



# REPORT

**ON THE OBSERVANCE OF HUMAN  
RIGHTS AND FREEDOMS  
IN THE REPUBLIC OF MOLDOVA  
IN 2019**

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## PREFACE

In 2019, in the Republic of Moldova there took place political events with major impact for the society, which affected the state of affairs in the field of human rights.

However, the political changes in the country cannot be accepted as an excuse for the lack of firm actions that contribute to the realization of human rights in a manner appropriate to the human rights treaties to which the Republic of Moldova is a party.

One argument in this regard would be that, by ratifying international human rights treaties, the Republic of Moldova has assumed certain commitments to implement the provisions of these treaties, so that people who are in the territory of the country can benefit from adequate protection by exercising their fundamental rights.

Regardless of the political situation in the country, any government should pay more attention to the field of human rights. The obligations of the State in the field of human rights (the obligation to respect,<sup>1</sup> the obligation to protect<sup>2</sup> and the obligation to fulfill<sup>3</sup>), derive from the treaties in the field of human rights to which the Republic of Moldova is a party, which in turn, in accordance with the Constitution, they are superior to national law. These commitments assumed by the Republic of Moldova must be indispensable criteria for the decision-making process at the state level, as well as for the elaboration of the public policy documents.

Thus, given that both decisions and public policies have a direct impact on the population, the authorities are obliged to consult the opinion of the beneficiaries and to involve them in the decision-making process, so that the developed solutions correspond to their needs.

In fact, this concept is called a human rights-based approach and it must be omnipresent at any decision-making level in a state that claims to be a state governed by the rule of law that has committed itself to respecting human rights.

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<sup>1</sup>The obligation to respect requires the state to ensure that none of its officials act in violation of human rights or the obligations contained in that treaty.

<sup>2</sup>The obligation to protect requires the state to take measures to ensure that no one violates the terms of a human rights treaty (third parties / persons).

<sup>3</sup>The obligation to fulfill requires the state to take positive measures to ensure that everyone within its jurisdiction is able to fully enjoy the rights recognized in the treaty.

Moreover, one of the commitments regarding the observance of human rights is establishing and ensuring the proper functioning of the National Human Rights Institutions (NHRIs). The guiding principles of NHRI's activity are the Paris Principles, which were adopted by the United Nations General Assembly by resolution 48/134 of 20 December 1993.

According to the decision of the Sub-Committee on Accreditation (SCA) of the Global Alliance of National Human Rights Institutions (GANHRI), in 2018, the People's Advocate Office was accredited with the A status, which attests that the mandate, duties and functionality of the institution are in full compliance with the provisions of the Paris Principles. However, the state needs to make further efforts to fully strengthen the National Human Rights Institution of the Republic of Moldova. On these issues I mentioned in previous reports, but also in the alternative ones to the international mechanisms for the protection of human rights.

Taking into account the above, I consider that it would be quite correct to assess 2019 as a year of stagnation in the field of human rights in the Republic of Moldova.

In view of the mandate of the National Human Rights Institution, the People's Advocate reiterates the availability to cooperate with the national authorities in order to contribute to the fulfillment of the state's obligations in accordance with the commitments made by ratifying international human rights treaties.

**Mihail COTOROBAI**  
**People's Advocate (Ombudsman)**

## CHAPTER I

### OBSERVANCE OF HUMAN RIGHTS IN THE REPUBLIC OF MOLDOVA IN 2019

#### RIGHT TO A FAIR TRIAL

Following the analysis of the situation regarding the observance of the right to a fair trial, the People's Advocate considers that there is no progress in this field, moreover, there is a obvious state of stagnation. It is noted that the state has not taken measures to implement the previous recommendations of the People's Advocate, but also regional and international mechanisms for the protection of human rights, measures to contribute to strengthening the justice system, the legal framework for criminalizing hate crimes has not been adopted, a draft law that from 2016 was adopted in the first reading. At the same time, in some situations, it is found that the level of professionals working in the justice system is not at a level corresponding to current requirements.

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

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

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

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

Earlier, the Ombudsman recommended that the authorities continue their efforts to reform the justice system to ensure its accessibility, independence, efficiency, transparency and integrity, and to

adopt a comprehensive legal framework to criminalize hate crimes, in accordance with the provisions of the UN Convention on the Elimination of Racial Discrimination.

Another aspect to which the People's Advocate drew attention refers to the obligation of the state to implement the international recommendations aimed at the realization of the right to a fair trial.

The recommendations of the international mechanisms for the protection of human rights also draw attention to the need to strengthen the capacity of the judiciary to respond to acts of corruption and to ensure the effective protection of victims of corruption, their lawyers, anti-corruption activists, whistleblowers and witnesses.<sup>4</sup>

At the same time, the state is encouraged to ensure the right to a fair administration of justice<sup>5</sup>; the sufficient remuneration of the judges, ensuring a sufficiently long mandate to guarantee the independence and integrity of the court; ensuring an immediate, thorough, independent and impartial investigation into all allegations of violation of the procedure and bringing to justice those responsible, including officials of the judiciary, who are involved in this; ensuring the de jure and de facto protection of judges from any sanctions or retaliation for unpopular judicial decisions.<sup>6</sup>

Another important aspect found in international recommendations refers to combating hate speech. It is necessary to amend Article 346 of the Criminal Code<sup>7</sup>, so that it fully complies with Article 4 of the UN Convention on the Elimination of All Forms of Racial Discrimination, and that this amended article is properly implemented; to adopt comprehensive legislation criminalizing hate crimes and to ensure that such legislation complies with the Convention and that racial motivation is listed as an aggravating circumstance; to ensure that all incidents of hate crimes and hate speech are investigated and prosecuted and that the offenders are punished, regardless of their official status; to provide data on the number of hate crimes and hate speech cases reported, criminal prosecution, convictions and compensation offered to victims; to strengthen the role of prosecutors in supporting victims of racial discrimination in reporting violations.<sup>8</sup>

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<sup>4</sup> UN Committee on Economic, Social and Cultural Rights;

<sup>5</sup> In accordance with Article 14 of the Covenant and the general comment no. 32 (2007) on the right to equality before the courts and tribunals and to a fair trial;

<sup>6</sup> UN Committee on Civil and Political Rights;

<sup>7</sup> "Intentional actions aimed at incitement to hatred, national, ethnic, racial or religious division or differentiation."

<sup>8</sup> The UN Committee on Racial Discrimination, recalling its General Recommendation no. 35 (2013) on combating racist hate speech;

During 2019, according to the claims received by the People's Advocate Office, the most frequently invoked as a violation was the *right to a fair trial - 207 claims*. Most of them, 124 claims, came from detainees, who invoked various aspects.

One problem identified in the claims received was the manifestation of dissatisfaction with the provision of qualified legal assistance provided by lawyers within the National Council for State Guaranteed Legal Aid (NCSGLA). The manifestation of the unworthy attitude during the exercise of the duties by the lawyers, by not informing the beneficiary of the legal assistance about the procedural rights and obligations, leads to the violation of the right to a fair trial. As a result, the beneficiary of legal assistance omits the terms for challenging the actions and procedural documents of the court, the prosecutor and the bailiff. The citizen, being outside any term to challenge the procedural actions, is unable to defend his/her injured right.

Another aspect identified is the inaction of the lawyer at the request of the beneficiary of legal aid to draw up or take any procedural actions, the lawyer limiting himself only to promises.

The beneficiaries also invoke the fact that the lawyers do not attend the court sessions, do not announce about this fact and they appear unprepared, reasoning that they did not have enough time to get acquainted with the file.

In the context of the previous recommendations submitted to NCSGLA, during 2019 the People's Advocate monitored their implementation.<sup>9</sup>

Thus, the People's Advocate was informed that the Lawyers' Training Centre (LTC) has announced that it intends to move to another stage of institutional capacity development. In this regard, new standards will be developed, thorough planning will be done and the tasks formulated by the Bar Association will be carried out.

According to the Center, there has been submitted a request to the Bar Association on the interpretation and implementation of the rules relating to the CIA provided for in the Status of the profession of lawyer.

Another problem identified is the delay in examining the cases by the courts in the process of reorganizing the courts. The beneficiaries did not know in which court and to which judge the case was distributed and when the examination would be resumed.

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<sup>9</sup> - warning the NCSGLA territorial Offices about the quality and timely provision of state-guaranteed legal aid by lawyers appointed for this purpose; informing the applicants in the near term about the decisions taken regarding the lawyers appointed in order to provide state-guaranteed legal aid.

The People's Advocate identified the issue on the failure to record the audio of court hearings. This fact does not allow the person to contrast the statements given with those mentioned in the hearing and in the minutes of the hearings. In the investigation process, the People's Advocate found the violation of the Regulation regarding the digital audio recording of the court hearings, approved by the Decision of the SCM no.338 / 13 of 12.04.2013, as well as the provisions of Art.336 and 337 of the CPC regarding the registration of the court hearings in order to ensure the fullness of the minutes of the court hearings, which amounts to a serious violation of the fundamental rights to defense and to a fair trial.

In this regard, the People's Advocate addressed the Superior Council of Magistracy<sup>10</sup>, and recalled about the recommendations of the UN committees in the context of ensuring the realization of the right to a fair trial.<sup>11</sup>

Following the recommendation of the People's Advocate, the Superior Council of Magistracy submitted to the courts a circular on the importance and obligation of compliance by court employees, as well as monitoring by court presidents of the provisions of the Regulation on digital audio recording of court hearings.

The People's Advocate considers that this deviation is inadmissible in the context in which the Justice Sector Reform Strategy for 2011-2016 had one of the general objectives, and namely *“building an accessible, efficient, independent, transparent, professional and responsible towards society justice sector, which corresponds to European standards, ensure the rule of law and respect for human rights and contribute to ensuring the confidence of society in the act of justice ”*. Thus, it follows that the policy document has not achieved the desired results and impact, and at the same time it highlights how important the level of professionalism of human resources is for a reform to have a positive impact on the beneficiaries.

Another problem identified is the failure to draw up the full court decision by the judge, at the request of the participants in the trial.

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<sup>10</sup>Pursuant to point 8, sub-point 6) of Law no. 164 of 31.07.2015 for the approval of the Regulation on the organization and operation of the People's Advocate Office.

<sup>11</sup>The State is encouraged to take concrete and effective measures to ensure the right to a fair administration of justice, in accordance with Article 14 of the Covenant on Civil and Political Rights and General Comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial; ensuring an immediate, thorough, independent and impartial investigation into all allegations of violation of the procedure and bringing to justice those responsible, including officials of the judiciary, who are involved in this.



The People's Advocate identified situations in which the constituent elements of the disciplinary deviation were met and addressed the Disciplinary Board of the Superior Council of Magistracy, which rejected the notification of the People's Advocate. In motivating the decision on the rejection of the notification, the Judicial Inspection invoked only the omissions of the clerk, who subsequently resigned and left the judiciary, and the facts elucidated could not be put under the responsibility of the judge. Considering that the decision to reject is unfounded, the People's Advocate filed an appeal<sup>12</sup> that is under examination.

Analyzing the 65 reports prepared during the year 2019 by the Judicial Inspection of the SCM, on the basis of which disciplinary procedures were initiated regarding the judges, the People's Advocate found that disciplinary sanctions were applied in 13 cases: 6 sanctions in the form of a warning, 6 sanctions in the form of reprimand and one sanction in the form of dismissal. Most of the sanctions were applied as a result of the violation, for reasons attributable to judges, of the deadlines for fulfilling the procedural actions, including the deadlines for drafting judgments and transmitting the copies to the participants in the trial, because they directly affected the rights of participants in the process.

Enforcement of court decisions is still a problem. The plaintiffs in most cases invoked the non-informing (non-disclosure) of the participants of the enforcement proceedings, by the bailiffs, about the measures taken and the procedural documents drawn up. Thus, most often, the participants of the enforcement proceedings do not know the reason for the triggering of the enforcement proceedings. Consequently, the debtor does not fall within 15 days when he/she can voluntarily pay the adjudicated amount, and he/she has to pay other enforcement expenses related to the enforcement proceedings and the bailiff's fee. Not every time the participants of the enforcement proceedings manage to challenge the acts of the bailiff in court because of bureaucratic actions of the bailiffs.

Delaying the execution of court decisions on the collection of alimony, as in previous years, remains a problem, because of the debtor's absence from home, the debtor being abroad and the debtor's lack of financial resources, alimony payer.

As mentioned above, in the previous report, the People's Advocate recommended continuing efforts to reform the justice system to ensure its accessibility, independence, efficiency, transparency and integrity. The new policy document for ensuring the continuity of the reform in the justice sector was not adopted either in 2019. In April 2019, a draft strategy for the development of the justice

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<sup>12</sup> To the Appeals Examination Panel of the Disciplinary Board of the Superior Council of Magistracy.

sector<sup>13</sup> was launched for public consultation by the Ministry of Justice, but it was not adopted. The People's Advocate recommended improving the draft from the perspective of a human rights-based approach. The Ombudsman was of the opinion that the relevant policy document should address the real needs of beneficiaries / rightholders with clear goals set in order to streamline the process of assessing the progress made following its implementation.

According to a press release of the Ministry of Justice from 03.01.2020, the new drafts on justice reform<sup>14</sup> developed by the Ministry of Justice based on the proposals / suggestions made during discussions with actors in the justice sector during 2019, were submitted to the Council of Europe.

At the same time, the Parliament has not adopted the comprehensive legislation to criminalize hate crimes, in line with the provisions of the UN Convention on the Elimination of Racial Discrimination. We remind you that the draft law no. 301 for the operation of the amendments in the normative framework regarding the regulation of hate crimes was adopted by the Parliament, in the first reading, in December 2016.

On 22.10.2019, the Committee on Legal Affairs, Appointments and Immunities and the Committee on Human Rights and Interethnic Relations of the Parliament organized public consultations on draft no. 301, revised by the Ministry of Justice, but the draft was not adopted in the final reading.

During 2019, the Constitutional Court ruled on issues related to the right to a fair trial.

The Constitutional Court<sup>15</sup> has ruled that paragraph 2 of Article 265 of the Code of Criminal Procedure<sup>16</sup> contravenes Article 20 in conjunction with Articles 16 and 23 of the Constitution. The Court noted that the right to lodge an appeal can only be effectively exercised from the date on which the contested act is brought to the person's notice. Otherwise, it risks becoming theoretical and illusory. Since the state guarantees a right, it must create the premises for its realization. The Ministry of Justice prepared a draft law to amend some normative acts for the execution of the Decision in question, which was finalized, including following the suggestions of the People's Advocate.

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<sup>13</sup> <http://www.justice.gov.md/libview.php?l=ro&idc=4&id=4330>

<sup>14</sup> Draft Strategy for ensuring the independence and integrity of the justice sector for the years 2020-2023; the draft Action Plan for the implementation of the Strategy for ensuring the independence and integrity of the justice sector for the years 2020-2023; draft proposal to assess judges.

<sup>15</sup> Decision of the Constitutional Court no. 6 of March 19, 2019.

<sup>16</sup> "The refusal of the criminal prosecution body to receive the complaint or denunciation may be appealed immediately to the investigating judge, but not later than 5 days from the moment of refusal."

During the reference period, the Constitutional Court declared as unconstitutional <sup>17</sup> some provisions of Article 161 par. (1) and of Article 162 par. (2) of the Enforcement Code, thus resolving the divergences of regulations generated by several provisions of the same normative act, regarding the contestation of acts issued in the enforcement proceedings. Due to the normative inconsistency, both the litigants and the subjects with the right to apply the Enforcement Code were in difficulty, being put in the situation to choose between several possible variants.

Also by the judgment of October 8, 2019<sup>18</sup> the Constitutional Court declared as unconstitutional the word "may" in Article 61 paragraph (1) of the Enforcement Code, which offered too much discretionary power to bailiffs regarding the initiation or refusal to initiate forced enforcement proceedings.

On July 24, 2019, the Group of States against Corruption (GRECO) published an interim report analyzing the level of implementation of the recommendations in the 2016 evaluation report. GRECO noted that Moldova has met four of the 18 recommendations, nine recommendations have been partially implemented, and five were not implemented at all. GRECO considered that the efforts to improve the transparency of the legislative process in Parliament are insufficient. The institution recommended the timely publication of draft laws and related information, allowing a meaningful public and parliamentary debate on draft normative acts.

GRECO was also concerned about the composition of the Superior Council of Prosecutors (SCP), namely the fact that the Minister of Justice and the President of the Superior Council of Magistracy (SCM) continue to be ex officio members of the SCP. A similar recommendation was made regarding the composition of the SCM and the cancellation of the ex officio membership of the Minister of Justice and the Prosecutor General. GRECO requested the Moldovan authorities to report on the implementation of the recommendations by June 30, 2020.

The People's Advocate recommends to the Ministry of Justice, as well as to other competent authorities, the public consultation, including of the professional groups in the field of justice and of the academic environment, of the draft normative acts.

On March 13, 2019, the International Commission of Jurists (ICJ) presented a report on the independence of the judiciary in the Republic of Moldova<sup>19</sup>. The ICJ report notes significant progress

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<sup>17</sup> Decision of the Constitutional Court no. 8 of April 5, 2019;;

<sup>18</sup> Decision of the Constitutional Court no. 22 of October 8, 2019;

<sup>19</sup> LRCM newsletter, January - March 2019;

regarding the audio recording of court hearings, random distribution of cases and increasing judges' salaries. On the other hand, the implementation of the most important reforms in the field of justice is dragging on, often because of the lack of political will.

Also, another study "Analysis of the gender dimension in the justice sector in the Republic of Moldova", launched by the Legal Resources Centre from Moldova<sup>20</sup> assessed the situation of gender equality in the justice system in Moldova. The conclusion of the study is that, although at first sight there is equality in terms of the presence of women as actors in the justice system of the Republic of Moldova, women are not proportionally represented in leadership positions.

The People's Advocate submitted to the Ministry of Justice some proposals for improving the Enforcement Code, in the part related to the disciplinary sanctions applied to the convicts.

The first aspect refers to the controversy generated by paragraph (10) of Art. 247 of the Enforcement Code: „ *The prisoner in **disciplinary isolation** is **prohibited** to meet, except for the visits of the defense counsel, the persons with official qualities provided in Art.181 paragraph (1) of this code or of the diplomatic representatives, telephone conversations, food procurement, **receipt of parcels, packages with supplies and wrappers.***”

Analyzing the provisions in question in the light of international standards, including the reports of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment, we found that the prisoner in disciplinary isolation in addition to the main sanction are categorically and cumulatively imposed all educational measures as additional sanctions: lack of meetings (except for the visits of officials provided by law), telephone conversations, food procurement, receipt of parcels, packages with supplies. In the opinion of the People's Advocate, this fact contradicts the principle of proportionality, as well as the CPT's recommendations. The simultaneous maintenance of all these restrictions could not always be justified, especially in the case of food procurement / receipt of parcels or packages with supplies, given the circumstances in which the detainees' feeding is poor.

Therefore, the People's Advocate recommended to the Ministry of Justice the initiation of the procedure for amending the provisions of paragraph (10) of Art. 247 of the Enforcement Code by replacing the phrase "are prohibited" with the phrase "may be prohibited", which would allow the application of the discretion of the head of the penitentiary, based on the gravity of the act committed,

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<sup>20</sup>[http://crjm.org/wp-content/uploads/2019/10/Raport\\_Analiza-dimensiunii-de-gen\\_finalweb.pdf](http://crjm.org/wp-content/uploads/2019/10/Raport_Analiza-dimensiunii-de-gen_finalweb.pdf)

as well as the alternative application of educational measures within the framework of disciplinary isolation.

Another problematic aspect refers to the examination of the complaints against the decision regarding the application of the disciplinary sanction regulated by the provisions of Art. 248<sup>1</sup> of the Enforcement Code.

In accordance with paragraph (2) of Art.248<sup>1</sup> of the Enforcement Code: *"The complaint against the decision regarding the application of the disciplinary sanction ... does not suspend the execution of the disciplinary sanction, **except for disciplinary isolation.**"* The solution resulting from the disposition of the enforceable criminal law in force has as effect the execution of the sanctions provided by Art.246 of the Enforcement Code, even in case of its annulment by the court. The current legislation does not provide a clear deadline for the investigating judge to examine and resolve the complaint.

The European Convention on Human Rights (ECHR) imposes obligations on Member States to ensure that the right of access to justice is understood in a concrete and effective way, not theoretically and illusory.

In this context, the People's Advocate considers that the express regulation of the term for examining the complaint filed by the convict would be the solution that would guarantee the detainee's rights and would remedy the effects of the disciplinary sanction imposed abusively. Otherwise, the affected person should have access to other remedies, such as suspending the sanction once it has been challenged, or granting compensatory measures.

With reference to the issue of applicability of this Article, it should be mentioned that the People's Advocate previously submitted a recommendation to the Ministry of Justice regarding the exclusion of the phrase *"through the administration of the penitentiary institution"* from paragraph (1) of Art.248<sup>1</sup> of the Enforcement Code. The People's Advocate pointed out that this phrase is abusive and arbitrary, because it contradicts the fundamental rights of the person convicted to free access to justice and the secrecy of correspondence. This phrase establishes a "filter" that allows the penitentiary institution as a purpose and effect, to have a discretionary control over the correspondence of the convicted person, restricting his/her right to free access to justice. The Ministry of Justice supported the recommendation of the People's Advocate and gave assurances that when amending the Enforcement Code, it will exclude the respective phrase<sup>21</sup>.

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<sup>21</sup> Letter of the Ministry of Justice of 08.04.2016 no.03 / 4915

Given that no amendments have been made so far, the People's Advocate recommends examining all these problematic aspects and improving the regulatory framework, which creates premises for human rights violations.

**In 2019, the European Court of Human Rights issued 21 judgments against the Republic of Moldova for violating Article 6 of the Convention, for which the State was obliged to pay an amount of approximately EUR 400,250.**

These include the case of *Ozdil and others v. the Republic of Moldova*, which refers to the case of Turkish teachers, their illegal transfer to their country of origin, to the detriment of domestic and international law. In this case, the State was obliged to pay compensation in the amount of EUR 125,000 (EUR 25,000 for each of the 5 applicants).

In the context of the above, we find that the problems mentioned are determined by the imperfection of the legal framework, in some cases, non-compliance with existing national legal norms, but also the international obligations assumed by the state by ratifying international human rights treaties, the level of professionalism of human resources operating in the justice system.

Another cause of the inadequate realization of the right to a fair trial is the lack of public policies to strengthen the justice system so that it meets the unanimously recognized requirements at international level, namely: accessibility, independence, efficiency, transparency and integrity.

#### **RECOMMENDATIONS:**

- The People's Advocate reiterates his recommendations on continuing efforts to reform the justice system, implementing the recommendations of regional and international human rights bodies relating to the justice system and adopting comprehensive legislation to criminalize hate crimes, in accordance with the provisions of the UN Convention on the Elimination of Racial Discrimination.

## INDIVIDUAL FREEDOM AND SECURITY OF THE PERSON

As a result of the analysis of the situation regarding the fundamental right to freedom and security of the person, the People's Advocate considers that no amendments can be mentioned in this field. Further there are detected situations in which persons are detained longer than the legal deadline of 72 hours provides, and the data on persons in preventive detention show an insignificant decrease in the application of this measure. At the same time, there are no efforts are made by the state to implement international recommendations on the realization of this fundamental right.

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

The Constitution of the Republic of Moldova, in Article 25, establishes that *“(1) The individual freedom and security of the person are inviolable. (2) The search, detention or arrest of a person are allowed only in the cases and with the procedure provided by law. (3) Detention may not exceed 72 hours. (4) The arrest shall be made on the basis of a warrant, issued by the judge, for a maximum period of 30 days. An appeal may be lodged against the legality of the warrant, in accordance with the law, in a hierarchically superior court. The term of arrest may be extended only by the judge or by the court, in accordance with the law, up to a maximum of 12 months. (5) The detained or arrested person shall be immediately informed of the reasons for the detention or arrest, and the accusation - as soon as possible; the reasons for detention and accusation shall be made known only in the presence of a lawyer, chosen or appointed ex officio. (6) The release of the detained or arrested person shall be compulsory if the reasons for the detention or arrest have disappeared. ”*

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

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

The People's Advocate reminds the authorities that the Republic of Moldova has received a series of international recommendations regarding issues related to the realization of the fundamental right to individual freedom and security of the person. Reducing the length of the preventive arrest to 48 hours, which is considered a sufficient period of time for arrested persons to be brought to court<sup>22</sup>, repealing legal provisions legitimizing forced hospitalization and non-consensual psychiatric treatment due to deficiency, stopping the deprivation of liberty of persons with disabilities on the basis of a real or perceived deficiency<sup>23</sup>...

In the previous annual report, the People's Advocate recommended that the authorities apply alternative measures to preventive detention so that it is applied as an exceptional measure; develop alternative measures to preventive detention and increase the professional competence of the judiciary in order to improve the motivation of decisions taken.

Despite these recommendations, the preventive detention remains a problem for the judiciary in the Republic of Moldova. Thus, according to the answer provided by the Ministry of Justice regarding the implementation of the recommendations of the People's Advocate in the Report on Human Rights in the Republic of Moldova in 2018, during 2019 in preventive detention there were placed 1136 people, compared to 1163 people in 2018, which constitutes a decrease of 2%.

The People's Advocate considers this decrease insignificant, which only emphasizes the fact that the preventive detention is still applied unjustifiably and excessively.

During his visits, the People's Advocate continued to identify persons detained over the legal term of 72 hours. We remind you that the international recommendations call for this term to be reduced to 48 hours.

At the same time, the People's Advocate warns the management of the police inspectorates that being in police custody of retained persons cannot exceed 72 hours, and if there are legal / solid / authorized reasons that this person must be in state custody and after the expiration of those 72 hours, the retained person is to be transferred to the custody of a penitentiary. The People's Advocate reiterates that the general rule regarding the observance of the right to freedom and security presupposes the observance of the 72-hours term.

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<sup>22</sup> The UN Committee on Civil and Political Rights argues that the State party should adapt its legislation and practice to Article 9 of the Covenant, taking into account the general comment of Committee no. 35 (2014) on personal freedom and security;

<sup>23</sup> UN Committee on the Rights of Persons with Disabilities;



Or, according to the provisions of Art.175, 175<sup>1</sup> of the Enforcement Code of the Republic of Moldova, the execution of the preventive detention is ensured by penitentiaries, through the criminal prosecution isolators within the NAP.

As required by international standards<sup>24</sup>, the People's Advocate considers that the preventive detention of persons suspected of committing the crime should be an exception rather than a rule. In separate cases, the preventive detention should be applied only in strictly necessary cases, as a measure of last resort, and should not be applied as a measure of punishment. In order to avoid the inappropriate application of the preventive detention, the widest possible range of alternatives should be available, less restrictive measures related to the behavior of the person suspected of committing the crime.

Thus, the preventive detention must be an exception to the right to freedom and security, and be applied in cases where clear evidence is presented, accompanied by arguments, which would confirm with certainty the likelihood of committing the actions by the suspects. The arrest is an exceptional measure. As a result, the arrest may be ordered only in certain cases and only for certain reasons, which must be shown in a concrete and convincing manner in the decision of the body ordering it.

In 2019, the European Court of Human Rights found a violation of Article 5 of the ECHR by the Republic of Moldova in the cases of *Ozdil and others*, *Gorea*, *Sirencu*, *Casu and Moscalciuc*. In these cases, the European Court found problems with the arbitrary retention and detention of the applicants for extradition; granting insufficient compensation for illegal detention and in 3 cases insufficient reasoning for arrest<sup>25</sup>.

The People's Advocate finds that the violation of the right to individual freedom and security of the person is caused by non-compliance with the existing legal framework and its improper application, due to which there are situations in which the legal term of 72 hours for the detention of persons is exceeded, and the application of the preventive detention does not register a significant decrease.

## **RECOMMENDATIONS:**

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<sup>24</sup> The rules for the application of the preventive detention, the deployment conditions and the measures to protect against abuse, are also to be found in the Recommendation of the Committee of Ministers of the Council of Europe, Rec (2006) 13 on research in the state of preventive detention;

<sup>25</sup> <https://crjm.org/wp-content/uploads/2020/01/Nota-analitica-CtEDO-2019.pdf>

- The People's Advocate recommends to the General Police Inspectorate to exclude from the prerogatives of the police the detention of persons in preventive detention isolators of over 72 hours;
- The People's Advocate recommends the Superior Council of Magistracy to issue circulars to the courts for the warning regarding the application of the preventive detention in accordance with the international standards, mentioned by the People's Advocate;

## **LEGAL STATUS OF FOREIGN CITIZENS AND STATELESS PERSONS**

In the Report on the observance of human rights in the Republic of Moldova in 2018, the People's Advocate expressed his deep concern about the decision of the Moldovan authorities to expel the group of people of Turkish origin from the country, under the pretext of threats to national security. In this context, the People's Advocate warned that the state authorities are obliged, before taking an expulsion decision, to carefully analyze the risks to which a person may be subjected and the consequences of his or her expulsion.

In connection with this case, it should be mentioned that the Republic of Moldova was condemned by the ECtHR by the Judgment of June 11, 2019 in the case of *Ozdil and others v. the Republic of Moldova* for violating Articles 5 and 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, for the expulsion of Turkish citizens from 2018.

The Court noted that the applicants' deprivation of liberty in the manner in which the authorities proceeded was an illegal transfer of persons from the territory of the State to Turkey, which circumvented all the guarantees offered to them by national and international law. There has accordingly been a violation of Article 5 §1 of the Convention.

Given that the applicants did not enjoy the minimum degree of protection against arbitration by the authorities, the Court concluded that interference with personal and family life was not in accordance with a "law" satisfying the requirements of the Convention (*see the case of Al Nashif v*

*Bulgaria, no.50.963 / 99, § 128*). The Court therefore ruled that Article 8 of the Convention had been violated.

The Court reiterated that a person who is subject to a measure based on national security considerations should not be deprived of all **guarantees against arbitrariness**.

The People's Advocate prepared in 2019 the *thematic Report "Observing the rights of foreign citizens in state custody"*, presented publicly<sup>26</sup> in December 2019. The Report aimed to identify gaps in the field of protection of aliens and submit proposals intended to help national public authorities to ensure the rights of aliens in state custody. Following the comprehensive analysis of the situation in the field, the Report contains several recommendations submitted to the competent public authorities. In particular, it is recommended to delete paragraph 4 of Article 63 of *Law no. 200 of 2010 on the regime of aliens in the Republic of Moldova*, for the total exclusion of the possibility of return or removal of aliens in territories where they risk being subjected to torture, inhuman or degrading treatment, regardless of the risk to national security and public order. It is also proposed to bring *Law no. 200 of 2010 on the regime of aliens in the Republic of Moldova* in accordance with the Administrative Code, as well as the completion of *Law no. 200 of 2010 on the regime of aliens in the Republic of Moldova*, with provisions, which would expressly order the release from public custody of aliens who have applied for asylum or the granting of stateless status.

Given the jurisprudence of the ECtHR, including in the case of *Ozdil and others v. the Republic of Moldova*, the results of the mentioned thematic Report, the People's Advocate sent to the Ministry of Internal Affairs<sup>27</sup> a proposal to improve the provisions of paragraph (3) of Art.55, paragraph (2) of Art.56 and paragraph (4) of Art.63 of *Law no.200 of 16.07.2010 on the regime of aliens in the Republic of Moldova*.

The People's Advocate considers that the mentioned provisions do not offer the foreigner minimum guarantees against the arbitrariness of the authorities. Or, the person concerned must benefit from an adversarial procedure in order to be able to present his/her point of view and to challenge the arguments of the authorities. Otherwise, it may affect the principle of equality of arms.

Another problem identified as a result of examining the provisions of *Law no.270 on Asylum in the Republic of Moldova* and addressing the Law Center of Advocates refers to the imperfection

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<sup>26</sup> [http://ombudsman.md/wp-content/uploads/2019/12/Studiul\\_Situatia\\_str%C4%83inilor\\_FINAL.pdf](http://ombudsman.md/wp-content/uploads/2019/12/Studiul_Situatia_str%C4%83inilor_FINAL.pdf)

<sup>27</sup> Letter from January 20, 2020 no. 12-6 / 4;

of legislation to ensure the right to health of asylum seekers, who are part of the category of vulnerable groups (people with disabilities, pregnant women, the elderly, victims of trafficking in human beings, victims of torture, people suffering from serious illnesses, etc.)

The People's Advocate reminds about the need to ensure access to health services for all people, without any discrimination, including for people from socially vulnerable groups. In this context, the State must take special measures to ensure effective protection by the State, namely because of their vulnerability. It is therefore recommended that the competent authorities examine the regulatory framework in the field of asylum and compulsory health insurance with a view to completing the list of state health insurance beneficiaries with persons belonging to the vulnerable groups listed in Article 21 of EU Directive 2013/33.

## **THE RIGHT TO VOTE AND THE RIGHT TO BE ELECTED**

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

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

In 2019, parliamentary elections took place in the Republic of Moldova (February 2019), general local elections simultaneously with new parliamentary elections (October 2019).

The People's Advocate monitored the election processes, the problems identified and publicized, including through the special reports of specialized NGOs, complaints and appeals submitted to the CEC.

Among the problems that were identified we highlight the impossibility of participation in elections of citizens of the diaspora due to the lack of valid identity documents; arranging a limited number of polling stations abroad, which is why not all citizens who wanted to exercise their right to vote had this possibility, even if they traveled quite long distances for this purpose.

Regarding the general local elections, according to the Final Report of the Promo-LEX Association Observation Mission, attention was drawn to the fact that the legislation still treats independent candidates unequally compared to those nominated by political parties and electoral blocs, forcing only them to collect signatures in the subscription lists. In addition, for the municipalities of Chisinau and Balti, the number of signatures requested in the subscription lists, in the opinion of the Mission, remains exaggerated.

They were submitted and some criticisms regarding the Central Electoral Commission and the courts, referring to the lack of clarity on the jurisdiction of the examination of appeals, as well as the narrow view advocated by the Central Electoral Commission on the registration of candidates for constituency commissions, which have resulted in several times being denied the right to an effective remedy, contrary to international standards.<sup>28</sup>

Some election candidates have published their own observation reports on the electoral fraud in the parliamentary elections of February 24, 2019, which states that the elections cannot be classified as free or fair.<sup>29</sup>

According to international observation missions, “the parliamentary elections of February 24, 2019 were competitive and fundamental rights were generally respected. The election campaign took place against the background of dissatisfaction with public institutions and was overshadowed by assumptions about pressure on public employees, clear indications of vote buying and misuse of state resources. Control and ownership of the media has limited the range of opinions presented to voters. Most aspects of the elections were managed in a professional and transparent manner. The voting was evaluated positively, but the electoral institutions faced

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<sup>28</sup><https://www.osce.org/ro/odhr/elections/moldova/412367?download=true>

<sup>29</sup>[https://acum.md/wp-content/uploads/2019/03/Raport\\_Fraude\\_Alegeri\\_2019\\_Blocul\\_ACUM-DA-PAS.pdf](https://acum.md/wp-content/uploads/2019/03/Raport_Fraude_Alegeri_2019_Blocul_ACUM-DA-PAS.pdf)

difficulties in processing the minutes with the voting results, due to the introduction of the new electoral system and the simultaneous conduct of the referendum”.

The People's Advocate also analyzed the Statement of Preliminary Findings and Conclusions of the ENEMO International Observation Mission for the General Local Elections of October 20, 2019, which is financially supported by the European Union, Sweden and the Kingdom of the Netherlands.

According to it, the general local elections in October 2019 took place in a calm and competitive environment in general, despite the legal deficiencies in the Electoral Code. Excessive requirements in the law for the registration of independent candidates are contrary to international standards and could raise concerns about inconsistent reasons for rejecting independent candidates, which could have affected the principle of equal opportunities.<sup>30</sup>

The provisions of the Electoral Code, challenged at the Constitutional Court by the People's Advocate<sup>31</sup>, were amended by Law no. 113 of 15.08.2019, so that in the polling stations opened abroad it was allowed to vote with the identity card and the expired passport. Also, following the amendments made by the same Law<sup>32</sup>, the proportional system on party lists for the election of deputies in parliament was restored, the ban for the electoral agitation on the day of the elections and on the day before the elections was reintroduced.

