treatment of Prisoners (Nelson Mandela Rules).

RECOMMENDATIONS :

Identify solutions to procure vehicles adapted to minimum standards of transport of detainees for all isolators of MIA. Especially, take into account the following:

- Oprovisions for video surveillance of detainees and custodians to monitor the legality of actions of both parties and prevent the violence among detainees during transportation;
- Otechnical state of the vehicle should meet all requirements stipulated in Section 18 of Chapter IV of Road Traffic Regulations approved by Government Decision No.357 of 13 May 2009. Also, these special vehicles have to be accredited;
- Othe transportation vehicle must be equipped with 1) at least 2 functional fire extinguishers; 2) medical kit in accordance with the provision of normative acts in force; 3) 2 tyres; 4) warning triangles;
- Othe vehicle has to be accommodated to the transportation of persons with disabilities;
- Oavoid as much as possible to transport different categories of persons in custody/ detainees (adults, women, men, minors) in the same vehicle. If this is not possible, it is necessary to physically separate them together with the custodians;
- Oobserve the standards of transportation in different exceptional/special situations (persons with disabilities, persons with tuberculosis, pregnant women, minors, etc.) and different responsibilities, including the refusal of transportation or transportation in the presence of medical staff;
- Oprovide the custodians of transportation with individual safety kit including safety masks in case of transportation of patients with infectious diseases (tuberculosis or Zika virus, for instance).

3.3.4 Vulnerable groups in places of detention under the subordination of the MIA

In the monitoring period, the CfPT paid attention to the observance of rights of vulnerable groups held in police custody (minors, women, elderly, and persons with special needs, including persons with mental disability, Roma persons, LGBT, and foreigners). Some vulnerabilities may aggravate during the detention period.

Cases of holding the minors in temporary detention beyond the legal term are very concerning. The CfPT monitoring team discovered a case when the person was taken into custody when **he was a minor and was held in temporary detention of the TDI Ungheni for two months.** Based on the discussions with employees of the police station, the CfPT concluded that efforts are made regarding minors to separate them from adults and keep them in separate cells.

A different situation was noted during preventive visits, **which refers to lack of internal mechanism for searching the female detainees.** According to representative of isolators, the search of women is made sometimes by male employees.

The access of persons with physical disabilities is not ensures in all isolators.

Also, **the CfPT could not find procedures or the representatives of isolators did not know how to interact with persons with different disabilities (including physical and/or mental disabilities).**

RECOMMENDATIONS :

- revise search procedures of female detainees by female employees and the other way around, so the person who perform the search has the same gender as the searched person;
- develop procedures for reasonable interaction with vulnerable groups (children, elderly, Roma, LGBT, persons with disabilities, etc.), so the interaction procedure meet the special needs of persons from each category, without discrimination based on the status of vulnerability. Train the employee to apply these procedures.

3.4

Places of detention of National Anticorruption Centre (NAC)

Representatives of Centre/isolator showed receptivity during and after the visit of CfPT submitting the requested information. The employees of the National Anticorruption Centre are informed about the mandate and duties of the Council for the Prevention of Torture. The information on CfPT mandate is displayed on the billboard at the entrance of the isolator.

CfPT did not receive allegations from the detainees held at the NAC isolator regarding ill treatment. Overall, the rights of detainees are observed. The material conditions of detention are satisfactory for detention of persons.

Although most detainees declared that had access to a lawyer, however, **the practice to restrict the right to a defence attorney and meetings with the lawyer persists.** Two cases were reported by detainees during the interviews with CfPT.

Based on its preventive visit, the Council concluded that the detained persons had the possibility to notify a relative or a third persons free of charge about being taken into custody and being held at the isolator.

The detained persons were informed about their rights and they received a written explanation of their rights and obligations from NAC employees, according to the CCP.

CfPT would like to emphasise the fact that persons in NAC custody should have clear/proper understanding of what is going on and what they should expect, what the action limits are. The mere handing in of a piece of paper with rights and obligations of arrested/detained persons at the onset of custody does not guarantee their understanding, and their behaviour should be within the limits indicated in the paper. **It is important to explain the rights and obligations of persons (not only when they are taken into custody or are handed in the informative paper, but every time it is necessary), so they understand them (in a language they speak or methods they understand).**

In this context, the **persons in custody/arrested did not know that they could make phone calls, request a phone call, number of allocated minutes, and periodicity.** There were no notes in the phone call register of detainees in January - June 2017. The reason provided by the isolator employees was that the detainees did not request to make phone calls.

No complaints regarding abuses committed by isolator employees were received during the visit. On overall, the access to correspondence and lodging/submission of complaints/petitions is observed. **Some detainees declared they were intimidated if they want to lodge a complaint or petition with the prosecutors, invoking the risk/threat to be transferred to Chisinau Penitentiary No. 13.** In this regard, CfPT could not identify the selection criteria applied to detainees when they are transferred from NAC isolator to Penitentiary No. 13, especially when the NAC isolator has insufficient places to detain arrested/detained persons.

We would like to commend the good practice for outsourcing the healthcare services provided to the persons held in custody based on a service contract with medical institution.

RECOMMENDATIONS :

- ensure the access to a lawyer to all detained persons without any impediments, or delays from the NAC isolator administration or prosecutors;
- continuous information and explanation of the rights guaranteed by Art. 64 CCP in a language the persons in custody/detained understand, including the right to remain silent and the right to avoid self-incrimination;
- ensure the right of arrested/detained persons to lodge a complaint/petition or address to prosecutors, lawyers;
- ensure the intimacy of detained persons in cells by isolating the in-cell toilets from the rest of the cell with a wall built up to ceiling and install a door and ventilation.

3.5 Places of detention within the Department of Penitentiary Institutions/National Administration of Penitentiaries under the subordination of the Ministry of Justice

During its first year of activity, the Council for the Prevention of Torture focused on 8 institutions under the subordination of the Department of Penitentiary Institutions of the Ministry of Justice. The CfPT drafted 7 reports on preventive visits. Six reports on preventive visits are available on the official webpage of the People's Advocate (Ombudsman) under Reaction of NPM Section. The responses received from visited institutions of Department of Penitentiary Institutions are included under reports in the same section.¹¹⁰ CfPT visited: Cricova Penitentiary No. 15, Soroca Penitentiary No.6, Penitentiary No. 10 for juveniles in Goian,¹¹¹ Penitentiary No. 7 for women in Rusca,¹¹² Leova Penitentiary No. 3,¹¹³ Chisinau Penitentiary No.13,¹¹⁴ Rezina Penitentiary No. 17¹¹⁵ and Balti Penitentiary No. 11.¹¹⁶

¹¹⁰ <http://ombudsman.md/ro/advanced-page-type/npm-draft-recommendations?page=2>

¹¹¹ Report on preventive visit to Penitentiary No. 10 for juveniles in Goian. http://ombudsman.md/sites/default/files/raport_cpt_p10_goian_03.02.2017.pdf

¹¹² Report on preventive visit to Penitentiary No. 7 for women in Rusca. http://ombudsman.md/sites/default/files/16_februarie_rusca.pdf

¹¹³ Report on preventive visit to Penitentiary No. 3 in Leova. http://ombudsman.md/sites/default/files/acte_de_reactionare/leova_peniten_04_mqi_2017.pdf

¹¹⁴ Report on preventive visit to Chisinau Penitentiary No.13. http://ombudsman.md/sites/default/files/raport_cnpt_p13_vers_finala_07_07_2017.pdf

¹¹⁵ Report on preventive visit to Penitentiary No. 17 in Rezina. http://ombudsman.md/sites/default/files/raport_cnpt_p17_26.09.2017.pdf

¹¹⁶ Report on preventive visit to Penitentiary No. 11 in Balti. http://ombudsman.md/sites/default/files/document/attachments/raport_cnpt_p11_balti_31.10.2017.pdf

3.5.1 Treatment of detainees in places of detention under the subordination of DPJs of MoJ

Interaction between detainees and administration/staff of places of detention

The CfPT did not receive allegations of abusive (physical) treatment by the personnel of penitentiaries for male adults during monitoring visits.

At the same time, the CfPT received during visits numerous allegations of verbal abuse addressed to detained women (Penitentiary No. 7 in Rusca and Chisinau Penitentiary No.13), juveniles (Penitentiary No. 10 for juveniles in Goian and Penitentiary No. 13) and men (in all visited penitentiaries).

In general, CfPT considers that the relations between some employees and detainees are quite tensioned, and on the other hand, the relation between other detainees and personnel is relaxed, which gives the impression of differentiated treatment of detainees and accommodation/corruption acts within other penitentiaries.

CfPT is concerned about a number of allegations received from juvenile detainees regarding physical abuse of personnel of Penitentiary No. 10 for juveniles in Goian and Chisinau Penitentiary No.13.

The visit to Penitentiary No. 10 for juveniles in Goian recorded allegations regarding abuses of employees towards the juveniles consisting of punching in the back and chest, kicking in the calves, smacking the fingers/palms of detainees with keys, cold water jets and placement a detainee in a cold cell. The violence towards juvenile detainees is applied so it does not leave visible marks. Abusive practices towards juvenile

detainees were applied repeatedly by the same employees.

During the visit to Chisinau Penitentiary No.13, the juveniles did not mention any incidents or ill treatment from employees or other detainees. But other juveniles declared that **when they are admitted into the penitentiary (search), some juveniles were maltreated by being hit with plastic bottles filled with water.** Although the floor where the cells of juveniles are located is always guarded, the interviewed minors mentioned that the custodian is not always receptive and often ignores their requests for food and healthcare.

CfPT took note of the position of the Department of Penitentiary Institutions regarding declarative character of juveniles' allegations.^{117,118}

CfPT would like to alert about tensioned relations between juveniles and employees of penitentiary institutions, which can generate violent incidents and mass riots. The penitentiary institutions faced such cases in 2015 and 2016. In this regard, it is necessary for the DPIs to reconsider the Standards of the European Committee for the Prevention of Torture (CPT) to improve the treatment of minors detained in penitentiaries: *[...] Custody and care of minors deprived of liberty is an especially difficult task. Take into account that many of them were subject to physical, sexual or psychological violence. The employees tasked with their care should be carefully selected based on maturity, professional integrity and capacity to face the challenges for working with this age group and ensure the welfare of the youngsters.[...] [...]All staff including with custodial duties, which is in direct contact with minors should receive professional training when starting the job and afterwards, and should benefit from proper external support and supervision in exercising its duties. A special attention should be paid to training of personnel in supervising violent incidents, especially in solving verbal conflicts and professional techniques of*

*immobilization [...].*¹¹⁹

RECOMMENDATIONS:

- improve specific professional training of the personnel of penitentiaries, especially, in conflict negotiation in prisons and non-violent communication. Eliminate any practice of abuse (physic, verbal) of the staff of penitentiary towards detainees. The staff of the penitentiary, who directly interacts with detainees (especially minors) should be informed about and should take into account their needs and requests;
- equal and non-differentiated treatment of all persons detained in penitentiaries. Inform the detainees and periodic explanations of their rights and obligations in the places of detention (including phases, living conditions, involvement in activities, labour, etc., ways of making decisions by the administration);
- develop performance evaluation indicators for penitentiary staff specialised in working with juvenile detainees.