The People's Advocate appreciates the amendments made by Law 113 of 15.08.2019, which contributed to the advancement of women and young people in public life, by establishing the minimum representation quota of 40% for both sexes in the lists of candidates for parliamentary and local elections<sup>33</sup>, and the rules for financing political parties from the state budget, depending on the proportion of women and young people who have actually been elected in parliamentary or local elections.<sup>34</sup>

In the opinion of the Observation Mission of the Promo-LEX Association, the approval of the amendments to the existing legal framework during the electoral period had a negative impact on the correctness and predictability of the electoral process. This provided that the law amending the

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<sup>30</sup><http://enemo.eu/uploads/file-manager/ROMSTATEMENTOFFPRELIMINARYFINDINGSANDCONCLUSIONS-1stRound22Oct.pdf>

<sup>31</sup> Decision of the Constitutional Court no. 5 of January 14, 2019 on the Notice of the People's Advocate regarding the impossibility of voting abroad based on the identity card and the impossibility of voting abroad based on the expired passport or identity card, which was declared inadmissible by the Constitutional Court;

<sup>32</sup> Law no. 113 of 15.08.2019 for the amendment of some legislative acts.

<sup>33</sup> Article 46, para. (3) of the Electoral Code;

<sup>34</sup> Article 27 of the Law on Political Parties, no. 294-XVI of 21.12.2007;

Electoral Code was published and, respectively, entered into force during the election period, according to the calendar approved by the CEC, for the new parliamentary elections and in the immediate vicinity of the beginning of the election period for general local elections. The CEC has therefore struggled to comply with the principles of decision-making transparency and public consultation in order to adjust its regulations in line with the new amendments.

In addition, due to the amendments made to the Electoral Code within the electoral period and their application in different ways for two types of elections held on the same day, the Observation Mission of the Promo-LEX Association considers that the organization of the electoral process was complicated and accompanied by uncertainties.<sup>35</sup>

We recall that the European Commission for Democracy through Law (Venice Commission) in its Joint Opinion No. 907/2017 on the law amending and finalizing certain legislative acts (Electoral system for the election of Parliament) specified that: "Successful electoral reform is based on at least the following three elements: 1) clarity and comprehensive legislation in line with international standards; 2) adoption of legislation by broad consensus, after public consultations with all relevant parties; 3) the political commitment to fully implement the electoral legislation in good faith."<sup>36</sup>

The People's Advocate reminds that, in ruling on the importance of the right to vote in a democratic society, the European Court has emphasized that in the 21st century, in a democratic state, the right to vote must not be a privilege of certain categories of persons, but a good of the whole society, and the presumption should operate in favor of its recognition in the case of as many persons as possible (see, to that effect, *Mathieu-Mohin and Clerfayt v. Belgium*, 3 March 1987), §51; and *Hirst v. the United Kingdom* [no.2], 6 October 2006, §59). Otherwise, the democratic legitimacy of the legislature thus elected and that of the laws adopted by it would be undermined.<sup>37</sup>

However, the European Court has held that the notion of "implicit limitation" arising from Article 3 of the Additional Protocol no.1<sup>38</sup>, is of particular importance in determining the legitimacy of the aims pursued where restrictions are imposed on the rights guaranteed by that Article ( see the case of *Mathieu-Mohin and Clerfayt*, cited above, §52).

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<sup>35</sup>[https://promolex.md/wp-content/uploads/2019/12/Raport\\_ALG\\_2019\\_web.pdf](https://promolex.md/wp-content/uploads/2019/12/Raport_ALG_2019_web.pdf)

<sup>36</sup> Pct.12 from Joint Opinion on the law for amending and completing certain legislative acts (electoral system for the election of the Parliament), Adopted by the Council for Democratic Elections at its 61st meeting (Venice, 15 March 2018) and by the Venice Commission at its 114th Plenary Session (Venice, 16-17 March 2018) from 19 March 2018;

<sup>37</sup> See *Hirst* [no. 2], cited above, §62;

<sup>38</sup> The right to free choice;

The conditions to which the right to vote and to stand as a candidate in elections are subject shall not limit those rights in so far as their very essence is affected. These conditions must also meet the requirements of equality, and the means used to achieve the legitimate aim must not be disproportionate (see, for example, the *Mathieu-Mohin and Clerfayt* case, cited above, §52).

#### **RECOMMENDATIONS:**

- The State to make every effort to remove the shortcomings of which it was informed by international organizations and civil society organizations, which monitored the electoral processes conducted during 2019 in the Republic of Moldova;
- To take all necessary measures to ensure the realization of the right to vote for all citizens of the Republic of Moldova who are abroad;

## **INTIMATE, FAMILY AND PRIVATE LIFE**

Respect for privacy in 2019 was marked by the appearance in the public space of information on the violation of this right by law enforcement agencies, by abusively applying special means of investigation. According to information published in the media, the special means of investigation were used in the case of political opponents and journalists who showed an unfair attitude towards the authorities.

Although there is a decrease in the number of cases regarding the use of special investigative measures by about 17% compared to 2018, the fact that about 99% of prosecutors' actions to use special means of investigation raise serious questions about privacy and family, in accordance with human rights standards.

The right to respect for private and family life is enshrined in Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. It provides that everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or



the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

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

The Constitution of the Republic of Moldova recognizes this right, in accordance with the provisions of Article 28, and establishes that the State respects and protects intimate, family and private life.

One of the most important topics of 2019, which provoked wide-ranging discussions at the societal level, is the application of special investigative measures by law enforcement agencies, actions that involve essential interference in respecting private and family life.

According to the data of the General Prosecutor's Office, within 50,920 criminal cases under management in 2019, the prosecutors submitted to the investigating judges 4,261 requests to authorize the special investigative measures. Of these, only 38 were rejected, which means that approximately 99% of prosecutors' requests for the application of special investigative measures were met by judges.

The most frequent special measures, authorized and carried out during the criminal investigation were:

- interception and recording of communications and images - 2,812 cases (year 2018 - 3,928);
- collecting information from electronic communications service providers - 707 (year 2018 - 770);
- documentation using technical methods and means, as well as location or tracking through the global positioning system (GPS) or other technical means - 507 (year 2018 - 594);
- monitoring or control of financial transactions and access to financial information - 78 (year 2018 - 41);
- research of the domicile and / or installation in it of the devices that ensure the surveillance and audio and video recording, of the photography and filming ones - 90 (year 2018 - 148);
- home supervision by using the technical means that ensure registration - 13 (year 2018 - 26);
- detaining, researching, handing over, searching or raising postal items - 4;
- monitoring telegraphic and electronic communications connections - 12.

At the same time, under the conditions of the criminal procedural legislation, the prosecutors authorized to carry out special investigative measures in 1,586 cases, including:

- identification of the subscriber, owner or user of electronic communications systems or access points to computer systems - 473 cases;
- visual tracking - 622;
- control of the transmission of money or other extorted material values - 98;
- undercover investigation –126;
- acquisition of control - 216;
- controlled delivery - 46;
- research of objects and documents - 3;
- sample collection for comparative research - 2.

In 2019, the share of special investigative measures in the criminal prosecution activity was about 11.4% (5,809 measures in 50,920 criminal cases under management), which is a decrease of about 17%. This decrease is explained by the reduction of the number of interceptions of communications and images by 1,116 cases (2,812 in 2019, compared to 3,928 in 2018).

The General Prosecutor's Office mentions that, in addition to the attributions of disposition in the special investigation activity, the prosecutor has the task of monitoring and controlling the observance of the legislation in this field. However, when verifying the conduct of the criminal prosecution, there were established deviations from the law, especially in the special investigation activity compartment.

Therefore, five criminal cases and three criminal proceedings were initiated for the commission of acts of illegal collection of information protected by law, without the consent of the person, with the use of special technical means intended to obtain hidden information. Likewise, it was found the violation of the right to the secrecy of telephone conversations in violation of the law, with the use of the service situation.

Following these findings, there are carried out criminal prosecution actions against five investigating officers, three prosecutors and a head of subdivision within the National Investigation Inspectorate of the GPI of the Ministry of Internal Affairs.

At the same time, 13 disciplinary proceedings were initiated against seven prosecutors, which were submitted for examination to the Disciplinary Board of the Superior Council of Prosecutors.

Regarding public policies in the field of respect for private and family life, the People's Advocate identified a problem that could generate the violation of this right, following the amendments made on 19.07.2018 by Law no.143<sup>39</sup>, adopted in the context of the application of the Law on data exchange and interoperability. By Law no. 143 the paragraph (5) of Art. 5 of Law no. 133 on personal data was completed with letter g), which establishes that *the consent of the subject of personal data is not required in cases where the processing is necessary for the exchange of data under the legislation in force on data exchange and interoperability*. Respectively, starting with the date of entry into force of this law (10.11.2018) all public institutions and authorities are obliged to provide access to the registers, databases, information systems and evidence systems they manage, connecting them to the interoperability platform, with the exception of those with responsibilities in the field of supervision of entities in the financial sector, national defense, state security, the maintenance of public order, combating crime, preventing and combating corruption, insofar as the special legislation applies.

It should be mentioned that during the procedure for approving the draft law, the National Center for Personal Data Protection did not support the proposals regarding the amendment and completion of Art.5 and Art.15 of the Law on personal data protection, in order to avoid the risk of information leakage, illegal access to personal data, and not to make assumptions to the data subject about the existence of an uncontrolled access to personal data concerning him/her.

The People's Advocate proposed the initiation of the procedure for amending Law no. 133 of 08.07.2011 on personal data protection in order to exclude the provisions that may generate the violation of the right to intimate, private and family life.

The State Chancellery supported<sup>40</sup> the proposal submitted by the People's Advocate, but so far no draft amendment to the provisions in question has been drawn up.

The jurisprudence of the ECHR has examined numerous situations in which data protection issues have been addressed, in particular situations concerning the interception of communications<sup>41</sup>, various forms of surveillance<sup>42</sup> and protection against the storage of personal data by public

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<sup>39</sup> Law no. 143 of 19.07.2018 for the amendment and completion of some legislative acts, Art.IX;

<sup>40</sup> Letter of the State Chancellery no. 31-16-6075 of 13 09.2019;

<sup>41</sup> See, for example, ECHR Judgment of 2 August 1984 in the case of *Malone v. The United Kingdom*, no. 8691/79; The ECHR judgment of 3 April 2007 in the case of *Copland v. The United Kingdom*, no. 62617/00;

<sup>42</sup> See, for example, ECHR judgment of 6 September 1978 in the case of *Klass and Others v. Germany*, no. 5029/71; ECHR judgment of 2 September 2010 in the case of *Uzun v. Germany*, no. 35623/05;

authorities<sup>43</sup>. It clarified that Article 8 of the European Convention on Human Rights not only obliges states not to take any action that could violate the right under the Convention, but also stipulates that they are subject, in certain circumstances, to positive obligations to actively ensure effective respect for private and family life<sup>44</sup>.

The People's Advocate draws attention to the fact that the right to respect for privacy is a very sensitive one. For these reasons, the request for the application of special investigative measures and the approval of these requests must meet all the criteria provided by the Constitution of the Republic of Moldova and the international human rights treaties to which the country is a party.

### **RECOMMENDATIONS:**

- The People's Advocate recommends the Superior Council of Magistracy to issue a circular to all courts reminding them of the conditions under which the requests for the application of special investigative measures may be approved, from the perspective of the fulfillment by the state of its obligations regarding the respect for private and family life, in accordance with human rights standards;
- The People's Advocate recommends that the Superior Council of Prosecutors take all measures, so that the prosecutors empowered within the special investigation activity, at the request of the courts to authorize the special investigation measures, to ensure the legality of the requests and respect for private and family life, in accordance with the human rights standards assumed by the state.

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<sup>43</sup> See, for example, ECHR judgment of 26 March 1987 in the case of *Leander v. Sweden*, no. 9248/81; ECHR judgment of 4 December 2008 in the case of *S. and Marper v. The United Kingdom* no. 30562/04 and no. 30566/04;

<sup>44</sup> See, for example, ECHR judgment of 17 July 2008, *I v. Finland*, no. 20511/03; ECHR judgment of 2 December 2008 in the case of *K.U. v. Finland*, no. 2872/02;

## RIGHT TO WORK

The Constitution of the Republic of Moldova establishes in the provisions of Article 43 that “(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. (2) Employees have the right to labour protection. The protection measures concern the safety and hygiene of work, the work regime of women and young people, the establishment of a minimum wage on the economy, the weekly rest, the paid rest leave, the performance of work in difficult conditions, as well as other specific situations. (3) The duration of the working week is at most 40 hours. 4. The right to bargain in labour matters and the binding nature of collective agreements shall be guaranteed. ” At the same time, the right to work and labour protection is guaranteed by Article 23 of the Universal Declaration of Human Rights, Articles 6 and 7 of the Covenant on Economic, Social and Cultural Rights, Article 27 of the UN Convention on the Rights of Persons with Disabilities.

In 2019, there were made a series of amendments to the labour code. Among the most important we could mention that, starting with 2019, during paternity leave, the employee benefits from a paternity allowance that cannot be lower than the average monthly income insured for that period and which is paid from the state social insurance budget.<sup>45</sup>

As of 01.01.2019, the mechanism regarding workbooks is no longer applicable, but it is necessary to create and manage an *electronic Register of employees*, the concept of which has been placed for public consultation.<sup>46</sup>

In 2018 was elaborated the *Law no.105 of 14.06.2018 on promotion of employment and unemployment insurance*, the effects of which were more felt in 2019. A relatively new aspect are the *pre-dismissal services*<sup>47</sup>, which involve a set of measures offered to persons notified in connection with the liquidation of the unit, the reduction of the number or the staff status.

We could also mention about the new regulations<sup>48</sup> aimed at employment outside the Republic of Moldova. Given the social realities in terms of emigration for work, the regulations in question come to offer a certain guarantee of respect for the right to fair working conditions.

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<sup>45</sup> Art.124<sup>1</sup> of the Labour Code;

<sup>46</sup><https://particip.gov.md/proiectview.php?l=ro&idd=7022>

<sup>47</sup>Art.28 of Law no. 105 of 14.06.2018 on promotion of employment and unemployment insurance;

<sup>48</sup>Chapter VII of Law no. 105 of 14.06.2018 on promotion of employment and unemployment insurance;

Starting with December 1, 2018, came into force *Law no. 270 of 23.11.2018 on the unitary pay system in the budget sector*, whose concept implies a unique character, which applies to all categories of employees in the budget sector.

In the process of implementing *Law no. 270 of 23.11.2018 on the unitary pay system in the budget sector*, the People's Advocate was notified about several problematic aspects and inequalities established in the remuneration of employees in various fields, such as education, the penitentiary system, including within the People's Advocate Office. Thus, following the addressing of some primary school teachers regarding the discriminatory provisions for establishing basic salaries for teachers in pre-university education, it was recommended to the Ministry of Finance and the Ministry of Education, Culture and Research to initiate the procedure for operating the amendments in Annex no. 7, table 1 of this Law to ensure compliance with the principle of non-discrimination in the realization of the right to work for all teachers. Respectively, by Law no.175 of 19.12.2019 (in force since January 1, 2020) amending Law no.270 / 2018 by which they were removed some inequalities in the pay level for some categories of employees, including those in the field of education, from penitentiary and defense institutions, etc.

The People's Advocate also considers it necessary to revise the way of establishing the reference value, so as to correspond to the proposed concept of this salary system, which presupposed a unique character, which applies to all categories of employees in the budgetary sector. In the *State Budget Law for 2019*<sup>49</sup> different reference values were established for various categories of employees. From the content of the provisions in question it is not clear the justification of the derogations established for certain categories of employees, which differ from 1000 MDL-2600 MDL.

There is also a large gap between the salaries of leading civil servants and executive civil servants within the same entity. In some cases the salary for an executive position was about 50% of the salary for the leading position (compared to the previous legislation the difference was about 25%). The calculation formula allows the continuous increase of the salary difference between the leading civil servants and the executive civil servants within the same entity.

Another problem identified by the People's Advocate following the examination of a collective claim <sup>50</sup> refers to the exclusion of certain professions from the list of those considered to be working

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<sup>49</sup>Art.10 paragraph (2) of the State Budget Law for 2019;

<sup>50</sup> The applicants worked for a milk production Association, as machinists in ammonia refrigeration installations (code 821103);

under special conditions in order to benefit from old-age pensions in advantageous conditions, in accordance with Art. (21) of Law no. 156 of 14.10.1998 on the public pension system.

In the process of examining this issue and the discussions held with the representatives of the National Trade Union Confederation of Moldova, it was established that there are several occupations / professions that are not included in this list<sup>51</sup>, but which could meet harmful and very difficult working conditions, according to the *Classifier of Occupations in the Republic of Moldova*<sup>52</sup>.

It was also found that the issue of excluding certain professions from the list of those considered to be working under special conditions was also examined by the Council for Preventing and Eliminating Discrimination and Ensuring Equality<sup>53</sup>, which described this as indirect discrimination.

To remedy the situation, the People's Advocate proposed to the Minister of Health, Labour and Social Protection the creation of a working group, involving representatives of the National Confederation of Employers of the Republic of Moldova, the National Trade Union Confederation of Moldova, and other relevant authorities to establish a methodology and mechanism for assessing working conditions at the employer in order to place jobs in special conditions. Thus, based on the respective assessment methodology and mechanism, to revise the List of jobs falling under special conditions, approved by Government Decision no. 256 of 27.03.2018, on the basis of which an old-age pension is granted under advantageous conditions.

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<sup>51</sup> Government Decision no. 256 of 27.03.2018 on the approval of the List of jobs under special conditions, based on which an old-age pension is granted under advantageous conditions, as well as the Instruction on how to apply the List and confirm the special internship;

<sup>52</sup> Classifier of occupations in the Republic of Moldova, approved by the Order of the Ministry of Labour, Social Protection and Family no. 22 of 03.03.2014;

<sup>53</sup> Decision of the Council for Preventing and Eliminating Discrimination and Ensuring Equality no. 119/17 of 30.11.2017;

## RIGHT TO HEALTH CARE

As a result of the studies and analyzes carried out by the People's Advocate Office, it is found that the situation in the field of respecting the right to health care has not registered positive developments. The situation remains equally serious and requires increased attention from the state. The field of health requires urgent and multisectoral intervention, from the creation of conditions for the provision of medical services to an appropriate level of quality for patients, and to the creation of adequate conditions for the work of staff working in the field of health.

Guaranteeing the right to health care, through the provisions of Article 36, the Constitution establishes obligations for the state and imposes on the legislative authorities the mission to regulate the main areas and aspects of the realization of the right in question.

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

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

When the Republic of Moldova ratified the Convention on Human Rights and Biomedicine<sup>54</sup>, it once again undertook to "take appropriate measures to ensure equitable access to good quality health services".

It is also worth mentioning the obligation of the state to ensure the right to the highest health standard, which stipulates that all health services must be: *available, accessible, acceptable and qualitative*.

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

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<sup>54</sup> Law on the ratification of the Additional Protocol to the Convention on Human Rights and Biomedicine, which targets biomedical research no. 271 of 30.11.2012;



Being declared one of the priorities of his activity for the following years, the monitoring of the right to health care was carried out by the People's Advocate in 2019 as well.

During 2019, the People's Advocate Office examined about **47 claims** in which there was invoked the violation of the right to health care.

It is unfortunate to note that the beneficiaries of health services continued to invoke in the reference year the violation of patients' rights regarding accessibility, compliance with quality standards, avoidance of unjustified suffering and pain, and personalized treatment.

Likewise, they were found and other aspects regarding the violation of human rights in the field of health care, especially regarding non-compliance with the condition of obtaining the informed consent of the patient, non-compliance with professional ethics by doctors, lack of correct information, poor doctor-patient communication, lack of discretion during the provision of medical care (breach of confidentiality), access to specialized treatment, low quality of medical services, limited access to quality standards, ensuring expensive treatments, lack of legal framework on malpractice, etc.

As it is known from the previous reports on the observance of human rights in the Republic of Moldova<sup>55</sup>, the People's Advocate warned the authorities about the irregularities detected when providing medical assistance and came up with some recommendations in this regard, including:

1. Development of health policies appropriate to rare diseases and initiation of control over financial resources for the early diagnosis of rare diseases.
2. Development of a methodology for rehabilitation and resocialization of patients diagnosed with rare disease.
3. The elaboration by medical institutions of institutional policies and procedures for the observance of the patient's rights.
4. Carrying out the periodic control regarding the observance / implementation by the medical staff and the managers of the public medical-sanitary institutions of the normative acts in force in the field of health (laws, orders, regulations, clinical protocols).
5. Elaboration of an efficient normative framework for investigating and solving cases of medical errors and malpractice.

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<sup>55</sup> <http://ombudsman.md/rapoarte/anuale/>

6. Organizing the initial and continuous trainings of the medical workers in the field of medical legislation and human rights, in order to ensure the observance of the patient's rights within the accomplishment of the medical care.

7. Specialists need training in communication, and patients need to be educated to a higher degree of responsibility for their own health.

8. Reviewing state policies in the field in the light of the human rights approach.

9. Implementation of recommendations of international and regional bodies for the protection of human rights.

Unfortunately, we found that these recommendations have not been fully implemented so far. Or, from the official answer provided by the MHLSP, it results that regarding the rare diseases, at the moment the act was established by a working group, composed of representatives on the fields of competence, which will elaborate the National Program for Rare Disease Control. Currently, the MHLSP provides the diagnosis and treatment from the state budget of a limited number of rare diseases, the annual amounts for this area are increasing.

For adults with disabilities caused by rare diseases, the state provides access to rehabilitation and resocialization services as well as for all people with disabilities.

With regard to the rehabilitation of children with rare diseases that have affected the nervous system, they are offered rehabilitation treatment at the Republican Rehabilitation Center for children up to 3 years old, being included in early intervention programs.

In terms of training, the Ombudsman appreciates the fact that within the Nicolae Testemitanu State University of Medicine and Pharmacy, the Center of Excellence “Raisa Pacalo”, the Medical Colleges and the Center for Continuing Medical Education of the medical and pharmaceutical staff are included topics such as: medical law; patients' access to health care; informed patient consent; confidentiality of personal health data.

Regarding the procedure for elaborating the normative framework for investigating and solving cases of medical errors and malpractice, MHLSP as a central specialized body of public administration, whose mission is to analyze the situation and problems in the field, to develop effective public policies, to monitor the quality of policies and normative acts, initiated at the moment the elaboration of the draft law on medical malpractice.

Even if some aspects regarding medical malpractice are currently stipulated only partially in Article 213 of the Criminal Code, and the civil legislation of the Republic of Moldova allows, to

some extent, the recovery of material and moral damage caused to the patient, however, this is a very difficult procedure.

For this reason, the law on medical malpractice should include provisions to protect the activity of doctors in their work, but also the degree of responsibility of the medical institution for the quality of investigations performed, the equipment used and the conditions.

Thus, the existence of such a law would contribute to the protection of patients' rights, and on the other hand, the law will protect doctors, because not all cases of medical errors occur through the direct fault of the doctor.

As mentioned above, one of the Ombudsman's priorities for the coming years is to monitor compliance with the right to health care. For this reason, in 2019, the People's Advocate Office prepared *two thematic reports, which reflect the situation in the field of healthcare*.<sup>56</sup>

One of these is the ***Report on Assessing the Level of Assurance of the Patient's Right to the Safety and Quality of Medical Equipment***. The Report reflects the identified systemic problems faced by medical institutions regarding the maintenance of medical equipment, the quality of medical devices which, in turn, affect the quality of the medical care and patient safety.

Data from the assessments made show that the technological potential of medical devices within some public medical-sanitary institutions is morally and physically exceeded, with major deficiencies, and which presents one of the root causes that determine the quality of medical care.

The findings show that:

- The health system does not have sufficient institutional and functional capacities for the full implementation of the Law no.102 of 09.06.2017 regarding medical devices;
- The health system does not have a strategic document in the field of medical device management. Some devices in the endowment of medical institutions have a lifespan of up to 40 years;
- Many equipments do not have technical passports, which makes it impossible to monitor their operation. The lack of a centralized system for recording and monitoring the equipment of medical institutions has a negative impact on the quality of medical services;
- Many equipments in the diagnostic and surgical departments are with excessive degree of wear and without metrological verification performed. For example, of the total number of Roentgen

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<sup>56</sup><http://ombudsman.md/wp-content/uploads/2019/04/RAPORT-MEDICINA-RED.pdf>  
[http://ombudsman.md/wp-content/uploads/2020/01/RAPORT\\_PALIATIVE.pdf](http://ombudsman.md/wp-content/uploads/2020/01/RAPORT_PALIATIVE.pdf)

devices reported by institutions at the time of evaluation, 65% (34 devices) have a wear rate of 75 to 100%, indicating a risk of injury to patients and staff working with these devices;

- The degree of endowment of the Emergency Response Units (ERU) type III and Resuscitation and Intensive Care (RIC) of the institutions with ERU type III at national level constitutes on average 67%, which does not correspond to the approved norms. About a third of the hospital institutions report a shortage of necessary equipment, mandatory according to the ERU endowment standard. Thus, the low quality of medical services can generate problems regarding the impossibility of establishing the optimal and timely treatment, which can subsequently have a negative effect on the patient's health, and can favor the evolution of diseases;

- There is an insufficient number of equipment needed in emergencies for life. Most institutions (80%) reported an insufficient number of monitors to monitor vital parameters.

The identified problems allowed us to formulate a series of recommendations that could improve the state of affairs in the field of medical device management to respect the patient's right to safety and the quality of the medical care.

On October 11, the People's Advocate Office presented another Report, which is a complex assessment of the real situation, following the signing of the World Health Assembly Resolution. We refer to the strengthening of palliative care, as a component of integrated lifelong treatments.

***The Report on the implementation by the Republic of Moldova of the Resolution on strengthening the palliative care, as a component of integrated lifelong treatments*** was prepared with the financial support of the Public Health Department of the Soros Foundation-Moldova.

The study identified a high risk of human rights violations, due to limited access and insufficient palliative care services at all levels of care. The report shows that palliative care in the Republic of Moldova is insufficient and fragmentedly developed, patients in need of palliative care have limited access to palliative care services.

The study also comes with the following conclusions:

- there are barriers in the management of patients pain palliatively, especially at the level of primary care;
- opioid drugs are provided without proper planning based on real needs;
- fragmentary approach in providing palliative care due to the lack of strategic planning for organizing and financing palliative care services;

- mostly, palliative care in the Republic of Moldova is interpreted primarily in the context of care provided to oncological patients, and patients with non-oncological diseases, especially children, have extremely limited access to palliative care;

- palliative care is placed only under the responsibility of medical care, other sectors being not at all or very weakly involved (social and psychological care, clergy, volunteers, etc.);

- there are serious gaps in the process of financing palliative care services;

- there are a small number of palliative care providers in the Republic of Moldova, and the services for which they are contracted by the NHIC are underfunded;

- conditions not in line with the national standard of palliative care in PMSIs providing hospital palliative care. There were detected cases of serious violation of human dignity of the patient in palliative care provision;

- acute shortage of trained staff to provide adequate palliative care services at all levels of healthcare, both for higher education staff and for secondary and lower medical staff;

- there are no training programs in palliative care for lower medical staff and specialists in non-medical fields (social care, psychology, clergy, etc.). The training program for medical staff does not cover pediatric palliative care;

- there are no official data on the number of people in need of palliative care, the number of those who have received palliative care, the number of people who have been adequately controlled for pain and the number of those who need such services, the number of beds for palliative care and the database of current palliative care providers.

- the study attests to the lack of intra- and inter-sectoral communication (social, community assistance) regarding the assistance and evidence of the patient in palliation. There is no concept about the pathway of the pediatric patient who needs palliative care.

The problems identified during the year, both from the claims received by the PAO and from the studies developed, allowed us to formulate a series of recommendations that could improve the state of affairs in the field of medicine, in order to respect patients' rights to health.

At the end of 2019, in order to create attractive conditions for the activity of family doctors in rural areas, there have been made amendments in the regulatory framework according to which from January 1, 2020 were increased single allowances for young specialists graduates of postgraduate education and medical technical vocational education, who have completed their studies on a contract

basis or at the expense of the state budget and who will be employed on the basis of the allocation issued by the Ministry of Health, Labour and Social Protection<sup>57</sup>.

One of the issues addressed by the People's Advocate in 2018 refers to the citizens of the Republic of Moldova who receive pensions abroad, but cannot benefit from the compulsory health insurance premium free of charge due to the lack of normative regulations in *Law no. 1585/1998 on compulsory health insurance*. The Ministry of Health, Labour and Social Protection<sup>58</sup> informed the Ombudsman about the availability of examining the opportunity to amend the legislation to remedy the legislative deficiency with regard to these categories of persons, but so far no amendments have been made to the relevant regulatory framework.

At the beginning of 2020, a group of deputies<sup>59</sup> submitted as a legislative initiative the draft law amending Article 4 of *Law no. 1585/1998 on compulsory health insurance*. Through the targeted draft law it is proposed to amend the legislation in order to obtain by the citizens of the Republic of Moldova, who benefit from a pension from another state, medical care according to the Single Program of compulsory health insurance.

Also, the People's Advocate considers that the list of persons insured by the Government<sup>60</sup> should include uninsured persons, who take care of a child up to the age of 2 years old. The People's Advocate in his proposal<sup>61</sup> submitted to the Ministry of Health, Labour and Social Protection proposed to examine the opportunity of inclusion in Art. 4 paragraph (4) of Law no. 1585 of 27.02.1998 on compulsory health insurance of *uninsured persons, who care for a child up to the age of 2 years old*, in order for them to benefit from free medical care, according to the Single Program of compulsory health insurance.

In a much more critical situation are the lonely people (uninsured), who take care of the child until the age of 2 years old. In cases where they benefit from an allowance of 640 MDL / per month<sup>62</sup> with which they have to survive with the child, it is easy to understand that such persons do not have a real possibility to pay the compulsory health insurance premium.

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<sup>57</sup>Art.11 of Law no. 411/1995 on health care;

<sup>58</sup> Letter from the Ministry of Health, Labor and Social Protection 01-5696 of 24.08.2018;

<sup>59</sup><file:///D:/EU%20doc/EU/Activitate/pentru%20control/lucru%20cu%20Sveta/Raport%20annual%202019/medical/33.2020.ro.pdf>;

<sup>60</sup> Art.4 paragraph (4) of Law no. 1585/1998 on compulsory health insurance is made from the state budget account;

<sup>61</sup> Letter of the People's Advocate no. 04-2 / 23 of 11.11.2019;

<sup>62</sup> Annex no. 2 of the Government Decision no. 1478 of 15.11.2002 on allowances for families with children;

Moreover, the European Committee of Social Rights pointed out that the situation of the Republic of Moldova is not in accordance with Article 13 §1 of the European Social Charter, because the level of social assistance (through social payments) for lonely people without resources, including the elderly is inadequate, and the right to health care is not guaranteed to all people deprived of financial resources.<sup>63</sup>

The Ministry of Health, Labour and Social Protection responded that “the inclusion in the list of categories of persons insured by the Government of uninsured persons caring for a child up to 2 years old, involves a complex and staged approach of reviewing the regulatory framework in the field... Any initiative to extend the categories of insured persons at the expense of the State shall be identified as the financial coverage of this initiative.”<sup>64</sup>.

The People's Advocate does not consider the arguments presented in the context of ensuring a fundamental human right as being plausible and recommends to the Government to identify the necessary resources for the inclusion of these categories of persons in the list of those insured by the Government.

## **RECOMMENDATIONS:**

- Development of health policies appropriate to rare diseases with the initiation of control over financial resources, for the early diagnosis of rare diseases.
- Development of an effective regulatory framework for investigating and solving cases of medical errors and malpractice.
- Revision by the National Council for Evaluation and Accreditation in Health of the criteria for evaluation and accreditation of medical-sanitary institutions in terms of respect for human rights.
- Organizing the initial and continuous trainings of the medical workers in the field of medical legislation and human rights in order to ensure the observance of the patient's rights within the accomplishment of the medical care;
- The management of medical devices must become a priority in the state health policy, and a coherent policy in this field can contribute to improving the cost / effectiveness ratio

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<sup>63</sup> Conclusions relating to articles from the thematic group „Health, social security and social protection”, European Social Charter, European Committee of Social Rights Conclusions 2017 Republic of Moldova, January 2018, page 34-36 - [https://www.ecoi.net/en/file/local/1425569/1226\\_1519804343\\_cr-2017-mda-eng.pdf](https://www.ecoi.net/en/file/local/1425569/1226_1519804343_cr-2017-mda-eng.pdf);

<sup>64</sup> Letter of the Ministry of Health, Labour and Social Protection no. 17/155 of 14.01.2020;

of using advanced medical technologies, increasing patient safety and last but not least, increasing the quality of the medical care. It is necessary to develop a strategic document in the field of management of medical devices and tools for monitoring their implementation.

- Elaboration of a Centralized Plan for planning the procurement of equipment in hospitals, according to the needs related to the identification of financial resources.
- Elaboration of a motivational policy to attract bioengineers for employment in PMSI.
- Obliging the managers of the hospital medical institutions to pass certified trainings regarding the management of the medical devices and the mandatory procedures necessary in the institution for this.
- Development of a procedure for a strict monitoring of the process of organizing the maintenance of medical equipment in medical institutions in the country. Identifying possibilities for assistance offered to institutions in districts, where it is difficult to hire a bioengineering specialist at the moment.
- Initiation and support of an extensive process of settlement of non-compliant devices, which do not have metrological verification in medical institutions in the country.
- Declaring palliative care as a priority in the Government's work program, with the initiation of concrete actions to ensure unlimited access to all patients with terminal or life-limiting illnesses and their families to specialized palliative care services that meet the needs of patients.
- Take the necessary steps to accelerate the implementation of the commitments made at the 67th World Health Assembly on strengthening palliative care as a component of integrated lifelong treatment.
- The Ministry of Health, Labour and Social Protection to develop / adopt a public policy document / strategy on the development of palliative care services and their integration into the health system of the Republic of Moldova, with the elaboration of an Action Plan containing, actors responsible for the planned measures, adequate financial resources, with the establishment of indicators for monitoring and evaluating the implementation of the plan and budgets.
- Revision of the existing normative framework regarding the organization of palliative care services (National Palliative Care Standards, national clinical protocols, etc.) to ensure a multisectoral approach, according to international recommendations, so as to ensure their



integration in both the health system and in that of social assistance and continuous intra- and inter-sectoral communication with the exclusion of the limits established per / patient / year.

- Creating a specialized structure at national and territorial level, which could be financed both from the NHIC funds and from the funds allocated for the social field, with the direct involvement of the local public administration. It will have a database disaggregated by age, gender, type of disease, etc., providing relevant information on the real needs of the population (children, adults) for palliative care, for the strategic planning of palliative services, including financial, medication and supplies.
- Development and support of hospice type institutions, including pediatric ones, according to the international recommendations with the identification of their financing mechanism.
- Development and support of a separate pediatric institution / hospital for pediatric palliative care for children with oncological and non-oncological diseases with adequate training of specialized staff, both medical and non-medical.
- Revision of the regulatory framework in the field of preservation, record and release of opioid analgesics, to ensure respect for the patient's right to avoid suffering by removing restrictive barriers which prevent access to special regimen medicines.

## **RIGHT TO SOCIAL ASSISTANCE AND PROTECTION**

During 2019, the field of social assistance and protection experienced some positive developments in terms of improving the normative framework and increasing social insurance benefits and social benefits, which corresponds to the principle of progressive realization of social and economic rights, according to international standards. At the same time, despite certain increases, the level of social benefits, correlated to the value of the subsistence minimum, continues to be much below its level. Social services also remain underdeveloped and underfunded by the state, not being able to cover the basic needs of vulnerable people.

The Constitution of the Republic of Moldova enshrines this right in the provisions of Article 47: *“(1) The State is obliged to take measures so that everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing*

*and medical care and necessary social services. (2) Citizens have the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond their control.”*

The right to social assistance and protection is enshrined in Article 22 of the Universal Declaration of Human Rights, Article 9 and Article 11 of the Covenant on Social, Economic and Cultural Rights, Article 28 of the UN Convention on the Rights of Persons with Disabilities.

The fundamental right to social assistance and protection is also provided by the **Sustainable Development Goal no. 1 - No poverty**: Eradicating poverty in all its forms globally. Targets for this goal include: eradicating extreme poverty, implementing appropriate social protection measures for all and protecting all the poor and vulnerable, ensuring that all men and women, especially the poor and vulnerable, have equal rights to economic resources, and access to basic services.

In previous reports, the Ombudsman recommended that the authorities properly implement international recommendations; to ensure a level of social security benefits (old-age pension, unemployment benefit, allowance for temporary incapacity for work due to common illness or accidents unrelated to work) so that their minimum amount is equivalent, at least with the established minimum subsistence value; to examine the advisability of ratifying Article 23 on the right of older people to social protection and Article 30 on the right to protection against poverty and social exclusion in the content of the Revised European Social Charter.