¹¹⁷ http://ombudsman.md/sites/default/files/raspuns_dip_raportvizitaprevenitiva_p10_28.04.17_1.pdf

¹¹⁸ <http://ombudsman.md/sites/default/files/2017-09-13-0015.pdf>

¹¹⁹ CPT Standards, the version in Romanian language can be found at: <https://www.coe.int/en/web/cpt/standards>

Relations between inmates. Violence between inmates

CfPT worries about informal relations between the inmates fuelled by the criminal sub-culture phenomenon that persists in most visited institutions, especially of the so-called 'humiliated' or 'undetermined' or those who recanted the 'informal laws'. The CfPT is especially worried about the so-called existence of silent acceptance of this phenomenon by the administration of penitentiaries. A number of inmates interviewed at Cricova Penitentiary No. 15, Soroca Penitentiary No.6, Leova Penitentiary No. 3, Rezina Penitentiary No. 17, and Balti Penitentiary No. 11 (one inmate complained about the persistence of these issues in Penitentiary No. 12 in Bender) claimed they were threatened, harassed and physically assaulted by other inmates. CfPT found indirect evidence of these allegations in almost all penitentiary institutions, confirmed by medical documentation (such as medical files and registers of injuries). CfPT found out that the Register on self-mutilation and Register on traumatic injuries are often handled without specifying the origin of these injuries (about 10 per cent).¹²⁰ All these findings indicate to the gaps in documentation and evidence of traumatic injuries of inmates, and eventually, possible acts of violence, and lack of efficient investigations of the authorities.

CfPT emphasises that after its visit to the Republic of Moldova in September 2015, the CPT established the existence of criminal sub-culture and found evidence of violence between inmates in Soroca Penitentiary No.6 and to less extent in Chisinau Penitentiary No.13 and Rezina Penitentiary No. 17.¹²¹

CfPT notes that the existence of violence between inmates was admitted by the employees of visited penitentiaries. It is noted that the prevention of violence between inmates is usually reduced to their separation by categories (inmates with informal status of 'humiliated', inmates with the status 'undetermined', and inmates who 'recant the informal laws') from the general population. **An inmate who is exposed to the risk to be assaulted physically shall be separated from the general population in accordance with Art. 206 of the Enforcement Code. Based on the 2017 Activity Report of Penitentiary System,¹²² the CfPT notes the preventive measures by separating the inmates at risk from general population. According to the report in the period of reference, the employees of penitentiary institutions undertook strict measures according to Art. 206 of Enforcement Code and para.129, 133 SEPC to ensure personal safety of 427 inmates. CfPT notes that this practice may resolve the problem of the inmate for a short period of time, but brings long-term negative effects.**

CfPT points to responsible authorities that separation of inmates exposed to physical risks is not an efficient measure per se to reduce the criminal sub-culture in the penitentiaries. Furthermore, this practice brings adverse effects of limiting the access of inmates considered 'humiliated' or with the status 'undetermined' to different activities, objects/locations in the penitentiaries, accessible to other inmates. This problem is faced not only by separated inmates but by the employees of penitentiaries that have to ensure equal access to all inmates without any form of discrimination. For instance, in Penitentiary No. 3 in Leova, about 70 inmates do not have access to walks and kitchen, long-term visitation rooms because they are considered 'humiliated' persons in the criminal sub-culture. Due to this 'informal status', their access to these facilities is restricted. Also, in Penitentiary No. 17 in Rezina the inmates labelled 'humiliated' by others declared that they had no access to ground walks and sports field. A similar situation is noted in Penitentiary No.11 in Balti regarding the inmates who 'recant the

¹²⁰ According to the data in the statistics form No.12 relating to the number of diseases recorded in Penitentiary No.13 in Chisinau in 2016, a total number of 535 cases of traumatic injuries, poisoning and other consequences of external causes including **50 traumatic injuries without clear source of origin.**

¹²¹ Report of the Government of the Republic of Moldova on the visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to Moldova made on 14 - 25 September 2015 (paragraphs 52 - 57); the version in English language may be accessed here: <https://rm.coe.int/16806975da>

¹²² The version in Romanian language is available here: <https://drive.google.com/file/d/1kg8hZLnWqybPzP8uPbuMGjka6GmfHlm/view>

informal law' in the penitentiary.

CfPT welcomes the statement of the Deputy Director of the Department of Penitentiary Institutions in his letter of 27 November 2017 that *eradicating the criminal sub-culture between inmates is one of overall objectives included on the agenda of developing and reforming the penitentiary system. Thus, the Prison System Development Strategy for 2016 - 2020 and the Action Plan for its implementation approved by GD No. 1462 of 30.12.2016 envisages the specific objective 5.3 'Prevent and fight criminality, terrorism and eradication of sub-cultural phenomenon in prisons'.* In this context, CfPT will follow the efforts made and results achieved by the DPIs.

CfPT encourages the responsible authorities to take all necessary measures to develop dynamic security in the entire penitentiary system in the Republic of Moldova according to the Recommendations of the Committee of Ministries of the Council of Europe Rec (2003)23 to member states on the management by prison administrations of life sentence and other long-term prisoners. Dynamic security means that the prison's staff is trained and is encouraged to develop good personal relations with inmates, to get to know and understand them as individuals, sympathise with them and help them in personal matters and have meaningful discussions with them. The inmates have most frequent continuous contacts with the basic personnel. The nature of daily interactions with such personnel influences to great extent the behaviour and attitude of inmates. Positive interactions tend to decrease the destructive behaviour and attitude and facilitate constructive work with inmates. Further, the dynamic security offers the possibility of an early warning before an undesired incident might occur. Hence, the penitentiary staff can take measures to stop an imminent incident.¹²³

It should be mentioned that in 2017 a team of international and national experts supported by the Council of Europe (CoE), developed the Baseline Study into Criminal Subculture in Prisons

in the Republic of Moldova and presented it to the Ministry of Justice and Department of Penitentiary Institutions.¹²⁴ In this context, CfPT recommends to consider the study with the findings and recommendations of the CfPT, CPT, People's Advocate, and NGOs, and to implement them.

RECOMMENDATIONS :

- amplify efforts, especially by intensifying the departmental controls to discover and eradicate hostile relations between different categories of inmates and sub-criminal culture in prisons, including by instituting accessible and equal separated zones for all inmates;
- stop the treatment of/approach to isolated persons based on Art. 206 of Enforcement Code or those with so-called 'humiliated', 'undetermined' or 'recanting the informal laws' status as persons who are disciplinary punished. Provide equal opportunities/rights to these persons as to general population. Identify/diversify long-term efficient measures regarding the security of detained persons.

Disciplinary procedures

CfPT notes the excessive application of sanctions by limiting the contact with outside world (suspended right to visits, suspended right to receive parcels, access to phone calls). This matter was invoked in Penitentiary No. 15 in Cricova, Penitentiary No. 7 in Rusca and Penitentiary No. 17 in Rezina. Based on the registers examined, the CfPT confirmed the declarations of inmates. For instance, in Penitentiary No. 17 in Rezina in 2016, the inmates were subject to 579 disciplinary sanctions; the number of applied sanctions was 4-5 times higher than the number of warnings. The high number of disciplinary sanctions included suspended right to visits for up to 3 months – 472 cases (81.5 per cent). In the first half of 2017, the inmates received 234 disciplinary sanctions (93 persons) and the suspended right to visits in 78 per cent (183 cases).

¹²³ Recommendations of the Committee of Ministries of the Council of Europe Rec (2003)23 to member states on the management by prison administrations of life sentence and other long-term prisoners, paragraph 73.

¹²⁴ Baseline Study into Criminal Subculture in Prisons in the Republic of Moldova, see the English version at: <https://rm.coe.int/criminal-subculture-md-en-/1680796111>

CfPT could not identify the application algorithm of these sanctions (sometimes differentiated), and whether the sanctioned persons knew how/when/where those were applied, and whether they had the possibility to challenge such sanctions.

In this regard, CfPT would like to remind the staff of penitentiaries about the CPT Standards:¹²⁵ [...] *It is very important for the inmates to keep reasonably good contacts with outside world. The inmate should have the possibility to keep ties with his or her family and close friends. The main principle is to promote the contact with outside world; any restriction of this contact should be based exclusively on serious safety issues or considerations of resource availability [...]*, as well revised Minimum Standard Rules for the Treatment of Prisoners (Nelson Mandela Rules).¹²⁶

Other major incidents

→ CfPT is concerned about the number, procedure, record and consequences of searches in the prisons of the country. According to the Order of DPIs No.177 of 15.06.2017 on the Approval of the Action Plan of Joint Squad of the Department of Penitentiary Institutions, 16 meetings of the squad were convoked to train the staff and to involve it in regime measures.

Most searches were conducted in the morning and some during the night. In Penitentiary No.17 in Rezina, 2 inmates showed resistance to searches and disobedience towards legal requirements of the staff of penitentiary, hence, physical force was applied. Also, some searches were conducted when the occupants of the cells were not there.

CfPT welcomes the fact that physical force application was recorded in accordance with the legislation in force and that the People's Advocate Office and Prosecution were informed.

CfPT would like to point the attention of DPIs to the following matters regarding the number, procedure, recording and consequences of searches:

- according to the Recommendations of the Minimum Standard Rules for the Treatment of Prisoners (Nelson Mandela Rules)¹²⁷, Searches shall be conducted in a manner that is respectful of the inherent human dignity and privacy of the individual being searched, as well as the principles of proportionality, legality and necessity;

- clear criteria/algorithms used to plan planned/unplanned searches conducted by the staff of the penitentiary or by/with the participation of DDS Panther or with North Joint Squad;

- availability of well trained and equipped staff involved in searches (including according to accepted methodologies, including with individual sets for searching to prevent the contamination with HIV and viral Hepatitis in case of accidental injury. It is also important to train the predecessor staff on applying internal regulations and international standards;

- searched persons should be aware and informed about their rights and obligations during and after searches;

- document searches conducted (especially unplanned) and their results, applied sanctions, when necessary.

→ CfPT is concerned that the mortality cases of inmates in penitentiary system grow (in 2012 – 31 persons, in 2016 – 54, and 42 in 2017).

CfPT notes that the decisions on determining the cause of death are not available in all cases of deaths and no procedures for quick examination of reasons that led to death of the person in state's custody are applied by the Department of Penitentiary Institutions.

RECOMMENDATION :

→ revise and improve prompt and multilateral investigation/examination mechanism/procedures of all cases of death of persons in detention.

¹²⁵ CPT standards, the version in Romanian language is available here: <https://www.coe.int/en/web/cpt/standards?>

¹²⁶ Revised Minimum Standard Rules for the Treatment of Prisoners (Nelson Mandela Rules), version in English language is available here: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf

¹²⁷ Version in Romanian language is available here: http://www.avp.ro/mnp/legi/ansamblu_reguli_mnp.pdf

→ CfPT is concerned by the fact that **suicide attempts and self-mutilation of detainees persists in the penitentiary system**. According to the Activity Report of the Penitentiary System, 331 cases of self-mutilation were registered in Q1 2017,¹²⁸ The number of self-mutilations is increasing because the same inmates are self-mutilating twice or more times. Considering the 2017 Activity Report of the Penitentiary System 2017,¹²⁹ CfPT mentions a positive dynamics in decreased number of suicidal attempts and death caused by suicide in the year of reference (in 2016: 6 cases of suicide and 15 attempts; in 2017: 3 cases of suicide and 8 attempts). At the same time, CfPT observes that the number of detainees prone to self-harming and suicide has increased (prone to self-harming: in 2016 - 756 detainees, in 2017 - 868 detainees; prone to suicide: in 2016 - 642 detainees, in 2017 - 747 detainees).

CfPT welcomes the fact that SAPAS makes major efforts to reduce self-harming actions and suicide attempts among detainees, in accordance with the Order of the Department of Penitentiary Institutions No. 466 of 29.12.2015 On the Approval of the Guidelines on the Organisation and Providing Psychological Assistance to Detainees in the Risk Group. CfPT notes that this Order envisages psychotherapeutic measures that are considered most effective in preventing such states by the academia. However, CfPT considers that the measures to reduce the self-mutilation actions and suicide attempts among detainees conducted by the specialists in penitentiaries are not sufficient. CfPT notes that to overcome these growing issues, systemic consolidated efforts are necessary to include new approaches relevant in the context of institutions, emotional needs and individual issues of the detainees with suicidal risk.