At the same time, the Republic of Moldova received a series of recommendations from the international human rights organizations. We refer to the recommendations of the UN Committee on Economic, Social and Cultural Rights, and the recommendations of the Committee on the Rights of Persons with Disabilities.

Of the 45 claims addressed to the People's Advocate Office in the field of social assistance and protection in 2019, the following aspects were invoked: failure to ensure a decent living, limited pensions and social services, the small amount of allowances, etc.

A large part of the claims addressed to the People's Advocate were from the elderly, people with disabilities or their relatives, who invoked the impossibility to benefit from the social service "Personal assistance"<sup>65</sup>.

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<sup>65</sup>According to the provisions of the Government Decision no. 314 of 23.05.2012 for the approval of the Framework Regulation on the organization and functioning of the Social Service "Personal Assistance" and the Minimum Quality Standards;

According to the official data provided by the Ministry of Health, Labour and Social Protection, it is only known that at the end of 2019, 3591 people were working as personal assistants. No data were provided on the number of claims submitted in this regard to the social assistance departments.

At the same time, it is found that people with severe disabilities, beneficiaries of a maintenance allowance, are put in the situation of choosing between allowance and admission to social service with the remuneration of the person who provides them support. We mention that the allowances established in accordance with the *Law no. 499 of 14.07.1999 on State Social Allowances for some categories of citizens* are paid from the state budget, through the social insurance budget, and the financing of the social service "Personal assistance" is made from the budget of local public authorities.

This problem was also mentioned by the People's Advocate in the Thematic Report "Integration of people with severe disabilities into the community: the impact of the social service "Personal Assistance", developed in 2017. Unfortunately, no measures have been taken to identify a viable solution for this state of affairs.

In the context of the recommendations of the People's Advocate from the report for 2018 there were attested some progress in improving the regulatory framework, especially regarding social benefits for some categories of people.

The approval of the *Regulation on the organization and functioning of the system of initial and continuous training of social assistance staff*<sup>66</sup> is a first step in increasing the professional capacity of staff in the social assistance system to ensure the quality of services provided and meet the needs of the beneficiaries. *At the same time, the People's Advocate recommends to the Ministry of Health, Labour and Social Protection / National Social Assistance Agency the mandatory inclusion in the initial and continuous training programs of training courses in the field of human rights.*

During the reference period, there have been made increases to the monthly social state allowances for the categories of persons provided for in *Law no. 121 of 03.05.2001 on Additional Social Protection of Certain Categories of Population*; allowances for people with severe, accentuated and moderate disabilities, for the elderly established by *Law no. 499 of 14.07.1999 on State Social Allowances for some categories of citizens*. The respective increases came into force

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<sup>66</sup> Government Decision no. 38 of 30.01.2019 on the approval of the Regulation on the organization and functioning of the system of initial and continuous training of personnel in the field of social assistance;

starting with January 1, 2020. Also, the amount of aid for the cold period of the year, which is granted to disadvantaged families, was increased from 350 to 500 MDL.<sup>67</sup>.

The People's Advocate appreciates the improvement of the normative framework in the part related to the process of reviewing the old-age pensions established until January 1, 2019, which is carried out in relation to the cumulative contribution period after the realization of the right to old-age pension<sup>68</sup>.

Also, following the amendments made in Article 13 of *Law no. 156/1998 on the public pension system*<sup>69</sup>, starting with 2020, on October 1, there will be indexed pensions whose amount on that date does not exceed the subsistence minimum for persons over the retirement age, calculated for the first semester of the current year.

However, despite the effort made, the amount of the minimum pension for retirement, which, on April 1, 2019, amounted to 1079.33 MDL<sup>70</sup>, is below the minimum subsistence level established for retirees (in the first semester 2019 - 1726.5 MDL<sup>71</sup>) and covers only 62.5% of it.

Another positive aspect is related to the amendment to *Law no. 156 of 14.10.1998 on the public pension system*, which consists in excluding the domicile from the conditions for establishing the pension. However, this does not ensure the transfer of the pension to the person's state of residence. The lack of a pension application procedure other than the one established by law (filing the application with the territorial social insurance body from the last place of residence in the Republic of Moldova) and the lack of a transfer mechanism on the territory of the state of residence does not exempt the right holder / the beneficiary of the need to travel to the Republic of Moldova, in order to submit the application for establishing the right or the extension of the pension payment and generates additional related expenses.

It should also be noted that the condition of domicile was not excluded from the eligibility criteria to benefit from the child raising allowance until reaching the age of 3 years old (Art. 28 para. (1) letter c) of Law 289 / 2004), as recommended by the European Committee of Social Rights of the Council of Europe.<sup>72</sup> The submission of the domicile criterion is unjustified, in the conditions in

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<sup>67</sup> Decision of the Government of the Republic of Moldova no. 578 of 27.11.2019, in force since 01.11.2019;

<sup>68</sup> Law no. 168 of 06.12.2019 for the amendment of Article 33 of Law no. 156/1998 on the public pension system;

<sup>69</sup> Law no. 162 of 06.12.2019 for the amendment of some legislative acts, in force since 01.01.2020;

<sup>70</sup> Decision of the Government of the Republic of Moldova no. 186 of 15.03.2019 on the indexation of social insurance benefits and state social benefits;

<sup>71</sup> <https://statistica.gov.md/newsview.php?l=ro&idc=168&id=6466>

<sup>72</sup> [https://www.ecoi.net/en/file/local/1425569/1226\\_1519804343\\_cr-2017-mda-eng.pdf](https://www.ecoi.net/en/file/local/1425569/1226_1519804343_cr-2017-mda-eng.pdf)

which the parent obtained the right to indemnity meeting the condition of paying the social insurance contributions for the insurance period established in the legislation. Thus, a legislative vacuum is created for the situation, when the parent establishes his domicile in another state, but has the right of permanent or temporary residence on the territory of the Republic of Moldova, a status that, in fact, does not affect his rights and obligations as an employee, therefore, an insured person in the Republic of Moldova.

Following the recommendation of the People's Advocate, starting with January 1, 2020, the rehabilitated victims of political repression during the years 1917-1990 benefit monthly from the state allowance (500 MDL), regardless of whether or not they are beneficiaries of pensions or social allowances<sup>73</sup>.

The People's Advocate appreciates the State's effort in restoring the right to social protection of victims of political repression, but emphasizes that the issue of recognizing children born in places of repression as victims of political repression remains unresolved.

It should be mentioned that the People's Advocate proposed to remedy this problem by making amendments in the provisions of Art.2 of *Law no.1225 of 8 December 1992 on rehabilitation of the victims of political repression*, as well as Art.1 of *Law no.296 of 23 November 1994 for the interpretation of some provisions of the law on rehabilitation of victims of political repression*, so as to include in the category of victims of political repression all persons who have suffered as a result of repression, without any discrimination.

With regard to this issue, the Council for Preventing and Eliminating Discrimination and Ensuring Equality<sup>74</sup>, also stated that all children born in places of repression or on the way to them, regardless of whether they come from a marriage concluded until repression, or from a marriage concluded during repressions, or the children from outside the marriage, are in the same situation - they are the children of persons who have been deprived of their liberty, exiled, deported, sent to forced labour.

I reiterate that, although the State enjoys a wide margin of appreciation in the field of social security, it is nevertheless obliged to ensure equal and fair treatment for all categories of people who have suffered as a result of political repression.

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<sup>73</sup> Law no. 121 of 03.05.2001 on Additional Social Protection of Certain Categories of Population, Article 1.

<sup>74</sup> Consultative Opinion of January 22, 2019;

Another unresolved issue identified by the People's Advocate refers to the provisions of Art. 6 of *Law no. 289 of 22.07.2004 on temporary incapacity for work payments and other social insurance benefits*, according to which the insured person can benefit from the right to social insurance benefits only if he/she confirms a contribution period of at least 9 months in the last 24 months preceding the date of occurrence of the insured risk.

In such circumstances, the People's Advocate considers unjustified the requirements established in Law no. 289/2004, considering that in case of occurrence of the insured risk the person remains without sources of existence, in the conditions in which the salary is the only source of existence. Moreover, the situation of temporary incapacity involves additional treatment costs.

At the same time, it should be mentioned that, as a result of the reform of the Police activity, civil servants with special status also fall under the incidence of this law, who are daily exposed to an increased risk of getting sick by virtue of their functional attributions.

The Ombudsman recalls that one of the basic principles of the public social insurance system in the Republic of Moldova is “the principle of social solidarity, inter- and intra-generational, according to which the participants in the public system consciously and reciprocally assume obligations and enjoy the right to prevent, limit or eliminate the social risks provided by law.”<sup>75</sup>

The People's Advocate maintains his own recommendation addressed to the Ministry of Health, Labour and Social Protection regarding the revision of the provisions of Article 6 of Law no. 289/2004 so that any insured person can benefit from the right to social security.

During the reference period, the People's Advocate submitted to the Government and the Parliament the proposal <sup>76</sup> to amend the provisions of Art. 60 of *Law no. 1544/1993 on the pension insurance of the military and of the persons from the command corps and from the troops of the internal affairs bodies and within the General Inspectorate of Carabinieri*, so as to exclude the prohibition of paying the pension to persons who establish their place of residence abroad.

Although the Government rejected the proposal in question, the People's Advocate further recommends re-examining this issue and revising the above-mentioned provisions.

In support of the above, the People's Advocate draws attention to the fact that the Constitutional Court in Decision no. 10 of May 8, 2018 declared as unconstitutional the similar provisions that

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<sup>75</sup> Art.3, letter c) of Law no. 489 of 08.07.1999 on public social insurance system;

<sup>76</sup> Letter of the People's Advocate no. 14-2 / 14 of 30.07.2019;

established prohibitions on the payment of the pension of insured persons domiciled abroad from *Law no. 156/1998 on the public pension system*<sup>77</sup>.

On 24.09.2019, the Constitutional Court examined the notification of the People's Advocate regarding some provisions of *Law no. 156 of 14.10.1998 on the public pension system*, which aims to assimilate the contribution period of the non-contributory period of care for a person with severe disabilities. In decision no. 19 of this date, the Court established as unjustified the existing differentiated treatment between the parent, guardian or curator of a severely disabled child and the parent, guardian or curator of a severely disabled person over the age of 18, in respect of the recognized benefits of exercising the right to a pension.

To remedy the existing deficiency, he established a solution, until Parliament intervenes. This solution requires the responsible authorities in the public pension system to notify the beneficiaries (the parent, guardian or curator of the person with severe disabilities) of their actions, regardless of the age of the person with severe disabilities who are in their care.

In view of the said decision, the authorities are to amend the relevant provisions of Law no. 156 of 14.10.1998 on the public pension system.

The People's Advocate draws attention to the fact that in 2019 the authorities did not take into account the recommendations of the European Committee of Social Rights of the Council of Europe, issued in his conclusions on the implementation by the Republic of Moldova of the Revised European Social Charter<sup>78</sup>. The People's Advocate mentioned these recommendations in detail in his Report on the observance of human rights in the Republic of Moldova in 2018.<sup>79</sup>

### **RECOMMENDATIONS:**

- The People's Advocate recommends the Government to amend the provisions of Art. 60 of *Law no. 1544/1993 on the pension insurance of the military and of the persons from the command corps and from the troops of the internal affairs bodies and within the General Inspectorate of Carabinieri*, to exclude the prohibition on payment of the pension to persons establishing their place of residence abroad;

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<sup>77</sup> Article 2 para. (1) and Article 36 para. (1) of Law no. 156 of 14.10.1998 on the public pension system

<sup>78</sup>[https://www.ecoi.net/en/file/local/1425569/1226\\_1519804343\\_cr-2017-mda-eng.pdf](https://www.ecoi.net/en/file/local/1425569/1226_1519804343_cr-2017-mda-eng.pdf)

<sup>79</sup>[http://ombudsman.md/wp-content/uploads/2020/01/RAPORT\\_2018\\_final.pdf](http://ombudsman.md/wp-content/uploads/2020/01/RAPORT_2018_final.pdf), page 50-51

- The People's Advocate recommends revising the provisions of Article 6 and Article 28 para. (1) letter c) of Law no. 289/2004 so that any insured person can benefit from the right to social security.
- The People's Advocate reiterates the need to examine the opportunity to exclude the condition of refusal of the monthly allowance for care and supervision, if he receives a personal assistant.

## **OBSERVANCE OF THE RIGHTS OF PERSONS WITH DISABILITIES**

During the process of analyzing the situation regarding the observance of the rights of persons with disabilities in the Republic of Moldova, the People's Advocate found that this category of persons continues to face the same problems. One of these issues is the access of people with disabilities to social infrastructure adapted to the needs, in accordance with the relevant standards. Another problem, which also persists, is the inadequacy of services, such as electronic services, to the needs of people with disabilities. These issues are an obstacle to the proper integration of people with disabilities into society, and their ability to realize their right to independent living in the community.

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

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

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

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



Regarding the level of implementation of the Convention, the UN Committee on the Rights of Persons with Disabilities was set out in the *Concluding observations on the initial report of the Republic of Moldova (April 12, 2017)*.<sup>80</sup>

Thus, the Committee recommends that the State step up its efforts to implement a human rights-based approach to disability; to ensure that people with disabilities have access to affordable healthcare equipment, devices and technology; to eliminate intersecting forms of discrimination, to recognize the right of persons with disabilities to challenge the refusal of reasonable accommodation and put in place effective sanctioning mechanisms for violating the rights of persons with disabilities; to ensure the right of women with disabilities to sexual and reproductive health and repeal legislation allowing for the forced or involuntary sterilization of persons with disabilities or the non-consensual termination of pregnancy, including when consent is given by a third party; to develop inclusive support measures, "Respiro" care services for families with a member with a disability, to ensure an adequate standard of living and social participation; to raise awareness among the general public and state representatives about the problems of people with disabilities.

The rights of persons with disabilities are also enshrined in the **Sustainable Development Goal 4**, which aims to ensure quality and inclusive education for all and to promote lifelong learning opportunities. The targets of this goal state that by 2030 disparities in education and ensuring equal access to all levels of education and vocational training for vulnerable people, including people with disabilities, should be eliminated.

In his previous reports, the People's Advocate recommended to the authorities to establish an efficient mechanism for implementation and control over the observance of the accessibility requirements at all stages, of design, authorization, execution and operation of constructions; to take measures to ensure the accessibility of people with disabilities to social infrastructure; to develop and approve an effective accountability mechanism for non-compliance with normative and legislative acts that guarantee the right of persons with disabilities to an accessible social infrastructure; to review strategies and policies to ensure respect for the rights of persons with disabilities; to raise public awareness of issues related to the rights of persons with disabilities; to ensure the participation of persons with disabilities in the elaboration of policies and laws aimed at them; and implement the recommendations of international human rights bodies.

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<sup>80</sup>[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fMDA%2fCO%2f1&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fMDA%2fCO%2f1&Lang=en)

Thus, in terms of implementation by the authorities of measures to ensure the accessibility of people with disabilities to social infrastructure, we mention that the National Action Plan on Human Rights for 2018-2022<sup>81</sup> (NAPHR) provides for the approval of the Action Plan on implementation measures to ensure the accessibility of people with disabilities and social infrastructure”. Responsible for this activity is the Ministry of Economy and Infrastructure, the State Construction Inspectorate, etc. One of the monitoring indicators is the “Impact of the implementation of the Action Plan in 2019, estimated.” Unfortunately, we found that such a Plan was not even approved, not to mention the impact assessment.

With reference to the implementation of the action from NAPHR “Accessibility of court premises, information and judicial processes according to the needs of persons with disabilities”<sup>82</sup> the Ministry of Justice<sup>83</sup> communicated that the court premises were equipped, within the limits of financial resources, with access ramps for people with disabilities. Access for persons with disabilities in the courts, according to the standards, will be ensured in the context of implementing the Plan for construction of new buildings and / or renovation of existing buildings, approved by Parliament Decision no. 21/2017 and the Draft standard requirements for the construction of a court. The Superior Council of Magistracy<sup>84</sup> communicated that out of the 20 courts, in 12 are created access conditions for people with disabilities. The other 8 courts will create conditions after the necessary financial resources will be allocated for this purpose.

With reference to the implementation of the sub-action the “Revision of the relevant normative framework in order to accommodate / make accessible the judicial procedures according to the needs of persons with disabilities”, at the request of the Ministry of Justice, the People's Advocate presented a series of proposals to be discussed in this context. The People's Advocate proposes to examine the elaboration of normative acts to regulate the way of ensuring access to information for people with visual impairments and those with mental disorders, both in the process of justice and in other areas of social life. There were also noted the findings of the Institute for Human Rights (IHR), which in the Report on the observance of Human Rights in the procedure of subjecting the person to psychiatric

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<sup>81</sup> The National Action Plan on Human Rights for 2018-2022, approved by the Parliament Decision no. 89 from 24.05.2018; Area of intervention no.14 .: Rights of persons with disabilities Goal I: Ensuring the legal and policy framework in the field of rights of persons with disabilities, Action 4 "Approval of the Action Plan on implementing measures to ensure accessibility for persons with disabilities and social infrastructure";

<sup>82</sup> Area of intervention no. 2: **National justice system, Strategic target A: Equal access to justice for all, Action 3;**

<sup>83</sup> Letter no. 02/11981 of 09.02.2020;

<sup>84</sup> Letter no. 163m / i of 20.01.2020;

treatment without consent<sup>85</sup> mentioned that people with mental disorders are neglected the right to information, both at the stage of preparation for the court hearing, as well as in the trial.

Despite some progress in this area, people with disabilities continue to be excluded or face various barriers to their full and effective participation in society, on an equal footing with others.

The Committee on the Rights of Persons with Disabilities<sup>86</sup> noted that reasonable accommodation is about individual justice meaning that non-discrimination or equality is ensured, taking into account human dignity, autonomy and free choice. In the same vein, the accessibility of the environment, transport, information and communication, as well as services are a precondition for the social inclusion of people with disabilities.

The People's Advocate did not find any developments regarding the implementation of his recommendation in the context of actions to support local public authorities in the development of community services for people with disabilities. He therefore maintains his recommendation to include the "Respiro" service in the minimum package of social services.<sup>87</sup>

Following the examination of a complaint from a visually impaired person, it was found that the free access to public services (banking) was restricted by the physical impossibility to use the facsimile signature for signing bank documents. The person in question claims that for the blind the impossibility of using this signature is a problem of accessibility in all areas of life. Referring to this issue, the PA "Association of Blind People of Moldova" mentioned that the use of this signature by blind people for the application of the signature could be a facilitator in accessing documentation, banking, financial, administrative, public services, education services, medicine, culture, sports, etc. According to the reports, it is practically impossible for the totally blind person to apply the signature to the appropriate place without help, and the handwritten signature applied can be changed each time (either the letters can be smaller or larger, raised above or below, etc).

In turn, the National Bank of Moldova was of the opinion that, given the consequences of applying the signature on bank documents, the application of a certain type of handwritten, facsimile

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<sup>85</sup><https://idom.md/wp-content/uploads/2019/05/RAPORT-TRATAMENT-F%C4%82R%C4%82-CONSIM%C8%9A%C4%82M%C3%82NT.pdf>;

<sup>86</sup> General Comment No. 2 (2014) of the Committee on the Rights of Persons with Disabilities from March 31 to April 11, 2014, points 26 and 37;

<sup>87</sup> Government Decision no. 800 of 01.08.2018 for the approval of the minimum package of social services and the amendment of the Regulation on the manner of establishing and paying material aid;

or digital signature should be made on the basis of a legal framework which explicitly regulates this fact, at law<sup>88</sup>.

And the "Center for the Rights of Persons with Disabilities" PA addressed another issue faced by visually impaired people. This problem is related to the impossibility of using the card independently at the bank's ATMs, including the possibility to know the information on the card account, to withdraw cash or to perform other operations offered by ATMs.

Existing good practices in several countries (such as Germany, Belgium, Belarus, the Russian Federation) show that ATMs have easy-to-find openings for touching, both for card insertion and for issuing banknotes, as well as larger screens for the visually impaired and have headphones attached through which the blind can listen to voice commands and implicitly follow them.

*Therefore, the People's Advocate recommended to the Governor of the National Bank of Moldova and the Ministry of Health, Labour and Social Protection the creation of a working group to examine the opportunity to amend and supplement the legislation in force to regulate the procedure for applying the special signature (facsimile) by persons with severe visual impairments, including on documents and bank documents provided by financial institutions. He also proposed the initiation of the procedure for regulating the obligation to adapt or gradually adapt ATMs to the needs of visually impaired people.*

At the same time, the People's Advocate recommended that in the process of initiating the procedure for improving the normative framework, the persons with disabilities and / or non-governmental organizations that ensure the protection and promotion of the rights of persons with disabilities, must be consulted.

In response, the National Bank of Moldova reported that "the Council for Preventing and Eliminating Discrimination and Ensuring Equality is responsible for detecting and sanctioning acts that are classified as discriminatory"<sup>89</sup>. The Ministry of Health, Labour and Social Protection mentioned that the National Bank of Moldova is the authority responsible for regulating and controlling the activity of financial institutions and respectively will solve the invoked problem.<sup>90</sup>

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<sup>88</sup> Letter of the NBM of 04.12.2018, no.09-03113154 / H25H;

<sup>89</sup> NBM letter no. 26-01109 / 576/2039 of 27.06.2019;

<sup>90</sup> MHLSP letter no. 13/2846 of 14.05.2019;

The People's Advocate was informed by a group of beneficiaries of the psycho-neurological boarding school from Branzeni village, Edinet district, about the violation of the right to medical assistance, due to the lack of identity documents.

Thus, the People's Advocate paid a visit to the mentioned institution, to evaluate the situation.

The psycho-neurological boarding school in Branzeni, Edinet, renamed the Temporary Placement Center for People with Disabilities in Branzeni, is managed by the National Social Assistance Agency, an administrative authority subordinated to the Ministry of Health, Labour and Social Protection.

At the time of the visit, about 230 people were hospitalized in the institution, of which 14 beneficiaries did not have identity documents. (they do not have a birth certificate, identity card, insurance policy), although they were placed in this institution for a long time. The administration explained that there are problems in obtaining identity documents, because the persons do not have the necessary civil status certificates, and in the case of some beneficiaries neither the date nor the place of birth is known.

Unfortunately, the Ombudsman's recommendations to the Ministry of Health, Labour and Social Protection to take the necessary measures to document the 14 beneficiaries were not implemented.

The People's Advocate reiterates that the lack of documentation of the beneficiaries generates the violation of a number of constitutional rights, but especially the right to health care, stipulated in Art. 36 of the Constitution of the Republic of Moldova, which expressly provides that “(1) The right to health care shall be guaranteed. (2) The minimum health insurance provided by the State shall be free”.

The right to health care is enshrined in Article 12 of the Covenant on Economic, Social and Cultural Rights, which obliges the State Party to recognize the right of every person to enjoy the highest attainable standard of physical and mental health.

At the same time, in accordance with Article 11 of the Revised European Social Charter, in order to effectively exercise the right to health protection, the Parties undertake to take, either directly or in cooperation with public and private organizations, appropriate measures, in particular to eliminate where possible, the causes of poor health.

The provisions of Article 25 of the International Convention on the Rights of Persons with Disabilities also state that States Parties recognize that persons with disabilities have the right to enjoy the highest attainable standard of health without discrimination on the basis of disability.

The UN Committee on the Protection of Persons with Disabilities recommends that the State Party ensure the availability and accessibility of health care services and facilities for all persons with disabilities throughout the country, including emergency services.

The lack of identity documents deprives this category of persons of the possibility to exercise their rights provided and guaranteed by the Fundamental Law.

In this context, the People's Advocate submitted a request to the Prime Minister of the Republic of Moldova and will continue to monitor the observance of human rights, including in the institution concerned.

#### **RECOMMENDATIONS:**

- The authorities should make every effort to implement policy documents that provide for the realization of the rights of persons with disabilities, including by providing them with financial and human resources;
- To urgently take the necessary measures to ensure the implementation of the obligations assumed by the ratification of the UN Convention on the Rights of Persons with Disabilities, and the recommendations of the UN Committee on the Rights of Persons with Disabilities on ensuring access to social infrastructure and services, including electronic, meeting the standards and needs of people with disabilities.

## **FREEDOM OF EXPRESSION**

The freedom of expression is protected by a number of international and regional instruments, such as Article 19 of the Universal Declaration of Human Rights; Article 19 of the International Covenant on Civil and Political Rights; Article 5, paragraph (d), (viii) of the International Convention on the Elimination of All Forms of Racial Discrimination; Article 10 of the European Convention on Human Rights.

## **Freedom of opinion and expression is enshrined in Article 32 of the Constitution of the Republic of Moldova.**

In a guide launched in the summer of 2019 by the Council of Europe<sup>91</sup>, it is recalled that the scope of rights protected under freedom of expression, Article 10 para. (1) of the ECHR explicitly refers to three components: the freedom to hold opinions; the freedom to receive information and ideas, which includes the right to collect information and to seek information through all possible legal sources; the freedom to impart information and ideas.

### *Freedom of opinion*

The People's Advocate appreciates that in 2019 the people of the Republic of Moldova were generally able to engage in political discussions, without fear of being subjected to coercion or persecution. At the same time, until June 2019, there were some reasonable fears that expressing criticism of the government or actors affiliated with the ruling party at that time could have negative consequences, particularly for the public sector.<sup>92</sup>

The reserved attitude of Moldovans to freely express their critical opinion towards the authorities is also demonstrated by the results of the Public Opinion Barometer (POB) from December 2019<sup>93</sup>, according to which only about 40% (36.2% in 2018) of the respondents, to some extent, stated that they feel free to express their opinion about the country's leadership, to take to the streets and protest against the decisions taken by the country's leadership.

There have also been cases of disproportionate use of law enforcement measures against protesters<sup>94</sup>, which runs counter to the right to assembly and free speech and leads to a decrease in civic activism.

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<sup>91</sup> Guide „Links between freedom of expression and other human rights”, adopted by the Steering Committee on Human Rights (CDDH) at its 91st meeting (18–21 June 2019);  
file:///C:/Users/User/Desktop/GUIDE%20LIBERTE%20D'EXPRESSION\_EN.pdf.pdf

<sup>92</sup>[https://freedomhouse.org/country/moldova/freedom-world/2020?fbclid=IwAR1Ila1SNwtMJ1inHzWYIDAM4ju25KHPe95FjK7xDmSZ\\_3L72\\_gBVIslgRQ](https://freedomhouse.org/country/moldova/freedom-world/2020?fbclid=IwAR1Ila1SNwtMJ1inHzWYIDAM4ju25KHPe95FjK7xDmSZ_3L72_gBVIslgRQ)

<sup>93</sup><http://ipp.md/wp-content/uploads/2019/12/BOP-FINAL-decembrie-2019.pdf>

<sup>94</sup>Several protesters were sprayed in March 2019 with tear gas, in front of the Orhei Court, where the sentence was pronounced in the case of the DA Platform activist Gheorghe Petic. This is despite the fact that the protesters did not present any danger to public order (<https://www.moldova.org/protetatori-din-fata-sediului-judecatoriei-orhei-stropiti-cu-gaze-lacrimogene-ce-declara-politia/>)

It should be noted that in January 2019 the ECtHR condemned our State in the case of *Matasaru v. the Republic of Moldova*. The Court found it contrary to freedom of expression to sanction the defendant with imprisonment for hooliganism as a result of the obscene way of protesting.

### *Access to information*

Article 34 para. (1) and (2) of the Constitution of the Republic of Moldova enshrines the right of the person to access any information of public interest. The "threshold criteria" for the right of access to information held by state authorities were set out by the ECtHR in the case of *Magyar Helsinki Bizottság v. Hungary* [MC], §158-170, of 8 November 2016, on the establishment of the scope of the right of access to information, as part of the right to free expression<sup>95</sup>.

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

In 2019, the state of affairs in the Republic of Moldova regarding access to information has not improved. The legal framework in the field has not been completed or modified, in order to comply with European standards and norms<sup>96</sup>, the authorities have continued to refuse to provide information requested by the representatives of the press and civil society on the grounds of personal data protection, state secrecy, to treat requests for information as petitions, which implies a different procedure and terms of examination, including for this reason requests for information in electronic version are not accepted because they do not have the applicant's signature.

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<sup>95</sup>*Magyar Helsinki Bizottság v. Hungary* (application no. 18030/11), Judgment of the Grand Chamber of 8 November 2016, §§ 157-180. The case concerned the right of access to information and, more specifically, the right of access to information held by the state. The "threshold criteria" for the right of access to information held by the State authorities set out by the ECtHR are: a) The purpose of the request for information, (b) The nature of the information requested, (c) The role of the complainant; (d) Existence and availability of information.

<sup>96</sup> Bringing in compliance with European standards Law no. 133/2011 on the protection of personal data, of Law no. 171/1994 on trade secret, of Law no. 245/2008 on the state secret.



The People's Advocate also attests to the existence of problems related to the functionality of the legal framework. This is because the provisions of the current legislation (the sanctions provided in Article 71 of the Contravention Code for violating the legislation on access to information and on petitions, as well as the punishment provided in Article 181, Criminal Code) are largely ignored or disregarded.

The problem of access to information was examined in 2019 by the representatives of the Public Association "Lawyers for Human Rights", which, within the Project "Promoting the right to information for the Moldovan public", with the financial support of the United Nations Democracy Fund (UNDEF), they litigated 40 strategic cases to improve the situation regarding access to information of public interest.<sup>97</sup> It was established that the authorities are only partially open to provide the requested information of public interest, most entities did not comply with the legal deadline for submitting the information or provided the information only after against them there was filled an action in the court.<sup>98</sup> Within the project, another experiment was carried out to measure the level of receptivity of central and local public authorities to requests for information of public interest. More than 100 telephone calls<sup>99</sup> were made for this purpose, but only in 34 cases the answers were complex.

A positive impact for the change of approaches to the issue addressed could have the decision of the Constitutional Court no. 29 of 12.12.2019 **on the exception of unconstitutionality of Article 16, para. (9), of Law no. 180 of July 26, 2018, on voluntary declaration and fiscal stimulation** (*access to the information regarding the voluntary declaration of the goods, notification no. 106g / 2019*). In this case examined by the Court, the State Fiscal Service refused to provide information of public interest to the Public Association "Lawyers for Human Rights", invoking the provisions of Article 16 para. (9) of the Law on voluntary declaration and fiscal stimulation.

The Constitutional Court found that the rule contained in Article 16 para. (9) of the Law on voluntary declaration and fiscal stimulation **establishes excessive restrictions on the information**

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<sup>97</sup><https://www.lhr.md/ro/2020/02/rezultatele-proiectului-promovarea-dreptului-la-informare-pentru-publicul-din-moldova-autoritatile-au-devenit-mai-responsabile-atunci-cand-trebuie-sa-ofere-informatii-de-interes-public/?fbclid=IwAR2WYvRN1bqkcNB8oNH8v9WYtEkQ3WULvwunXsFGFfrj0HVri3c7A-Q90Zo>

<sup>98</sup><https://www.facebook.com/juristiidrepturileomului/videos/1543574905808043/> (Ina Sotchi, BAA lawyer "Tanase si Partenerii" about the strategic litigation on access to information of public interest)

<sup>99</sup> <https://www.lhr.md/ro/2020/02/studiu-institutiile-publice-mai-schiopateaza-atunci-cand-trebuie-sa-ofere-informatii-de-interes-public/>

**in the possession of the State Fiscal Service**<sup>100</sup>. The Court mentioned the unconstitutionality of **Article 16 para. (9) of the Law on voluntary declaration and fiscal stimulation because it establishes a hierarchy between the two rights that is not allowed by the Constitution** (in an interpretation that takes into account the relevant jurisprudence of the European Court of Human Rights). According to the judges of the Constitutional Court, **the contested provision does not allow for a reasonable relationship of proportionality between competing values**, does not ensure a fair balance between the right of access to information and protection of privacy, **and therefore, restriction is not necessary in a democratic society**.

### *Freedom of the press*

The People's Advocate considers that in 2019 there were no developments regarding the freedom of the press in the Republic of Moldova. In the conditions of a year marked by major political turmoil, it was not possible to adopt the laws necessary for the long-term development of independent media institutions in the Republic of Moldova, as well as decision-making that contributes to creating a favorable environment for media activity. Issues on the agenda remained the concentration and monopolization of the media, political control over the most influential media institutions, limited access of journalists to some categories of information of public interest, maintaining unequal, uncompetitive conditions in the advertising market, conditions of insufficiently secure activity for journalists.

Freedom of the press and failure to investigate the cartel market on the advertising market are outstanding areas of the Republic of Moldova, according to the European Union Ambassador to Chisinau, Peter Michalko, expressed in the context of assessing the degree of implementation of the National Action Plan of the Moldova-EU Association Agreement , for the period 2017–2019.

At the same time, national and international media experts<sup>101</sup> estimate that the situation of the media in the Republic of Moldova remains serious. Journalists have faced threats from politicians or civil servants over the past year, and the inefficiently enforced media legislation has encouraged this phenomenon<sup>102</sup>. The makers of the Index on the Situation of the Press in Moldova (ISPM) in 2019

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<sup>100</sup>[https://www.legis.md/cautare/getResults?doc\\_id=119876&lang=ru&lang=ro](https://www.legis.md/cautare/getResults?doc_id=119876&lang=ru&lang=ro)

<sup>101</sup>[https://freedomhouse.org/country/moldova/freedom-world/2020?fbclid=IwAR1IIa1SNwtMJ1inHzWYIDAM4ju25KHPe95FjK7xDmSZ\\_3L72\\_gBVIslgRQ](https://freedomhouse.org/country/moldova/freedom-world/2020?fbclid=IwAR1IIa1SNwtMJ1inHzWYIDAM4ju25KHPe95FjK7xDmSZ_3L72_gBVIslgRQ)

<sup>102</sup> Index on the Situation of the Press in Moldova (ISPM) in 2019, launched on February 26, 2020 by the Center for Independent Journalism;

note that the poor implementation of media legislation has maintained and stimulated an unfavorable climate for the activity and development of the independent press.

In 2019, political partisanship, manipulation and misinformation in politically affiliated media were felt like never before. According to ISPM<sup>103</sup>, influential parties have managed to corrupt journalists and much of the media, subordinate certain media institutions and use them against political opponents in various ways - pressure, verbal attacks, threats, aggression, obstruction in the exercise of the profession; easy access to information of public interest or public events, for politically affiliated media; attractive financial offers for journalists who have agreed to play the role of political actors, etc.

At the same time, in a Monitoring Report, carried out in 2019 by the Center for Independent Journalism on how the media institutions reflected the political crisis in June last year, there is a biased and unbalanced reflection of events with deviations from ethical standards.<sup>104</sup> The mixture of facts and opinions, the lack of the right to reply, the manipulation through the biased use of video images and titles, truncation of facts, opinions and statements are just some of the techniques used by major media institutions to reflect recent political developments, says the media expert Victor Gotisan.

These and other irregularities and signals regarding the broadcasting of topics of a manipulative and misinformation nature do not always come under the scrutiny of the Audiovisual Council (AC), empowered to ascertain whether there are derogations from the legislation and to apply the necessary sanctions. This institution is still criticized by media experts for its passivity and lack of attitude in obvious cases of politicization of some radio and television institutions. In the Resolution of the Media Forum of 4-5 November 2019<sup>105</sup>, there was criticized the way in which the Audiovisual Council redistributes frequencies and licenses in audiovisual, which leads to maintaining the political influence on audiovisual media content, stimulates the concentration of ownership and dominant positions in forming public opinion.

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<sup>103</sup><http://media-azi.md/ro/publicatii/indicele-privind-situa%C8%9Bia-presei-din-republica-moldova-%C3%AEn-anul-2019>

<sup>104</sup><https://moldova.europalibera.org/a/majoritatea-mass-media-monitorizate-au-prezentat-ultima-criz%C4%83%C4%83-politic%C4%83-%C3%AEn-func%C5%A3ie-de-preferin%C5%A3ele-politice/30058780.html>

<sup>105</sup>[https://www.ipn.md/ro/rezolutia-forumului-mass-media-din-republica-moldova-2019-7542\\_1069400.html#ixzz6F4W224RD](https://www.ipn.md/ro/rezolutia-forumului-mass-media-din-republica-moldova-2019-7542_1069400.html#ixzz6F4W224RD)

The influence of the political factor affects media pluralism. Even if there are different types of media in the Republic of Moldova, this does not mean a diversity of opinions, attitudes and content regarding the realities in the country. The reason is that the media space continues to be monopolized, and the media - a manipulation tool for spheres of influence.

In 2019, independent journalists were subjected to intimidation and pressure due to criticism of the government, the state failing to create an effective mechanism to protect them. There were registered several cases of physical and verbal aggression against journalists<sup>106</sup>, some representatives of the media were restricted from accessing events held in the public space, and their right to exercise the profession was limited. In the context of the incidents witnessed during the events of 7 and 9 June 2019 with the involvement of journalists from several independent media institutions, the OSCE Representative on Freedom of the Media, Harlem Désir, called on the authorities in June last year to ensure safe working conditions for the press<sup>107</sup>.

In a press statement<sup>108</sup>, the People's Advocate condemned the intimidation actions committed against the journalists from the Center for Journalistic Investigations and asked the relevant authorities to identify the perpetrators and to hold them accountable according to the legislation in force. In the statement there was also mentioned that the acts of intimidation, harassment of journalists have a discouraging effect on them and lead to the restriction of freedom of the press and freedom of expression.

In this context, it should be noted that in 2019, the European Court of Human Rights reiterated in its jurisprudence<sup>109</sup> that the effective exercise of freedom of expression does not only *depend on the fulfillment of the State's obligation not to intervene, but may require positive protection measures*. Positive obligations, in accordance with Article 10 of the Convention, require States to create, while establishing an effective system for the protection of journalists, an environment conducive to the participation of all persons concerned in public debates, enabling them to express their views and ideas without fear, even if they contradict those defended by the official authorities

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<sup>106</sup><https://www.europafm.ro/protest-fara-precedent-al-jurnalistilor-din-moldova-video/>

<sup>107</sup><http://media-azi.md/ro/stiri/reprezentantul-osce-pentru-libertatea-presei-cerut-autorit%C4%83%C8%9Bilor-moldovene-s%C4%83-asigure>

<sup>108</sup><http://ombudsman.md/news/declaratie-de-presa/>

<sup>109</sup> Khadija Ismayilova v. Azerbaijan, 65286/13 and 57270/15, 10 January 2019;

or a significant part of the public opinion, or are even irritating or shocking for the latter ... ”, stated in the ECtHR Judgment Khadija Ismayilova v. Azerbaijan, of 10 January 2019.

### *Legal framework for media*

In 2019, it was not possible to complete the legal framework on the media with important documents that are to eliminate the shortcomings in the legislation or update some obsolete rules. The projects elaborated by the Working Group for the improvement of the media legislation in the former Parliament did not reach the attention of the deputies from the new Legislature. Outstanding projects are those regarding advertising, amending the Competition Law, meant to improve the competitive situation on the media market.

The People's Advocate subscribes to the appeal<sup>110</sup> of the media community regarding the need to adopt the draft amendment and completion of 7 laws. The package of laws, which contains the recommendations of the Center for Independent Journalism, the Independent Press Association and other non-governmental media organizations, includes amendments to the Law on Access to Information, the Law on Freedom of Expression, the Law on the Protection of Personal Data, the Law on petitions, the Contravention Code, the Law on State Secrecy and the Press Law. The amendments aim to improve the situation in the media and create better working conditions for journalists. The draft law provides for the reduction of the deadline for providing information of public interest to applicants, providing facilities for processing personal data for media institutions, defining the notion of information of public interest and expanding the list of providers of such information, amending some provisions regarding the state secret, the introduction of the public register of the media, etc.

It is necessary to develop and consult with the whole society a strategy and an action plan for the implementation of the National Concept of Media Development in the Republic of Moldova.

In January 2019, entered into force the Code of Audiovisual Media Services, developed with the participation of civil society and based on the recommendations of the CoE and the OSCE. The document establishes the principles of media independence, development of audiovisual pluralism and protection and development of the national audiovisual space. At the same time, media experts pointed out that the document needs some improvements in ensuring the impartiality and editorial

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<sup>110</sup><http://media-azi.md/ro/stiri/apelul-ong-urilor-de-media-c%C4%83tre-deputa%C8%9Bi-privind-revenirea-la-pachetul-legislativ-pentru-0>

independence of audiovisual media institutions and the exclusion of influences from political interests. A draft law amending the Code has been registered in the current Parliament to prevent the participation of subjects from jurisdictions that do not comply with international standards of transparency in the activities of providing and distributing audiovisual services.

The People's Advocate draws attention not only to the need to complete and improve the legal framework that regulates the activity of the media, but also to the observance of the legislation, its efficient application in practice. The People's Advocate shares the opinion of the national media experts, according to which, the difficulties that the media in the country has to face are determined by the arbitrary and / or selective application of the legal norms.<sup>111</sup>

### *The quality of journalism in the Republic of Moldova*

In this Report, the People's Advocate also addresses the issue of the quality of journalism in the Republic of Moldova, given the magnitude of recent alarming trends such as manipulation, misinformation, propaganda, fake news, selective use of information, unverified data or personal data, spreading hate speech messages, etc. In the attention of the People's Advocate, there have been cases in which the media institutions, in pursuit of the audience, exploited the sensational using images or sequences, information that infringed the person's right to privacy, distributed fake news.

The People's Advocate recalls that in a democratic society, citizens participate in public decision-making, which means that individuals have relevant and credible information from various sources that allow them to form and express their opinions, to make informed decisions about their government and society. Manipulation, misinformation, propaganda create wrong opinions and attitudes about socio-political realities and prevent people from making correct and assumed decisions which can affect their right to information and other rights.

Quality journalism provides a range of diverse, credible, interesting and timely information available to the public and counteracts propaganda and misinformation. Quality journalism serves the public interest, is based on the good faith and ethics of the profession, provides accurate and verified information that respects the principles of fairness, independence of transparency and public accountability.

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<sup>111</sup> Index on the Situation of the Press in Moldova (ISPM) in 2019, launched on February 26, 2020 by the Center for Independent Journalism;

The People's Advocate emphasizes the importance of the representatives of the journalistic community respecting the norms of the Professional Code of Ethics, without which the quality of journalism cannot be discussed. The People's Advocate encourages journalists, media institutions to sign the Code of Ethics for Journalism in the Republic of Moldova and to strictly follow its rules.

At the same time, the People's Advocate calls on the authorities to work to create a pluralistic media ecosystem in which quality journalism is stimulated and supported, including through financial support measures.

The People's Advocate expresses his opinion on this subject in the context of the Declaration of the Committee of Ministers of the Council of Europe on the financial sustainability of quality journalism in the digital age of 13 February 2019<sup>112</sup>. In the nominated statement, the CoE Committee of Ministers states that an environment conducive to freedom of expression and freedom of the media presupposes favorable political, legal, social and economic conditions for quality journalism in the public interest, recognizing that such journalism is a good public and has substantial benefits for democracy.

The CoE Committee of Ministers recommends that Member States ensure the long-term financial sustainability of quality journalism, produced in accordance with the editorial and ethical standards of the profession, while providing effective safeguards to ensure that such a framework does not constrain the editorial and operational independence of the media. Member States are encouraged to create a beneficial tax regime for the production and distribution of journalistic content; financial support schemes for the media sectors, to undertake measures to develop journalism and the media financed through a variety of funding modalities, including through private-public partnerships.

## **RECOMMENDATIONS:**

Before formulating the recommendations, it will be mentioned that the recommendations of the People's Advocate from his 2019 Report on Freedom of Expression<sup>113</sup> were largely not fulfilled. They

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<sup>112</sup> Declaration of the Committee of Ministers of the Council of Europe on the financial sustainability of quality journalism in the digital age of 13 February 2019

([https://search.coe.int/cm/pages/result\\_details.aspx?objectid=090000168092dd4d](https://search.coe.int/cm/pages/result_details.aspx?objectid=090000168092dd4d));

<sup>113</sup> Report of the People's Advocate on the observance of fundamental rights and freedoms in the Republic of Moldova in 2019, pages 34-35 ([http://ombudsman.md/wp-content/uploads/2020/01/RAPORT\\_2018\\_final.pdf](http://ombudsman.md/wp-content/uploads/2020/01/RAPORT_2018_final.pdf));

are currently 90 percent valid, which is why the People's Advocate reiterates them in this Report. In addition, the People's Advocate makes the following recommendations:

1. The Parliament should adopt, as a matter of priority, after consultation with the media community, the necessary laws to combat concentration, political control over the media and create a favorable climate for the development of independent media in the Republic of Moldova (*in particular the draft amendment and completion of 7 laws; draft laws on advertising, amendment of the Competition Law, the Code of audiovisual media services, etc.*);
2. The Parliament should develop a strategy and action plan for the implementation of the National Media Development Concept;
3. The relevant authorities (MIA, prosecutor's offices) should ensure the application of the national legal framework regarding the media activity, in order to create safe and optimal working conditions for journalists, to sanction intimidation actions or pressures against the media representatives;
4. The public authorities should ensure the observance by the civil servants of the legal norms regarding the access to information, by providing in the established terms the information of public interest, placing on the official pages of the public institutions the relevant information about the activity of the institution; presentation at the request of persons or journalists of information of public interest;
5. Public authorities should discourage and penalize the practices of refusing to provide information of public interest, of registering requests for information as petitions, contrary to the Law on Access to Information;
6. The MIA, the General Inspectorate of Carabinieri should ensure compliance with national legal norms and international standards on freedom of assembly and freedom of expression, to exclude cases of disproportionate measures against protesters;
7. The Competition Council should ensure free competition on the advertising market and to penalize cartel agreements within it;
8. The Audiovisual Council (AC) should ensure a level playing field in the issuance of broadcasting licenses, in order not to allow the concentration of ownership and the consolidation of dominant positions in the formation of public opinion;
9. Journalists should strictly observe the ethical norms and professional standards;



10. The government should support, including through financial and fiscal measures, implicitly in the distribution segment, independent media institutions and quality journalism.

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

Even if the State does not have effective control over the localities on the left bank of the Dniester, the State does not cease to have jurisdiction and, therefore, still has obligations under international law with regard to persons within this territory.<sup>114</sup> The State does not cease to have jurisdiction within the meaning of Article 1 of the European Convention on Human Rights (ECHR) over that part of its territory. Even in the absence of effective control, the State has a positive obligation and is obliged to take diplomatic, economic, judicial or other measures that are within its competence with respect to foreign States and international organizations, to continue guaranteeing the rights of persons ”(from Transnistria - n.n.).<sup>115</sup> The State has the obligation to ensure the observance of the rights recognized in the Covenant in relation to the people of Transnistria within the limits of its effective power, and should renew its efforts to resolve the impediments to the implementation of the Covenant in Transnistria ...<sup>116</sup>

The activity of the People's Advocate Office, which was established to protect and promote human rights in the jurisdiction of Moldova, expands, in accordance with its attributions, to carry out its activity on the situation of human rights in Transnistria: the role and tasks of the People's Advocate Office in Moldova are determined by the provisions of the Law on the People's Advocate, no. 52 of 03.04.2014 and the Law on the approval of the Regulation on the organization and functioning of the People's Advocate Office, no. 164 of 31.07.2015. The Paris Principles, the international standard for the functioning of National Human Rights Institutions, encourage these institutions to work actively in the post-conflict period. Also, the Area of Intervention 16 “Observance of human rights in the localities on the left bank of the Dniester of the Republic of Moldova” of the National Action Plan on Human Rights for 2018-2022 establishes specific actions for the protection and promotion of

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<sup>114</sup> Ilascu and Others v. The Republic of Moldova and Russia, 48787/99, European Court of Human Rights, 8 July 2004, § 333.

<sup>115</sup> Ilascu and Others v. The Republic of Moldova and Russia, § 331, 333 and 339.

<sup>116</sup> Committee on Human Rights, Establishment of Observations related to Moldova (CCPR / C / MDA / CO / 2 (2009), para. 5.

human rights in Transnistria. These actions also reflect Moldova's commitments in the two cycles of the Universal Periodic Review.

The independence of the People's Advocate Office from the authorities, broad responsibilities, expert support and the "A" status of the National Human Rights Institution make the PAO one of the few viable tools to influence the human rights situation in Transnistria.

The presence of the People's Advocate Office in the Transnistrian region is ensured by the activity of the Representation in Varnita. Thus, the People's Advocate Office ensures increased accessibility for its beneficiaries, who live in the administrative-territorial localities on the left bank of the Dniester and in the municipality of Bender, as well as for the representatives of the civil society in the region.

In 2019, the Varnita Representation of the People's Advocate Office received 195 complaints, out of which 174 (89%) from persons domiciled in the territory not controlled by the government.

### **Right to freedom of movement**

Only in 2019 the Reintegration Policies Bureau registered 91 incidents involving force structures in the high security area, of which 35 regarding the installation of mobile checkpoints by Transnistrian "law enforcement bodies" and 12 cases regarding the restriction of free movement of citizens through the so-called police, customs and border guard posts.

### **Forced enlistment in the "Transnistrian armed forces"**

In 2019, de facto authorities in Tiraspol continued to forcibly incorporate young people for long-term service into the *so-called "Transnistrian armed forces"*. Unfortunately, the constitutional authorities react late, only after the young people are placed in the barracks in Tiraspol.

### **Right to health**

The People's Advocate appreciates the efforts of the constitutional authorities and external partners who contributed to ensuring the access of citizens residing in the administrative-territorial localities on the left bank of the Dniester and Bender municipality to the health care system of the Republic of Moldova.

Thus, in the localities bordering the Transnistrian region within the program of confidence-building measures, with the support of international partners, there were built / renovated Centers of

Family Doctors which ensures the access of people living on the left bank of the Dniester to health services.

Even if these people do not cover the expenses for the treatment of conditions subject to the occurrence of the insured events, the Government has the quality of insured for the categories of unemployed persons residing in the Republic of Moldova, including the localities on the left bank of the Dniester and Bender municipality, and registered with the competent institutions of the Republic of Moldova, except for the persons obliged by law to insure themselves individually<sup>117</sup>.

### **The right to social assistance and protection**

The failure to realize the right to social assistance and protection remains to be generated, for the most part, due to the lack of legal local public authorities in the eastern districts of the country.<sup>118</sup> For this reason, local public authorities of both levels provide social assistance and protection to persons in difficulty, only if they have a residence visa in localities under the jurisdiction of the constitutional bodies of the Republic of Moldova, except for persons falling under Law no. 190 of 08.05.2003 "On veterans" and Government Decision no. 906 of 24.09.2010, on the creation and activity of commissions for examining the addresses of citizens of the Republic of Moldova residing in the localities on the left bank of the Dniester (Transnistria) and their neighboring localities from the categories for which the Government has the quality of insured. Thus, the citizens of the Republic of Moldova who benefit from pensions established by the National Social Insurance House of the Republic of Moldova, domiciled in localities under the control of de facto authorities, do not have full and equal access to social assistance, benefits and social assistance services.

### **The principle of individualization of criminal liability and criminal punishment**

The *non bis in idem* principle establishes that no one can be prosecuted or criminally punished twice for the same crime. This fundamental principle is recognized both in the Charter of

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<sup>117</sup> Art.4 of Law no. 1585 on compulsory health insurance of 27.02.1998

[http://www.legis.md/cautare/getResults?doc\\_id=113243&lang=ro](http://www.legis.md/cautare/getResults?doc_id=113243&lang=ro)

<sup>118</sup> Law on basic provisions of the special legal status of localities from the left bank of the Dniester (Transnistria) no. 173 of 22.07.2005

Fundamental Rights of the European Union<sup>119</sup>, and in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).<sup>120</sup>

At present, the Republic of Moldova does not ensure, on the uncontrolled territory, the principle of individualization of criminal liability and criminal punishment, not to be subjected twice to criminal prosecution and criminal punishment for the same act committed.

Thus, the person risks being convicted for one and the same act not only by the constitutional authorities but also by the de facto authorities.

### **Documentation of citizens from the administrative-territorial localities on the left bank of the Dniester and the municipality of Bender**

The issue of documentation with civil status documents and identity documents, as well as the recognition of civil status facts registered in the Transnistrian region, was addressed in 91 of the applications (about 47%) registered in the Varnita Representation of the PAO.

The People's Advocate welcomes the efforts of the Chisinau authorities to identify solutions aimed at simplifying the process of documenting citizens on the left bank of the Dniester with documents prepared by the competent authorities<sup>121</sup>.

In order to regulate the certification process of the civil status facts produced and recorded in the localities on the left bank of the Dniester, by Government Decision no. 286 of 29.05.2019, the Instructions on the certification of civil status facts produced and recorded in the localities on the left bank of the Dniester and the municipality of Bender were approved<sup>122</sup>.

However, with the approval of these instructions, the aspects that generate the bureaucratization and delay of the provision of services by the Public Services Agency, mentioned in the Report on the observance of human rights in the Republic of Moldova in 2018, were not removed.

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<sup>119</sup> Art.50 of the Charter of Fundamental Rights of the European Union

<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:ro:PDF>

<sup>120</sup> Protocol no. 7 (Article 4) of the Convention for the Protection of Human Rights and Fundamental Freedoms, <http://ier.gov.ro/wp-content/uploads/2018/11/Protocolul-nr-7.pdf>

<sup>121</sup> Law no. 310 of 22.12.2017 on the completion of Law no. 100/2001 on civil status acts.

[https://www.legis.md/cautare/getResults?doc\\_id=105665&lang=ro](https://www.legis.md/cautare/getResults?doc_id=105665&lang=ro)

<sup>122</sup> Government Decision no. 286 of 29.05.2019 for the approval of the Instructions on the certification of civil status facts produced and recorded in the localities on the left bank of the Dniester and Bender municipality. [https://www.legis.md/cautare/getResults?doc\\_id=114695&lang=ro](https://www.legis.md/cautare/getResults?doc_id=114695&lang=ro)

Thus, until now, after receiving the duplicate of the birth certificate (without entering the identification number), based on the copies of the civil status documents issued by the civil status authorities subordinated to Tiraspol, the person must address to the territorial subdivisions - Identity Documents Issuance Services within the Public Services Agency, where the registration of the person takes place (assignment of the identity number), without the issuance of identity documents from the National Passport System<sup>123</sup>. Subsequently, the person is to repeatedly address the territorial subdivisions of the Civil Status Documents Service within the Public Services Agency in order to prepare the birth certificate, but in this case with the registration of the identification number in the birth certificate.

The lack of a clear mechanism, the bureaucratization and delay of the the process of providing services by the PSA, favors the emergence of corrupt schemes in the activity of the territorial subdivisions of the Public Services Agency<sup>124</sup>.

### **Right to education**

The People's Advocate appreciates the efforts of the state related to ensuring the functioning of the schools with teaching in Latin script in the Transnistrian region, which is subordinated to the Ministry of Education, Culture and Research of the Republic of Moldova.

In 2019, within the program of reintegration activities of the country, approved by Government Decision no. 212/2019<sup>125</sup>, these educational institutions were allocated a single aid amounting to 800 thousand MDL and 35 projects were implemented (15 million MDL).

However, the cases of violation of the provisions of the Protocol Decision on the Functioning of Moldovan schools with teaching based on Latin script <sup>126</sup> from 25.11.2017 <sup>127</sup> by the force structures subordinated to the de facto authorities on the left bank of the Dniester cannot be overlooked.<sup>128</sup>

It is necessary to mention that the State's efforts aimed at the proper functioning of Moldovan schools with teaching based on Latin script on the left bank of the Dniester and Bender municipality

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<sup>123</sup>[https://www.legis.md/cautare/getResults?doc\\_id=118956&lang=ro](https://www.legis.md/cautare/getResults?doc_id=118956&lang=ro)

<sup>124</sup><https://www.jurnaltv.md/news/08d9eee7157e5b74/perchezitii-la-serviciul-stare-civila-varnita-sefa-institutiei-si-alte-trei-persoane-retinute-pentru-corupere-pasiva.html>

<sup>125</sup>[https://www.legis.md/cautare/getResults?doc\\_id=113550&lang=ro](https://www.legis.md/cautare/getResults?doc_id=113550&lang=ro)

<sup>126</sup><https://gov.md/sites/default/files/apel.pdf>

<sup>127</sup>[https://gov.md/sites/default/files/2017\\_11\\_25\\_protokolnoe\\_reshenie\\_o\\_funkcionirovanii\\_moldavskih\\_shkol.pdf](https://gov.md/sites/default/files/2017_11_25_protokolnoe_reshenie_o_funkcionirovanii_moldavskih_shkol.pdf)

<sup>128</sup><https://agora.md/stiri/57704/sarbatoare--dar-nu-pentru-toti-elevii-scolilor-romanesti-din-stanga-nistru-nu-au-avut-voie-sa-intoneze-immnului-de-stat>

have contributed to increasing the number of students in these educational institutions (2017-1317 students, 2018-1396 students, 2019 - 1481 students).

At the same time, it is an important step to recognize the diplomas issued by the educational institutions from the Eastern districts of the Republic of Moldova and the municipality of Bender. By recognizing the legal effects of these educational documents, holders are given the opportunity to continue their studies or to engage in employment.

In the period 2014-2019, there were received 2261 files for preparing the educational documents of graduates from the Eastern districts of the Republic of Moldova and the municipality of Bender of all levels of education.

#### **RECOMMENDATIONS:**

- The People's Advocate recommends the use of all available mechanisms in the process of settling the Transnistrian conflict, in order to boost the activity of the sectoral working groups;
- Sectoral working groups should apply the human rights-based approach in the negotiation process, in order to identify effective solutions to the problems faced by the people of the Transnistrian region;
- The Government should take all measures to implement the international recommendations on the protection of human rights in the Transnistrian region.

## **CHAPTER II**

# **OBSERVANCE OF CHILD RIGHTS IN THE REPUBLIC OF MOLDOVA IN 2019**

The report on the observance of child rights in the Republic of Moldova in 2019 was prepared in accordance with the provisions of Art. 29 of Law on the People's Advocate (Ombudsman) no. 52 of April 3, 2014.

The report presents the opinion of the People's Advocate for Children's Rights on the capacity of the national child protection system to ensure respect for the rights of the child, based on the conclusions made in the process of monitoring the national implementation of the UN Convention on the Rights of the Child. The Children's Ombudsman also makes recommendations to the state authorities to be taken in order to eliminate the systemic factors that lead to the violation of the rights of the child in a particular compartment and to improve the situation in the system of protection of the rights of the child.

The issues addressed in the report are for the most part "old", being addressed in the annual Reports of the Children's Ombudsman for previous years. Keeping them in the monitoring area, together with new ones identified, indicates that they have not been solved, on the contrary, they have conditioned the aggravation of the situation in the field.

During 2019, in the context of exercising the powers provided by the Law on the People's Advocate (Ombudsman) no. 52 of April 3, 2014, the Children's Ombudsman examined individual cases based on requests and ex-officio procedure, studied the criminal, civil and administrative legal framework and put forward proposals to amend it, cooperated with state institutions to ensure respect for the rights of the child, prepared thematic reports on respect for the rights of children left without parental care and children in places of detention, the situation regarding palliative services for children. There were also organized activities to promote children's rights in educational institutions, activities to consult the opinion of the child at zonal and national level, such as the National Children's Forum.

At the same time, the People's Advocate for Children's Rights monitored the implementation of the Recommendations of the UN Committee on the Rights of the Child based on the combined Report IV and V, presented in 2017.

Subsequently, the Children's Ombudsman concludes that public policy is ineffective in protecting the rights of the child, the national child protection system does not meet the special needs of children at risk, the national education system does not provide children with the necessary training for social integration, and the juvenile justice system fails to perform the basic tasks of prevention and protection of the child with complex emotional behavior.

The State does not allocate sufficient resources to maintain and strengthen the systemic reforms carried out. There is a lack of adequate vision for the development of parenting skills, as evidenced by the tragic cases resulting in the death of children. There is no adequate response to combating domestic violence against children. And the Lanzarote Convention remains a challenge for the Republic of Moldova.

Failure to respect the rights of children on the left bank of the Dniester to name and citizenship, education in their mother language, social assistance and protection, free movement, the right to life and development has been a persistent problem for decades.

The child's opinion and the best interests of the child are not perceived and applied as fundamental principles in actions taken by public institutions and authorities, non-profit organizations and individuals.

The People's Advocate for Children's Rights further draws the attention of public authorities on the imperative nature of the concept of *protection of future generations*.

*The right of future generations, the child rights-based approach, the child's opinion and the best interests of the child* must be the essential pillars of the national child protection system and enshrined in all state actions in the legislative, administrative, judicial, educational, social and any other field relating to children.

## **RIGHT TO LIFE**

Enshrined in several international human rights treaties, the right to life is the basic foundation of a society that tends to be called the rule of law. Thus, the Universal Declaration of Human Rights specifies in Article 3 “*Everyone has the right to life ...*”<sup>129</sup>, an idea also reconfirmed by the European Convention on Human Rights in Article 2 “*Everyone's right to life shall be protected by law. Death*

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<sup>129</sup>[https://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/rum.pdf](https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/rum.pdf)



cannot be caused to someone intentionally, except in the execution of a capital punishment pronounced by a court when the crime is sanctioned with this punishment by law”<sup>130</sup>. It is imperative to note that the European Convention, while legislating the right to life, also provides a legal explanation for the extent and limitation of this right. Thus, if the Universal Declaration refers only to the obligation of the High Contracting Parties to provide protection of the “right to life”, then the European Convention provides a delimitation of the positive and negative obligations of the state in case of intervention in the legal sphere of this right.

From the perspective of the protection of children's rights, the adoption of the UN Convention on the Rights of the Child and the enshrinement of the right to life in the text of the international treaty are of particular importance or, with the elaboration of the Convention, the right to life acquires a different approach than that obtained in the other acts in the field. Thus, the UN Convention on the Rights of the Child sets out the right to life “States Parties recognize that every child has an inherent right to life. States Parties shall ensure to the maximum extent possible the survival and development of the child”<sup>131</sup>, as an obligation to ensure not only the life of the child, but at the same time obliges the State to create favorable conditions for his survival and harmonious development as a being to be integrated into society from the moment of his birth. In this context, the UN Convention on the Rights of the Child has a much broader connotation of the right to life than other international treaties.

At national level, the child's right to life is guaranteed by the Constitution of the Republic of Moldova in Art. 24, para. (1) “The State guarantees every individual the right to life and physical and mental integrity” Art. 50, para. (4) “The exploitation of minors, their use in activities that would harm their health, morality or that would endanger their **life or normal development** are prohibited” and Law no. 338 of December 15, 1994 on children's rights<sup>132</sup>, which in Art. 4 stipulates the obligation to protect the child's right to life. In the context of the analysis of the concordance between the national and the international legal framework, the People's Advocate for Children's Rights concludes that the national standards in the field of protection of the child's right to life largely correspond to similar international norms.

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<sup>130</sup>[https://www.echr.coe.int/Documents/Convention\\_ROM.pdf](https://www.echr.coe.int/Documents/Convention_ROM.pdf)

<sup>131</sup>[https://drepturilecopilului.md/files/publications/CDC\\_2005\\_final.pdf](https://drepturilecopilului.md/files/publications/CDC_2005_final.pdf)

<sup>132</sup>[http://www.legis.md/cautare/getResults?doc\\_id=94939&lang=ro](http://www.legis.md/cautare/getResults?doc_id=94939&lang=ro)

It should be noted that in order to improve the national child protection system, the UN Committee on the Rights of the Child in 2017 submitted its Recommendations<sup>133</sup> on the basis of the combined Report IV and V presented by the Government of the Republic of Moldova on the fulfillment of obligations under the ratification of the UN Convention on the Rights of the Child, as well as the alternative reports submitted, including by the People's Advocate for Children's Rights.

Currently, two years after the State received the Committee's Recommendations, the People's Advocate for Children's Rights draws the attention of the responsible public authorities to the fact that the measures taken to implement them are insufficient and segmented, and the lack of a well-structured action plan is a determining factor in fulfilling the assumed obligations.

In the context of the presentation of the situation regarding the protection of the child's right to life, the Children's Ombudsman clearly indicates that the state policy is inefficient in the field of protection of the child's right to life. The State does not allocate sufficient resources, it does not support and improve systemic changes in this area. While the population satisfaction index is declining, existing programs fail to provide support tailored to the needs of children in the right to life segment. Moreover, the People's Advocate for Children's Rights notes with concern that his Recommendations from previous annual reports to the right to life compartment, have not been taken into account by the central public authorities. The Children's Ombudsman reiterates his previous recommendations and also presents some issues in this area from the perspective of the activity in 2019.

The Children's Ombudsman notes the positive efforts of the State to reduce child mortality (2016-585, 2017-513, 2018-521, 2019 (9 months) -366)<sup>134</sup> noting in this context that the State has an obligation to take action to reduce the number of deaths among children, in order to implement actions for the proper assurance of the right to life guaranteed by Article 6 of the UN Convention on the Rights of the Child.

As a representative of the children before the public authorities, the People's Advocate for Children's Rights asked children about how they perceive the right to life and further presents some of the children's opinions on the subject under investigation:

- I think my parents can help me find my purpose in life;

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<sup>133</sup>[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fMDA%2fCO%2f4-5&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fMDA%2fCO%2f4-5&Lang=en)

<sup>134</sup>MHLSP letter, no. 02/917 of February 13, 2019;

- I don't think I will be able to fully develop in the country;
- I want to have a better life;
- Life and child development must be a priority for our authorities;
- To ensure a decent life I will emigrate from the country;
- I want to know more about the right to life and development.

In 2019, the Children's Ombudsman monitored the situation of respecting the child's right to life on the segment of the phenomenon of "*children giving birth to children*", so in 2018, in Moldova, 2167<sup>135</sup> girls up to 18 years old are raising their children, even they are still children. The People's Advocate for Children's Rights notes that, although the indices experienced a slight decrease from 2010 to 2018 (by 1/3 from 9.4% to 6.7%)<sup>136</sup>, the situation remains alarming. Thus, only in 2018, 141<sup>137</sup> girls under the age of 18 underwent the abortion procedure.

During this period, the following problems were identified:

- Lack of effective sectoral policies in the field of health and education, aimed at informing children about sexual life and the prevention of infant pregnancy;
- Lack of a national curriculum on sex education in the educational system;
- Society is dominated by stereotypes and stigmatization in terms of sexual development;
- High rate of sexual offenses committed by children or committed against children.

The Children's Ombudsman argues that this situation is a violation of the child's life and development. Moreover, non-compliance with the right to life and development leads to a violation of all related rights enshrined in the UN Convention on the Rights of the Child.

For these reasons, we mention that promoting the phenomenon of "children give birth to children" is a serious violation not only of the right to life and development, but also of all related rights enshrined in the Convention.

The People's Advocate for Children's Rights concludes that this phenomenon is largely caused by the poor level of education and information of children. In the Republic of Moldova, children are not sufficiently informed or practically do not know at all what the intimate security of the person means, they do not know how to relate to their peers and especially do not know about the

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<sup>135</sup><https://protv.md/actualitate/isi-cresc-copiii-fiind-copii-doar-anul-trecut-pest-2-mii-de-adolescente-au-devenit-mame-iar-numarul-lor-este-doua-ori-mai-mare-comparativ-cu-cel-inregistrat-in-tarile-europene-video---2508668.html>

<sup>136</sup><https://msmps.gov.md/>

<sup>137</sup><https://msmps.gov.md/>

consequences of premature sexual activity. At the current stage, the situation is alarming and we cannot deny that children have started having sex from an early age compared to previous generations. These processes cannot be fully controlled by parents or by the state authorities in terms of prevention, so the Children's Ombudsman encourages an active intervention of public authorities in terms of information and prevention, which will have an impact on reducing the number of pregnancies in girls.

At the same time, another problematic circumstance is that the national authorities fail to provide protection adapted to the special needs of young mothers, who in essence are in fact nothing more than victims of their own situation. Thus, the lack of support from the State and in most cases the interruption of family relationships due to stereotypes and ingrained medieval traditions, make children left alone in front of the problem, and the result is often terrifying. So, only in 2019, 2 out of 5 minor mothers hid the fact that they are pregnant from relatives and the authorities and tried to get rid of their own children by throwing them in the dumpsters or abandoning them in the street<sup>138</sup>.

The People's Advocate for Children's Rights mentions that adolescents face barriers in access to contraception, including by the lack of education and quality protection policies, barriers to access are related to age or marital status, prejudices of health care workers and / or lack of society's willingness to recognize the sexual health needs of adolescents and their limited access to contraceptives due to lack of knowledge and financial constraints.

The Children's Ombudsman notes that, according to World Health Organization statistics, “pregnancy among children remains a major contributor to maternal and infant mortality and intergenerational cycles of poor health and poverty. Pregnancy and birth complications are the leading cause of death among girls aged 15 to 19 globally. Adolescent mothers (aged 10 to 19 years) have a higher risk of eclampsia, puerperal endometritis and systemic infections than women aged 20 to 24 years. In addition, approximately 3.9 million unsafe abortions among girls aged 15 to 19 years occur each year, contributing to maternal mortality and long-term health problems. Moreover, the emotional, psychological and social needs of pregnant teenage girls may be greater than those of other women.”<sup>139</sup>.

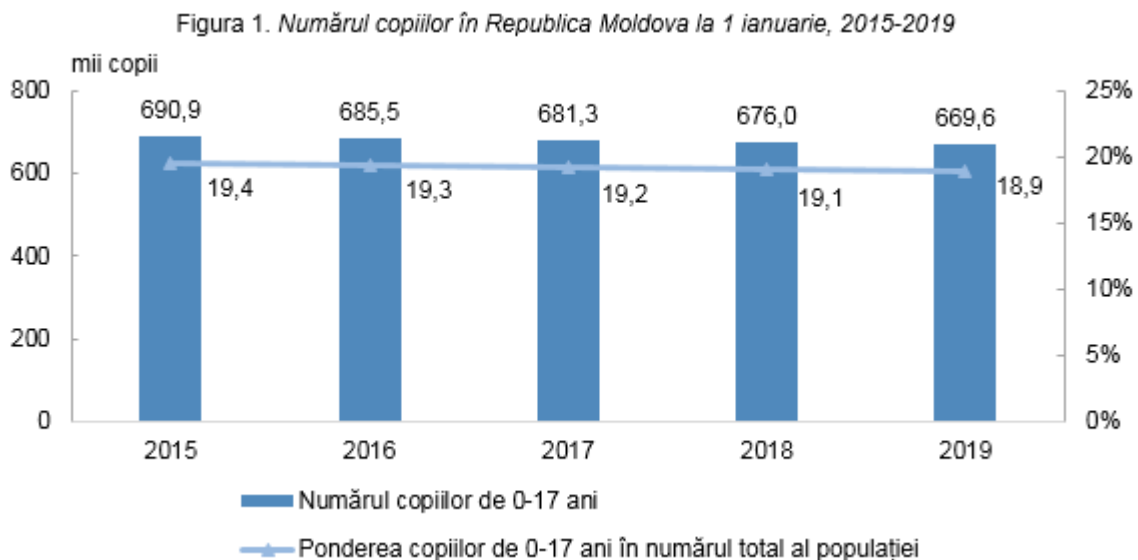
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<sup>138</sup><https://point.md/ru/novosti/proisshestviya/marturiile-mamei-care-shi-a-aruncat-copilul-nou-nascut-la-tomberon58-am-crezut-ca-i-mort>

<sup>139</sup><https://www.who.int/news-room/fact-sheets/detail/adolescent-pregnancy>

Another aspect of the right to life and development analyzed by the People's Advocate for Children's Rights in 2019 is the capacity of the national child protection system to respond to challenges in ensuring respect for the rights and protection of future generations, through the analysis of the demographic situation in Moldova. As in the previous Report, the Children's Ombudsman analyzed the statistical data on the birth rate in the Republic of Moldova and concluded that we are in a demographic decline that contributes to the population ageing.

Figure 1. Number of children in the Republic of Moldova on January 1, 2015-2019



Number of children aged 0-17

The share of children aged 0-17 in the total population

Source: National Bureau of Statistics

The Children's Ombudsman mentions that the Republic of Moldova remains an unattractive State for young people from the perspective of starting a family and giving birth to children. In the current circumstances, if the government authorities fail to improve the situation, according to experts, in about 15-20 years the Republic of Moldova risks reaching a rate of population ageing of about 70%. For these reasons, the People's Advocate for Children's Rights considers it imperative to adopt policies in the field of protection of **the rights of future generations**. Thus, in the process of monitoring the given subject, the following gaps were detected:

- Inefficient family planning policies;
- Economic decline and emigration of the population aged between 16 and 35;

- Although the Intersectoral Strategy for the development of parenting skills and competences has a deadline for execution in 2020, the National Action Plan for the implementation of this Strategy developed for 2018-2020 has not been adopted so far.