CfPT observes that most visited penitentiaries are a source of stress that can intensify the suicidal thoughts. The conditions of detention in penitentiaries cannot provide therapeutic

environment. Furthermore, the penitentiaries do not have rooms for individual and group psychotherapy. The CfPT understands that despite the number of positive initiatives, psychologists do not have standard instruments to diagnose the risk of self-harming and suicidal attempts among the detainees. Psychologists in penitentiaries do not have necessary training in psychotherapy, and obviously, cannot provide quality services to detainees prone to self-mutilation and suicidal actions.

RECOMMENDATIONS :

- Department of Penitentiary Institutions should develop a comprehensive strategy to prevent self-harming and suicidal attempts among detainees;
- Department of Penitentiary Institutions should ensure necessary number of psychologists trained correspondingly;
- Department of Penitentiary Institutions should provide the psychologists with standard instruments to diagnose the risk of self-harming and suicidal attempts among the detainees;
- Psychologists should be ensured with proper training in psychotherapy by the Department of Penitentiary Institutions.

→ Another concern of the CfPT is the **declaration of hunger strike in the penitentiary system**. According to the 2016 Activity Report of the Penitentiary System,¹³⁰ 650 cases of hunger strikes were declared in the reporting period. According to the Activity Report of the Penitentiary System,¹³¹ 460 cases of hunger strikes were declared by detainees in Q1 2017. CfPT observes that the most frequent reasons invoked by detainees refer to certain procedures that regulate the activity of penitentiary system: transfer to another penitentiary or refusal to be transferred to another penitentiary; disagreement with the conditions of

¹²⁸ Version in Romanian language is available here: <https://drive.google.com/file/d/0B3cDJ-pp652HMjAtUk1sZTRkTGc/view>

¹²⁹ Version in Romanian language is available here: <https://drive.google.com/file/d/1kg8hZLnWqybPzP8uPbuMGjkfa6GmfHlm/view>

¹³⁰ Version in Romanian language is available here: <https://drive.google.com/file/d/0B3cDJ-pp652HSWh6Wmh3b2hqN2M/view>

¹³¹ Version in Romanian language is available here: <https://drive.google.com/file/d/0B3cDJ-pp652HMjAtUk1sZTRkTGc/view>

detention and benefits (visits, audio-video devices or telephone). To formulate the findings and proper recommendations, the CfPT needs more extensive information and will document thoroughly the observed phenomenon during future visits.

3.5.2 Guarantees against torture and other ill-treatment in places of detention under the authorisation of DPIs of MoJJ

Medical examination

Insufficient number of medical staff influences the access of detainees to medical examination. This concern was discussed during the CPT visit (2015) regarding *critical situation of vacancies and low number of medical personnel in wards* (prison hospital).

CfPT reiterates the recommendation of CPT (2015) to revise urgently the number of prison staff (especially, Soroca Penitentiary No.6, Penitentiary No. 7 for women in Rusca, Chisinau Penitentiary No.13), in order to increase the custodial (including medical) staff in the detention areas.

Medical examination procedures of detainees when committed to/released from penitentiary to determine body injuries are applied occasionally, by introducing the notes into the outpatient file, violating thus the CPT recommendations that stipulates that *persons taken into custody should be questioned and physically examined by qualified physicians within 24 hours from their commitment to detention to determine any traumatic injuries and to record without delay any declarations regarding the circumstances of acquired injuries.*

RECOMMENDATION :

- ensure medical examination of detained persons at each commitment to/release from penitentiary, and in any other circumstances to record body injuries, or upon request.

Confidentiality of medical examination is not ensured sufficiently, including due to insufficient number of suitable rooms for medical examination.

This was mentioned in the CPT Report (2015),¹³² that reiterated that the *medical confidentiality was not observed in most visited prisons. Especially, despite specific recommendations made repeatedly by the CPT in the past, the medical examination is still conducted in the presence of custodial staff.* All these findings are in violation of CPT recommendation that states that the *detainees should be able to use the healthcare service in confidentiality.*

CfPT reiterated the need for confidential medical examination, as well as the protection of medical data of the detainees.

The services to detect transmissible diseases of detainees when they are committed into the penitentiary system are not sufficiently covered: voluntary HIV testing and radiology test to detect tuberculosis. These tests can determine serious health issues of the new-comers and can stop the spreading of transmissible diseases among healthy persons.

CfPT would like to reiterate the CPT recommendation regarding the responsibility of healthcare system in prisons to ensure periodic information about transmissible diseases (especially, hepatitis, AIDS, tuberculosis, and dermatological infections) among detainees and penitentiary staff. The Nelson Mandela Rules (R24) stipulate that the healthcare services should be organized in close relationship to the general public health administration and in a way that ensures continuity of treatment and care, including for HIV, tuberculosis and other infectious diseases, as well as for drug dependence.

There are no clear procedures to ensure the right of detainee to independent medical examination. This leads to subjective interpretation at institutional level and delayed access or refusal of the administration to conduct an independent medical examination (or sometimes, the detainees do not even know that they have the right to ask for an independent physician). Respectively,

¹³² <https://rm.coe.int/16806975db>

the CPT recommendation regarding the right of detainees to independent (at own expense) medical consultation, especially, in specialised healthcare (endocrinology, neurology, etc.), and provisions of Art.187 para.(2) of CCP.

RECOMMENDATION :

- amend the normative framework to implement express provisions of the procedure to guarantee the right of detainees to independent (private) medical examination additionally to guarantees of compulsory medical authorities ensured by authorities.

Medical records of traumatic injuries are not standard and have separated registers for different types of traumas (for instance, Register of self-mutilation, Register of traumas, Register of traumatic injuries). Also, the CPT Standards stipulate that *prison's medical staff should keep a special register of traumatic injuries describing all cases of traumatic injuries recorded by the institution.*

RECOMMENDATION :

- consolidate the registers of traumas, body injuries and self-harming to exclude incorrect records. From strategic perspective, implement electronic medical records systems that would provide a general picture of alleged torture, inhuman and degrading treatment.

Internal complaint mechanism in penitentiaries plays a special role in the protection of detainees.

According to penitentiary administration, the detainees have unlimited access to correspondence, limited access to phone calls, they can lodge petitions both with penitentiary (head of institution or other employee) and with external parties (relatives, friends, and state institutions).

However, some detainees complained that their petitions or complaints went unanswered or their examination was unreasonably delayed, especially those lodged with the People's Advocate, Prosecution or NGOs.

The Council noted a specific situation in Cricova Penitentiary No.15. Block 1 had no mail box. This block is used for quarantine, initial regime, disciplinary isolation, where the detainees are being transferred into initial regime or isolated for safety reasons. **Based on detainees' allegations, their complaints/petitions are being taken to the mailbox by a detainee, who also filters/verifies their content.**

Similar situations were identified in Chisinau Penitentiary No.13.

CfPT points to the DPIs that persons in quarantine, initial regime, and disciplinary isolator have the right to petition and right to correspondence. Also, the correspondence of the convict/detainee with the lawyer, with People's Advocate or depending on the case, with the People's Advocate for the Rights of the Child, members of monitoring commission, criminal prosecution establishments, prosecution, court, central public administration authorities, international inter-government organisations for the protection of human rights and fundamental freedoms cannot be censored.

A concerning situation that CfPT wants to bring into the attention of the DPIs, is the procedure of lodging and receiving petitions addressed to outside world that is implemented in Goian Penitentiary No. 10 for juveniles. **Even if the detainees declare that they send petitions and letters to different institutions, they never receive**

an answer. Also, there are practices when the detainees' correspondence is sent via employees, which was confirmed in interviews. In confidential interviews the detainees declared that they addressed complaints/petitions to the People's Advocate, People's Advocate for the Protection of the Rights of the Child, but never received an answer. In the discussions with representatives of the People's Advocate Office, it was established that the PAO has not received any letters from the detainees of Penitentiary No. 10 in Goian since 2014. This leads to the assumption of an alleged **filter** of the correspondence and violation of the right to correspondence of juvenile detainees when they send and/or receive letters/complaints/petitions to/from the outside.

Detainees have access to phone calls with relatives, family, and friends. But the **calls to other institutions are denied, assumes the CfPT**. Such situation is described in the addresses to the People's Advocate for the Protection of the Rights of the Child, which during the prisons' visits urged the juveniles to contact her if there were any issues, leaving her contact details. However, the People's Advocate for the Protection of the Rights of the Child was never contacted.

CfPT appreciates the efforts of DPIs and prisons to install mail boxes in places of detention, however, the CfPT has not identified a viable, standard and safe mechanism for lodging complaints/petitions with the institution/system and with outside world – with lawyers/prosecutors/People's Advocate/NGOs.

CfPT draws the attention of penitentiary administration to the revised Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules), according to which, every prisoner shall be allowed to make a request or complaint regarding his or her treatment, without censorship as to substance, to the central prison administration and to the judicial or other competent authorities, including those vested with reviewing or remedial power. Safeguards shall be in place to ensure that prisoners can make requests or complaints safely and, if so requested by the complainant, in a

confidential manner.

RECOMMENDATIONS :

- revise the complaint management mechanism in the entire penitentiary system to ensure the access of each detainee (including juveniles, illiterate persons, and foreigners) to confidential complaints (correspondence) addressed to competent authorities outside the penitentiary system. First of all:
 - revise the location of mail boxes in penitentiaries (including in disciplinary isolators) to ensure the accessibility and safety of persons who send complaints/petitions;
 - identify resources and special procedures to provide the detainees with stationary (paper, pens, envelopes, and stamps) to be able to exercise the right to petitions within and outside the system;
 - inform all detainees about the complaint procedure and provide them with addresses and contact details of People's Advocate, People's Advocate for the Rights of the Child, Prosecutor's Office, NGOs, etc. (institutions listed in Art. 210 (2) of Enforcement Code);
- eliminate censorship/verification/filtering of complaints/petitions addressed by detainees to competent authorities (listed in Art. 210 (2) of Enforcement Code)¹³³;
- stop denying the calls to People's Advocate for the Protection of the Rights of the Child applied to juvenile detainees.

¹³³ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=336538>

3.5.3 Living conditions in places of detention under the subordination of DPI of MoJ

Conditions of detention of male detainees

Conditions of detention in cells¹³⁴ are far from being satisfactory. Many cells have unsatisfactory hygienic conditions. Access to natural light is limited due to small windows or existence of external objects that impede the penetration of natural light into the cells. Also, the artificial ventilation system is not functional in most prisons. Cells are in deplorable conditions, the beds are narrow with old mattresses separated by curtains. In-cell toilets (sink, toilet) are in general unusable. Personal things of detainees are stored in bags under the bed. Detainees often sleep on dirty mattresses and sometimes without bedding. Also, there are delays in providing the detainees with clothes.

Overcrowding level noticed by the CfPT in a number of cells is unacceptable. CfPT could not ignore the Order of MoJ No. 576 of 31.12.2014 *'To approve the maximum admitted number of convicts detained in prisons'*, which states **8654** and calculated average area of **3 m² in 9 out of 17 institutions**.¹³⁵ CfPT concluded that the detention threshold in institutions were extended artificially to legalise the overcrowding.¹³⁶ CfPT welcomes the fact that the Ministry of Justice, in its Order

No. 1159 of 19.12.2017 *'To approve the maximum admitted number of convicts detained in prisons'*, introduced real norms on setting thresholds in penitentiaries and abrogated the Order No. 576 of 31.12.2014 *'To approve the maximum admitted number of convicts detained in prisons'*. The new Order becomes effective on 01 January 2018. According to the new Order, the maximum number of convicts for detention in penitentiary is **6735**. Hence, **the 4m² standard per detainee is not observed, which is confirmed by DPIs statistics – as of 01 January 2018, 7635 persons were de facto detained instead of the admissible number of 6735**. For instance, a cell of 9 m² (including the toilet of about 1.5 m²) in Balti Penitentiary No. 11 accommodated 4 detainees. CfPT received many complaints that the cells were very cold during winter.¹³⁷ In Cricova Penitentiary No.15, in the sector 4 on the 2nd floor, 2 cells with high capacity would provide a detainee with 1.3 m² and 1.75 m², respectively. It is nice that the toilets in most cells are separated by living area.

Also the CfPT could not determine an algorithm for detainee distribution by cells. Some general regime cells accommodate 2, 3, 4 persons (who benefit from more than 4 m²), while other rooms/cells accommodate 40-50 persons each (Cricova Penitentiary No.15).

CfPT points to DPIs that most visited disciplinary isolators are deplorable, and could be qualified as inhuman and degrading treatment (Cricova Penitentiary No.15, Chisinau Penitentiary No.13, Rezina Penitentiary No. 17 and Balti Penitentiary No. 11).

¹³⁴ Balti Penitentiary No.11, Chisinau Penitentiary No.13, Rezina Penitentiary No.17; sectors for detainees in self-isolation and disciplinary isolator, quarantine in almost all prisons.

¹³⁵ Lipcani Penitentiary No.2 [living space (i) 660 m², maximum number of convicts for detention (ii) 220 pers.] and Penitentiary No.4 Cricova [(i) 2820 m², (ii) 850 pers.], Penitentiary No.5 Cahul [(i) 1248 m², (ii) 350 pers.], Penitentiary No.6 Soroca [(i) 2987 m², (ii) 800 pers.], Penitentiary No.7 Rusca [(i) 1008 m², (ii) 310 pers.], Penitentiary No.9 Pruncul [(i) 2043 m², (ii) 700 pers.], Penitentiary No.11 Balti [(i) 1417 m², (ii) 520 pers.], Penitentiary No.13 Chisinau [(i) 2835 m², (ii) 1000 pers.], Penitentiary No.15 Cricova [(i) 2150 m², (ii) 600 pers.].

¹³⁶ Based on simple calculations using international standards, P-2 Lipcani is 'legally' overcrowded. (iii) minimum by 60 persons and P-4 Cricova (iii) by 150 pers., P-5 Cahul (iii) by 40 pers., P-6 Soroca (iii) by 60 pers., P-7 Rusca (iii) by 60 pers., P-9 Pruncul (iii) by 190 pers., P-11 Balti (iii) by 170 pers., P-13 Chisinau (iii) by 300 pers., P-15 Cricova (iii) by 70 pers.

¹³⁷ Penitentiary No. 3 in Leova, sectors for detainees in self-isolation and disciplinary isolator; Chisinau Penitentiary No.13; Rezina Penitentiary No.17.

CfPT emphasises that the Republic of Moldova continues to be sanctioned by the European Court of Human Rights for overcrowded prisons.¹³⁸

CfPT notes that the CPT emphasised the *when determining the living space for a detainee, besides the number of detainees per cell in a prison, take into account the official occupancy (number of beds) based on 4 m² standard per detainee and revise the official capacity of prisons. The space for toilets should not be included in calculations. Furthermore, the 4 m² standard should be provided in collective cells. As for the individual cells, each cell with less than 6 m² should be extended or declared unusable.*¹³⁹

RECOMMENDATIONS :

- step up efforts to bring conditions of detention to an acceptable level. In particular, measures should be taken to ensure that:
 - cell occupancy rates are reduced in order to provide for at least 4 m² of living space per person in multi-occupancy cells (not counting the area taken up by in-cell toilets);
 - the distribution (algorithm) of persons uniformly and without discrimination per cells is re-assessed;
 - cells are kept in an adequate state of repair and hygiene and that regular disinfestation of the premises is carried out;
 - cells are adequately ventilated and heated;
 - every prisoner has a clean mattress and clean bedding;
 - all in-cell toilets are fully partitioned (i.e. from floor to ceiling);
- re-evaluate as soon as possible the disciplinary isolators to comply with the international standards. Close the isolators that do not meet international norms (currently the isolators in Penitentiary No. 15 in Cricova, Penitentiary No. 17 in Rezina) and identify new spaces for disciplinary isolators that meet the international standards.

¹³⁸ See: Judgment *Ostrovar v. Moldova*, 2005; *Istratii and others v. Moldova*, 2006; *Modârcă v. Moldova*, 2007; *Ciorap v. Moldova*, 2007; *Țurcan v. Moldova*, 2007; *I.D. v. Moldova*, 2010; *Arseniev v. Moldova*, 2012; *Plotnicova v. Moldova*, 2012; *Constantin Modârcă v. Moldova*, 2012; *Mitrofan v. Moldova*, 2013; *Ipati v. Moldova*, 2013 etc.

¹³⁹ Reports to Government of the Republic of Moldova on the visits conducted by the European Committee for the Prevention of Torture and Inhuman or Degrading Punishment or Treatment (CPT) of 1 - 10 June 2011 and 14 - 25 September 2015.

Access to shower facilities of detainees is mostly ensured by the penitentiary administration according to the schedules set, at least once a week. Most detainees said they wanted to shower more often. Almost all detainees complained that doing laundry was a major problem because there were no conditions to wash and dry clothes.

CfPT points out that the United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules) state that each prisoner must have access to personal hygiene; they must be provided with water and toiletries necessary for their health and hygiene.

RECOMMENDATION :

- ensure necessary conditions for clean clothing of detainees. At the same time, the penitentiary administration should allow more frequent use of showers, at a proper temperature, possibly daily or at least twice a week (or more frequently if necessary).

Water supply in some prisons is difficult. Most alarming situation was registered in Cricova Penitentiary No.15. Water is supplied from the well of Cricova Penitentiary No. 4 at a very low pressure (during the visits, there was no water in taps at the top floors). Plastic bottles and other improvised recipients with water were observed in all penitentiaries, in residential sections, cells, kitchens, showers and toilets (from 1.5 – up to 50 litres). Water is supplied based on schedules, and in the summer period the water supply becomes a problem.¹⁴⁰

CfPT established problems related to **food quality and quantity** in all prisons. Many detainees declared they preferred to prepare own food with groceries received from their families.

Obsolete infrastructure and insufficient funds are key issues faced by the penitentiary system. The kitchen blocks in the prisons lack necessary equipment and inventory. Food in most prisons is prepared in pots on solid fuel (wood and coal). After reading the 2016 and 2017 activity reports

of the penitentiary systems, the CfPT noted that the food budget varied between MDL 44.0 million (2016) up to MDL 44.4 million (2017). Taking into account the number of persons detained in the penitentiary system (7762 detainees in 2016 and 7635 – in 2017), CfPT established that the daily food allowance per detainee was about MDL 15-16. It should be mentioned that the increase of allowance is directly dependent on constant increase of prices for groceries and not their quality or volume. The food provided to detainees is not in compliance with the Order of MoJ No. 512 of 12 December 2007, GD No. 609 of 29 May 2006 and Order of MoJ No.100 of 07.03.2007 to approve the food norms for detainees in exceptional cases, when the provision of hot food is not possible and the norms to substitute some ingredients with others.

CfPT found out that these norms do not take into account special diets for detainees with medical condition, such as diabetes or religious and other beliefs of the detainee.

RECOMMENDATION :

- water and food should be supplied to the detainees in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules). Drinking water shall be available to every prisoner whenever he or she needs it. Every prisoner shall be provided by the prison administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.

Daily activities. CfPT established that almost all detainees in criminal prosecution isolators and detainees held in initial and disciplinary regime (quarantine) do outdoor exercises for an hour or two usually in small courtyards.¹⁴¹ Deținuții petrec restul zilei închiși în celulele lor, frecvent suprapopulate.

The rest of the day the detainees are in their

¹⁴⁰ Penitentiary No. 15 in Cricova and Penitentiary No. 3 in Leova.

¹⁴¹ Some have basic gym equipment such as weights and boxing bags.

cells, which are usually overcrowded.

The prisons for convicts have small fields for sports activities. The convicts (transferred to re-socialisation programmes) are enrolled in 14 optional educational, psychological and social programmes. CfPT notes that work possibilities and occupations in their spare time are reduced and most detainees pass their days by watching TV or walking in the courtyard.

CPT emphasised that the activities are essential to the welfare of every detainee and especially for convicts with significant sentence to serve.¹⁴²

RECOMMENDATIONS :

- develop and implement educational, psychological and social programmes that would meet the specific needs of convicts;
- make efforts to provide all convicts with work, and employment opportunities taking into account the background of convicts.

Contact with outside world. CfPT notes that the right to visits and phone calls is limited in some penitentiaries. For instance, in Balti Penitentiary No. 11 there is only one phone located between the control post and guarding section (officer on duty) and the place is not heated in winter. Also, the CfPT points that the intimacy and confidentiality of phone calls is not ensured permanently in penitentiaries. In Rezina Penitentiary No. 17 was an issue to communicate with outside world because the phone calls with the localities from the left bank of the River Nistru and to Russian Federation could not be made. In Balti Penitentiary No. 11 the short visits are ensured but only for an hour and are taken place in a room with another 4 detainees. The detainees have to wait for 1.5 hours for long-term visits (4 hours).

CfPT points out that the United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules)¹⁴³ stipulate that prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals: (a) by corresponding in writing and using, where available, telecommunication, electronic, digital and other means; and (b) by receiving visits. Where conjugal visits are allowed, this right shall be applied without discrimination, and women prisoners shall be able to exercise this right on an equal basis with men. Procedures shall be in place and premises shall be made available to ensure fair and equal access with due regard to safety and dignity.

RECOMMENDATIONS :

- the administration of Balti Penitentiary No. 11 shall intensify their efforts to increase the number of rooms for short and long-term visits;
- ensure the right of detainees to phone calls (including the intimacy and confidence of phone calls and installing a sufficient number of phones in penitentiaries), according to the Unannounced, Statute on serving sentences by convicts and Regulations regarding the number, periodicity and length of phone calls that can be made or received by convicts.¹⁴⁴

¹⁴² Report to Government of the Republic of Moldova on the visits conducted by the European Committee for the Prevention of Torture and Inhuman or Degrading Punishment or Treatment (CPT) of 14 - 25 September 2015.

¹⁴³ Version in Romanian language is available here: http://www.avp.ro/mnp/legi/ansamblu_reguli_mnp.pdf

¹⁴⁴ Order of Ministry of Justice No. 730 of 08.09.2017 to Approve the Set of Rules regarding number, periodicity and length of phone calls made or received by a convict <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=371456>

Conditions of detention of females in penitentiary system

During its monitoring visits, the CfPT paid special attention to the situation of women in Penitentiary No. 7 in Rusca, Chisinau Penitentiary No.13, Penitentiary No. 11 in Balti and Rezina Penitentiary No. 17.