Although, according to the statistical data presented by the National Social Insurance House, the amount of the single childbirth allowance increased from 6303 MDL to 8299 MDL for every child born alive,<sup>140</sup> however, a serious problem analyzed by the Children's Ombudsman in this regard is represented by the monthly allowance granted for the uninsured persons, which currently constitutes the amount of 640 MDL / per month<sup>141</sup>.

Another parallel in ensuring the right to life, on the protection segment of future generations, examined by the People's Advocate for Children's Rights, was the situation regarding the conditions in which women in the Republic of Moldova give birth. From the information gathered, it is found that there are currently 34 maternity hospitals in the country. However, although the number of maternity hospitals is high, 60% of all women who have to give birth go to only 4 of these maternity hospitals, and the remaining 40% - in the remaining 30. According to specialists in the field, 70% of women who gave birth in these 30 maternity hospitals and children born had to suffer various complications up to cases resulting in death, due to poor endowment of these units or due to lack of specialists at work.<sup>142</sup>

The situation is also alarming from the perspective of ensuring the child's right to life from the first moments of his birth. In most of these institutions there are no resuscitation departments and there are no doctors specialized in resuscitation, the patients being practically left to their fate in case of emergency. Thus, in the context of the complaints received by the People's Advocate Office, during 2020, there will be carried out a monitoring on the observance of the right to life in the segment of accessibility to health services in maternity hospitals in the country.

In this regard, the People's Advocate for Children's Rights referring to the General Comment of the UN Committee on the Rights of the Child no. 19 (2016)<sup>143</sup>, notes that *child development is “a*

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<sup>140</sup><http://cnas.md/slidepageview.php?l=ro&idc=560&t=/Alte-prestatii-sociale/Indemnizatii/Indemnizatii-adresate-familiilor-cu-copii/Indemnizatie-unica-la-nasterea-copilului/>

<sup>141</sup><http://cnas.md/slidepageview.php?l=ro&idc=560&t=/Alte-prestatii-sociale/Indemnizatii/Indemnizatii-adresate-familiilor-cu-copii/Indemnizatie-unica-la-nasterea-copilului/>

<sup>142</sup><https://ro.sputnik.md/moldova/20191214/28543850/Doctor-habilitat-23-de-maternitati-trebuie-inchise-pun-in-pericol-viata-femeilor.html>

<sup>143</sup>[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11)

*holistic concept, which includes the physical, mental, spiritual, moral, psychological and social development of the child” and that “implementation measures should aim at achieving optimal development for all children ”*<sup>144</sup>. Or, children have different needs at different stages of their growth and development. Thus, in its budgetary decisions, the State should take into account all the factors necessary for children of different ages to survive, grow and develop. The State should show its commitment to children's rights by making visible parts of their budgets that affect children of different age groups.

The Children's Ombudsman argues that investing in early childhood development can have a positive impact on children's ability to exercise their rights, break the cycle of poverty and bring great economic benefits in the near future. Underinvestment in children's development in the early years can be detrimental to their cognitive development and can reinforce the existing gaps, inequalities and aggravate intergenerational poverty. Therefore, ensuring the right to life, survival and development includes the need to take into account budgets for different groups of children in the current generation, taking into account ***future generations by developing sustainable multi-year income and expenditure projections.***

In the light of the above, the Ombudsman encourages government authorities to create or strengthen the existing policies to protect future generations. Ensuring sustainable development requires improving the quality of life that future generations will enjoy and, as adaptation to sustainable lifestyles brings together, the rights of future generations and their well-being must become a primary need of today's authorities / people.

***Suicide in children*** was another topic discussed by the People's Advocate for Children's Rights during the reporting period. It is worth mentioning that 8 children died committing suicide<sup>145</sup> in the first 9 months of 2019. Although there are psychological services at national level in such cases<sup>146</sup>, the situation remains alarming.

After examining the subject, the following causes were identified:

- Poor level of support for children at risk from parents;
- Poor level of support for children at risk from professionals and public authorities;

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<sup>144</sup>[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f19&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f19&Lang=en)

<sup>145</sup>MHLSP letter no. 02/917 of February 13, 2019;

<sup>146</sup><https://www.pentruviata.md/>

- Insufficient information / promotion of children about psychological assistance services for that age;
- The reluctance of adult members of society to contemporary change, the conflict between generations (between parents and children);
- Lack of reliable people in the entourage of children who are at risk.

The People's Advocate for Children's Rights notes that the State has the primary obligation to take all possible actions in order to ensure the **child's life**. In this context, the Children's Ombudsman encourages the authorities to strengthen awareness-raising activities aimed at preventing suicide among children and also to adopt a holistic approach based on *the best interests of the child*, when new services are developed in this segment.

Thus, we emphasize that guaranteeing the right to life in the light of the UN Convention on the Rights of the Child means not only ensuring the life of the child, but also ensuring his harmonious development as a full member of society.

During the reported year, several cases were brought to the attention of the Children's Ombudsman, which were examined on the basis of ex officio notification (ex-officio procedure) in which the child's life was harmed by non-compliance with personal and social security rules. Children remain victims of road traffic, various domestic accidents, due to lack of supervision and irresponsibility of adults (drug treatment without a doctor's prescription, use by adults of substances dangerous to the child's life, etc.). In all these cases, there were sent recommendations to the authorities for effective prevention, information and assistance for victims and / or their families.

In this context, the People's Advocate for Children's Rights highlights the tragic case of the death of a child diagnosed with rabies following the bite of a stray dog<sup>147</sup>. According to the information gathered, in the process of examining the case, it was established that the child was bitten by a stray dog while returning from the rest camp in the neighboring town, where he was participating to recreational activities during the day. The child was under the tutelage of a pensioner who raised him from an early age. We highlight the fact that the minor was brought to the family doctor only a few days after the incident, which confirms the irresponsibility of the legal representative. We also note the unprofessionalism of the medical workers who, although they knew about the bite, did not

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<sup>147</sup><https://sputnik.md/society/20190718/26900251/Ultim-or-Copilul-infectat-cu-rabie-a-decedat-la-spital-.html>



take into account the probability of rabies infection, but suspected a psycho-somatic cause, which led to the loss of *golden time* (4 days), for sending for consultation with a psychiatrist.

Cases of stray dog attacks on children are common and occur in all localities in the country, especially in urban areas, and the situation in Chisinau and Balti municipalities can serve as a symptomatic example of the problem examined.

Following the investigation, the People's Advocate for Children's Rights draws attention to the "**eminent danger to the life and health of children from stray animals**" and notes the failure of local public authorities to take effective measures to protect residents and animals.

We specify that in Chisinau there are more than 10 thousand stray dogs. The data are approximate, because the local public authorities in the country have never made a record of the strays. And if the municipal public authorities in Chisinau have initiated actions to solve the problem of "stray dogs" by creating shelters, reducing their number through the sterilization procedure, in Balti municipality the situation remains alarming. This situation was in the attention of the Children's Ombudsman during the years 2018-2019.

As a result of the examination of the related problem, the following gaps were found: the low level of development of the rendering service; the lack of financial resources for the development of modern services to control the number of stray populations; the low level of responsibility for promises of quadrupeds; the lack of a sterilization center; the low level of information of the population on the rules of behavior in certain risk situations, all these cumulatively negatively influence the level of safety of the environment in which children live.

The People's Advocate for Children's Rights warns the central and local public authorities about the need to implement some urgent measures to rectify the situation created in this regard, which has a negative impact on ensuring respect for the child's right to life and health.

In this context, the People's Advocate for Children's Rights submits to the Government the following

#### **RECOMMENDATIONS:**

- Reassessment of national policies in the field of ensuring the child's right to life;
- Strengthening the principle of the best interests of the child, especially on respecting the child's right to life;

- Creating / Strengthening family planning and parenting skills training services for raising and educating children;
- Developing effective sectoral policies in the field of health and education, to prevent pregnancy among underage girls;
- Developing the school curriculum regarding the sexual education, with compulsory status, in the educational institutions of all levels, and the content of the material must be exposed according to the specifics of the age and development of the child;
- Strengthen the skills of psychologists to identify, assess and provide necessary services to children at risk of suicide.
- Addressing the principle of ensuring the **rights of future generations** as a fundamental one for child protection policies;

## RIGHT TO HEALTH

The right to health care is a fundamental right of the person closely linked to his physical and mental, individual and social existence, being defined as such in several international documents, such as the Preamble to the Constitution of the World Health Organization (1946), Universal Declaration of Human Rights (1948), the Revised European Social Charter (1996), the International Covenant on Economic, Social and Cultural Rights and the Charter of Fundamental Rights of the European Union.

If contemporary medicine defines health as the state of normalcy of all physiological, mental and emotional functions of the body<sup>148</sup>, according to the Preamble to the Constitution of the World Health Organization, health is a fully favorable state both physically, mentally and socially, and not only the absence of disease or infirmity, but also the capacity to lead a socially and economically productive life, the state of which must be the desideratum of all signatory states, which are called upon to co-operate in achieving this goal.<sup>149</sup>

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<sup>148</sup><https://www.who.int/>

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Currently, the right to health is also approached in the light of international provisions, emphasizing patient rights, which are stipulated in the European Charter of Patients' Rights, which includes 14 patient rights. These rights are important in the relationship between citizens and their health care system.

From a legal point of view, patient rights are defined in the legislation of the Republic of Moldova as rights derived from fundamental human rights to life and health, which include social rights related to accessibility, quality and equity in obtaining medical care, as well as individual rights related to the respect of the patient as a human being, of his dignity and integrity, achieved within the use of health services.

It is also important to note that by ratifying the Convention on Human Rights and Biomedicine, the Republic of Moldova has once again committed itself "to take appropriate measures to ensure equitable access to good quality health services".

The Universal Declaration of Human Rights states in Article 25 that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services. To these are added, according to the previously referred rule, the right to insurance in case of unemployment, illness, disability, widowhood and old age, or in other cases of loss of means of subsistence, due to causes beyond his control (paragraph (1)). According to the same Art.25, the mother and the child enjoy a special protection (paragraph (1) sentence 1), and children enjoy the same rights, regardless of whether they come from marriages or outside them (paragraph (1) sentence 2). Also, Art.8 of the international document recognizes the right of any person to an effective satisfaction from the competent national courts, if he is prejudiced by acts that violate his fundamental rights (including the right to health care - s.n.) recognized by constitution or law.

The UN Convention on the Rights of the Child has a special role in specifying the right to health of the child, which specifies in the text of Art. 24 the obligation of the state to ensure "*the right to health and to access to health and medical services with special emphasis on primary and preventive health care, public health education and the reduction of infant mortality. The State also has an obligation to take measures to abolish harmful traditional practices.*"<sup>150</sup>.

The Children's Ombudsman interprets the child's right to health, as defined in Article 24, as an inclusive right, extending not only to timely and appropriate prevention, health promotion, the

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<sup>150</sup>[https://drepturilecopilului.md/files/publications/CDC\\_2005\\_final.pdf](https://drepturilecopilului.md/files/publications/CDC_2005_final.pdf)

provision of curative, rehabilitative and palliative services, but also to the right to grow and develop to their full potential and live in conditions that enable them to achieve the highest standard of health by implementing programs that address health determinants.

In the context of the interpretation provided by the UN Convention on the Rights of the Child, there are defined three types of obligations, on the right to health segment, to be fulfilled by the State, *in this case: to respect, protect and fulfill*<sup>151</sup>. In the context of the stated obligations, the People's Advocate for Children's Rights outlines some concrete actions, to be carried out by the public authorities, in order to consider the realization of the child's right to health to be appropriate:

- Reviewing national policies and the legal framework in the field of ensuring the child's right to health;
- Ensuring universal coverage with quality primary health services, including disease prevention and the promotion of health and healthy living, care and treatment services and drug provision;
- Ensuring an efficient communication between the doctor and the patient (child) or his legal representations;
- Development, implementation, monitoring and evaluation of policies and budget action plans that constitute a human rights-based approach to the realization of children's right to health.

In the process of monitoring the right to health for 2019, the Children's Ombudsman analyzed the compatibility of national legislation with international standards and the level of fulfillment of the actions put forward by central and local public authorities. In the national legislation, the right to health is found in Art. 36, 37 para. (1), (3) and (4), Art. 47, para. (1) and Art. 50, para. (4) of the Constitution of the Republic of Moldova<sup>152</sup>, Art. 4, para. (4) and (5), Art. 15 and Art. 29, para. (2) of Law no. 338 of December 15, 1994 and Art. 5, para. (2), point 12) of Law no. 10 of February 3, 2009 on State Surveillance of Public Health.

Thus, following the compatibility expertise, the People's Advocate for Children's Rights finds that in the field of health the national legal framework is *partially accounting* with the international standards in the field. Moreover, it fails to cover all the issues covered by Article 24 of the UN Convention on the Rights of the Child and largely provides only rules on the health of the child. The

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<sup>151</sup>[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11)

<sup>152</sup> <http://www.parlament.md/CadrullLegal/Constitution/tabid/151/language/ro-RO/Default.aspx>

People's Advocate for Children's Rights also concludes that the national public authorities *have failed to reach a satisfactory threshold* for carrying out the indicated actions and notes with regret that government institutions have not examined or implemented his previous recommendations set out in the previous annual reports in the chapters on the right to health and reiterates the importance of fulfilling them.

In the current circumstances, the Children's Ombudsman presents the situation of respecting the child's right to health on palliative care segment in 2019. In the Republic of Moldova at present there are over 500 children in need of *palliative care*. Palliative care is the type of service that can help children and adolescents living with many serious illnesses, including genetic disorders, cancer, neurological disorders, heart and lung disease and others. Palliative care is important for children at any age or stage of serious illness. It may start as soon as you learn about your child's illness. This can help prevent symptoms and relieve physical pain. Thus, during 2019, the People's Advocate Office prepared the Thematic Report on the implementation by the Republic of Moldova of the provisions of the resolution on strengthening the palliative care as a component of integrated lifelong treatments<sup>153</sup>. In the process of monitoring and analyzing the data obtained, the following problematic aspects were found:

- The MHLSP mentions that the district hospitals hospitalize patients with care problems in the pediatric wards of the district, if necessary. However, in the study it was determined that palliative care services for children are not provided in the district hospital medical institutions.
- The managers of the institutions mentioned that separate funding for children in palliative care does not exist, and the NHIC contracts services for palliative care, without a delimitation between adults and children and there is no way to calculate the needs and consumables for children in palliative care.
- At the same time, there was invoked the lack of an interdisciplinary team specially created and trained for palliative care in children, with only the assistance offered within the Oncology Institute.
- It was also found that no hospital institution has a psychologist specialized in pediatric palliative care<sup>154</sup>.

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<sup>153</sup>[http://ombudsman.md/wp-content/uploads/2020/01/RAPORT\\_PALIATIVE.pdf](http://ombudsman.md/wp-content/uploads/2020/01/RAPORT_PALIATIVE.pdf)

<sup>154</sup>[http://ombudsman.md/wp-content/uploads/2020/01/RAPORT\\_PALIATIVE.pdf](http://ombudsman.md/wp-content/uploads/2020/01/RAPORT_PALIATIVE.pdf)

The Children's Ombudsman states that in the context of palliative care for children, as a special group that needs to be protected, the issue of convenience and accessibility of given services is a pressing one. Thus, when a child is seriously ill, every member of the family is affected. Therefore, it is important that in addition to the qualitative care provided to the child, the necessary assistance to be also provided to the family, as the closest and most trusted circle of the child.

The study found that in the Republic of Moldova pediatric palliative care practically does not exist, except in a specialized section at the Oncology Institute. Beds are also provided in the clinical protocol for the palliation of children with cancer, but there is no normative provision and possibility for palliative care for children with non-oncological conditions. Children in serious conditions, who need palliative care are hospitalized in pediatric hospitals with a general profile, in the intensive care unit or chronic diseases, for long periods, according to vital needs, being connected to life support devices. However, so far, no mechanism for calculating and financing these cases has been developed, the NHIC refusing to pay them. Thus, hospitals are required to cover these huge expenses from their own funds, which affects the access and quality of medical services needed by other children admitted to these institutions, including access to intensive care equipment that is blocked for months and even years by children in irreversible states. There are not enough specialized human resources in the country in this field.

In concluding the above, the Children's Ombudsman considers that the central public authorities have not made sufficient efforts to develop the palliative care service for children, which is why it cannot reach international quality standards in the field of child protection.

Another aspect of the child's right to health, examined by the People's Advocate for Children's Rights during the reporting period, ***was the provision of medical care to children without parental consent or in the case of the parent's refusal to medical care***, an issue addressed by the authorities and individuals in several addresses to the Children's Ombudsman. The parent's refusal to medical care is currently one of the most difficult dilemmas of medical ethics and jurisprudence. Thus, although at present Law no. 338 of December 15, 1994 on children's rights to Art. 4, para. (4) provides that if ***"the parents refuse medical care for the sick child, it is granted against their will, at the decision of the board of doctors, taken in the presence of the power representative<sup>155"</sup>***, the problem at the practical level is not solved.

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<sup>155</sup>[http://www.legis.md/cautare/getResults?doc\\_id=94939&lang=ro](http://www.legis.md/cautare/getResults?doc_id=94939&lang=ro)

In the examination procedure of the People's Advocate for Children's Rights, there was the case of the child who due to his health condition needed a surgical intervention, and the child's mother did not allow the medical procedure. The duality and complexity of the situation occurred due to the fact that the medical workers and the persons responsible for the protection of the child's rights, involved in the examination of the given case, interpreted the norm established in Art. 4, para. (4) of the Law indicated from a narrow perspective, stating that it applies only in situations of extreme necessity and when the child is "between life and death". The Children's Ombudsman considers this interpretation erroneous and narrows the effect of the law or, Art. 4, paragraph (4) of Law no. 338/1994 on children's rights clearly provides "... *refuses medical care for the sick child ...*", without making a distinction on the seriousness of the problem.

In this regard, the People's Advocate for Children's Rights presents her opinion on the conflict of interest regarding the consent of parents / legal representatives to medical care for sick children and indicates that, although in accordance with international and national standards, the strength of the child's opinion has a lower weight than that of his parents, the child's opinion can not be neglected. There are several good reasons for this presumption, to keep the parents this autonomy and family confidentiality. Firstly, because most parents care for their children, they will usually be better placed than others to understand their children's unique needs, to be aware of what is best for their children and they will take decisions that are beneficial to them. Secondly, the interests of other family members may sometimes be in conflict and some family members may be subject to harmful pressures as a result of these decisions. Parents are often better placed than others outside the family to weigh the child's competing interests in making a final decision. Thirdly, parents should be allowed to raise their children according to their own chosen standards and values and pass them on to their children. Finally, the family must have sufficient space and freedom of intrusion from third parties.

However, parental authority is not and cannot be absolute and when a parent takes action contrary to the best interests of a child, the State can intervene. The "*parens patriae*" doctrine<sup>156</sup> states that the State can act as a "surrogate parent" when necessary to protect the lives and health of those who cannot take care of themselves, especially children. By acting for the purpose of protecting the general interest in the welfare of the child, the State as "*parens patriae*" may restrict the discretion of the parents in order to protect the best interests of the child.

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<sup>156</sup><https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1440-1754.2005.00643.x>

Another issue examined by the People's Advocate for Children's Rights was the ***compulsory vaccination of children***, a subject reflected in the previous periods of the exercise of his mandate. During the monitored period, the following problematic aspects were deduced from the analyzed compartment:

- Insufficient information on the benefits of vaccination;
- The dubious quality of vaccines and the lack of safety of medical services provided in case of complications following vaccination, according to the opinion of the parents who notify the Child Ombudsman;
- Poor communication between medical staff and parents / legal representatives of the child;

The issue was repeatedly analyzed by several authorities and, on October 30, 2018, the Constitutional Court ruled on the constitutionality of the provisions of Law no. 10 of February 3, 2009 on State Surveillance of Public Health and the National Immunization Programme for 2016-2020, approved by Government Decision no. 1113 of October 6, 2016<sup>157</sup>, establishing that the respective provisions are constitutional.

In the opinion of the Children's Ombudsman, the issue addressed has not been resolved, and the dilemma lies in the ***mandatory vaccination and the lack of accountability mechanism for parents / legal representatives***. In his Opinion before the Constitutional Court, the People's Advocate for Children's Rights mentioned that any State has an obligation to adopt effective policies on the health security of its citizens, and citizens are obliged to respect it, including in the field of vaccination. At the same time, the state must guarantee citizens safety regarding the quality of the vaccine and taking responsibility for the risk situations that may arise after vaccination.

Thus, on the one hand, the State in the light of the provisions of Art. 52, para. (6) of Law 10/2009 "*the admission of children to communities and educational and recreational institutions is conditioned by the fact of their systematic prophylactic vaccination*<sup>158</sup>", provides for the compulsory vaccination of children and at the same time does not constitute a coercive mechanism for parents who refuse this procedure. In this regard, the Children's Ombudsman mentions that in the matter of

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<sup>157</sup><http://www.constcourt.md/ccdocview.php?tip=hotariri&docid=674&l=ro>

<sup>158</sup>[http://www.legis.md/cautare/getResults?doc\\_id=106570&lang=ro](http://www.legis.md/cautare/getResults?doc_id=106570&lang=ro)



respecting the child's right to health, on the compulsory vaccination segment, two aspects are imperative for specialists in the field of children's rights.

**Consent** which is the principle by which individuals must give their permission before accepting a doctor, an intervention or a procedure. Under current laws and regulations, in most countries, including the Republic of Moldova, consent is required for a series of medical interventions or procedures, from a simple blood test to an organ transplant procedure, including vaccinations. In very few well-described circumstances, such as life-threatening emergencies, there may be allowed some exceptions from taking consent. Consent derives from the principle of autonomy and is an important part of medical and public health ethics. For the consent to be valid, it must be informed, understood and voluntary, and the consenting person must have the ability to make the decision.

The second aspect of vaccination in the field of child rights protection is **agreement**, this notion refers to the process of involving children in making decisions regarding vaccination (or other medical interventions). The agreement is not regulated in law like consent and thus, is qualified as a **moral obligation**, imperative to the field of child protection, closely related to good practices in approaching patients. International law provides strong support for children's rights to participate in decisions about their health and health care, as well as in the planning and delivery of relevant health services.

At the same time, the People's Advocate for Children's Rights notes that in the case of principles based on concepts about vaccines as a public good, or on public health objectives of disease elimination and outbreak control, the State may identify one or more vaccines to include them in a legislative act as being binding, thus excluding the need for consent. At the moment, due to the fact that mandatory consent is required, vaccination depends on the legal nature of the pre-established rule. However, once vaccination is mandatory and the legislator will concretely establish in the law the list of mandatory vaccines and the conditions under which they can be administered, consent may not be necessary.

This theory lies in the fact that currently the vaccination policy in the Republic of Moldova is based on a *soft* law which, although establishing the obligation of vaccination does not provide the necessary levers for its implementation, the only restriction provided by law is the ***prohibition of admission to communities***. Thus, the State is currently failing to establish a well-defined mechanism for ensuring the right to health of the child, based on the principles of the UN Convention on the Rights of the Child.

In the context of respecting the child's right to health, the People's Advocate for Children's Rights refers to his 2018 Annual Report on the observance of children's rights in the Republic of Moldova<sup>159</sup> and brings to the attention of public authorities the issue of respecting the right to health of *children suffering from rare diseases*. A rare disease is considered any disease that affects less than 1 in 2,000 people. Currently, about 6000-6000 rare diseases are recognized, and about 350 million people worldwide suffer from it<sup>160</sup>. About 75% of people diagnosed with rare diseases are children.

According to the World Health Organization, there are 36 million people in the countries of the European Union who suffer from rare diseases. According to official information provided by the Ministry of Health, Labour and Social Protection<sup>161</sup>, in the Republic of Moldova there is developed the List of Rare Diseases, being managed by the Center for Reproductive Health and Medical Genetics within the Institute of Mother and Child<sup>162</sup>, being completed according to practical cases. The total number of patients included in the List of rare diseases in the records of this Center, is 800 patients, with over 20 clinical conditions.

The People's Advocate for Children's Rights has examined several cases in which there was invoked the violation of the right to health care by not granting personalized treatment in case of a rare disease. In 2018, for the treatment of patients with rare diseases, the MHLSP allocated from the budget the amount of 12,710 thousand MDL<sup>163</sup>, which is a very small amount, related to the number of identified cases. At the same time, the quality of life of families with children diagnosed with rare diseases, who suffer, must be taken into account, as they are put in the situation of procuring the necessary medication, consumables, etc. on their own. In the opinion of parents, the authorities need to pay more attention to the social and educational inclusion of these children.

As a result of the investigation of the subject, the Children's Ombudsman found a minor involvement in the diagnosis, treatment, support and care provided to children suffering from rare diseases and their families. In other words, children with rare diseases in the Republic of Moldova, for the most part, are not correctly diagnosed, do not have the necessary treatment, adequate care and social inclusion.

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<sup>159</sup>[http://ombudsman.md/wp-content/uploads/2020/01/RAPORT\\_2018\\_final.pdf](http://ombudsman.md/wp-content/uploads/2020/01/RAPORT_2018_final.pdf)

<sup>160</sup><http://www.euro.who.int/en/countries/republic-of-moldova>

<sup>161</sup><https://msmps.gov.md/>

<sup>162</sup><https://www.mama-copilul.md/>

<sup>163</sup><https://msmps.gov.md/>

It was also found that family doctors are not well enough prepared to detect in time the symptoms of a rare disease, and late diagnosis of these diseases, leads to severe disability, which subsequently involves additional costs from the State, this phenomenon is one of the causes that increases the infant mortality rate.

Most of the time, children are diagnosed with a rare disease, late and abroad, at private clinics abroad, "*children with rare genetic diseases are out of the system in the Republic of Moldova*", and financial expenses for travel and services diagnosis, in most cases are borne by the family.

Respect for the right to life, health and development of *children born prematurely* was again in the attention of the People's Advocate for Children's Rights during the reported period. In the Report on the observance of children's rights in 2018, this topic was addressed, mentioning the findings and recommendations addressed to public authorities for the recovery of the situation. As in the previous report, the Children's Ombudsman appreciates the efforts of public authorities for the measures taken that have had a positive impact on this segment, however, it indicates some shortcomings notified in the reported year, specifying the low quality of consumables (syringes, intravenous catheters, gastric tubes, sterile handling diapers and sterile field, etc.) insufficiency of special equipment, including specialized ambulances for transporting children, an acute problem in the case of transporting them from the country to the national medical institution Mother and Child Center in Chisinau. Petitioners - parents, doctors and representatives of the P.A. "Vitae" mentioned that the low level of quality of medical products in hospitals is caused by the public procurement procedure based on the "lowest price" principle. As a result, low-quality products are brought into use and it is not taken into account that the poor quality of these products causes unjustified suffering to young patients. The Children's Ombudsman notes that the issues set out above apply to both premature babies and newborns with health problems.

Another aspect analyzed by the People's Advocate for Children's Rights was the *consumption by children of alcohol, tobacco products and narcotics*, a problem taken from several calls from the *Child's Phone* (080011116) within the People's Advocate Office. The Children's Ombudsman notes that the policies currently adopted to combat the use of alcohol and tobacco products are ineffective and do not correspond to reality. The number of children consuming narcotics, alcoholic beverages and tobacco products is constantly increasing, and the diversification of harmful products leads to an even greater aggravation of the problem. At present, the situation has reached a level where it can no longer be controlled by parents, teachers or authorities, and the decision-makers fail to settle the

situation. According to parents and teachers, children even got to smoke during school hours, and to buy a pack of cigarettes and narcotics they are ready to run out of money for lunch or transportation.

The progress of these addictions leads to the fact that some children have serious health problems, are underdeveloped, fail to master the study material, participate in illegal actions, wander, etc. In this regard, the Children's Ombudsman urges the health authorities to strengthen actions to prevent and stop the spread of vices among children.

Following the process of monitoring the observance of the right to health, the following problems were identified:

- Law no. 338/1994 on children's rights, is a legislative act that does not correspond to current realities and does not comply with the specific provisions of the right to health of the child set out in Article 24 of the UN Convention on the Rights of the Child;

- The interpretation by the public authorities of the principle of the “best interests of the child”, stipulated in the UN Convention on the Rights of the Child on the right to health segment, is ambiguous, segmental and incomplete;

- The low level of theoretical knowledge of medical workers in the field of child rights protection leads to serious consequences, including the delay of necessary interventions in a timely manner, which can even result in the death of the child;

- The low level of awareness of parental responsibilities in relation to the protection of the child's right to health.

In conclusion, the People's Advocate for Children's Rights insists that the authorities should take conclusive measures to define the best interests of the child in the area of respect for the right to health and amend the regulatory framework relevant to the field of child protection.

## **RECOMMENDATIONS:**

### **Ministry of Health, Labour and Social Protection:**

- To amend the legislative framework in the field of the right to health by bringing it into line with the standards set out in Article 24 of the UN Convention on the Rights of the Child;
- To strengthen the mechanism for the protection of children with rare diseases, support services and training of parents in the field of therapy and care of children with rare diseases;

- To intensify the promotion of immunization, in order to convince parents about the benefits of vaccination;
- To ensure, through subordinated institutions, the monitoring of children's health in the pre- and post-vaccination periods;
- To actively promote anti-tobacco, anti-alcohol and anti-drug policies among children;
- To strengthen the mechanism of informing the population thus ensuring the patient's right to information;
- To strengthen the system of protection of the rights of children in palliative care:
- To review the funding mechanism for contracting pediatric hospitals for palliative care for children with incurable non-oncological diseases, permanently hospitalized, dependent on medical devices to maintain vital functions.
- To organize palliative care units for children in hospitals, including those with non-oncological diseases in palliation (in pediatric hospitals), with adequate training of specialized staff, both medical and non-medical.
- To promote the creation and support the development of hospice-type institutions (including for children), according to the international recommendations with the revision of their financing mechanism.

## **THE RIGHT TO FAMILY LIFE AND THE PROTECTION OF CHILDREN LEFT WITHOUT PARENTAL CARE**

Enshrined in Articles 9, 10 and 20 of the UN Convention on the Rights of the Child, the right to family life is the basic foundation for the proper development of the child.

Thus, the Convention establishes the obligation of the State *"to ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child... any child who is temporarily or permanently deprived of his or her family environment, or who, in his or her own interest, cannot be left in that environment, has the right to special protection and assistance from the State<sup>164</sup>".*

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<sup>164</sup><https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

At national level, the child's right to family is guaranteed by Art. 48, 49 of the Constitution of the Republic of Moldova<sup>165</sup>, Family Code and chap. III of Law no. 338 of December 15, 1994 on children's rights<sup>166</sup>. Analyzing the compatibility of national legislation with international standards, there is highlighted a partial compliance with the legal norms stated in this way, the national authorities are to link the pre-established provisions in the field of protection of the right of the child to family life to international norms.

As a representative of the children before the public authorities, the People's Advocate for Children's Rights asked children how they perceive the realization of the right to family and the protection of children left without parental care and further presents some of their views on the subject:

- I want my parents home;
- My father doesn't live with us;
- I was in the care of my grandparents since I was a kid;
- When I grow up I will not leave my children;
- I want my little sister to live with us;

During 2019, the People's Advocate for Children's Rights prepared the Thematic Report on *"Monitoring the observance of the rights of children left without parental care"*. The purpose of the Thematic Report was to monitor the implementation of the UN Convention on the Rights of the Child in the Republic of Moldova, to determine existing systemic problems in providing adequate assistance to categories of children at risk and to identify major risks of child rights violations. During the monitoring process, the following problematic aspects were detected:

- **Discriminatory attitude from society.** According to the accumulated data, it is found that children left without parental care face problems of social inclusion, have many psychological problems, frustrations, distrust, tendency to self-isolation, etc. The situation is also exacerbated by the lack of specialists in the field of psychological rehabilitation who could provide these children with guidance in the process of social inclusion;
- **Health problems.** By going abroad to work, parents leave their children for a material benefit, leaving them to their grandparents, relatives, friends or even on their

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<sup>165</sup>[https://www.legis.md/cautare/getResults?doc\\_id=111918&lang=ro](https://www.legis.md/cautare/getResults?doc_id=111918&lang=ro)

<sup>166</sup>[https://www.legis.md/cautare/getResults?doc\\_id=94939&lang=ro](https://www.legis.md/cautare/getResults?doc_id=94939&lang=ro)

own when they are left alone. But the departure of the parents is followed, most often, by a radical change in the environment and living conditions of the children left in the country. This situation involves interrupting normal life and changing the comfortable environment, making children suffer from the lack of home, family, and this puts them under the burden of a strong emotional load;

- **The risk of approaching a deviant behavior.** During the period of development and socialization, due to the way of life, lack of affection and psychological problems they have, children may be at risk of being influenced in initiating harmful behaviors, with increased risk for their health, such as alcohol use, smoking, drug use, etc. In particular, there are dangers in cases where insufficient contact is established between the child and the person in whose care he or she has remained. Such situations can be due to various causes such as: children remain in the care of elderly people, lack of time of the only remaining parent, the child was left with a stranger who does not show affection and interest in him. As a result, in the absence of adult monitoring, there can develop some harmful behaviors of children. Namely, the lack of parental control can motivate minors to engage in vicious behavior. These children are much easier to handle and often fall under the influence of adults with delinquent behavior, which attracts them to illegal activities;
- **Violation of the rights of children with severe disabilities.** Respondents frequently noted that at the national level there are no opportunities for adequate care for children with disabilities left without parental care, who have serious problems in the placement.
- **Low educational attainment of children left without parental care.** Many parents and children do not know their rights, do not know the provisions on financial insurance of children who study, enshrined in the *Provisional Rules of spending money for orphaned pupils (students) and those under guardianship / curatorship in vocational and trade schools, specialized secondary and higher education institutions, boarding schools and orphanages*, approved by Government Decision no. 870 of July 28, 2014. For this category of children there are reduced opportunities for training (professionalization), limited number of qualification possibilities offered by the Employment Agency;

- **Increased vulnerability of orphans who have reached the age of 18.** Many of these people do not have the basic conditions for independent living, housing, financial sources for survival. Moreover, if these children (teenagers) are enrolled in professional studies, they are stopped the allowance of (1400 MDL), and the guardians and APP in whose care the children are, are outraged by this fact. At the same time, a considerable impediment to the protection of orphans who have reached the age of 18 is the lack of access to housing, a problem also analyzed by the Council of Europe Special Rapporteur Djuna Mijatovic within the Council of Europe Special Report on the right to affordable housing<sup>167</sup>. Thus, although the legislation stipulates the obligation of the State to insure orphaned children who have left the residential housing system, the situation at the practical level does not correspond to the stipulated legislative norms. The People's Advocate for Children's Rights notes that the competent authorities neglect their direct responsibilities in this area.

In this regard, we point out that the national authorities have failed to provide effective protection for children left without parental care. The Children's Ombudsman encourages the State to make extensive use of the standards and principles on the rights of the child in the Convention and other international human rights instruments, on the segment of children left without parental care, to guide behavior, actions, policies and programs, in particular: non-discrimination; the best interests of the child; the right to life, survival and development; the right to be heard and taken into account; and the right of the child to be guided in the exercise of his or her rights by caregivers, parents and community members, in accordance with the developmental abilities of the child without parental care.

The People's Advocate for Children's Rights considers that the strategies and initiatives currently adopted do not have an approach focused on the rights, needs and interests of the child and do not meet the main criteria to correspond to good practices in the field of protection of children without parental care. Children without parents are often distrustful of adult intervention in their lives. Their abusive treatment, admitted by adults in society, makes them not want to give up their autonomy, gained, although limited. State policies must also take into account the particularities of child development, the strengths of children and the positive contributions that children make to their own survival and development and that of their peers, families and communities. Applying this

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<sup>167</sup> <https://www.coe.int/en/web/commissioner/-/the-right-to-affordable-housing-europe-s-neglected-duty>



approach is not only a moral and legal imperative, but also the most appropriate approach for identifying and implementing sustainable solutions for children separated from their parents.

Another issue examined by the Children's Ombudsman during 2019 was the *process of deinstitutionalization of children in the Orhei and Hincesti Temporary Placement Centers for children and their inclusion in the family environment*. Although this issue was addressed by the Children's Ombudsman in 2017 in the Thematic Report on "Assessment of the situation of children placed in boarding schools for children with mental disorders in Orhei and Hincesti in the process of deinstitutionalization<sup>168</sup>", the situation did not change.