Material conditions of detention. In Chisinau Penitentiary No.13, the CfPT visited the residential facility of female detainees,¹⁴⁵ and ascertained that 11 cells accommodated 78 women. In Balti Penitentiary No. 11 there were 26 women in 3 cells. In Rezina Penitentiary No. 17 on the day of the visit, there were 2 women. The cells in Chisinau Penitentiary No.13 and Balti Penitentiary No. 11 were overcrowded. The CfPT established that the penitentiary administration does not provide the women with bedding, all the clothing is washed by hand in the cell with cold water. Only in Balti Penitentiary No. 11 the bedding is washed in the Laundromat of the penitentiary. Usually the clothes and bedding are dried in cells or in the walking courtyards.¹⁴⁶ Taking into account this fact and that the in-cell toilets are also in the cell without being separated by a wall and not having any direct connection to a ventilation system, the cells are humid. In Rezina Penitentiary No. 17 the in-cell toilet is completely isolated from the rest of the cell but the access to the toilet is not adapted to older persons or persons with reduced mobility because of a high step, which is almost at the same level with the sink.

The CfPT noted the overcrowding of Rusca Penitentiary No. 7 for women. Eight women were sharing one cell (floors 3 and 2). The cells have signs of mould, which were more evident on floors 2 and 3. The cell reparations are only done during summer on the account of detainees and by them. It is good that the juvenile detainees live in a separate cell (2 persons) in decent conditions (the cell is located in the same residential block of adult detainees).

¹⁴⁵ The residential block for accommodation of female detainees has 11 cells located on floor 2, one medical office, 3 spaces for walks and one bathroom.

¹⁴⁶ In Penitentiary No. 13 of Chisinau, the walking spaces were used to dry clothes.

RECOMMENDATION :

- step up efforts to bring conditions of detention to an acceptable level. In particular, measures should be taken to ensure that:
- cell occupancy rates are reduced in order to provide for at least 4 m² of living space per person in multi-occupancy cells (not counting the area taken up by in-cell toilets);
 - cells are kept in an adequate state of repair and hygiene and that regular disinfection of the premises is carried out;
 - cells are adequately ventilated and heated;
 - every prisoner has a clean mattress and clean bedding;
 - all in-cell toilets are fully partitioned (i.e. from floor to ceiling).

Access to shower facilities in criminal prosecution isolators is ensured once a week, according to the schedule of institutions and is limited in time.¹⁴⁷ All detainees declared that this schedule is not sufficient and they want to increase the frequency from once to twice a week at least, especially in summer time. In Rusca Penitentiary No. 7 for women, the detainees have access to shower facilities according to the schedule, once a week. The time for shower is only 10 minutes; there is no hot water, the shower is not heated, most shower cabins are deteriorated and were not repaired, etc. In the morning the detainees have no time to visit the toilet facilities because of the short period of time.

Personal hygiene articles are ensured centralised in all penitentiaries once a month and the set includes toilet paper (monthly), tooth brush and paste (once in 3 months), face wash and soap for clothes (monthly) and disposable sanitary pads (monthly). If the detainees are committed after these dates, they do not receive the hygienic set and some have to borrow sanitary pads, if necessary. The towels are not included in the minimum set of hygienic products.

¹⁴⁷ In Chisinau Penitentiary No.13, the access to shower is provided on Saturday, for 20 min per every detainee.

RECOMMENDATION :

- ensure that female prisoners have access to sufficient quantities of personal hygiene products; the specific hygiene needs of women should be addressed in an appropriate manner. Steps should also be taken in these prisons to allow female prisoners more frequent access to shower facilities of proper temperature and if possible daily, but at least twice a week (of more frequently, if necessary).

Food. Almost all detainees from criminal prosecution isolators stated poor quality of food. With small exceptions, most detainees refuse to eat the penitentiary's food because they prefer to prepare their own food in cells using electric stoves and groceries received from outside.

The detainees in Rusca Penitentiary No. 7 receive their food in a well-equipped kitchen and in shifts.

RECOMMENDATION :

- drinking water shall be available to every prisoner whenever she needs it; every prisoner shall be provided by the prison administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.

Daily activities. CfPT noted that female detainees in criminal prosecution isolators have no access to occupational, psycho-educational, or social activities and most of their time (23 hours) they spend in the cell. They have only one hour a day to go for a walk. They have partial access to TV, radio and books. Practically, no reclamations to this chapter were registered, except for one cell in Chisinau Penitentiary No.13. A problem noted by the CfPT and the detainees is the roof of walking spaces, which is a wire net, and makes it impossible to go out when the weather is bad. They cannot walk when it rains or snows.

RECOMMENDATION :

- provide shelter for walking courtyards, so the detainees can have access to walks even when it rains or snows.

In Rusca Penitentiary No. 7 for women, CfPT noted that the persons held in initial regime have limited access to occupational, psycho-educational and social activities and most of the time (22-23 hours) they spend in the cell. They go out only 1-2 hours a day. They also have limited access to TV (in the hall) only 10-30 minutes. The juvenile detainees go to school organised in the penitentiary by teachers of Rusca lyceum. The majority of detainees had vocational courses and even work. The vocational courses included sewing, plastering and hairdressing. Persons who work (household, canteen, and production) are hired on contract basis and can manage their accounts. Other persons are involved in unpaid work up to 2 hours a day, which is mandatory, and usually exceed the legal 2 hour period.¹⁴⁸ If they refuse to participate in such works, they receive disciplinary sanctions. **This ambiguous interpretation of the possibility to work for money and free of charge at the decision of the administration of the penitentiary generates misunderstandings and needs to be clearly regulated to avoid the abuse in this field.**

RECOMMENDATIONS :

- develop and implement educational, psychological and social programmes tailored to the specific needs of female convicts;
- make efforts to provide all detainees with paid work, and especially, provide them with employment opportunities, taking into account their speciality.

¹⁴⁸ Art.243 of the Enforcement Code.

Contact with outside world. CfPT notes that the right to phone calls and visits is limited in some penitentiaries. For instance, in Balti Penitentiary No. 11 there is only one phone located between the control post and guarding section (officer on duty) and the place is not heated in winter. Also, the CfPT points to that the intimacy and confidentiality of phone calls is not ensured permanently in penitentiaries. In Rezina Penitentiary No. 17 was an issue to communicate with outside world because the phone calls with the localities from the left bank of the River Nistru and to Russian Federation could not be made. In Balti Penitentiary No. 11 the short visits are ensured but only for an hour and are taken place in a room with another 4 detainees. The detainees have to wait for 1.5 hours for long-term visits (4 hours).

CfPT points that the United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules)¹⁴⁹ stipulate that prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals: (a) by corresponding in writing and using, where available, telecommunication, electronic, digital and other means; and (b) by receiving visits. Where conjugal visits are allowed, this right shall be applied without discrimination, and women prisoners shall be able to exercise this right on an equal basis with men. Procedures shall be in place and premises shall be made available to ensure fair and equal access with due regard to safety and dignity.

RECOMMENDATIONS :

- the administration of Balti Penitentiary No. 11 shall intensify their efforts to increase the number of rooms for short and long-term visits;
- ensure the right of detainees to phone calls (including the intimacy and confidence of phone calls and installing a sufficient number of phones in penitentiaries), according to the Enforcement Code, Statute on serving sentences by convicts and Regulations regarding the number, periodicity and length of phone calls that can be made or received by convicts.¹⁵⁰

Conditions of detention of juvenile detainees in penitentiary system

In its monitoring visits, the CfPT paid special attention to the situation of juvenile detainees in Penitentiary No. 10 for juveniles in Goian, Chisinau Penitentiary No.13, Balti Penitentiary No. 11 and Rezina Penitentiary No. 17.

Material conditions of detention. 16 juveniles were detained in 3 cells in Chisinau Penitentiary No.13. In Balti Penitentiary No. 11 – 10 juveniles in 2 cells. In Rezina Penitentiary No. 17 – 10 juvenile were detainees in 3 cells. In all penitentiaries, the cells were in a precarious state – dirty and deteriorated walls in 2 cells, in-cell toilets partly non-functional (better conditions in Balti Penitentiary No. 11). In Chisinau Penitentiary No.13 and Balti Penitentiary No. 11, the in-cell toilets were separated by the living area, and in Rezina Penitentiary No. 17 the sanitary installation was delimited by an improvised plastic curtain.¹⁵¹ Access to natural ventilation is satisfactory, the

¹⁵⁰ Order of Ministry of Justice No. 730 of 08.09.2017 to Approve the Set of Rules regarding number, periodicity and length of phone calls made or received by a convict <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=371456>

¹⁵¹ In Rezina Penitentiary No.17, CfPT visited a cell with 5 minors and the number of beds 8. Taking into account the small size of the cell, the 4 m² standard could not be met. Even if some beds are not used to sleep, this decreases the movement area in the cell.

¹⁴⁹ Version in Romanian language is available here: http://www.avp.ro/mnp/legi/ansamblu_reguli_mnp.pdf

air circulation was ensured by the barred windows without coverage.¹⁵² Artificial ventilation was not working.

An issue noted by the CfPT was **holding the juveniles in the same block with the adult detainees in Chisinau Penitentiary No.13, Balti Penitentiary No. 11 and Rezina Penitentiary No. 17.** CfPT noted that juvenile detainees cannot be isolated from the adult detainees. The communication/discussions between adults and juveniles takes places through cell windows.

CfPT draws the attention of the administration of the Department of Penitentiary Institutions that the United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules)¹⁵³ stipulate that the different categories of prisoners shall be kept in separate institutions or parts of institutions, taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment.

There were 32 juvenile detainees (men) held in Penitentiary No. 10 for juveniles in Goian. They were accommodated by 1-3 persons in spacious rooms, well illuminated, clean. But the air was cold. It is welcome that the administration interdicts smoking on the entire territory of the penitentiary. The smoking area is a half closed area outside the penitentiary where the personnel can smoke.

RECOMMENDATIONS :

- identify solutions to separate the juvenile from adult detainees. Especially, identify mechanisms so the juveniles are only held in Penitentiary No.10 in Goian, develop separated spaces for juveniles in preventive arrest;
- place juveniles in separated cells depending on their age, to prevent unwanted influence, domination and abuse;
- ensure optimal temperature during cold season in all detention cells of Penitentiary No.10 in Goian.

Access to shower facilities in criminal prosecution isolator is ensured once a week. In Penitentiary No.10 for minors in Goian, access to shower is ensured according to a schedule twice a week, but during winter, the detainees have access to the shower only once a week.

RECOMMENDATION :

- the administration of penitentiaries should make efforts to allow more frequent access of juvenile detainees to shower of proper temperature, if possible daily, or at least twice a week (or more frequently, if necessary).

Food. Minors in four visited penitentiaries complained about bad and too little food. The food provided to juveniles should be sufficient to ensure their strength. This is very important for juveniles who have not reached their growing potential.

RECOMMENDATION :

- review the provision of food to juvenile prisoners so as to ensure that it is adequate in terms of both quantity and quality.

¹⁵² In Chisinau Penitentiary No. 13, CfPT noted that the windows were broken. According to juvenile detainees, during winter, the temperature in cell is very low and they have to sleep dressed.

¹⁵³ Version in Romanian language is available here: http://www.avp.ro/mnp/legi/ansamblu_reguli_mnp.pdf

Daily activities. A number of pupils in all criminal prosecution isolators went to general education school for grades VII-IX.¹⁵⁴ The juveniles are included in 3 educational, psychological and social programmes. The walking spaces are small, missing elementary conditions (benches, shelter in case of rain, snow or sun) and unattractive because there are no occupations (chess, throwing ball, etc.). The juvenile detainees declared that in such conditions they do not use integrally the time for walks. CfPT is concerned that the regime of juveniles on Saturday and Sunday is only two hours of outdoor exercise and one hour of sports, hence the juveniles are locked up in the cells for 21 hours a day

In Penitentiary No. 10 for juveniles in Goian some juveniles finished vocational training and were even involved in some activities. The juvenile are employed based on labour contract and can manage their accounts. The juvenile detainees have access to a large courtyard for exercise up to 2 hours a day and an indoor gym, as well as an entertainment room equipped with TV and video game console. The detainees are enrolled in 14 educational, psychological, and social programmes. At the same time, since the detention may happen an early stage, there is a need for specific programmes regarding life skills.