It should be noted that, according to data presented by the Ministry of Health, Labour and Social Protection<sup>169</sup> the number of children who are placed in the Orhei and Hincesti Temporary Placement Centers is significantly lower than the number of adults who are there.

<b>Placement institution</b>	<b>children</b>	<b>adults</b>
Orhei Placement Center	35 (boys)	162
Hincesti Placement Center	30 (girls)	219

Thus, the Children's Ombudsman remarks that in the institution predestined for the placement of children with severe disabilities there is currently a much larger number of adults than children, which is contrary to international Recommendations<sup>170</sup> in the field of child protection and can endanger the life and health of children. The presence of a large number of adult beneficiaries in this institution is proof of the inefficient actions of the State, in order to deinstitutionalize and integrate them in a family environment. The issue of respecting the right of children with disabilities to a family environment will be further addressed in the light of international standards stated above and from the perspective of the real situation in the country, reflected based on the experience of some parents / legal representatives of children.

The People's Advocate for Children's Rights states that in its capacity as a national institution for children's rights it is not against the deinstitutionalization process and supports the principle of

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<sup>168</sup>[http://ombudsman.md/wp-content/uploads/2018/10/raport\\_diz\\_2017\\_red\\_0.pdf](http://ombudsman.md/wp-content/uploads/2018/10/raport_diz_2017_red_0.pdf)

<sup>169</sup> MHLSP letter no. 023/917 of February 13, 2019

<sup>170</sup>[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11)

family reintegration of the child, provided that this procedure is carried out in compliance with all standards.

The deinstitutionalization process started in the Republic of Moldova in 2010 with the support of non-governmental organizations and is currently underway. Following the monitoring, there were found the following problematic issues that do not comply with international standards for the protection of the rights of the child:

- **The family is not sufficiently prepared for the reintegration of children into the family.** At present, there are families who have left children in such centers for a period of over 10-15 years and have practically severed contact with their children for various reasons. Thus, when parents are forced to take over their child after such a long period, this situation poses a risk not only for the child, because he finds himself in an unknown environment, but also for parents because they do not have the skills to behave with their child and cannot adequately respond to the specific needs of the child lacking the essentials of this relationship, the affection;
- **Community medical services do not meet the needs of reintegrated children.** The issue was reported by the Children's Ombudsman in the monitoring of several families in which children with disabilities from placement centers were reintegrated. Thus, it was found that there are localities where there is no doctor, and the medical point is served only by a nurse who rarely reaches the child. In this situation, medical care is provided by the parent who does not have the necessary knowledge, even if he has received primary training from a specialist. It is also problematic to access ambulances in case of emergency;
- **Education is provided at home.** In most cases, the children concerned are not included in the community education system, the educational program being provided at home. However, in most cases, teachers refuse to come to the children's home permanently. Thus parents are put in the position to fulfill the role of pedagogues for their children;
- **Social isolation of parents.** With the reintegration of the child with special needs, the parent / parents are forced to isolate themselves from society due to stereotypes, lack of tolerance, underdeveloped social assistance services. Thus, parents are forced to resign, lacking financial resources, going to adopt a new lifestyle, which can lead to anxiety and nervousness of parents that can affect the well-being of the child.

In the context of the above, the People's Advocate for Children's Rights finds that public authorities do not have the capacity to ensure the continuity of the process of social integration of children and to provide the necessary support to families.

The Children's Ombudsman urges the State to initiate a comprehensive process of examining the post-deinstitutionalisation situation in order to identify systemic gaps in ensuring the qualitative social inclusion of the child and to review the deinstitutionalisation process in the light of international best practices and standards set by the UN Convention on the Rights of the Child.<sup>171</sup>

It also highlights the need to review the entire social assistance system for children with mental disorders reintegrated into biological families / extended families or other family-type services. The current situation remains alarming because the authorities have not put in place a clear post-deinstitutionalisation intervention mechanism. Thus, children who arrive in unprepared families become a burden for those who have to take care of them and for themselves.

The Children's Ombudsman monitored the observance of the right to family and in the context of maintaining the relations between children and parents, when the parents live separately or are divorced and when there is *an established and respected schedule of parent-child meetings*.

The national legislation stipulates that in the event of dissolution of the marriage through divorce, if the spouses have children, a number of important aspects will be decided (the child's domicile, the schedule of meetings and the alimony). If the parents decide by mutual agreement on these issues, then the involvement of the authorities should be minimal, only in the process of legal drafting of the corresponding procedural acts. Thus, the State guarantees the power of family autonomy to any couple and does not intervene in the sphere of private and family life.

A more complicated situation arises when parents cannot find a common denominator on the issues concerned and moreover, they are in hostile relations and do not want to reach a compromise. In such situations, State interference should be as effective and precise as possible to ensure that personal conflicts between parents do not affect **the child's well-being**. However, at present it is observed that the intervention of the authorities leads to a worsening of the situation rather than to its improvement.

In the opinion of the Children's Ombudsman, the serious situation on this segment is favored by the imperfection of the legislation on establishing the schedules of meetings with parents and the intervention mechanism in such circumstances. Firstly, national law does not regulate the procedure

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<sup>171</sup>[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11)

for drawing up the schedule of meetings, nor it does give it legal power until it has been imposed by a court decision. Secondly, the situation remains uncertain, as the authorities do not have a national intervention mechanism, so the mode of action reverts to the *discretionary right* of each individual authority, which leads to the actions being segmented and not uniform. It also attests the *irresponsibility of parents* to ensure a child-friendly environment. In most cases there are situations of conflict between the parents, and the child becomes a currency in the process of "fighting" of adults, and such situations have a negative impact on the physical and mental health of the child.

Ensuring compliance with the schedule of meetings becomes more complicated if the parent, in whose custody the child is, goes to live with the child in another State. This situation highlights a conceptual-legal problem - the court establishes the child's domicile with one of the parents, but the court cannot impose on the parent the obligation to remain on the territory of the Republic of Moldova. However, the respect of *the right to free movement of the adult is ensured, but the child's right to communicate with both parents is violated*. Although the standards for the protection of children's rights stipulate the obligation of the State to ensure in the shortest possible time the child's contact with the parent whose contact was restricted, in practice this obligation often cannot be fulfilled, not being established / provided the mechanism / procedure of realization.

In this regard, the People's Advocate for Children's Rights recommends the State to review the legal framework in the field of establishing the schedule of meetings with parents and to strengthen the mechanism for enforcing court decisions with an element of extraneousness from the segment analyzed above.

Another area that came to the attention of the Children's Ombudsman during the reporting period was the observance of the rights of *children on the streets*. That issue has been included in the agenda of the People's Advocate for Children's Rights from the beginning of the activity mandate (2016). Thus, during 2019, according to the information presented by the General Police Inspectorate, there were registered 893 cases of voluntary departure of children from home or social institutions<sup>172</sup>, of which according to the information of the Municipal Directorate for Child Rights Protection **are registered as children leading a street life**.

Observing the large number of children who leave home and risk being left on the street, the Children's Ombudsman referring to the General Comment no. 21 (2017) on street children<sup>173</sup>,

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<sup>172</sup>[http://politia.md/sites/default/files/ni\\_ssc\\_12\\_luni\\_anul\\_2019\\_finala.pdf](http://politia.md/sites/default/files/ni_ssc_12_luni_anul_2019_finala.pdf)

<sup>173</sup>[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11)

recommends that the State conduct a proper study of the root causes of the phenomenon, develop a comprehensive strategy for the protection of these children in order to prevent and mitigate the phenomenon and provide adequate protection for the recovery and reintegration of these children, including shelter, education and training, appropriate health care and other social services, including programs to combat substance abuse and mental health counseling.

The main causes of the departure of children are: poverty, related to alcohol abuse of the parents, lack of supervision and psycho-emotional and physical abuse by the parents. Most beneficiaries fled the country from the age of 8 to 13. All beneficiaries of the Roadside Assistance Service use narcotic and toxic substances. The effects of street life on children are: dropping out of school, addictions, health problems, especially related to mental health and respiratory organs, caused by substance use and juvenile delinquency (theft, violence between children), sexual exploitation, attracting in the drug marketing networks, etc.

The Children's Ombudsman notes that, although several measures have been taken since 2016 to eradicate the phenomenon of *street children*, today we are forced by circumstances to recognize that they did not have the expected effect, they did not achieve their intended purpose. Those conditions establish the inability of the guardianship authorities to ensure the sustainability and consistency of actions in this area. At the same time, it is worth appreciating the effort of the Chisinau Municipal Council for the creation in 2019 of the Roadside Assistance Service, with a day program, where children are fed, there are conditions for maintaining personal hygiene, recreation through sports, reading and other occupations. However, the need to extend the Service's program is obvious and at night, its operation must be ensured 24/7.

Following the process of monitoring the observance of children's rights in street situations, the following problems were identified:

- Insufficiency of qualified and experienced specialists in the field of child protection who lead a street way of life;
- Difficulties in applying case management;
- Delayed intervention of specialists and omission of the prevention stage;
- Lack of a clear intervention mechanism at the child's location;
- Poor collaboration of all actors, parts of the Intersectoral Cooperation Mechanism for the identification, assessment, referral, assistance and monitoring of child victims and potential victims of violence, neglect, exploitation and trafficking;

- Defective collaboration of the guardianship authorities in the country in the context of the child's return to the locality of residence;
- Weak interventions of the guardianship authorities in the process of providing the necessary support to the child and the family / family environment for reintegration.

The People's Advocate for Children's Rights encourages the authorities to take a holistic approach focused on the best interests of the child and the consultation of the child's opinion. Public authorities must regard children, not only as objects of protection, but also as an active actor in the process of implementing their rights. The responsible persons must decide together with the children the form of protection that will be agreed by them.

In the context of this situation, the People's Advocate for Children's Rights presents the following **RECOMMENDATIONS:**

- The Ministry of Health, Labour and Social Protection is to initiate the procedure for amending the legislation on maintaining relations with both parents in case of their separation, on the segment of “schedules of meetings between children and parents”;
- The Ministry of Health, Labour and Social Protection must assess the observance of the rights of deinstitutionalized children and the child protection system in the post-deinstitutionalization period;
- The Ministry of Health, Labour and Social Protection is to take action in order to optimize the system of deinstitutionalization of children from residential centers;
- The Ministry of Health, Labour and Social Protection will ensure the optimal functioning of the mechanisms for the effective protection of children left without parental care;
- The Ministry of Health, Labour and Social Protection is to evaluate the functionality and cooperation of intersectoral mechanisms to ensure adequate protection of children in street situations;
- The Ministry of Health, Labour and Social Protection is to develop the National Clinical Protocol on narcological detoxification of children under 16 years of age;
- The government needs to review the national housing policy for orphans leaving the residential system.



## THE RIGHT TO OPINION AND CIVIL FREEDOMS

The provisions of Articles 12 to 15 of the UN Convention on the Rights of the Child (right to opinion, freedom of expression, freedom of thought, conscience and religion, freedom of association)<sup>174</sup>, represent the child's support when he or she wishes to interact with the society or wishes to actively participate in its activity. The State through the given obligations is to ensure by all possible measures, that no child will be marginalized in the realization of these fundamental freedoms.

Article 12 of the Convention establishes the right of every child to freely express his or her views in all matters affecting him or her, as well as the subsequent right for such views to be given appropriate weight, depending on the age and maturity of the child. This right imposes clear legal obligations on public authorities to recognize this right and to ensure its implementation, listening to the views of the child according to the child's age and level of development giving it due weight. Article 12, as a general principle, provides that the competent authorities should endeavor to ensure that the interpretation and implementation of all other rights enshrined in the Convention are guided by it.

At the same time, the child has the right not to exercise this right. Expressing opinions is a choice for the child, not an obligation. The responsible persons must ensure that the child receives all the information, advice and has the necessary conditions to make a decision on the use or abstention from exercising this right.

In the national legislation, the right to opinion and civil liberties, on the segment of children's rights, are enshrined in Art. 31, 32 and 40 of the Constitution of the Republic of Moldova and Art. 8 of Law no. 338 of December 15, 1994 on children's rights. We note that the national legislation is partially compatible with international standards, thus, it is necessary to modify the national normative framework in the field of protection of the child's right to opinion.

In his work, the People's Advocate for Children's Rights has repeatedly expressed his position on respect for the right to opinion and civil liberties of the child in the Republic of Moldova and presented a set of recommendations for improving the existing situation. We mention that recommendations regarding the observance of the child's right to opinion and civil liberties were

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<sup>174</sup><https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>



presented by the Children's Ombudsman in the Annual Report on the observance of children's rights in the Republic of Moldova in 2018, but the relevant authorities did not take the necessary actions<sup>175</sup>. The Children's Ombudsman also notes that the State has not taken any action on the implementation of the Recommendations of the UN Committee on the Rights of the Child on the combined fourth and fifth periodic report of the Republic of Moldova<sup>176</sup>. As a result, the situation regarding the observance of the child's right to opinion and civil liberties has not changed significantly, and the situation at national level has remained constant.

As a representative of the children before the public authorities, the People's Advocate for Children's Rights asked the children about their perception on the right to opinion and civil liberties and further presents some of the children's opinions on the subject under investigation:

- My opinion matters and I want to be able to express it;
- I want to be able to freely express myself about the areas in which I am interested;
- I want to participate in the daily life of the school where I study;
- I think I can change something in the locality where I live;
- I want to decide the optional objects myself;
- I want to be heard.

In 2019, the People's Advocate for Children's Rights, in the department of the right to opinion and civil liberties, monitored the activity of *student councils within educational institutions as a mechanism for exercising children's rights*. Student councils are a direct manifestation of the child's right to opinion and the child's civil liberties in educational institutions.

During the monitoring process, the Children's Ombudsman made 15 visits to educational institutions across the country, where he had discussions with members of the student councils of these institutions. Following the monitoring process, the following problematic aspects in the field were detected:

- Lack of the mechanism for promoting opinions, ideas proposed by children at national level;
- Lack of training / informing children about the role and mission of the student council in an educational institution;
- Decisions made by board members are largely neglected by the school administration;

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<sup>175</sup>[http://ombudsman.md/wp-content/uploads/2018/10/raport\\_copil\\_2017def.pdf](http://ombudsman.md/wp-content/uploads/2018/10/raport_copil_2017def.pdf)

<sup>176</sup>[https://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=MDA&Lang=EN](https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=MDA&Lang=EN)

- The process of selecting board members is not in all cases transparent and impartial;
- Influencing the opinion of children by the administration of the educational institution.

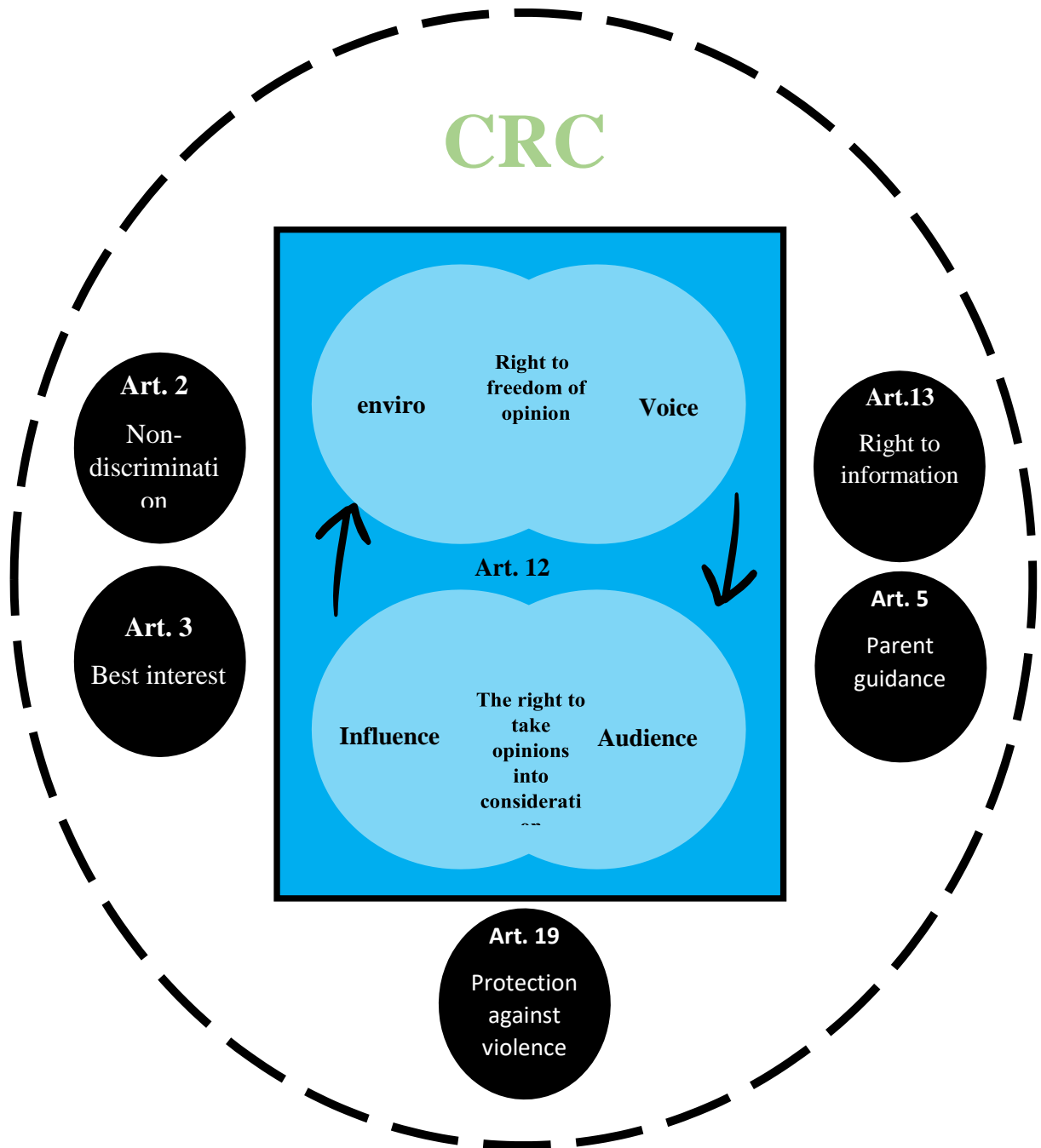
The Children's Ombudsman notes that this situation is caused by the fact that the normative acts in the field, in particular the Instruction of the Ministry of Education, Culture and Research on the establishment and functioning of the Student Council,<sup>177</sup> are not developed from a holistic perspective, which would correspond to the standards of children's involvement in the decision-making process on the issues that concern them. The Ombudsman also notes that the national authorities did not take into account the standards stipulated by the General Comment of the UN Committee on the Rights of the Child no. 12 (2009) on the right of the child to be heard.<sup>178</sup> The formal establishment of children's advisory bodies is a mimicry of the implementation of the Convention and cannot be described by the People's Advocate for Children's Rights as appropriate. Children themselves must be able, with the support of adults, to create and manage the work of bodies that are meant to represent the interests of children.

Thus, the current situation requires a speedy remedy in line with the international standards in the field. National authorities are to review the national standards for children's participation in the decision-making process and bring it into line with the pre-established international rules, according to the scheme below:

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<sup>177</sup><https://mecc.gov.md/ro/content/cadrul-national-al-calificarilor-2>

<sup>178</sup>[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11)



In this regard, the People's Advocate for Children's Rights, in accordance with international standards in the field of protection of children's rights, on the segment of respect for the right to opinion, initiated in 2019 the creation of the *Children's Advisory Council to the Children's Ombudsman*. The Council is a support mechanism for the Child Advocate, in order to ensure closer

contact between the National Institution for the Protection of the Rights of the Child and children in the Republic of Moldova.

Another effective mechanism of the Ombudsman for consulting the opinion on the observance of children's rights in the Republic of Moldova is the *National Children's Forum* organized annually.

The People's Advocate for Children's Rights draws attention to the fact that in 2019 there *were created impediments in the conduct of the National Children's Forum*. Thus, the People's Advocate for Children's Rights considers as an interference in the exercise of his duties the attempt to discredit the activity of consulting children's opinion and pressure actions to cancel the forum, by a small group of civil society representatives and public officials. Moreover, these circumstances are to be considered as actions to discredit the National Institution of Children's Rights and to interfere in the activity of the People's Advocate institution, provided in Article 3 paragraph (4) of the Law on the People's Advocate (Ombudsman). Likewise, the respective actions fall under the incidence of the provisions of Art. 320 of the Contravention Code "Interference in the activity of the People's Advocate and the People's Advocate for Children's Rights"<sup>179</sup>.

Referring to the General Comment no. 2 of the UN Committee on the Rights of the Child<sup>180</sup>, the People's Advocate for Children's Rights notes that the State, as a high contracting party and a direct subject of fulfilling its obligations under the Convention on the Rights of the Child, must ensure the independence of the National Institution for the Protection of the Rights of the Child and to create conditions for its efficient activity. The State must also provide the Children's Ombudsman with effective and qualitative conditions for consulting children's opinions in order to properly fulfill the child's right to opinion and related rights. At present, the Children's Ombudsman considers that the State has failed to fully ensure the support of the mechanism for consulting the child's opinion, developed by the Children's Ombudsman. The unsatisfactory situation is also caused by the superficial interest of the central public authorities towards the National Children's Forum (absence from the forum or passivity to the actions within the event). In this context, it is necessary to urgently remedy the situation created by connecting and respecting the international standards stipulated by the UN Convention on the Rights of the Child. The created situation was discussed with the representatives of some non-governmental organizations at a meeting, organized at the initiative of the People's Advocate for Children's Rights, where the parties presented their positions. In this

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<sup>179</sup>[http://www.legis.md/cautare/getResults?doc\\_id=119550&lang=ro](http://www.legis.md/cautare/getResults?doc_id=119550&lang=ro)

<sup>180</sup>[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11)

context, the Children's Ombudsman was open to dialogue and collaboration, acting in the best interests of the child.

The Children's Ombudsman points out that children are not significantly represented within the National Council for the Rights of the Child, which is a government body with the mission of ensuring the development and implementation of policies for the protection of the rights of the child and the family. Or, in this context, the child's voice matters. The Children's Ombudsman reiterates the importance of developing national policies / strategies in the field of child-centered child protection, based on ensuring respect for children's rights, the best interests of the child, involving children by consulting their opinion and implementing it.

In the context of this situation, the People's Advocate for Children's Rights presents the following **RECOMMENDATIONS:**

- The Ministry of Education, Culture and Research will review the policies for involving children in the decision-making process;
- The Ministry of Education, Culture and Research will organize a set of trainings, for children in student councils on the purpose and mission of student councils, with the involvement of experts in the field of child protection;
- The Government will revise the Regulation of activity of the National Council for Child Rights Protection, in order to introduce changes in the composition of the Council and to include the representatives of children and young people in the composition of this governmental body.
- The Parliament and the Government will promote the standards for consulting the child's opinion and its implementation;
- The Parliament and the Government will ensure the promotion and observance of the principles of independence of the People's Advocate for Children's Rights.

## JUSTICE FOR CHILDREN

The People's Advocate for Children's Rights in the activity from 2019, as in the previous years, monitored the observance of the children's rights in *the national juvenile justice system*.

At the international level, the protection of children who interfere with the justice system is ensured by the provisions of Article 40 of the UN Convention on the Rights of the Child, which provides for *"the right of children alleged or proven to have committed a crime to all aspects of the legal process instituted, including legal or other assistance in the preparation and presentation of their defense"*<sup>181</sup>. The text of the Convention provides for a series of obligations attributable to the State, in order to ensure *the best interests* of the child who is alleged or has been proven to have committed a violation of the law which is at fault at the time of the commission. Internationally, the Beijing Rules and the Riyadh Guidelines have a special contribution to the protection of children in contact / conflict with the law<sup>182</sup>. They set out standards for the prevention of juvenile delinquency and standards for the protection of children who are deprived of their liberty.

At the national level, the protection of children who are in contact / conflict with the judiciary system is achieved through the provisions of the Criminal Code, the Criminal Procedure Code, the Executive Code and related laws. Also, in Art. 28 of Law no. 338 of December 15, 1994 on children's rights<sup>183</sup>, there are laid down rules to provide special protection to children who are in conflict with the law.

The Children's Ombudsman notes that the national legislation in the field largely corresponds to the minimum international standards, however we note that the public authorities did not take into account the Recommendations of the People's Advocate for Children's Rights in the Annual Report on the observance of children's rights in the Republic of Moldova in 2018<sup>184</sup>. Moreover, no action has been taken to implement the Recommendations of the UN Committee on the Rights of the Child on the combined fourth and fifth periodic report of the Republic of Moldova<sup>185</sup>.

With reference to the children's justice department, the People's Advocate for Children's Rights notes that she analyzed *the quality of state-guaranteed legal services provided to children in conflict with the law*. Aspects of this issue were also addressed in the Thematic Report "Assessment

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<sup>181</sup> [https://www.salvaticopiii.ro/sci-ro/media/Documente/Conventia\\_ONU\\_drepturile\\_copilului.pdf](https://www.salvaticopiii.ro/sci-ro/media/Documente/Conventia_ONU_drepturile_copilului.pdf)

<sup>182</sup> <https://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>

<sup>183</sup> [http://www.legis.md/cautare/getResults?doc\\_id=94939&lang=ro](http://www.legis.md/cautare/getResults?doc_id=94939&lang=ro)

<sup>184</sup> [http://ombudsman.md/wp-content/uploads/2020/01/RAPORT\\_2018\\_final.pdf](http://ombudsman.md/wp-content/uploads/2020/01/RAPORT_2018_final.pdf)

<sup>185</sup> [https://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=MDA&Lang=EN](https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=MDA&Lang=EN)

of observance of the children's rights in state custody in connection with the prosecution or execution of the sentence."<sup>186</sup>. The analysis of the questionnaires completed by the children who had a connection with the criminal investigation and the judicial system highlighted the following issues:

- Children are often questioned by prosecuting officers without the participation of an lawyer, teacher or parent;
- Children mention that in most cases they get to know their lawyers in the courtroom;
- Often state-guaranteed lawyers appear at court hearings unprepared, taking note of the case materials in the corridors of the courts;
- Magistrates, lawyers and prosecuting officers always use language that is far too sophisticated for the child's perception, so he or she cannot understand and assimilate the necessary information.

The People's Advocate for Children's Rights emphasizes that the UN Convention on the Rights of the Child requires the State, through the provisions of Article 40, to take all necessary measures to provide adequate protection for children who are referred to the national justice system. The Children's Ombudsman points out that in accordance with Article 40, par. (2) of the CRC, there is an important list of rights and guarantees that are all meant to ensure that every child who is accused of violating criminal law will receive fair treatment and trial.

Most of these guarantees are also found in Article 14 of the International Covenant on Civil and Political Rights, which the Human Rights Committee has developed and commented on in its General Comment no. 13 (1984)<sup>187</sup>. The implementation of these guarantees has some specific aspects for children that are imperative for the State. In this context, the Children's Ombudsman emphasizes that an essential condition for the correct and effective implementation of these rights or guarantees is the quality and capacity of those involved in the administration of juvenile justice. The training of professionals, such as police officers, prosecutors, judges, probation officers, social workers and others, is crucial and should be organized in a systematic and continuous manner. These professionals should be well informed about the child, especially about the physical, psychological, mental and social development of the child / adolescent, as well as the special needs of vulnerable

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<sup>186</sup> <http://ombudsman.md/wp-content/uploads/2019/12/RAPORTCOPIIDET2019red-%E2%80%94%D0%BA%D0%BE%D0%BF%D0%B8%D1%8F.pdf>

<sup>187</sup> <https://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIntro.aspx>

children, such as children with disabilities, displaced children, street children, refugees and children seeking asylum and those belonging to racial, ethnic, religious, linguistic or other minorities.

As girls in the juvenile justice system can be easily overlooked because they are only a small group, special attention should be paid to the particular needs of girls, for example, in relation to previous abuses and special health needs. Professionals and staff should act in all circumstances in a manner consistent with the dignity and values of the child, which strengthens the child's respect for human rights and the fundamental freedoms of others promoting the child's reintegration and assuming a constructive role in society (Art. 40 par. (1)).

In the context of the above, the People's Advocate for Children's Rights emphasizes the need for qualified legal assistance from the state. The authorities concerned need to review the internal procedures in order to adopt a holistic assistance mechanism based on the best interests of the child.

We emphasize that the number of convicted children in the Republic of Moldova remains a constant one with small deviations, which shows that the state policy in the field of preventing and combating crime among children is ineffective and needs to be improved.

<b>Year</b>	2013	2014	2015	2016	2017	2018	2019
<b>No. of the children</b>	<b>32</b>	<b>27</b>	<b>31</b>	<b>30</b>	<b>36</b>	<b>32</b>	<b>30</b>

*Source: National Penitentiary Administration*

As a representative of the children before the public authorities, the People's Advocate for Children's Rights asked the children in the penitentiary system about how they perceive the observance of their rights in detention institutions and further presents some of the children's opinions on the subject discussed:

- I don't feel safe here;
- I was beaten by the prison staff;
- I hope I never get here again;
- I want to go to the adult prison sooner
- I am forgotten by those outside.

In 2019, the People's Advocate for Children's Rights monitored the child protection system that interacts with the penitentiary system and prepared the Thematic Report on "**Assessment of observance of the children's rights in state custody in connection with the prosecution or**



**execution of the sentence**<sup>188</sup>. As a result of the monitoring, the following problematic aspects were established:

- Poor endowment of the material-technical base of all penitentiaries where children are detained;
- Psychological assistance and assistance services for reducing conflict situations are poorly developed;
- Residential spaces do not meet the standards of health protection and child development;
- Sanitary blocks are a potential source of infection;
- The educational system does not meet the needs of children;
- The inability of the penitentiary system to ensure the effective isolation of children prevented by prevented adults;
- Weak intervention of the penitentiary and probation system in the process of resocialization of juveniles released from detention.

The People’s Advocate for Children’s Rights mentions that the situation of respecting children's rights in contact / conflict with the law, becomes a problem that is constantly growing due to the multitude of factors that influence it in relation to the constant increase in the number of crimes. An obvious increase of the indicators is observed in the chapter “Serious crimes”, where 35 and 26 crimes were registered respectively in 2018, 2019 compared to 23 and 24 in 2016, 2017 (see the table below). Although less than in the same period of 2018, the indicator is increasing compared to 2016 and 2017<sup>189</sup>, that is why it requires due attention from the authorities.

Year 2016	Year 2017	Year 2018	Year 2019
<b>23</b>	<b>24</b>	<b>35</b>	<b>26</b>

In this context, it is important that the competent institutions investigate any increase in the indicators of crime and the causes that have generated it, as well as come up with the necessary response without delay. It is useful to study the structure of crime from a criminological point of view, to ensure that we do not have dangerous tendencies to rejuvenate exceptionally serious, serious crimes.

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<sup>188</sup> <http://ombudsman.md/wp-content/uploads/2019/12/RAPORTCOPIIDET2019red-%E2%80%94%D0%BA%D0%BE%D0%BF%D0%B8%D1%8F.pdf>

<sup>189</sup> <http://politia.md/ro/advanced-page-type/rapoarte-si-evaluari>

An issue analyzed during 2019, addressed in the Thematic Report mentioned above is *the observance of the children's rights with preventable status*. The People's Advocate for Children's Rights notes that the juvenile criminal justice system is not child-friendly and does not have a holistic approach to the best interests of the child. Excessive enforcement of security measures by limiting the right to liberty and placing children in criminal prosecution in solitary confinement prisons is an impediment to the child's development and an additional impetus for inclusion in the underworld.

The Children's Ombudsman encourages the line authorities and the courts to reduce the number of situations in which children are imprisoned until the final sentence is issued, to the detriment of the juvenile justice system.

As in previous years, the Children's Ombudsman monitored the respect for the child's rights *not to be subjected to abuse or violence in detention facilities*. Thus, it becomes obvious that penitentiaries in the Republic of Moldova, where minors are detained, continue to pose a risk to the life and health of children. Analyzing the international standards in the field of child protection, who are in detention, the Children's Ombudsman finds that the national penitentiary system does not comply with international provisions and is a danger to children in detention.

From the applications received and from the phone calls we find that children are often beaten by employees, and in situations when there are conflicts between children, employees neglect them until the situation reaches a maximum level of risk. Moreover, the children indicate that some collaborators themselves may generate situations of conflict between the detained children, "for prophylactic purposes". Thus, the People's Advocate for Children's Rights notes that detention rarely meets the specific needs of children as a group or at the individual level, including the need for adequate education, contact with family and community, sports, recreation, etc.

On the contrary, it often aggravates their vulnerability, exposing them to many forms and situations of risk, such as discrimination, abuse, violence, poor living conditions, inadequate health care and nutrition. When deprived of their liberty, they are also at risk of self-harm or even suicide.

The Children's Ombudsman notes that respect for the dignity of the child requires that all forms of violence in the treatment of children in conflict with the law be prohibited and prevented. The information received shows that in all detention institutions there take place acts of violence, even in situations where children are transferred to **the hospital-type Penitentiary, where the juvenile is supposed to receive specific treatment and care**. The People's Advocate for Children's

Rights repeatedly urges the relevant authorities to take effective measures to prevent such violence and to ensure that perpetrators are brought to justice.

Another issue reported is the provision of *the right to education of children in detention institutions*. During the reported period, there were made visits to all detention institutions where minors are detained and the department ensuring the right to education of children in conflict with the law was analyzed.

The UN Convention on the Rights of the Child and the General Comment no. 10 (2007) of the UN Committee on the Rights of the Child<sup>190</sup> stipulates the obligation of the State to ensure the continuity of the child's educational process regardless of the stage of the process in which he / she is and regardless of the form of custody in which he / she was placed.

Although the Children's Ombudsman notes that in Penitentiary no. 10 from Goian there are technical conditions for teaching classes, and the teaching staff is seconded from the PI Theoretical High School "Nicolae Balcescu", children do not show interest in the educational system and desire to attend classes. There is also a library in the detention facility, however the room is used for watching TV or for various group activities.

A particularly serious situation is the observance of the right to education of prevented children. In this order of ideas we mention the fact that the national penitentiary system does not ensure the continuity of the educational process and does not fully ensure **the right of the child to education in the national penitentiary system**.

Another ongoing problem of the penitentiary system analyzed by the People's Advocate for Children's Rights is *the provision of medical and psychological assistance to minors* who are in detention institutions. Children invoke several irregularities in this regard:

- Medical employees and psychologists are not receptive to their requirements;
- Insufficient number of psychologists, which leads to the impossibility of providing psychological counseling every time the child needs it;
- Lack of space for psychological counseling;
- Children are forced to pay for medicines administered;
- Medical staff may provide them with medications other than those required;

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<sup>190</sup>[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f10&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f10&Lang=en)

- Psychological rehabilitation programs are not focused on the best interests of the child and are attractive to children.

In this regard, the Children's Ombudsman notes that the National Penitentiary Administration has failed to strengthen the child health protection system in the institutions it administers. It should be noted that the UN Convention on the Rights of the Child requires the highest quality of child health to be provided without discrimination and without reference to the status of the child. Thus, the Ombudsman indicates that the National Penitentiary Administration should link the internal procedures for providing medical and psychological care to the international standards set by the UN Convention and the World Health Organization.

In 2019, the People's Advocate for Children's Rights continued to monitor *the protection of children aged 0-3 who are in detention institutions together with their mothers*. This chapter highlights the fact that the situation has not changed and the authorities have not taken into account the Recommendations of the Children's Ombudsman developed in the Thematic Report "Respect for the rights of children aged 0-3 who are with their mothers serving their sentences in penitentiary institutions in the Republic of Moldova<sup>191</sup>". The Children's Ombudsman urges that action be taken on the recommendations given in the report indicated above.

Another aspect analyzed by the Children's Ombudsman during the reported period is *the process of resocialization of children who have served their sentence*. The People's Advocate for Children's Rights notes that the system of resocialization of children who have served their sentences does not correspond to international standards for the protection of children's rights and thus there are conditions of risk for the safety of the child. Thus, the Children's Ombudsman mentions that these children are not involved in effective resocialization activities either during detention or when they are released from detention, and during the reintegration of children into society, they become *Mowgli children* who do not possess the elementary knowledge of interaction with the social environment.

An alarming situation is represented by the group of children who have no one in society, and reaching freedom, due to shortcomings and problems, they commit crimes in order to be convicted, and going repeatedly in prison, an already known environment for them, with somewhat accepted and assumed rules by minors, the penitentiary becomes for them the only "normal" environment of existence. The lack of perspective, social opportunities, no matter how modest, jobs and social stigma

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<sup>191</sup> <http://ombudsman.md/wp-content/uploads/2019/02/RAPORT-COPIIREDACTAT.pdf>

are the issues most often raised by children who have been released and returned to detention facilities.