CfPT determines that the programmes for juveniles are optional and are not completely tailored to their needs.

A number of juveniles had general education schooling. CfPT established the insufficiency of educational programmes for Russian language speakers. At the same time, there is a delay or even interruption of educational process when the juveniles are transferred from one penitentiary to another.

On a general note, the CPT doubts the placement policy of juvenile detainees in preventive arrest in

adult penitentiaries. In the opinion of CPT¹⁵⁵, all juveniles irrespective of their status of prisoners or convicts should be placed in specially designed age-appropriate centres, providing them with regimes adapted to their needs for schooling and relations with young persons.

RECOMMENDATIONS :

- the visited penitentiaries should take measures to increase substantially the time of juveniles spent outside the cell;
- develop educational, psychological, and social programme tailored to the needs and interests of juvenile detainees.

Conditions of detention of life-sentenced detainees

The 2017 Activity Report of the penitentiary system¹⁵⁶ accounted for 123 life-sentenced detainees. Rezina Penitentiary No.17 was holding 97 life-sentenced prisoners at the time of the CfPT visit. On overall, **the cells were in a good state, bright, well ventilated, and clean, and equipped with separated in-cell toilets.** Moreover, the common shower room was renovated. The air circulation in rooms was provided through barred windows without coverage. The detainees have access to shower facilities once a week.

Detainees have access to some walking areas on the top floor of residential block No. 1, up to 2 hours a day according to a schedule set by the administration. In general, these areas were properly equipped (benches, protected areas, etc.). Also, some detainees have access to walking area and sports/football field. The life-sentenced detainees enjoy other activities such as music/theatre and table tennis.

¹⁵⁴ For instance, in Balti Penitentiary No.11, 2 juvenile detainees are in Grade 9 (1 – with studies in Romanian and 1 in Russian language). The juvenile detainee who studies in Russian language said that he did not have this opportunity in Penitentiary No. 10 in Goian.

¹⁵⁵ Report to the Government of the Republic of Moldova on the visit made to the Republic of Moldova by the European Committee for the Prevention of Torture and Inhuman or Degrading Punishment or Treatment (CPT), of 14 - 25 September 2015.

¹⁵⁶ Version in Romanian language is available here: <https://drive.google.com/file/d/1kg8hZLnWqybPzP8uPbuMGjka6GmfHlm/view>

CfPT points out that the life-sentenced detainees are not provided with training courses or employment opportunities. Also, the persons from Rezina Penitentiary No.17 do not have equal opportunities to participate in sports activities (especially those with informal status 'undetermined' or who 'recanted the law' in places of detention).

In this regard, the CfPT¹⁵⁷ recommends that the Moldovan authorities take further steps – including, if necessary, through legislative amendments – to expand the range of out-of-cell activities offered to life-sentenced prisoners, with a particular focus on work and educational/vocational training.

At the same time, CPT sees no justification for the systematic segregation of life-sentenced prisoners from the rest of the prison population. Indeed, the experience in various European countries has shown that life-sentenced prisoners are not necessarily more dangerous than other prisoners and that they can be successfully integrated into the mainstream prison population; many of them have a long-term interest in a stable and conflict free environment. Therefore, the placement of persons sentenced to life imprisonment should be the result of a comprehensive and on-going risk and needs assessment, based on an individualised sentence plan, and not merely a result of their sentence. The CPT calls upon the Moldovan authorities to take steps – including of a legislative nature – to institute a process for integrating life-sentenced prisoners into the general prison population, in the light of the above remarks. In so doing, the authorities should be guided, inter alia, by Recommendation Rec(2003)23 of the Committee of Ministers of the Council of Europe on the management by prison administrations of life sentence and other long-term prisoners.

RECOMMENDATIONS :

- initiate a process to examine external opportunities that would contribute to the diversification of out-of-cell activities of life-sentenced convicts;
- gradual integration of life-sentenced convicts into the general population of the prisons and reduce the segregation of this category of detainees.

Situation of detainees with special needs in places of detention under the subordination of DPI of MoJ

A major concern of the CfPT is the situation of persons with disabilities in places of detention. **CfPT established that the conditions of detention in all visited penitentiaries are not adapted to special needs of detainee with disabilities.** The detainees with physical disabilities do not have independent access to walking area, cultural and educative places (libraries, culture rooms), visit sector or rooms, dining rooms. Furthermore, the in-cell toilets (pit latrine), barrack-type spaces, quarantine and medical wards are not accessible for detainees with physical disabilities and for elders. No caretakers (nurses, stretcher-bearer) are stipulated in the staff of penitentiary institutions; these duties are delegated to management unit consisting of other employed detainees. There is a common situation when one detainee takes care of another detainee sometimes in exchange for commodities (cigarettes, clothes, food).

CfPT welcomes the progress in Chisinau Penitentiary No.13 that adapted one cell for persons with physical disabilities. The in-cell toilet meet the minimum standard requirements for persons with physical disabilities in wheel chair. The cell and in-cell toilet were accommodated based on the decision of the Council for the Prevention of Discrimination and Ensuring Equality

¹⁵⁷ Report to the Government of the Republic of Moldova on the visit made to the Republic of Moldova by the European Committee for the Prevention of Torture and Inhuman or Degrading Punishment or Treatment (CPT), of 14 - 25 September 2015.

of the Republic of Moldova.¹⁵⁸

CfPT has established that the accommodated cell is not used according to its purpose but to separate the detainees, according to Art. 206 of Enforcement Code or Law No. 105 of 2008 on the protection of witnesses and other participants in criminal prosecution, although the Chisinau penitentiary always holds several persons with special needs.

The European Court of Human Rights¹⁵⁹ shows in its judgments that the State must ensure proper conditions of detentions to detainees with physical disabilities and should not deviate from this obligation by transferring the responsibility to other detainees. Conditions of detention of detainees with physical disability, especially their incapacity to access different rooms in the penitentiaries, including using independently the toilets and lack of any provided assistance in their daily life reaches thus, the threshold of severity that build the degrading treatment.

According to the recommendations of the United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules),¹⁶⁰ the administration of penitentiaries should undertake all reasonable measures for reasonable accommodation to ensure that the detainees with physical, mental and other disabilities benefit equally from full and efficient access to the activities in the penitentiaries.

RECOMMENDATION :

- identify needs and develop a plan for the entire penitentiary system to accommodate the prisons to the needs of detainees with disabilities, including hiring caretakers.

Healthcare in penitentiary institutions

Unsatisfactory quality of medical records (initial data) of detainees' health and illnesses. In accordance with the CPT standards, *the medical staff should record the incidents with detainees in daily records, which are useful for general information provided for healthcare in prisons emphasising possible issues. According to the national legislation and in cooperation with community healthcare authorities, the physicians in the penitentiaries should keep statistics regarding all healthcare services delivered in prison. A special attention should be paid to the number of visits and pathology prevalence measured by the number of diagnoses according to the International Classification of Diseases (ICB), including specific registers for diseases declared compulsory, such as tuberculosis, by using case definitions and categories for standard treatment of the World Health Organisation (WHO) (dysentery, hepatitis, and HIV).*

RECOMMENDATION :

- ensure qualitative medical records and provide a consolidated standard for proper documentation of medical activity, including of alleged torture.

¹⁵⁸ Judgment of 11.12.2014 in case No. 155/14 (M.T. v. Department of Penitentiary Institutions, Penitentiary No. 13, National Social Insurance House) regarding the discrimination based on reasonable accommodation refusal based on disability is available here: <http://old.egalitate.md/index.php?pag=news&id=836&rid=583&l=ro>

¹⁵⁹ See judgments: Prince v. United Kingdom, 2001; Vincent v. France, 2006; Mouisel v. France, 2002; Khudobin v. Russia, 2006; Xiros v. Greece, 2010; Kupczak v. Poland, 2009; Grori v. Albania, 2009; Logvinenko v. Ukraine, 2010; Jansinskis v. Leetonia, 2010; Raffray Tadei v. France, 2010; Vasyukov v. Russia, 2012; Artynian v. Russia, 2012; Grzywaczewski v. Poland, 2012; Grimailovs v. Leetonia, 2013; D.G. v. Poland, 2013 etc.

¹⁶⁰ Version in Romanian language is available here: http://www.avp.ro/mnp/legi/ansamblu_reguli_mnp.pdf

Records of persons in hunger strike are not standardized, and the quality of their data is unsatisfactory. The provisions of the Guidelines to be followed in special situations are obsolete, including list of medicine to be administrated to persons who end the hunger strike does not meet the available range in the institution. In accordance with international standards, the measures ensured by medical personnel are: daily visits, or as much as possible, of the prison's doctor of the person who refuses to eat and check-up on him/her making notes in the medical records; the doctor will provide the convict with corresponding

healthcare so his/her life is not endangered. The penitentiary staff does not know the measures to be taken when a complaint is lodged by a detainee and daily medical examination is not ensured.

RECOMMENDATION :

- review the Order of the Ministry of Justice No. 529 of 26.11.2004 to approve the Guidelines on the conditions of detention of persons on hunger strike and procedure to introduce them to food once the hunger strike ends to provide corresponding healthcare, so their life is not endangered.

The medicine provided to detainees is not sufficient (including dental supplies) and the detainees continue to buy the medicine with own money. Due to insufficient medicine, it is not possible to observe the recommended treatment schemes and regimens, and consequently, the mortality rate of detainees due to inadequate treatment increases. Also the findings of the CPT (2015) that *the administration procures insufficient medicine with own budget, and the prisons visited depended to a certain extent on the humanitarian aid they could secure and on prisoners' families*. This situation results in the impossibility to observe the international recommendations that *the treatment should be provided based on the prisoners' state of health. And in this case, the principle of 'equivalence of care' should be applied. The funds allocated to penitentiaries should be sufficient to ensure free treatment to detainees without medical insurance and who have no necessary resources to pay for it. Any interruption of the long-period treatment should be avoided (in case of a transfer from one unit to another)*.

RECOMMENDATIONS :

- authorities should observe their positive obligation to provide the persons, during their detention, with medical monitoring, as well as the treatment prescribed by doctors to treat their diseases and to note the evolution of their health;
- ensure the detainees with medicine and consumable sufficient to implement the treatment schemes and regimes approved by the MHLSP;
- improve the provision with medicines of detainees based on their needs, including by approving the procedures to receive and store medicine procured by detainees with own resources.

The Ministry of Justice (Department of Penitentiary Institutions) has not approved the departmental plans (territorial, sector) for Tuberculosis, HIV AIDS and STIs control, despite the approval of the new National Tuberculosis Control Programme for 2016-2020 and National Programme for prevention and control of HIV/AIDS and STIs for 2016-2020. Respectively, the institutional disease control plans are not updated and are not implemented efficiently, alongside with the overcrowding and failure to provide preventive medical examination at early admission in the penitentiary system create high risk conditions to catch tuberculosis in detention.

CfPT noted that the anti-tuberculosis medicine procured with own resources by the detainees is administrated without direct supervision of medical staff, which can lead to the amplification of drug resistance and may deprive the detainees in the future of a corresponding treatment, because tuberculosis cannot be cured.

Tuberculosis control measures in penitentiaries institutions are not observed: the ventilation systems in places of detention of persons with tuberculosis are not functional, the staff is not provided with respiratory masks, and the appropriate quantity of quarts lamps is missing. Respectively, all these situations present a risk

for the health of detainees and prison's staff due to improper implementation of infectious disease control measures by the administration.

RECOMMENDATION :

- observe international and national provisions regarding the control of transmissible infections in places of detention by developing and approving departmental and institutional plans for tuberculosis and HIV/AIDS infection control. Also, review and align the Regulations on treatment and behaviour of detainees with tuberculosis approved by Order of Ministry of Justice No. 278 of 17.07.2007 and other relevant normative acts with the new national and international recommendations.

Insufficient financial support of the Government to implement health programmes in the penitentiary system, including failure to provide medicine of vital importance to treat the tuberculosis, HIV/AIDS infection may result in real exposure to the transmissible infections not only in places of detention, but also in the community. In the past ten years, these needs were covered by the resources of Global Fund, but since 2018 it is necessary to gradually cover the expenses to sustain the activities implemented with the resources of foreign donors to ensure the access of detainees to efficient diagnosis services, treatment and support to tuberculosis and HIV/AIDS infection.

To ensure continuous control of tuberculosis and HIV/AIDS infections in penitentiaries and to observe the right to life, the CfPT would like to make the following.

RECOMMENDATION :

- develop and approve Sustainability Tuberculosis and HIV/AIDS Control Plan within the Ministry of Justice, with gradual coverage of activities currently implemented with external resources by the national budget.

The compassionate release due to severe illness is limited, despite the Order of the Ministry of Justice No.331 of 06.09.2006 to approve the Set of Rules for compassionate release of seriously ill inmates from serving their sentence. Only one fourth of deceased in custody of DPIs was examined by the Special Medical Commission for the eligibility of Art.95 CP for early compassionate release on the grounds of poor health. The number of persons released is extremely insignificant due to severe criteria and long procedure. The Council recommends to review the mechanism/list of severely ill detainees eligible for compassionate release in order to apply the compassionate release provisions in a timely manner.

Gender specific matters in penitentiaries are not sufficiently ensured. The female detainees frequently do not receive the consultation of gynaecologist; other gender related services are also not provided accordingly. Apparently, every female detainee benefits from monthly hygienic products and has the right to visit shower facilities once a week, but in practices, the need for hygienic products may arise at the moment of placing in detention. Based on international norms, *the specific hygiene needs of women should be met accordingly. They should have access to toilets and showers when they wish, should be able to change their hygienic pads and have necessary toiletries, including tampons. Failure to provide these fundamental needs may be considered per se a degrading treatment (CPT Norms, 2015)¹⁶¹.*

RECOMMENDATION :

- develop procedures/mechanisms that take into account gender specific needs of detainees, including of juveniles, to prevent degrading treatment.

¹⁶¹ http://www.avp.ro/mnp/legi/norme_cpt_mnp.pdf

Detainees do not benefit from national programmes implemented in the Republic of Moldova (for instance, mental health, cancer, diabetes, and heart diseases) and persons in detention do not have a status of insured within compulsory medical insurance funds. CfPT established that this practice apparently neutral is caused by considerable underfinance of health system, as well as insufficiency of essential medicine to observe the treatment schemes, according to the national programmes. It influences the aggravation of health state of detainees in institutions and may be labelled as inhuman and degrading treatment.

R E C O M M E N D A T I O N :

- award the detainees the status of insured person and implement accordingly the provisions of national health legislation for detainees without discrimination based on their detention.

Places of detention under the subordination of the Ministry of Health, Labour and Social Protection

3.6

The Republic of Moldova has 3 psychiatric hospitals and 6 psycho-neurological boarding houses operating under the subordination of the Ministry of Health, Labour and Social Protection. These institutions were under the subordination of the Ministry of Health (psychiatric hospitals) and Ministry of Labour and Social Protection and Family (psycho-neurological boarding house)¹⁶² until September 2017. These include 4 adult and 2 minor psycho-neurological boarding houses (girls and boys).

About 4200 persons are admitted into psychiatric hospitals and psycho-neurological boarding houses for treatment or temporary placement.

CfPT had 6 visits to these institutions, 3 to psychiatric hospitals and 3 to psycho-neurological boarding houses.

3.6.1 Torture, inhuman and degrading treatment in psychiatric hospitals

National legislation and especially the Law No.1402/1997 on Mental Health stipulates excessive provisions that allow forced hospitalisation and application of forced (involuntary) treatment in the absence of an efficient control mechanism and guarantee of human rights and fundamental freedoms that lead to ill treatment.

A person hospitalised without free consent will be subject to compulsory medical examination in the first 48 hours by a medical Commission consisting of psychiatric doctors of the hospital. This Commission will decide on the grounds of person's hospitalisation by issuing a notice in this regard.¹⁶³ A judge examines the hospitalisation

without free consent request in the psychiatric hospital within 3 days from the admission. Hence, a person with mental disorders may be deprived of liberty for up to 72 hours until the medical Commission issues its notice and another 3 days while the judge examines the forced hospitalisation request.¹⁶⁴ In this period, the person may receive forced treatment, even if in the end, no such treatment was required.

Such cases were discovered by CfPT in its interviews with patients of psychiatric hospitals. These situations are determined by closed character of these institutions favouring thus, the abuses in psychiatric hospitals. The abusive forced treatment is established by the visit of CPT in 2015 to Republic of Moldova.¹⁶⁵

Having examined the need to apply the protection standards against torture in medical institutions, the UN Special Rapporteur on torture and other inhuman or degrading treatment established that any involuntary treatment or other psychiatric interventions in psychiatric medical institutions represent torture and inhuman or degrading treatment.¹⁶⁶

RECOMMENDATION :

- develop a strict mechanism to control and include the guarantees in the legislation to suppress the abuses at hospitalisation and administration of treatment to persons in psychiatric institutions. The procedure of placement without patient's consent should provide guarantees of independence and impartiality and an objective medical expertise.

¹⁶⁴ Art. 33 of Law on mental health.

¹⁶⁵ <https://rm.coe.int/16806975da.pag.64-65>

¹⁶⁶ Report of Special Rapporteur for torture and other inhuman or degrading treatment, Juan E. Méndez/A/HRC/22/53/1 February 2013, p.64.

¹⁶² Government Decision No. 694 of 30.08.2017 on the organisation and functioning of the Ministry of Health, Labour and Social Protection.

¹⁶³ Art. 31 of Law on mental health.

If the hospitalisation of people into psychiatric hospitals is a procedure that has a vicious character of person's consent, then the release of the patient has an excessive bureaucratic character and is expressed through an unjustified complicated procedure to obtain the consent to be placed in an institution. Hence, the notification about the health of the patient or expressing the wish to the doctor about leaving the institution is not considered ground for release.

RECOMMENDATION :

- simplify the release procedure of patients from psychiatric hospitals who willingly express their consent at admission and treatment, which determines the implementation of principles of Art.3 of the UN Convention on the Rights of Persons with Disabilities.¹⁶⁷

CfPT notes the refusal of judges to visit psychiatric wards, according to Art. 33 (2)¹⁶⁸ of Law on Mental Health to consider the requests for hospitalisation without free consent, when the psychological state of the person impede him or her to stand before the court. Furthermore, the judges request compulsory participation of the representative of psychiatric ward when they examine the request for admitting without free consent.¹⁶⁹ Hence, the medical staff has to leave the ward and its duties and participate in court trials; there is already a deficit of medical staff in these institutions, which limits the access of hospitalised persons to their treatment doctor.

¹⁶⁷ Observance of inherent dignity of an individual, including his/her freedom to make own decisions and his/her independence.

¹⁶⁸ Art. 33 (2): Person hospitalised in psychiatric ward without free consent shall be entitled to take part in the examination of the matter regarding his/her hospitalisation. If the psychological state does not allow the presence of the persons to stand before a judge, the hospitalisation without free consent shall be examined in the ward by a judge. <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=312970>

¹⁶⁹ Art. 33 (3): The examination of hospitalisation without free consent in the psychiatric ward shall be done in the presence of a representative of the ward who requests the hospitalisation without consent and legal representative of the person whose matter is considered.

CfPT encourages the authorities to develop and approve operational procedures to exercise the right to freedom and safety when the hospitalisation without free consent is used and to ensure proper functioning of psychiatric hospitals.¹⁷⁰

CfPT observes the ambiguity of the national legislation when the psychiatric hospitals refuse to admit the persons referred based on Art. 99 CP, because the IMSP Psychiatric Hospital is not adapted for detainees but is a public self-supporting healthcare facility. The placement of persons by court decision adds to the expenses of the facility, which are not correlated to real expenses. Lack of quantification of placement service in the healthcare facility based on court order (enforced) generates additional costs of about 20 per cent of global budget of the healthcare facility,¹⁷¹ which are not covered by the NHIC and can influence the duration of hospitalisation and quality of services provided to admitted persons.

RECOMMENDATION :

- review the national legislation to clarify the procedure of enforcing court decisions regarding the forced treatment including the quantification of costs covered by the NHIC to reduce the differentiated treatment of these persons and avoid abuses in the form of duration of hospitalisation and quality of healthcare services.

CfPT points to insulting attitude and even application of physical force by the medical personnel or agitated patients. Stigmatisation and prejudice of the medical staff and especially of the low-level personnel towards the patients with psychiatric issues results in discrimination and application of ill treatment to persons in treatment. All these situations are overlooked by the management of hospitals.

¹⁷⁰ http://ombudsman.md/sites/default/files/document/attachments/30_martie_codru.pdf

¹⁷¹ Hence, the coverage by the NHIC for one case is MDL 7800 but average duration of admission based on court order to ward No.12 is about 2500 days.

RECOMMENDATION :

- investigate timely the alleged cases of ill treatment by holding accountable the guilty persons for committed actions.¹⁷² Ensure that the management of respective hospital forwards the patients' complaints to the People's Advocate within 24 hours from their receipt.¹⁷³

Lack of efficient mechanisms to lodge complaint by the patients from psychiatric hospitals represents an important issue in the mental health system of the Republic of Moldova. CfPT did not identify clear mechanisms for lodging a complaint by a patient during its monitoring visits.

RECOMMENDATION :

- create a real and independent mechanism to consider complaints of patients from psychiatric hospitals, as well as the possibility to access this mechanism by their relatives.

Based on discussions with patients of psychiatric hospitals, CfPT has outlined two situations: first, the patients do not know that they have the right to lodge a complaint and second, they are afraid of the doctors and caretakers of the hospitals. Such findings are reported by relevant NGOs.¹⁷⁴

RECOMMENDATION :

- ensure immediate (in the shortest time) and accessible (in clear and understandable language) information about the rights and guarantees of persons in treatment in psychiatric hospitals.

CfPT notes differentiated application of immobilisation procedures to the patients of psychiatric hospitals. The registers of physical immobilisation are not standard yet, and are not accompanied by clear and detailed provisions regarding the immobilisation in case of violent and aggressive behaviour of patients with mental disorders.

Methods that are known superficially by the employees include three possibilities of immobilisation: closeness, restrain to bed and immobilisation with bedding sheet, and the team of immobilisation includes interns and orderlies.

CfPT and international organisations¹⁷⁵ believe that it is inadmissible to fail to document the intervention, and each subdivision should have a detailed policy regarding calming methods which should be applied under strict control of medical staff, by indicating the situations when the non-medical staff (orderlies) was involved in the immobilisation of a patient.

RECOMMENDATION :

- develop clear policies to use the measures of constraint in different cases. These policies should stipulate initial attempts to restrain the agitated or violent patients, as much as possible, and should be of a different nature than physical (for instance, verbal instructions), and when the physical constraint is necessary, this should be limited to a manual control. Using instruments of physical constraint (straps, straightjackets, etc.) are rarely justified and always should be made at the order of the doctor and should be immediately reported to a doctor for approval.¹⁷⁶

¹⁷² <https://rm.coe.int/16806975da>, pag.67.