The People's Advocate for Children's Rights urges the State to review the national mechanisms for the protection and integration of children who have served their criminal sentences, so that they meet their vital requirements, in order to become active members of society. The State must develop a protection mechanism, in addition to the post-detention control mechanism established by the National Probation Institution, to help the targeted children to integrate more easily into the social environment.

In the context of the analyzed situation, the People's Advocate for Children's Rights submits the following **RECOMMENDATIONS**:

- The National Penitentiary Administration is to review the psychological rehabilitation programs for children;
- The National Penitentiary Administration will carry out a comprehensive action of monitoring the medical system, in order to eradicate the established deficiencies and to connect the system to international standards;
- The National Penitentiary Administration is to strengthen the educational process in penitentiary institutions in order to ensure the continuity of the educational cycle;
- The National Penitentiary Administration is to strengthen its efforts in order to promote the maintenance of the connection of convicted and prevented children with the family;
- The National Penitentiary Administration will take the necessary measures to eliminate the practice of applying disciplinary punishments by prohibiting visits from relatives, applied to children;
- The Ministry of Justice will examine within the reform of the judiciary the opportunity to create level I courts and colleges in specialized courts of appeal for the examination of civil, administrative and criminal cases concerning children.
- The Ministry of Justice together with the Ministry of Finance will examine the budgetary policy in order to establish separate budget lines in the budgets of penitentiary institutions where there are children aged 0-3 years who are in penitentiaries with their mothers, in order to ensure adequate funding for the needs of these children;

- The Ministry of Justice will take the necessary measures to complete the construction of the new block of the Penitentiary no. 10 from Goian in order to ensure adequate conditions for the prevented children;
- The Ministry of Justice will strengthen the mechanism for preventing and prosecuting criminal cases with the involvement of children under the age of criminal responsibility and those in conflict with the law.

## **RIGHT TO EDUCATION**

Articles 28 and 29 of the UN Convention on the Rights of the Child enshrine the right of the child to education and the obligation of the state to ensure the education of children based on criteria of quality, equality and accessibility. The provisions of the UN Convention also establish the obligation of the State to ensure that education is directed towards the development of the child's personality and talents, preparing the child for active life as an adult, cultivating respect for fundamental human rights and the cultural and national values of the child and others.

At national level, the right to education is guaranteed by Article 35 of the Constitution of the Republic of Moldova, the Education Code and Articles 9 and 10 of Law no. 338 of December 15, 1994 on children's rights. Analyzing the compatibility report between the national norms in the field of guaranteeing the child's right to education with international standards, a partial correspondence of the listed national norms is found, which indicates the need to change the normative framework.

At the same time, the People's Advocate for Children's Rights finds that in 2019 the situation regarding the observance of the child's right to education has not undergone any essential changes.

Also, the national authorities did not take actions to implement the Recommendations stipulated in the Annual Report on the Observance of the Children's Rights in 2018 in the Republic of Moldova<sup>192</sup>. The Children's Ombudsman urges the central and local public authorities to implement his recommendations from previous Annual Reports, regarding the connection of the national education system to the minimum standards in the field. The need for changes in the national education system also arises from the findings of the Report prepared under the International

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<sup>192</sup> [http://ombudsman.md/wp-content/uploads/2020/01/RAPORT\\_APDC\\_2019.pdf](http://ombudsman.md/wp-content/uploads/2020/01/RAPORT_APDC_2019.pdf)

Assessment Programme PISA 2018<sup>193</sup>. PISA is an international study organized every three years to evaluate the world's education systems by testing the skills and knowledge of 15-year-old students. The PISA assessment was attended by students from over 80 countries, including 44 middle-income countries. The PISA program assesses the extent to which 15-year-old students, who are completing the compulsory cycle of study, have acquired skills and knowledge essential for full participation in the life of modern society. The assessment is focused on the main school subjects: reading / lecture, mathematics and science. Testing is performed on a computer or paper basis. For the countries that participated in the computer-based assessment, the assessment of students' skills in an innovative field is also organized each time (in 2018 this area was the global competence). In 2018 the Republic of Moldova organized the PISA test on paper. Assessment does not only assess students' ability to reproduce their knowledge; it also examines how well students know how to extrapolate what they have learned and apply the knowledge gained in lesser-known situations, both in and out of school.

In the Republic of Moldova, PISA testing took place between March 28-30, 2018. As in all countries, the sample of educational institutions was selected by the OECD, the international organization responsible for the study, based on the complete list of all educational institutions in country with the number of eligible students, submitted by the national authorities. Based on the list of selected educational institutions and the lists of all 15-year-old students in these institutions, submitted by their administrations, the students who participated in the testing were randomly selected. Thus, the evaluation data are representative for the entire population of 15-year-old students in the country.

Following the evaluation process, the following were found:

- The average score for the Republic of Moldova in PISA Testing 2018 is 421 points in mathematics (compared to the OECD average of 489 points), 424 points in reading / lecture (compared to the OECD average of 487 points) and 428 points in science (compared to the OECD average of 489 points);
- Students in urban educational institutions outperform students in rural educational institutions in all three areas tested, with an average score difference of 55 points in mathematics, 56 points in science and 64 points in reading / lecture;

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<sup>193</sup> [http://aee.edu.md/sites/default/files/raport\\_pisa2018.pdf](http://aee.edu.md/sites/default/files/raport_pisa2018.pdf)

- The average score differences between socio-economically advantaged and disadvantaged students is over 90 points in all three areas tested;
- In the Republic of Moldova, **50% of the number of students reach the minimum level of competence in mathematics and 57%** in reading / lecture and science;
- Approximately **56%** of the number of students in rural institutions **do not reach the minimum level** of competence in science, **58%** - in reading / science and **63%** - in mathematics. About **30%** of the number of students in urban institutions do not reach the minimum level of competence in reading / lecture and science, and **39%** - in mathematics;
- About 62% of the number of directors of educational institutions in the Republic of Moldova, compared to the average of 39% in OECD countries, reported that the lack of teaching materials affects the teaching process "to a certain extent" or "very much";
- Approximately 68% of the number of principals in the Republic of Moldova and 40% in OECD countries reported that unmotivated absences of students impede the learning activity of students in the institution they lead;
- About 13% of the number of students in the Republic of Moldova and 10% in OECD countries report being victims of verbal violence and 7% - victims of physical violence several times a month;
- Most socio-economically disadvantaged students believe that the effort they put into school will help them to be admitted to a good university, while most socio-economically disadvantaged students believe that the effort they put into school will help them to obtain a good job;
- About 49% of the number of 15-year-old students in the Republic of Moldova expect to study, and 18% examine the possibility of completing their studies at a college.

Following the analysis of the results presented in the PISA Report, the Children's Ombudsman finds that the educational process in the Republic of Moldova is not competitive enough and does not provide children with the minimum necessary knowledge to compete with their peers internationally.

In 2019, the People's Advocate for Children's Rights continued to monitor the situation regarding *the protection of children against abuse and violence in educational institutions*. There is a significant rise in the phenomenon of *bullying*, with cases becoming more frequent and more serious. If in previous years most cases were focused on acts of physical aggression between children



(mostly boys), lately the situation is aggravated by cases of psychological violence, abuse and sexual violence between young children (10-14 years) of the same sex and, blackmail actions for the purpose of transferring property owned by the abuser and the exploitation of students by work by adults, including teachers, especially in rural areas.

Toleration of these situations, in the opinion of the People's Advocate for Children's Rights, shows a series of major risks such as:

- Preventing the realization of children's fundamental rights, in particular: the right to protection from abuse and neglect; the right to freedom of opinion; the right to participate, etc .;
- Aggravation of children's physical and mental health;
- Increased risk of dropping out of school;
- Increasing the number of children leaving home.
- Determining children to adopt deviant behavior;
- Increased risk of suicide;

The Children's Ombudsman mentions that violence between children is one of the most serious factors affecting the overall well-being of the child. Acts of physical, psychological and sexual violence, often in the form of intimidation, admitted by children against other children or groups of children, endanger physical integrity both when committed and have serious consequences for development, education and social integration in the medium and long term. Adults, regardless of their status, whether they are parents / legal representatives or teachers, have an extremely important role in examining and preventing acts of violence. Adult intervention must be based on the best interests of the child, without recourse to punishment or violence against violence. The provisions of Article 19 of the UN Convention on the Rights of the Child expressly establish the obligation of the State to protect children from all forms of abuse by parents or others and to implement preventive programs in this regard.

The People's Advocate for Children's Rights welcomes the numerous initiatives to prevent violence against children implemented by the Ministry of Education, Culture and Research. At the same time, she concludes that the actions taken are largely ineffective. So far, the relevant authorities cannot ensure the prohibition and elimination of forms of discrimination and violence between children and against children in educational institutions. According to the Children's Ombudsman, the results of the measures taken are limited due to the lack of knowledge and skills of teachers and

administrative staff to manage conflict situations, lack of information and understanding of the danger of violence against children and root causes, and lack or insufficient number of psychologists in educational institutions. Efforts are focused more on symptoms and consequences than on causes. The application of the legal framework in practice is unsatisfactory, the existing strategies are more fragmented than unified and do not have their expected effect, and the financial means allocated to solve these problems are inadequate. Opinions and practices spread in society and culture contribute to the persistence of violence.

The Children's Ombudsman emphasizes that taking into account and eliminating widespread practices of violence against children is one of the primary obligations of relevant authorities. Ensuring and encouraging the fundamental rights of children to ensure respect for human dignity and respect for their physical and mental integrity by preventing all forms of violence is the most important action to promote the rights of all children in accordance with the Convention.

The opinion of the People's Advocate for Children's Rights in this chapter is also supported by the Report on "Bullying among adolescents in the Republic of Moldova<sup>194</sup>", prepared and submitted by UNICEF Moldova. The Report states that "School violence, in all its forms, is a violation of children's rights to education, health and welfare."

The People's Advocate for Children's Rights proposed supplementing the Education Code with a new principle of "*nonviolence*" and introducing a new chapter on the elimination of violence in educational institutions, and that bullying be defined by the provisions of a separate article.

Another aspect analyzed by the People's Advocate for Children's Rights during the reporting period is *the compatibility of the national curriculum with the international standard on the development of respect for human rights and fundamental freedoms, enshrined in the UN Convention on the Rights of the Child.*

That situation was analyzed in order to adjust the education system to the standards of promoting children's rights. The Children's Ombudsman notes that the rights and freedoms of the child are poorly studied in the country's educational institutions. The textbook on the subject of the People's Advocate for Children's Rights as a National Institution of Children's Rights is missing from the textbooks. Although some topics exist in some textbooks, they are not studied. Thus, children are deprived of the opportunity to know the only national institution specialized in the field of children's

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<sup>194</sup> <https://www.unicef.org/moldova/media/3146/file/Bullying-ul%20%C3%AEn%20r%C3%A2ndul%20adolescen%C8%9Bilor%20din%20Republica%20Moldova.pdf>

rights that can represent the interests of the child before state authorities of any level, non-governmental organizations and individuals. During the discussions at the meetings of the Children's Ombudsman with the students, they expressed their dissatisfaction with the level of teaching of children's rights in educational institutions. Most children know nothing about the People's Advocate for Children's Rights, and if they know something, the source of information is more often the media and very rarely they are informed on the subject within the respective disciplines in the study process.

During the monitoring process of the respective issue there were identified the following deficiencies:

- At present, children know superficially the rights and freedoms they have, children do not know the national institution of children's rights, the People's Advocate for Children's Rights (Ombudsman) and this subject is not included in the school curriculum;
- Information in the field of children's rights is mostly done by NGOs or volunteers from public or private institutions;
- The academic hours given for the study of subjects related to children's rights are insufficient, and their teaching is done by people who do not have the necessary training;
- The impact of information actions in the field of children's rights spent in educational institutions is unsatisfactory.

The Children's Ombudsman notes that the study of children's rights of information about the work of the national institution of children's rights, the People's Advocate for Children's Rights (Ombudsman), in educational institutions of all levels is an imperative for the child's development as a full holder of rights and responsibilities. At present, within the national education system there are two *compulsory* school subjects and an *optional* one in which the subject of respecting the children's rights / human being is approached. Thus, in the discipline "*Education for society*", children can form social and civic skills and, in the discipline "*Personal development*", children form skills on personal identity and harmonious relationship that emphasizes self-knowledge and acceptance, exploitation and self-assessment of personal resources, family as value, etc.

However, following discussions with students during visits to the educational institutions of the People's Advocate for Children's Rights, it was found that students' knowledge is limited to the mere enumeration of their rights, without being able to describe any application and protection of the nominated rights. The Children's Ombudsman notes with reference to Art. 29 of the UN Convention

on the Rights of the Child<sup>195</sup>, that the state has an obligation to ensure the proper implementation of the provisions of the Convention, which means that children must receive adequate training in the child's rights. The Children's Ombudsman also regrets that the opinion of the National Institution for Child Rights' Protection (the People's Advocate for Children's Rights) was not requested when developing textbooks for human / child rights related subjects (Education for Society and Personal Development).

Another issue analyzed by the People's Advocate for Children's Rights during 2019 was *the low level of educational inclusion of children with special needs in educational institutions*. The issue has also been addressed in previous reports of the Children's Ombudsman<sup>196</sup> but the large number of complaints to the Child's Phone of the People's Advocate Office indicates that this issue has not been resolved and even more, it is in a state of aggravation.

If in the previous periods the major problems that were invoked consist in the lack of physical conveniences of accessibility inside the educational institutions now, the approached problems are more complex and more sensitive. Such a problem is the observance of the children's rights with special needs in the psycho-emotional spectrum and those with sensory problems of sight and hearing. Due to the specific features of development, these children need specific attention and care, requiring the permanent assistance of the supportive teacher.

Following the monitoring process, the following aspects were identified:

- The number of supportive teachers in educational institutions is insufficient;
- The overestimated norm of the number of children with special educational needs established for a supportive teacher;
- The assistance provided to children with special educational needs from the psycho-emotional spectrum does not correspond to the specific needs of each child, nor to the group - from a methodological point of view;
- The staff involved in the educational process do not have knowledge and skills of communication and relationships with these children, but also skills to improve crisis situations of children with special educational needs;
- Stigmatization by children without special educational requirements and their parents;

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<sup>195</sup> <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

<sup>196</sup> <http://ombudsman.md/avocatul-copilului/rapoarte/>

- As a consequence, the small number of students who continue their studies in specialized or higher institutions.

The Children's Ombudsman mentions that at present, the process of educational inclusion of children with special educational needs is a formal one that does not correspond to international quality standards. National authorities have not taken a holistic approach focused on the best interests of the child, but have relied more on the economic efficiency of budget expenditures in the budget sector. In this context, the People's Advocate for Children's Rights urges the public authorities to review the standards stipulated by General Comment no. 16 and 19 of the UN Committee<sup>197</sup> on the Rights of the Child in order to form the public budget focused on the best interests of the child.

At the end of the above, and in the context of the fact that the central and local public authorities failed to implement the recommendations stipulated in the Reports on the observance of children's rights in previous years, the People's Advocate for Children's Rights reviews the relevant and current previously addressed issues:

- Providing educational institutions with sanitary blocks inside educational institutions, properly equipped with hygienic products;
- Centralized provision of quality drinking water education institutions;
- Ensuring the quality transport for the movement of children to the district educational institutions;
- Centralized provision of qualitative food for children in primary and secondary school;
- Ensuring the proper functioning of medical offices in educational institutions, strengthening the professional skills of medical staff and the transfer of medical functions under the Ministry of Health, Labour and Social Protection;
- Strengthening the teacher-student, teacher-parent collaboration process;
- Arrangement of playgrounds for children according to quality standards and protection of life and health.

The People's Advocate for Children's Rights submits the following **RECOMMENDATIONS** to the Ministry of Education, Culture and Research:

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<sup>197</sup>[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11)

- Development and promotion, at national level, of strategies for preventing and combating school violence in general, and bullying in particular, as well as the clear delimitation of these notions in normative acts;
- Increasing the effectiveness of educational and training programs for violence prevention, dedicated to teachers of parents and students;
- Inclusion in the programs of initial and continuous training of teachers of the modules on addressing violence according to the particularities of the child's age and conflict and bullying resolution;
- Adoption of the regulatory framework of the profession of psychologist, of the school psychological service, of the quality standards for the psychological assistance, within the educational institutions and the provision of all educational institutions, including those of early education, with psychologists;
- Adaptation to the international standards in the field of the educational curriculum from the subjects related to children's rights;
- Supplementing the number of supportive teachers so that for each student with special needs to be assigned a support teacher, with the appropriate skills and knowledge;
- Inclusion in the school curriculum of the subject *National Institution of Children's Rights People's Advocate for Children's Rights (Ombudsman)*;
- Strengthening the process of educational inclusion of children with special educational needs with problems in the psycho-emotional and sensory spectrum.

## **RIGHT TO WORK**

Enshrined in Article 32 of the UN Convention on the Rights of the Child, the right to work provides for the obligation of the State to protect children from employment in work that endangers their health, education or development, to set minimum ages for employment and to regulate the conditions of employment. At national level, the protection of the right to work is ensured through the provisions of Art. 43 of the Constitution of the Republic of Moldova, the Labour Code and Article 11 of Law no. 338 of December 15, 1994 on children's rights.

As the children's representative before the public authorities, the People's Advocate for Children's Rights asked the children about how they perceive the realization of the right to work and further presents some of the children's opinions on the subject:

- I would like to be able to combine school with work;
- I worked for 2 months, this summer and they didn't pay me any money;
- The working conditions to which I was exposed were very difficult;
- My employer did not want us to sign an employment contract and I worked illegally.

The Children's Ombudsman mentions that the public authorities have failed to rectify the situation in the field of respect for the child's right to work, on the contrary, following the monitoring in the reported year, there is a worsening of the situation in the field.

Thus, the Republic of Moldova remains overdue in this regard in the context of non-implementation of the Recommendations of the UN Committee on the Rights of the Child. Likewise, the Children's Ombudsman's Recommendations on Ensuring the Child's Right to Work were not implemented.

In her conclusions, the Children's Ombudsman notes the lack of an effective mechanism for monitoring compliance with child labour law. Amendments to national legislation in the field of occupational safety and entrepreneurial activity do not have an approach based on human / child rights and this fact has generated situations of violation of human / child rights. Ambiguous legislation is the cause of misinterpretations of the control powers of public authorities, which pass the responsibility from one institution to another, in order not to assume assigned responsibilities.

That situation can be proved in the light of the case examined by the People's Advocate for Children's Rights during this period, in which several systemic problems related to the protection of the child employed were found.

Thus, in accordance with the provisions of Art. 32 and Art. 3 of the UN Convention on the Rights of the Child (in force for the Republic of Moldova of February 25, 1995), Art. 1, par. (3) and Art. 11, letter i), the Children's Ombudsman ordered the monitoring of the observance of the right to work of a group of children employed by the economic agent "Aqua Magic" (Sociteni village, Ialoveni district), where children were employed as *lifeguards*, a dangerous activity for the child's life. The examination of the case was initiated on the basis of allegations made on the Child's Phone.

The children complained about the working conditions:

- a) they were forced to work 10 hours a day, the work schedule being between 08.00-20.00;

- b) they had to stand all day (they did not have chairs available);
- c) they worked under the direct rays of the sun, without umbrellas, at temperatures of 36<sup>0</sup>C in the shade, and if they requested their installation they are refused on the grounds that they are defective and the purchase of new umbrellas would cost a lot - EUR 100;
- d) there is no special place for dining or refrigerating food taken from home;
- e) the children were not provided with drinking water that corresponds to the sanitary-epidemiological norms
- f) the children were frequently sanctioned without being informed of this fact and without knowing the basis;
- g) the tasks assigned to the children exceeded their attributions and did not correspond to their age and development;
- h) the children were not equipped with protective equipment;
- l) the employers did not provide the children with a professional training of salamamar and first aid;
- ï) the administration had an offensive attitude towards children, encouraging this fact to the other employees as well;
- j) when hiring the children, their tasks / duties were not clearly explained to them, nor were they notified by signature, nor were job descriptions or other instructions, regulations, indications that were to be followed in daily activity;
- k) the transportation of the children was not ensured after the end of the working day, at 20.00, when the public transport was no longer running. The children had to travel by occasional transport, without any guarantees of safety and protection.

Also, the strict record of the days and hours worked was not intentionally kept, reason for which the workload and the contribution for the submitted work were diminished.

During the on-site visit, carried out by the representatives of the People's Advocate Office, the administrator of the economic agent abusively and contrary to the legislation in force (Law no. 52 of April 3, 2014 Art. 11, letter i) and Art. 320 of the Contravention Code) prohibited the access to the territory of the managed economic unit. Access restrictions were determined by an attempt to conceal violations and deviations from the legal rules on the employment of children. The next day, the employees of the People's Advocate Office had access to the company's territory, but they could no



longer verify the veracity of the information, because it was visibly clear that some actions / measures were taken to improve working conditions, a fact confirmed by the children themselves.

The children reported that they were prevented from talking to the representatives of the People's Advocate for Children's Rights and that umbrellas, chairs, drinking water appeared while access to the territory was restricted to the office employees. At the same time, the children were created conditions to store food and were assigned space to eat, but all this was soon removed again.

Assessing the situation following on-the-spot monitoring visits and after analyzing the requested documents, the People's Advocate for Children's Rights finds a number of deviations from international and national standards in the field of child rights protection.

Children are a specific and vulnerable group that will benefit from special protection as required by international labour and child protection standards. Moreover, according to the provisions in the field of labour law, the employee is considered a vulnerable person to the employer, so the obligation to prove the facts falls on the employer. The lack of education and information of the employed child is in contradiction with the provisions of the UN Convention on the Rights of the Child, which stipulates that the information provided to the child should be presented in a manner as child-friendly as possible so that he / she can understand and use it in situations of need. Following the above, the Children's Ombudsman concludes that it is the responsibility of the aqua park administrator to prove the facts and cannot be attributed to the employed children.

In the process of examining the case, the People's Advocate for Children's Rights requested the intervention of public line authorities, but which gave formal answers, with delegation of powers:

- In response to letter no. 12-9/56 of June 12, 2019 with the request to carry out a control of the economic agent concerned, the State Labour Inspectorate sent us **the message no. 863 of July 3, 2019 regarding the decline of competence based on Art. 23<sup>1</sup> of Law no. 186-XVI of July 10, 2008 on Occupational Health and Safety and the impossibility of carrying out unannounced controls based on Art. 14 and 19 of Law no. 131-XIX of June 8, 2012 on state control over entrepreneurial activity.**
- Another public institution - the National Agency for Public Health responded to our letter no. 06-3/21, of July 22, 2019 regarding the request for the contest by the message (no. 01-20/1-3434 of July 31, 2019) about **the redirection of the petition to the Agency for Consumer Protection and Market Surveillance. Subsequently, no response was received from ACPMS.**

- Another public institution also redirected our request, without following our approach of verifying the signals of payment of the real wage in envelope and of economic exploitation of the children. The State Fiscal Service, in answer **no. 26-10/3-06-10742 of August 13, 2019, informed us about the redirection of the request to the State Labour Inspectorate.**
- The State Labour Inspectorate informed us about **the preparation of the report on remedying the violations detected for 10 days.** This response was not a credible one because the deviations were not exemplified, but also because by controls that are not unexpected, the critical situation cannot be objectively established.

Following the state of affairs and the answers received from the competent authorities, the People's Advocate for Children's Rights analyzed *the national legal norms relevant to the case in order to establish their compliance with international standards:*

- The Constitution of the Republic of Moldova: Art. 43, par. (2) "All employees shall have the right to social protection of labour. The measures of protection shall bear upon labour safety and hygiene, working conditions **for women and young people**, introduction of a minimum wage per economy, weekly rest and annual paid leave, as well as difficult working conditions and other specific situations.";
- The Labour Code: Chap. III "Work of persons aged up to 18 years", Art. 253-257;
- The Law no. 140 of May 10, 2001 on State Labour Inspectorate - Art. 4, par. (1), letters a), c) and f) par. (2), letter b), Art. 8 par. (1), letter a) "In the exercise of his function, the labour inspector empowered to carry out state control in the field of labour relations, upon submission of the service card, **is entitled to enter freely, at any time of day or night, without prior notice to the employer**, in the workplace, in the service and production rooms" and Art. 112, par. (2) "**The unannounced inspection may also be carried out on the initiative of the labour inspector, without the control order**, and the inspector shall immediately inform one of the persons referred to in par. 1 thereof";
- The Law no. 186 of July 10, 2008 on Occupational Health and Safety, - Art. 231, par. (2) "The coordination at national level and the monitoring of the state control of the observance of the legislation on safety and health at work carried out by the labour inspectors within the competent authorities in the field of occupational safety control are exercised by the State Labour Inspectorate";

- The Law no. 131 of June 8, 2012 on state control of entrepreneurial activity - Art. 1, par. (6) „For the control performed based on Law no. 50 of March 28, 2013 on official controls to verify compliance with feed and food law and animal health and welfare rules, as well as on compliance with occupational safety and employment legislation, the provisions of Art. 18 par. (1) of this law”;

**International standards in the field of child's rights protection on the segment of the child's right to work:**

- UN Convention on the Rights of the Child (in force for the Republic of Moldova of February 25, 1993), Art. 3 and Art. 32 - "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. The State recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development”;
- The Convention no. 138 of the International Labour Organization on the Minimum Age for Employment (in force for the Republic of Moldova since September 21, 1999), which stipulates the minimum age for employment of children;
- The Convention no. 182 of the International Labour Organization concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, which in Art. 3, letter d) provides that "For the purposes of this Convention, the expression the worst forms of child labour includes: work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children".

**Thus, the order to attract children to work during the heat wave (temperature above 30°C), without providing shelter from direct sunlight, without having conditions to store food during the day and without proper training of employees (lifeguards) on life safety techniques and first aid are, in the opinion of the People's Advocate for Children's Rights, a serious form of child labour.**

**In the opinion of the People's Advocate for Children's Rights, the child should be provided with access to the labour market, but in compliance with national and international norms and standards. Any work (economic or household) that a child performs must be without**

**potential risk or likely to compromise education, harm health or physical, mental, spiritual, moral or social development.**

The People's Advocate for Children's Rights mentions that, given the seriousness of the problems identified, this case remains under examination in 2020.

The Children's Ombudsman concludes that the national legislation largely corresponds to international standards for the protection of the rights of the child on the segment of ensuring *the child's right to work*. At the same time, it is imperative to mention that the authorities formally fulfill their duties of monitoring the observance of international and national standards in the field of protection of children's rights at work, always arguing with the imperfection of the legislation. Consequently, effective protection of employed children is not ensured.

In the context of this situation, the People's Advocate for Children's Rights submits the following **RECOMMENDATIONS:**

- Amending the legislation in the field of the right to work through the approach based on the rights of the child, taking into account his / her best interests;
- Ensuring the legal powers of the State Labour Inspectorate with attributions for monitoring the observance of the rights of the child employed, by carrying out unannounced controls at the economic agents;
- Establishing a single database on the record of children employed (this would facilitate the monitoring of respect for the rights of the child employed);
- Ensuring the training of employers, economic agents regarding children's rights and the facilities they have, as subjects of labour;
- Carrying out campaigns on protection against child labour;
- Developing the legal framework on the provision of facilities for economic agents that provide jobs for children and comply with labour legislation regarding minor employees.

## **OBSERVANCE OF CHILDREN'S RIGHTS IN THE TRANSNISTRIAN REGION**

The observance of children's rights in the region not controlled by the Moldovan authorities is a dilemma for national public authorities, including the National Human Rights Institution. Thus,

as a National Human/Child Rights Institution, the People's Advocate for Children's Rights has constantly monitored, since the beginning of her term of office (year 2016) the observance of children's rights on the left bank of the Dniester.

The Children's Ombudsman notes that the constitutional authorities continue to fail to provide effective protection to children in the Transnistrian region. Thus, at present there is no truthful systematized information on the observance of children's rights in that region.

The Children's Ombudsman recommends that central and local public authorities strengthen the measures taken to ensure that the rights of the child are respected in the territory concerned. The Children's Ombudsman argues that the neglect of this category of citizens leads to a destabilization of the overall situation in the field of human rights protection. The State must also be ready to answer for the consequences of continuing to neglect the issue of respect for the rights of children on the left bank of the Dniester.

In this chapter, the People's Advocate for Children's Rights will submit only a part of the rights that she considers most affected and on which she recommends the urgent recovery of the situation.

***The protection of children left without parental care and children placed in residential institutions*** is an issue that needs to be urgently included on the agenda of politicians and the negotiating group on the Transnistrian segment. According to the information received from the authorities in the region, the number of children left without parental care and children placed in residential institutions reaches 545 children, but the information provided by non-governmental organizations working in this field in Transnistria indicates the figure of over 1500 of placed children. In these circumstances, the Children's Ombudsman gives an opinion on the need to examine and monitor the conditions of placement of these children and the quality of the services provided to the children during the placement. The Children's Ombudsman also urges the authorities to initiate a constructive dialogue with the associative sector in the Transnistrian territory, which can provide methodological and practical assistance for the recovery of the situation in the field.

Another problematic aspect submitted by the People's Advocate for Children's Rights is ***the juvenile justice system and the system of execution of sentences with deprivation of liberty by children***. The Children's Ombudsman mentions that the situation in this regard is quite alarming and poses a risk to the life, health and development of the child, thus being a ground for violation of the UN Convention on the Rights of the Child. According to the information received from the NGOs in the territory, it is revealed that the children are subjected to inhuman and degrading treatment in

detention institutions, they are not provided with procedural guarantees in criminal proceedings and in judicial examination, they are detained in precarious conditions for their life and health, etc. Under these conditions, the People's Advocate for Children's Rights calls on national governmental authorities and international observers to intervene with concrete actions in order *to guarantee the observance of the children's rights who are in contact / conflict with the law*.

Another issue examined by the People's Advocate for Children's Rights is ensuring the child's right to a name and citizenship for children in the Transnistrian region. The Children's Ombudsman notes that national authorities do not fully ensure the implementation of the provisions of the UN Convention on the Rights of the Child in the area of compulsory *guarantee of the right to a name and citizenship for all children within the State party*. Following the presentation of the Thematic Report "*Respect for children's rights to a name and citizenship*"<sup>198</sup>, prepared by the People's Advocate for Children's Rights, several legislative and practical gaps were presented that hindered the process of documenting children in Moldova. However, the Children's Ombudsman notes with regret that even after the three-year deadline for the submission of the thematic report, no essential changes have been made. Recent amendments to the legislation on civil status documents do not regulate all situations and categories of children for documentation with civil status documents of the Republic of Moldova, including children left without parental care and placed in residential institutions on the left bank of the Dniester.

*Ensuring the right to education in the mother tongue* is another issue addressed by the People's Advocate for Children's Rights, on the segment of respecting the rights of the child in the Transnistrian region. Although the situation of schools teaching in Romanian and ensuring the observance of children's right to study in their mother tongue has been the subject of several working sessions, there is also a decision of the European Court of Human Rights on this subject, however, the problem still has no final positive solution. Romanian-language educational institutions continue to face impediments in their activity from the de facto authorities in the Transnistrian region, and the constitutional authorities fail to provide them with effective protection for constant activity. Children are put in the situation of learning in buildings that were not initially predestined for the development of the educational process and cannot meet all the requirements of the educational process. Thus, in most institutions children can not attend physical education and sports classes, because they do not have space, classrooms are redesigned from former offices that do not allow the simultaneous finding

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<sup>198</sup> [http://ombudsman.md/wp-content/uploads/2018/10/studiul\\_documentarea\\_0.pdf](http://ombudsman.md/wp-content/uploads/2018/10/studiul_documentarea_0.pdf)

of more than 10 people, while the number of students in a class exceeds the figure of 20, the sanitary and drinking water insurance conditions are not fully insured, this representing a risk for the life and health of children. The problem of providing textbooks and literature in Romanian also persists. The students informed the Children's Ombudsman that there was no bookstore on Transnistrian territory where literature in Romanian could be purchased.

*In the context of the analyzed aspects, the People's Advocate for Children's Rights describes as unsatisfactory the State's actions in ensuring the observance of children's rights on the left bank of the Dniester and asks government authorities to identify solutions to remedy the situation, facilitate access to monitor the rights of children in residential institutions.*

## **CHILD'S PHONE (0 800 11116) IN 2019**

*The Child's Phone 0 800 11116* is a mechanism for direct communication of the People's Advocate for Children's Rights with adolescents and children throughout the country, established by the People's Advocate Office, in its capacity as National Human Rights Institution is intended to ensure the exercise of the duties of the Children's Ombudsman to provide “protection and assistance to the child at his / her request, without requesting the consent of the parents or legal representatives, Art. 17 of the Law on the People's Advocate (Ombudsman) ”.

*The Child's Phone* is a platform for discussions between adolescents and children with the Ombudsman on the Protection and Promotion of the Children's Rights, it is an opportunity for their voice to be heard and it is an advantageous way for them to request and the Ombudsman intervene in solving the invoked problems.

Beneficiaries of the service can also be legal representatives and any person who has information about the child being at risk or in difficulty.

The purpose of the service is to provide information support / guidance to the beneficiaries regarding the means and the way of solving the allegedly violated rights, about the competent public institutions for examining the issues invoked regarding the cases of violation of children's rights.

During 2019, **194 telephone calls** were registered to *the Child's Phone*. Of the total number of calls, **190 came from adults and 4 from children**. The People's Advocate for Children's Rights was notified ex officio based on the information provided, in **17 cases** regarding: domestic violence, violence by the educator, school violence, negligence on the part of parents, sexual abuse, exploitation

of the child through work, precarious conditions at the place child labour, children taken from the family by the guardianship authorities, children taken by one parent from the other's home contrary to the court decision.

According to the data, the number of calls to *the Child's Phone* registered in 2019 has increased. The factors that contributed to the increase in the number of calls are related to the opportunity to access the number (0 800 11116) on the mobile phone, but also to the intensification of the promotion and media coverage of this service. During the service activity, the number of calls received from adults exceeded the number of calls from children. It is not only the specifics of the age, the particularities and the circumstances related to it that are the causes of the small number of addresses from the children on the given phone. Another cause is the insufficient information of children both about the existence of this phone and about the possibility to call. The Children's Ombudsman mentions another cause of the small number of calls from children - the child's lack of skills to speak personally about his / her problems, as well as the lack of confidence that he will be heard and his / her problem will be solved. In order to correct this situation, further efforts will be made by the Child Ombudsman and the team.

<b>Alleged right</b>	<b>Adult</b>	<b>Child</b>	<b>Urban environment</b>	<b>Rural environment</b>	<b>M</b>	<b>F</b>
Protection of the family and orphaned children	24		11	13		40
Right to intimate, family and private life	31				10	15
Right to social assistance and protection	29		7	13		30
Violence in school / preschool institutions	35	1	9	7	15	10
Right to education	28	1	12	8	3	20



Right to health care	9		4	4	3	6
Children at risk	6		2	3	1	5
Right to information	5		3	2	2	3
Right to work	1	2	2	1		1
Preserving the child's identity	1		1			1
Right to free movement	2		2	1		2
Right to justice	3		1	2		3
Domestic violence	7		3	2		6
Sexual abuse	2		1	1		10
Legal advice	30					
<b>Total</b>	<b>190</b>	<b>4</b>	<b>134</b>	<b>60</b>	<b>34</b>	<b>160</b>

**Issues / rights violated invoked on the Child's Phone  
between 01.01.2019 - 31.12.2019**

Based on the number of registered calls, some parents requested legal advice, at the same time, citing issues related to:

- non-compliance with the schedule of meetings with the child by one of the parents, who lives separately;
- evading the payment of alimony by parents;
- lack of social benefits for families with many children;
- violence in educational institutions;
- domestic violence
- complaints from citizens about children at risk, namely, children begging in the street, children who have been subjected to violence and neglect by their parents;
- information / consultation on the adoption of children in the Republic of Moldova;

There were also calls for the non-admission of unvaccinated children into the education system. Reasons why parents refuse to immunize their children include suspicions about low vaccine quality and possible side effects, lack of multilateral and comprehensive information to be received from the

doctor, concerns but also the benefits of vaccination, obtaining consent for vaccination by imposing certain conditions.