¹⁷³ Art.37 para.(2) of Law on mental health.

¹⁷⁴ <http://idom.md/wp-content/uploads/2017/09/Raport-SP-Orhei.pdf>

¹⁷⁵ <https://rm.coe.int/16806975cc>, pag. 51-52

¹⁷⁶ <https://rm.coe.int/16806cd438>

CfPT reports high number of death cases during short hospitalisation, and lack of a qualitative and quantitative analysis to improve the situation in the psychiatric hospitals, which concerns the CfPT. The number of cases is worrying because we do not speak of medical facilities with patients with diseases. The discussions with the staff of psychiatric hospitals revealed that there were cases of patients in very bad state brought from public health units. Their transportation to psychiatric hospitals, which do not have resuscitation service, is a serious violation. The Balti Psychiatric Hospital registered 92 deaths in 2015, Orhei Psychiatric Hospital – 17 cases, Codru Clinical Psychiatric Hospital - 32 deaths. These cases were also reported by the mass-media specialised in medical field.¹⁷⁷

RECOMMENDATION :

- systematic organisation of clinical and morphological conferences with the representatives of other IMSP to discuss death cases and take measures to provide quality treatment to patients and prevent deaths.

Medical staff has insufficient knowledge in documenting body injuries, and of specific interventions when working with persons with mental problems (communication skills, considering a suicide attempt and violence).

There is a major fluctuation and deficit of medical personnel (including orderlies qualified in psychiatric care); most of doctors are due to retire. Loss of previous social benefits (annual leave of 78 days, bonus of 30 per cent for working in psychiatry) makes this profession unattractive.

RECOMMENDATIONS :

- adopt special instructions for psychiatric hospitals regarding specific interventions to patients in treatment, including the cooperation with the police to avoid the abuse in applying physical force and standardization of interventions;
- initial and continuous training in effective and timely documentation of all injuries of patients supervised;
- develop a comprehensive policy to ensure human resources in mental field, including corresponding social benefits for psychiatric activity.

CfPT notes missing efficient cooperation mechanisms between hospitals and mental health community centres. The inpatient report is released to the patient but the medical documentation (duplicate of report) is not sent to the mental health community centre to protect medical data, according to the Law No.133 on personal data protection. This generates a situation when the persons with mental disabilities fall from supervision and consequently, their necessary treatment is interrupted, which violates the right to life.

RECOMMENDATION :

- implement efficient mechanisms to continue medical supervision in transition from inpatient to outpatient care to observe the right to health of persons with mental disabilities.

There is also the issue of insufficient qualified personnel for social therapy (especially of ergo-therapists) and financial resources to develop the rehabilitation and social integration of psychiatric patients (ergo-therapy). Limited human resources severely impede the application of rehabilitation activities and treatment of patients.

¹⁷⁷ <http://e-sanatate.md/News/4298/sute-de-oameni-mor-anual-in-spitalele-de-psihiatrie-din-moldova-sunt-multe-decese-suspecte-de-dementa-nu-se-moare>

RECOMMENDATION :

- human resources should be adequate, experienced professionals (psychiatrists, general doctors, orderlies, psychologists, ergo-therapists, social workers, etc.) are necessary.

Deficiencies in distributing the patients by wards were noted in the 2017 visits. There were cases when patients, who undergo forced treatment, were placed with voluntary patients, which may generate conflicts between patients.

RECOMMENDATION :

- avoid placing patients with different treatment regimens or of different sexes in the same rooms.

3.6.2 Torture, inhuman and degrading treatment in psycho-neurological boarding houses

In accordance with normative acts,¹⁷⁸ the boarding house is a public institution for temporary placement that provides socio-healthcare services to adults with mental disorders. Until recently, the entire range of boarding house services included placement, food and partial coverage of healthcare services only.

The major problems of these boarding houses have not changed and include: insufficient number of staff determined by low wages and high risk; lack of initial and continuous training of the staff due to financial problems, according to the authorities; insufficient healthcare services and inadequate care; and lack of rehabilitation services, which all-in-one increase the risk of ill treatment of beneficiaries and provokes the aggression of residents.¹⁷⁹

¹⁷⁸ Framework-regulation on the organisation and functionality of psycho-neurologic ward for adults with mental disabilities approved by Order No.204 of 01.11.2016.

¹⁷⁹ https://issuu.com/cajpd/docs/raport-drept_la_capacitate_juridicaff

The current legislation of the Republic of Moldova, especially the provisions of the Civil Code and Code of Civil Procedure, as well as the practice to declare a person incapable, are deficient and discriminating, and declaring a person incapable and place her or him in a psycho-neurological boarding house leads, in most cases, to violation of many rights, including the right to not be subject to torture, inhuman and degrading treatments.

Systemic problems ascertained by the Council for the Prevention of Torture in 2017 have not been solved for some time.

Living conditions and treatment do not guarantee a positive therapeutic environment. Lack of attention in this field may rapidly determine situation that leads to the appearance of inhuman or degrading treatment.

The institutions should aim at provision of proper material conditions for the treatment and welfare of patients and a positive therapeutic environment. Furthermore, the patients should benefit from proper psychiatric treatment and somatic care. Based on the principle of equal opportunities, the healthcare and treatment provided to persons placed without consent in psychiatric hospitals should be the same as the treatment provided to voluntarily admitted patients.¹⁸⁰

RECOMMENDATION :

- adapt the treatment regime of each resident according to its goals, therapeutic means and necessary social assistance, and conduct periodic evaluations depending on the psychical and psychological state of residents.

¹⁸⁰ CPT standards, version in Romanian language is available here: <https://www.coe.int/en/web/cpt/standards?>

Overcrowded dormitories and closed units in psycho-neurological boarding houses. The dormitories (Badiceni and Cocieri psycho-neurological boarding houses) provide every resident with less than 3 m². Lack of individual spaces continues to be a major problem for the administration of psycho-neurological boarding houses. This matter results in frequent conflicts between residents, violates their human dignity and leads to lack of personal intimacy.

RECOMMENDATION :

- undertake necessary measures to reduce the maximum rate of occupancy in the units of psycho-neurological boarding houses. Identify corresponding solutions to ensure the availability of personal space for each resident of the institution to observe human dignity of every resident.

Drastic insufficiency of medical and auxiliary staff are consequences of insufficient number of personnel (compared to psychiatric institutions) and improper payment of employees of these institutions.

RECOMMENDATION :

- review the number of staff in social-medical institutions to ensure proper number of qualified and auxiliary personnel.

Deficit of medical personnel affects the quality of services provided to residents, indirectly proved by the high rate of deaths in psycho-neurological boarding houses, classified as a rule, as 'cardiorespiratory failure'. Death by mechanical asphyxiation and toxic-infectious shock is an indication of violent death of residents.

RECOMMENDATION :

- initiate comprehensive investigations of the high rate of deaths in psycho-neurological boarding houses by involving independent medical specialists. Implement an inter-institutional mechanism for periodic evaluation of death rates in residential institutions and quality of healthcare services provided to residents.

The boarding house staff does not have efficient procedures, methods, and means to prevent and calm down in situations of violence, as well they do not keep a specific register of applied calming methods (describing the measure applied, specific circumstances, causes, description of injuries, immobilisation team and the name of the doctor who ordered the immobilisation, etc.). The violence, and even the deaths as a result of violence, in the psycho-neurological boarding houses remain a stringent issue, which is confirmed in the reports of other organisations.¹⁸¹

RECOMMENDATION :

- develop protection mechanisms for residents and personnel against violent actions of other residents and exclude the practice of involving the patients in solving their conflicts.

The medical and auxiliary personnel needs training in the field of human rights, especially of the persons with disabilities.

RECOMMENDATION :

- develop human rights training programmes with an accent on the right to information, informed consent, medical treatment, non-discrimination, prohibition of physical force and other forms of punishment addressed to medical and auxiliary personnel of psychiatric institutions.

¹⁸¹ http://idom.md/wp-content/uploads/2017/08/Raport-vizita-Cocieri_IDOM-2017.pdf

The residents who do not comply with disciplinary protocol or are aggressive are placed in closed units of the boarding house, which they cannot leave at will. Their isolation may last up to 3 weeks, when they may be deprived of the right to outdoor walks.¹⁸²

RECOMMENDATION :

- stop the practice of transferring the residents to strict supervision regime units as disciplinary punishment, and interdiction of outdoor walks as sanction.

CfPT could not identify accessible methods for residents of boarding houses to lodge a complaint with national human rights institutions (People's Advocate, Council for the Prevention and Elimination of Discrimination and Ensuring of Equality) or law-enforcement entities (police, Prosecutor's Office).

RECOMMENDATION :

- develop clear and accessible complaint mechanism for acts of torture and inhuman treatment for the residents of psycho-neurological boarding houses. The right to lodge complaints by the victims should not be obstructed under any circumstances.

Reclamations regarding illegal abortion, illegal surgical sterilisation, forced contraception. In interviews with CfPT members, some women declared that doctors from psychiatric hospitals obliged them to use different methods of contraception. In most cases the women refused specifying that they wanted to start a family and have children something that is not approved by the staff of these institutions.¹⁸³

RECOMMENDATION :

- eliminate abusive illegal sterilization and contraception, abortion without consent. Use informed consent for such medical procedures and develop a mechanism for strict recording of such cases.

In its confidential interviews with residents of psycho-neurological boarding houses, the CfPT established that the residents are obstructed from and deprived of information about their right to have a family.

RECOMMENDATION :

- eliminate the obstruction of residents of psycho-neurological boarding houses to start a family and provide them with information on their rights to facilitate their inclusion in the society.

Healthcare assistance in psycho-neurological boarding houses

The medical insurance policy is a compulsory documents of the resident of boarding house, however, after being placed, the residents are not included in compulsory healthcare system. Medical personnel does not benefit from necessary trainings, and the quality of provided services is not verified by the Ministry of Health, Labour and Social Protection. The residents of boarding houses have different chronic diseases that have to be treated in accordance with national clinical protocols, but this field has major deficiencies in ensuring medicine, observing the treatment regimen, and qualifications of personnel.

RECOMMENDATION :

- include the residents of psycho-neurological boarding houses in compulsory healthcare system, conduct regular inspections of the quality of treatment of the residents of psycho-neurological boarding houses by the MHLSP in order to observe the right to health by undertaking necessary measures, if necessary.

¹⁸² http://ombudsman.md/sites/default/files/document/attachments/balti_T6_martie.pdf

¹⁸³ http://ombudsman.md/sites/default/files/document/attachments/balti_T6_martie.pdf

Many tuberculosis cases were identified in boarding houses in 2017. These were diagnosed late and treated improperly (including the violation of principle of direct supervision of treatment). At the same time, CfPT noted a 6-month administration of preventive treatment with isoniazid of 107 residents of boarding houses, who were in contact with tuberculosis patients (including drug-resistant forms), which contravenes the provisions of National Clinical Protocol for Tuberculosis in Adults.^{184,185} The administration of preventive treatment with isoniazid to residents of psycho-neurological boarding houses is not in correspondence with national and international standards of ethics and the unjustified administration of treatment may be considered an ill-treatment.

RECOMMENDATION :

- prohibit the administration of treatment without medical and proper indications of the National Protocol of Preventive Treatment of residents in contact with patients with tuberculosis. Develop and approve institutional tuberculosis control plans in accordance with the specifics of places of detention, including national normative provisions (Framework-plan).

¹⁸⁴ <http://old.ms.gov.md/public/info/Ghid/protocols/fiziopneumologie/adult6/pcn123/>

¹⁸⁵ http://old.ms.gov.md/_files/15076-PCN%2520TB%2520adult_T6_04_2015.pdf