The appellants report that the immunization of children is not always carried out in places arranged in compliance with the conditions for preventing contamination, i.e. in vaccination offices within primary medical institutions. Parents are not informed in advance of the need for immunizations, the day the children will be immunized, the vaccine used, the possible post-vaccine reactions that may occur following the administration of the vaccine and how it is necessary to react in such situations. Children subjected to immunization are not examined preventively by the doctor and are not specified / verified anamnesis data (*diseases, previous vaccinations, drug allergy, food, etc.*), data that only the legal representative knows and can communicate.

Some parents also invoked the lack / insufficiency of cooperation of the actors that are part of the intersectoral mechanism in the fields of social assistance, education, health care, law enforcement, provided in the Law no. 140 of June 14, 2013 about special protection of children, being in risk situations, and the children separated from parents. The lack of intersectoral cooperation is more pronounced in cases of violence against children, specialists do not intervene promptly according to their skills. The appellants also point out the phenomenon of bureaucracy which is very common, as well as the indifference of the line authorities towards the problems of the citizens and last but not least, the lack of communication with the citizens and / or their correct consultation / guidance in the difficult problems / situations they face.

**Rights invoked on *the Child's Phone*  
between 2016 - 2019**

<b>The alleged right violated</b>	<b>Year 2016</b>	<b>Year 2017</b>	<b>Year 2018</b>	<b>Year 2019</b>
Right to education	4	12	18	28
Right to social assistance and protection	6	16	29	29
Right to family	9	16	45	31
Right to health care	3	5	5	9

Right to information	0	0	8	5
Right to work	0	0	0	3
Right to free movement	1	5	0	2
Right to life and physical and mental integrity	0	4	0	0
Right to a name and citizenship	0	2	4	0
Violence in educational institutions	5	11	8	35
Domestic violence against children	5	7	10	7
Sexual abuse	1	2	0	2
Legal advice	19	12	0	30
Children at risk	3	3	1	6
Right to a fair trial	1	0	2	0
The right to rest	0	2	1	0
Inactions from state institutions	5	3	1	0

Despite the fact that there is a legal framework that prohibits violence of any kind and that establishes the mechanism for the procedure of identification, registration, reporting and intervention in cases of violence in educational institutions, this phenomenon is proving to be growing.

In cases of abuse and negligence, there is found non-compliance with the provisions established in the Procedure for institutional organization and intervention of the workers of educational

institutions in cases of abuse, neglect, exploitation, child trafficking. The children are not referred to benefit from rehabilitative care, fact provided by Art. 39 of the UN Convention on the Rights of the Child.

***RECOMMENDATIONS:***

- Further promotion of *the Child's Phone (number 0800 11116)*
- Informing the children / specialists working with the children regarding the cases / situations and the way to address *the Child's Phone (number 0800 11116)*
- Evaluating the efficiency and effectiveness of intersectoral cooperation mechanisms in the field of children's rights, with recommendations for improving collaboration in cases of intervention on cases of children who are at risk or in difficulty.

## CHAPTER III TORTURE PREVENTION

### SUMMARY OF TORTURE PREVENTION ACTIVITIES

In 2019, 56 preventive visits and a monitoring visit to places of deprivation of liberty were carried out as part of the torture prevention activity<sup>199</sup>. The Directorate for the Prevention of Torture within the People's Advocate Office carried out 31 of the 19 planned visits to places of deprivation of liberty, as follows: police inspectorates (9); penitentiary (9); temporary Placement Centers for People with Disabilities (adults) (2); military units (1); border crossing points (5); sectors of the border police (3) and the subdivisions of the Bureau of Migration and Asylum (2). For the first time, the People's Advocate Office, in a partnership with the public association "Law Center of Advocates", carried out 8 joint visits to monitor border crossing points in order to verify the situation regarding the observance of the rights of foreign citizens, asylum seekers, etc. Some observations from the joint visits were reflected in **the Thematic Study "Observing the Rights of Foreign Citizens in State Custody"**, presented by the International Migrants Day in Chisinau<sup>200</sup>.

Following the preventive visits, the Directorate for the Prevention of Torture prepared 10 visit reports with recommendations. The People's Advocate submitted 8 reaction acts based on the visit reports, formulating to the authorities 68 recommendations, 54 being executed, 5 rejected and another 9 being in the process of implementation. Thus, Penitentiary no. 13 in Chisinau received 6 recommendations, of which 2 were implemented and 4 remained unanswered; the Placement Center for People with Disabilities (adults) from Badiceni received 10 recommendations, of which 8 were implemented and 2 are in the process of implementation; The Placement Center for People with Disabilities (adults) from Branzeni received 11 recommendations, of which 8 were implemented and another 2 are in the process of implementation; The Stefan-Voda Police Inspectorate received 2 recommendations, of which only 1 was implemented; Penitentiary no. 3 in Leova received 11 recommendations, of which 8 were implemented and 2 were in progress; Penitentiary no. 18 in Branesti received 5 recommendations, of which 4 were implemented on time, and 1 was refused; Penitentiary no. 1 in Taraclia received 13 recommendations, of which 12 were implemented, and 1

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<sup>199</sup> 57 visits by the Directorate for the Prevention of Torture of and the Council for the Prevention of Torture;

<sup>200</sup> [http://ombudsman.md/wp-content/uploads/2019/12/Studiul\\_Situatia\\_str%C4%83inilor\\_FINAL.pdf](http://ombudsman.md/wp-content/uploads/2019/12/Studiul_Situatia_str%C4%83inilor_FINAL.pdf);

unclear and the Briceni Police Inspectorate received 10 recommendations (including cessation of activity), of which 10 were implemented, the activity of the isolator was stopped.

In its work, the Council for the Prevention of Torture carried out 25 preventive visits and 1 monitoring visit (2 days)<sup>201</sup>, as follows: police inspectorates (18); penitentiaries (6); Temporary placement center for foreigners (1), psychiatric hospitals (2); judges (6); temporary placement centers for people with disabilities (1); The criminal investigation isolator of the National Anticorruption Center (1). A total of 35 places of detention visited. Following the preventive visits, there were submitted 3 visit reports with 69 recommendations in 2019, about 60% being implemented.

For the first time, with the financial support of the People's Advocate Office, by contracting the profile experts, the members of the Council carried out a monitoring visit on the field of Penitentiary no. 16-Pruncul (penitentiary hospital). The report with recommendations was submitted to the authorities concerned, in particular to the Ministry of Health, Labour and Social Protection, the Ministry of Justice, the National Penitentiary Administration and Penitentiary no. 16-Pruncul.

Likewise, the members of the Council met in 17 meetings.

On June 21, 2019 at the Academy of Sciences of the Republic of Moldova, the People's Advocate publicly submitted **the Thematic Report "The situation regarding persons retained and in police custody"**<sup>202</sup>. The event was attended by representatives of the MIA, GPI and territorial subdivisions, lawyers, NGOs, academia, anti-torture volunteers, etc. The People's Advocate reiterated the importance of respecting human and their rights and national and international regulations. At the same time, the Ombudsman emphasized the need to ensure the rights and safety of the person in the process of detaining and placing them in police custody. The report was prepared by national experts Mihaela Vidaicu and Elena Croitor, PhD in criminal law, following the visits and findings made by the People's Advocate Office during 32 documentary visits to police inspectorates, conducted in 2018. The report contains empirical-scientific findings on the phenomenon of procedural detention. The activity was carried out thanks to the financial support provided by the Department of Justice and Human Rights of the Soros Foundation-Moldova within the project "Management of detention and detention in police inspectorates of the Republic of Moldova", implemented by the People's Advocate Office.

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<sup>201</sup> 1 day = 1 visit, according to the provisions of Art. 31 of Law 52/2014 on the People's Advocate (Ombudsman);

<sup>202</sup> <http://ombudsman.md/wp-content/uploads/2019/06/Raport-Situatia-persoanelor-retinute-RO-Web.pdf>;

Between June 20-27, 2019, the People's Advocate Office in cooperation with the National Penitentiary Administration and the General Police Inspectorate led the online Campaign **”EuNUAplic166<sup>1</sup>-EuRespectDemnitateaUmana”**, dedicated to the International Day for Supporting Victims of Torture<sup>203</sup>. The campaign aimed to promote zero tolerance for acts of torture by people in the occupational risk group. Hundreds of police and prison staff took part in the first edition of this campaign. Also, during this campaign, the People's Advocate Office sent 30 panels "Torture prevention" with information support in the field for all territorial subdivisions of the GPI.

Regarding the activity of torture prevention by training bondholders and rights holders, the employees of the People's Advocate Office conducted training activities for 236 students from the faculties of law and psychology (The Alecu Russo Balti State University, ULIM and SUM); 429 employees of penitentiary institutions (especially at the NPA Training Center, Penitentiary no. 2 in Lipcani, Penitentiary no. 6 in Soroaca, Penitentiary no. 16-Pruncul, Penitentiary no. 18 in Branesti and Penitentiary no. 9 in Chisinau); 19 police officers; 121 employees and 120 residents of the Temporary Placement Centers for people with disabilities in Balti, Branzeni and Badiceni; 120 detainees from Penitentiary no. 2 in Lipcani, Penitentiary no. 6 in Soroaca, Penitentiary no. 18 in Branesti and Penitentiary no. 3 in Leova. Likewise, the members of the Council for the Prevention of Torture conducted several training sessions with employees of public institutions.

On May 24, 2019, a study visit took place at the Temporary Placement Center for People with Disabilities (Adults) in Balti with the involvement of students - members of the Anti-Torture Forum, in order to improve their monitoring skills. During the year, two students were voluntarily involved in providing informational and analytical support to the Directorate for the Prevention of Torture within the People's Advocate Office, and three other students provided support in translating the texts.

During the year, the People's Advocate reacted in some resonant cases such as Gheorghe Petic *versus* Ungheni PI, Nisporeni PI, General Prosecutor's Office of the Republic of Moldova, Balti Court, Orhei Court, Penitentiary no. 17 and Penitentiary no. 13<sup>204</sup>; case of Serghei Cosovan *versus* Penitentiary no. 16 and the National Penitentiary Administration<sup>205</sup>, case of C and others *versus* the 2nd Motorized Infantry Brigade "Stefan Cel Mare"<sup>206</sup>, etc. As a result of the reaction, the situation of

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<sup>203</sup> <http://ombudsman.md/news/evenimentele-planificate-de-avocatul-poporului-cu-ocazia-zilei-internationale-in-srijinul-victimelor-torturii-26-iunie-2019-2/>;

<sup>204</sup> [http://ombudsman.md/wp-content/uploads/2019/07/RAPORT\\_Investigatie\\_Petic-FINAL.pdf](http://ombudsman.md/wp-content/uploads/2019/07/RAPORT_Investigatie_Petic-FINAL.pdf);

<sup>205</sup> <http://ombudsman.md/news/cazul-cosovan-s-demonstreaza-ca-eforturile-conjugate-pot-genera-schimbari-de-sistem-2/>;

<sup>206</sup> <http://ombudsman.md/news/comunicat-de-presa-8/>;

the mentioned persons has improved. In addition, the employees of the subdivision analyzed over 400 operational summaries of the penitentiary system and 373 operational summaries on the situation in psychiatric hospitals and temporary placement centers for people with disabilities. In some cases, the People's Advocate initiated ex officio investigations.

During the year, the dialogue with the profile authorities, the associative sector and other actors in the field of torture prevention was continued on the segment of promoting the recommendations of the People's Advocate, identifying solutions, improving the situation, etc. It is worth mentioning the openness and willingness of the authorities to cooperate in the field of prevention of torture and ill-treatment, compared to previous years. However, the institutions monitored in the activity of torture prevention have started to realize the need to address zero tolerance towards acts of torture.

However, during the year there were cases of obstruction of access to PAO employees and members of the Council for the Prevention of Torture at the State Border Crossing Point "Chisinau International Airport" and the Rascani Police Inspectorate of the Chisinau Police Directorate. In this way, the People's Advocate reminds that the interference in the activity of the People's Advocate, the intentional ignorance of his notifications and recommendations, as well as **the impediment in any form of his activity, attract legal liability**. The People's Advocate warns police officers that the access of the People's Advocate, employees of the People's Advocate Office and members of the Council for the Prevention of Torture, as well as experts and specialists accompanying them during preventive, documentary, thematic or monitoring visits **may not be restricted in no way**, whether or not there are persons retained or detained at the time of the visit to the institution visited. The same provisions apply to access to places where persons are presumed to be deprived of their liberty, access to registers and any other information on the treatment and conditions of detention of persons deprived of their liberty.

Ensuring access to the above-mentioned actors in the institution, place of detention, registers, etc. is one of the key elements in the prevention of torture and ill-treatment. Any form of obstruction of access is a precondition for a reasonable suspicion that detainees may be or are subject to torture and / or ill-treatment. It is in the interest of the monitored authority to ensure unhindered, rapid, prompt and qualitative access by the staff of the Ombudsman's Institution and the members of the Council for the Prevention of Torture in the institution, in particular to avoid allegations of torture, etc.



In 2019, with the support of the CoE in Moldova, 3 methodologies for monitoring places of detention were developed, namely: "Methodology for planning and conducting preventive visits by a National Mechanism for the Prevention of Torture in Various Places of Detention"; "Checklist for planning and conducting pre-trial visits by a National Mechanism for the Prevention of Torture in Various Detention Places" and "Guide for Interviewing Persons in Detention" required for activities to prevent torture in places of deprivation of liberty. Also, with the support of the CoE in Moldova, 2 workshops were conducted for the application and testing of monitoring methodologies developed for members of the Council for the Prevention of Torture and employees of the People's Advocate Office. Between 9 and 11 December 2019, members of the Council for the Prevention of Torture and representatives of the People's Advocate Office paid a study visit to the Parliamentary Ombudsman and the Norwegian National Preventive Mechanism of Torture.

On June 25, 2019, the People's Advocate approved 3 other methodologies for monitoring places of detention: "Methodological aspects regarding the performance of preventive visits in pre-trial detention facilities. Step by step visit"; „Methodological aspects regarding the accomplishment of preventive visits in penitentiaries. Step by step visit”; ”Methodological aspects regarding the accomplishment of preventive visits in the institutions of temporary placement of persons with disabilities and psychiatric institutions. Step by step visit ".

## **SUMMARY OF THE SITUATION IN PLACES OF DEPRIVATION OF LIBERTY**

In general, the situation in places of deprivation of liberty remains worrying. The elective processes and the instability of the governmental act have left a critical imprint in all places of deprivation of liberty. The moratorium on employment, wage inequality, poor working conditions, etc. have contributed to the worsening of the situation in terms of providing human resources in the penitentiary system. Most institutions that provide custody of persons deprived of their liberty are in a crisis of employees, particularly professionals. Therefore, there is a decrease in the quality of resocialization, re-education and other activities. Meanwhile, the places of detention have become only long-term accommodation with irreversible effects on the physical and mental aspects of the person. It is obvious that the attention of the authorities must not be limited only to the component of creating good living conditions, but also to the occupational and educational field of the persons in custody. **The People's Advocate argues that the situation in the custodial system can progress only in the case of a firm, clear, transparent and accountable political will. The reforms initiated**

**are to be extended in order to effectively protect against torture and other forms of inhuman and degrading punishment.**

Similarly, the People's Advocate draws the attention of government authorities to the fulfillment of his recommendations made in the 2018 report. Only 10% of the recommendations were implemented in 2019. The Ombudsman is alarmed by the attitude of public actors versus his comments and unwillingness to address them.

The authorities also did not rush to report to the UN Committee Against Torture, which in 2017 requested the Government to report by December 6, 2018 information on the implementation of point 16 (c), point 9 and point 14 (i) of its comments (CAT/C/MDA/3). This approach was resolved only on July 31, 2019<sup>207</sup>.

On March 28, 2019, the ECtHR, due to the non-exhaustion of the national remedy, declared inadmissible the cases: Baban and others v. The Republic of Moldova (application no. 3282/12); Bulgacov and others v. The Republic of Moldova (application no. 54187/15); Cobilceanu and others v. The Republic of Moldova (application no. 72239/16); Filat and others v. The Republic of Moldova (application no. 11657/16); Codreanu and others v. The Republic of Moldova (application no. 22927/09); Grigoras and others v. The Republic of Moldova (application no. 25435/18); Talambuta and others v. The Republic of Moldova (application no. 23151/09). The applicants alleged a violation of Art. 3 of the Convention on the grounds of detention in materially inadequate conditions of detention, lack of adequate medical care, and lack of an effective remedy for the enforcement of their rights. The Court noted that with the introduction of the new compensatory remedy for inadequate detention conditions, approved by Law no. 163/2017 in force on January 1, 2019, the applicants must make use of this national mechanism.

The European Court has reiterated that *it will not rule out a possible re-examination* of the cases of the matter concerning the effectiveness of the remedy in question in the light of the decisions rendered by the national courts and their effective enforcement.

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[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fMDA%2fCO%2f3%2fAdd.1&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fMDA%2fCO%2f3%2fAdd.1&Lang=en);

## SITUATION OF PERSONS DETAINED IN PENITENTIARY INSTITUTIONS

There are 17 penitentiary institutions in the Republic of Moldova, of which one is a penitentiary for women, one for minors and one is a penitentiary hospital.

### *a. Penitentiary dynamics*

On December 31, 2019, **6716 persons** were detained in the penitentiary administration system, out of which 5598 convicts, 1114 persons in pre-trial detention and 4 in custody. By subgroups, there were detained 406 women, 57 minors (including 2 minors), 101 former civil servants, 88 foreigners and 123 convicts to life imprisonment.

Regarding the dynamics of detainees, there is a slight decrease in their number. In 2018, 6990 people were detained, and in 2017 - 7635.

### *b. Human resources*

On January 1, 2020 the limit staff of the National Penitentiary Administration (NPA) constituted 2951 units of which 452.25 units were vacant positions. For comparison: in 2018 there were 290.25 vacancies.

According to NPA data, comparing the number of resignations by categories of employees, there is a significant difference in this respect, compared to the same period last year, the number of hirings / resignations by category of agents was 1 to 1 ratio. In 2019 the number of employees was 100 persons less, while the number of resignations increased by 50. The same dynamic was observed in the category of "officers", which indicates that in the penitentiary administration system the degree of retention of employees it is a very weak one.

The reference period for 2018 indicates the existence of a staff turnover, and the period of 2019 - low level of detention in the penitentiary system, especially in the case of the agent category. In the Ombudsman's view, the human resources crisis is evident for the prison system. The ratio between employees and convicts is worrying: 1 employee to 5 convicts. We are not talking about the quality of employees here, which is another major issue. In the conditions of this crisis (even if the NPA strives to maintain the staff), both the criminal law enforcement process and society as a whole suffer.

As early as 2018, the People's Advocate mentioned that on average, between 7-12 positions were vacant in penitentiary institutions, within the limits set for the staff (1000 employees to 7000 detainees). The penitentiary administrations, according to their annual balance reports, showed that

they faced the exodus of employees from the system. However, there are reservations about the quality of employees, the shortage of professionals in areas other than supervision and security. Compared to the number of persons in custody, the number of employees is reduced to 50-60%. The relatively small number of employees obviously decreases from the efficiency and quality of the executive-criminal act and the mission of the penitentiaries as such. This imbalance shows that the closed system is maintained on the basis of reaching a "compromise" with detainees. In fact, the system will not withstand any revolts or disobedience, etc.

**The government must unconditionally take measures to stimulate the current staff; encouraging employment; ensuring the institutional memory, etc. These measures derive from the need and commitment assumed by the Government in combating the criminal subculture within penitentiary institutions.**

*c. Renovation of the penitentiary infrastructure*

We remind you that, according to the State Budget Law for 2019, 5 penitentiaries were to be rebuilt. For this purpose, expenses of over MDL 209 million were provided, allocated to the Ministry of Justice within the "Penitentiary System" program.

Of the total amount, almost MDL 40 million were provided for the construction of the Detention Center in Balti; MDL 2.1 million - Penitentiary no. 3 from Leova city; MDL 4.2 million - finishing the repair at Penitentiary no. 10 from Goian and MDL 3 million for renovating the security perimeter at Penitentiary no. 7 Rusca. More than half of the total amount - about MDL 160 million, were to be spent on the Project "Construction of the penitentiary in Chisinau". Of this amount, 14.5 million is money from the national budget, and over MDL 145 million come from external resources. For the same project, in 2018, MDL 139.6 million were allocated. According to the project sketch of the new penitentiary in Chisinau, it will consist of five separate functional compartments. The institution will have a residential block, one for transfer, one for providing secondary medical services, as well as the entrance and administrative area. Also, two parking lots will be built, one for the institution's employees and another for visitors. The future prison will be located at the entrance to the village of Bubuieci, on a plot of 11 hectares. Its value exceeded EUR 52 million.

Likewise, in 2019 the building of a block of flats with a capacity of 110 places at Penitentiary no. 3 in Leova was to be finished and put into operation. The respective space involves accommodation for 2 and 4 people in 2 floors, with a place arranged for walking isolated and separate

from the rest of the penitentiary space. At the time of the vision made by the PAO team from July 3, 2019, finishing works were taking place. The site manager said that the works were difficult, due to bureaucratic aspects and the delay of public procurement. To finish the construction were allocated MDL 4 million.

Another important construction, which has been going on for several years, is the Balti Detention Center. This space for 650 preventers is only in the first stage of implementation (55%). In 2019, another MDL 39 million were allocated from the state budget.

In the juvenile penitentiary, three blocks were rebuilt in proportion of 99%. According to the NPA, the penitentiary is to be renamed the Juvenile Center, and the detained juveniles are to be placed in a separate block to exclude their contact with adults from the five criminal investigation facilities.

Apart from that, only 169 cells were renovated in all 17 penitentiaries. 44 cells were renovated in Penitentiary no. 13 in Chisinau. It is a rather small effort compared to the real needs of living in private places. Separately, periodic cosmetic repairs have taken place in penitentiary institutions, including accredited medical sectors or blocks. Penitentiary institutions no. 1, 7, 8, 11 and 12 received a sanitary operating license.

#### ***d. Overcrowding in penitentiaries***

The People's Advocate noted that the National Penitentiary Administration has made efforts to overcome the phenomenon of overcrowding. The Ombudsman encourages penitentiary institutions to continue to fulfill this obligation, so that every person in detention is guaranteed human dignity and physical and mental integrity.

However, in some prisons there is still overcrowding of housing. On December 31, 2019, in Penitentiary no. 2 in Lipcani with a capacity of 286 people there were 308 detainees. In Penitentiary no. 6 in Soroca there were 729 detainees, the capacity of the institution being 693 people. In Penitentiary no. 7 Rusca, 295 women were detained, instead of 231 according to the capacity. In Penitentiary no. 15 in Cricova, on a space for 470 people, 498 convicts were detained. In Penitentiary no.18 in Branesti with a capacity of 652 persons, there were detained 666. In Penitentiary no. 3 in Leova, with a capacity of 307 persons, there were detained 329.

In Penitentiary no. 13 in Chisinau, with a capacity of 570 people, there were 869 detainees, with about 300 people exceeding the minimum ceiling. In this context, the People's Advocate reminds the Prosecutor's Office and the courts to apply as often as possible the alternative measures to pre-

trial detention. Detention criminal prosecution isolators, especially in Penitentiary no. 13, is not the only worthy solution neither for the person, nor for the public budget. It is necessary to be aware that the critical insufficiency of space for detention is likely to force penitentiary institutions to house detainees in inappropriate material conditions.

At present, **4150 convicts are detained in conditions of less than 4m<sup>2</sup>, and 2619 convicts are detained in conditions of more than 4 m<sup>2</sup>.** The detention ceiling, established for the penitentiary institutions by NPA, is **6735** places. In fact, on December 31, 2019, 6716 people were detained. This does not necessarily mean that in 2019 the detention ceiling was below 6716 persons. Rather, that figure is calculated for December 31, 2019.

#### ***e. Material conditions of detention***

In its jurisprudence, the ECtHR has noted that Article 3 of the ECHR requires the State to ensure that the person is detained in conditions that are compatible with respect for human dignity, so that the manner and methods of execution of the imposed measures or punishment do not cause the person suffering or pain of an intensity exceeding the unavoidable level of suffering inherent in detention and, in view of the requirements of detention, the health and integrity of the person being adequately ensured, inter alia, by providing the necessary medical care<sup>208</sup>.

The Executive Code of the Republic of Moldova regulates the manner and conditions of execution of the sentence, determines the means of correcting convicts, establishes the manner of execution of security and preventive measures, aimed at protecting the rights, freedoms and legitimate interests of the person, and providing assistance convicts to their social adaptation<sup>209</sup>. Likewise, the legislator established that the executive-criminal legislation is applied in accordance with the Constitution of the Republic of Moldova and with the international treaties to which the Republic of Moldova is a party. If there are inconsistencies between the regulations of international treaties in the field of fundamental human rights and freedoms to which the Republic of Moldova is a party and the provisions of this code, the regulations of international treaties have priority. Thus, Article 167<sup>1</sup> of the Executive Code expressly provides that ***it is prohibited to subject any person serving a sentence of torture, cruel, inhuman or degrading treatment or other ill-treatment.***

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<sup>208</sup> Case of Kudla v. Poland [MC], Decision of 26/10/2000, § 94; Paladi v. Republic of Moldova [MC], id., §71;

<sup>209</sup> Para. 2, Art.165 Executive Code of the Republic of Moldova;

Among the rights stipulated in the provisions of Art. 169 of the Executive Code at letter b) of par.1) is stipulated the right to defense and observance by the institution or body that ensures the execution of the punishment of the dignity, rights and freedoms it has, *including not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*

In his previous remarks, the Ombudsman mentioned that all the penitentiaries in the country are of an old architecture and an organization not adapted to human detention as such. Large spaces (barracks type) influence both the observance of the detention regime by detainees, their health and their ability to participate in resocialization programs. More than 80% of convicts spend time inside institutions due to lack of jobs and other forms of employment. In fact, penitentiaries do not have / have limited occupational areas specific and useful to detainees. The aspect of "resocialization" is maintained in the process of recording written documentation, rather than a succession of actions in this field. And the effort of the penitentiary authorities in this regard is still minimal.

At present, the detention of persons can easily be qualified as detention contrary to Art. 3 of the European Convention and case-law. These findings have been repeatedly drawn by the UN Committee Against Torture (2014, 2017), the European Committee for the Prevention of Torture (2015-2019), the People's Advocate (2002-2019) and the Council for the Prevention of Torture (2017-2019).

In 2019, the NPA managed to purchase beds, nightstands, tables and chairs worth MDL 8 million. The furniture was distributed in penitentiaries and is to replace worn, defective equipment, etc. Also, hygiene products, bed linen, food preparation equipment were purchased, which has not been done in recent years.

The People's Advocate registered **851 applications from detainees**, invoking inappropriate conditions of detention; overcrowding; insufficient and poor quality food; lack of effective medical care (lack of medicines, lack of doctors, medical equipment), dental pain; unsanitary hygiene (parasitic insects, presence of dirt, lack of beds, presence of rodents, lack of adequate ventilation, access to daylight, deplorable condition of toilets, dirty conditions in bathrooms; lack of privacy in toilets and bathrooms; (some lead to illness) TB), insufficient winter heating, relations between detainees, discriminatory treatment, intimidation and harassment by the administration, etc. At the same time, the NPA registered 1113 applications / complaints from detainees, lawyers and their relatives regarding poor detention conditions.

**In this context, the Ombudsman reaffirms the Government's commitment to ensuring decent conditions in closed spaces and urges the Executive to decide on a comprehensive assessment of the situation. The fragmented and insufficient allocation of financial resources in each year may not be the best solution. Respectively, it is probably necessary to revise the concept of execution of custodial measures, given the annual austerity of the public budget.**

We also reiterate that the content of the *Concluding Observations on the third periodic report of the Republic of Moldova*, adopted at the 1600 and 1602 meetings of November 27 and 28, 2017 by the Committee Against Torture, emphasizes that “the Republic of Moldova must step up efforts to bring conditions in places of detention to international standards, such as the United Nations Standard Minimum Rules for the Treatment of Prisoners (*Nelson Mandela Rules*), including by ensuring adequate material and hygienic conditions for detainees, including sufficient natural and artificial lighting, adequate sewerage systems and sanitation, including toilets and showers, cell heating, sufficient ventilation, adequate quality and quantity of food, bedding, beds and personal hygiene items, medical care, outdoor activities and family visits”.<sup>210</sup>

#### ***f. Deaths in prisons***

In 2019, there were registered 36 deaths. The number of deaths increased compared to the same period for 2018 in which there were recorded 29 deaths. According to the NPA data: 10 detainees died as a result of diseases of the cardiovascular system; 9 detainees - following suicide acts; 6 detainees - due to cancer; 3 detainees due to traumatic injuries, intoxication; 2 detainees - due to tuberculosis; other 2 detainees due to diseases of the digestive system, etc. 1 detainee died while waiting for the decision of the special commission of the NPA for release due to illness from serving the sentence.

#### ***g. Disciplinary isolation***

According to point 5 of the Execution of Sentences Act by the convicts, the disciplinary isolator represents the room in which the sanction of disciplinary isolation is to be executed, in accordance with the provisions of Art. 246 of the Executive Code.

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<sup>210</sup> Point 18 (c) of the Concluding Observations on the third periodic report of the Republic of Moldova, adopted by the Committee Against Torture at its 62nd Session (November 6 - December 6, 2017);



In practice, disciplinary isolators are used, in particular, for: incarceration as a disciplinary measure, pre-trial detention, protective incarceration, incarceration of those who have announced a hunger strike and incarceration of persons with disorders.

The People's Advocate understands that due to the lack of other spaces in the penitentiary institutions and other reasoning, the penitentiary institutions identified only this method of incarceration. However, we have to note that the period of incarceration runs for some categories of convicts for years on end, and for others from 5 days to 30 days. Solitary prisoners were observed, who, at first sight, had deviant aspects.

We also reiterate *the detention of persons in conditions contrary to Article 3 of the ECHR*. For example, in the disciplinary isolator of Penitentiary no.11 in Balti (visit from January 2019) the material conditions in solitary confinement reached worrying proportions, incompatible with respect for human dignity, the applicable standards and minimum norms in the matter, likely to subject to stress and hardship which exceed the inevitable level of suffering inherent in detention, with an extremely detrimental effect on the mental, somatic and social health of the isolated person. In the disciplinary isolation of Penitentiary no. 3 in Leova (visit from June 2019) unsatisfactory detention conditions were found in all 11 cells. These are represented by narrow rooms, small windows (which limit the access to daylight), heavy air, increased humidity, electrical wires hanging on the wall and ceiling, unsanitary toilets, deplorable linen, concrete floor, artificial light of a low density and unsanitary blankets<sup>211</sup>. A similar situation was observed at the isolator of Penitentiary no. 1 in Taraclia, where unsatisfactory detention conditions were found in all the cells of the isolator. These are represented by narrow rooms, unsanitary toilets, concrete floors, broken windows, deplorable linen and unsanitary blankets. Likewise, there was a lack of artificial light and heat<sup>212</sup>.

**In his reaction, the Ombudsman reaffirmed that under those conditions it was NOT appropriate to place any person, including for short periods of time. Also here, we mention that the detention in the disciplinary isolation must ensure that the detainee has the possibility to sit or lie on the bed. This means that the bed must not be closed to the wall during detention or the legal provision in this regard would be contrary to the CPT's recommendations in this regard. Likewise, penitentiary institutions must take into account the length of detention. It should not be longer than 14 days.**

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<sup>211</sup> [http://ombudsman.md/wp-content/uploads/2019/08/Raport\\_P3\\_03.07.19.pdf](http://ombudsman.md/wp-content/uploads/2019/08/Raport_P3_03.07.19.pdf);

<sup>212</sup> [http://ombudsman.md/wp-content/uploads/2019/10/Raport\\_P1\\_09.10.19.pdf](http://ombudsman.md/wp-content/uploads/2019/10/Raport_P1_09.10.19.pdf);

#### *h. Prisoners with diseases*

In 2019, **80 cases of tuberculosis** were detected and another **178 detainees were diagnosed with HIV / AIDS** from 2473 blood tests. NPA gave assurances that the penitentiary institutions are taking actions to prevent / combat TB, the prophylactic-radiological examination of the new arrivals takes place, including 6 months of detention, etc. **89 detainees were included in the viral hepatitis C treatment program** under a contract with PMSI Republican Medical Diagnostic Center with a value of MDL 400 thousand.

The CPT recommends a regular assessment of detainees for mental disorders and recommends that the authorities ensure the immediate transfer of detainees to a psychiatric hospital. Unfortunately, the lack of internal mechanisms in this regard requires that detainees continue to be in prisons. Or, the placement in the psychiatric hospital is to be ordered forcibly and / or voluntarily. In both cases, the penitentiary institutions and the psychiatric hospitals do not have solutions to proceed. In fact, they can be taken for primary examination, and what is related to psychiatric treatment is performed in the penitentiary. Given the lack of psychiatrists in prisons, but also the non-specific conditions of effective treatment, this form of "treatment" is ineffective. Detainees with disorders impede the normal activity of the penitentiary, commit violent and disobedient acts, attacks on staff. Employees are required to apply special means, to the detriment of their health / excess, as the only solution to prevent self-harm, destruction or endangerment of peers or employees.

Likewise, in all penitentiary institutions there are no spaces specially arranged for persons in delirium, with psychoses, etc. Respectively, they are placed in disciplinary isolators (which have another function), where they can be held for several days / months. Penitentiary institutions should contact the services of psychiatrists (the salary of 0.5 is not a real one), who will assess and provide the necessary assistance for the prevention and treatment of mental illness (if possible) to detainees. This recommendation is to be implemented as a matter of urgency.

#### *i. Transfer of medical responsibility*

The UN Committee Against Torture (CAT) and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) have recommended that the Government urgently transfer responsibility for medical services from NPA to the Ministry of Health, Labour and Social Protection and ensure that the penitentiary hospital is affiliated to the Ministry of Health, Labour and Social Protection, etc.

This recommendation has not been implemented. In 2019 this topic was not discussed by the authorities. NPA constituted the Medical Directorate of NPA with specific attributions. This Directorate has taken over the role of coordinating, ensuring and supervising the medical processes in the penitentiary institutions, including the contact with the civil medical institutions. It was possible to carry out protocols, sign agreements with medical hospitals in the provision of emergency / specialized services. Likewise, the NPA facilitated access to private medical services, against payment, at the request of detainees. It seems that the national authorities will remain to strengthen the capacity of the Medical Directorate of the NPA rather than assume medical responsibility over detainees.

The PAO employees found that in the territory, the civil health centers do not provide support to the penitentiary institutions nor do they maintain any evidence of the medical / health / food situation, etc. on the persons in detention.

#### ***j. Teleconferencing system***

In 2019, there were held 2136 court hearings through the teleconference system, during which 2136 complaints were examined. Practically, teleconferencing video systems were installed in all penitentiaries. However, not all courts have this system. And, in the courts of appeal, it is impossible to hold a teleconference, which imposes the obligation to escort and ensure the presence of the detainee in the courtroom.

Another problem remains *the mechanism for defending the client's interests by remote lawyers.*

#### ***k. The compensatory mechanism***

On January 1, 2019, entered into force the compensatory mechanism for precarious conditions of detention, established as a national remedy for resolving complaints about conditions of detention that seriously affect human rights. This mechanism involves reducing the time of execution of sentences by compensating for days of detention or monetary compensation for detention in precarious conditions of detention, including pre-trial detention.

In the process of applying the compensatory mechanism in practice, the normative framework has been interpreted differently by institutions - from penitentiary institutions to courts. Dozens of court rulings contradict each other, even if the situation is the same for detainees.

In 2019, more than 4,500 complaints were registered in the courts. 137 detainees were released, and another 1410 had their sentences reduced. Some detainees received monetary compensation amounting to about MDL 1.2 million.

The People's Advocate reminds that through the provisions of Art. 385 par. (5), Art. 473<sup>2</sup> - 473<sup>4</sup> of the Criminal Procedure Code of the Republic of Moldova no. 122/2003, the State of the Republic of Moldova established a "*compensatory mechanism*" for the detention of persons in inhuman and degrading conditions, contrary to Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, reaffirming its commitments to abolish torture. Thus, the Republic of Moldova recognized that detention in places of detention is a form of inhuman and degrading treatment, including the inability to improve the situation of detainees. Consequently, the suspension of the application of **the compensatory mechanism constitutes an interference with the exercise of an absolute right and constitutes a regression in the assurance of human rights.**

### *l. Life imprisonment*

19 detainees sentenced to life imprisonment declared a "hunger strike" in autumn 2019 as a protest action against the refusal of the courts to review their sentences, as well as the refusal to apply the compensatory mechanism for this category. The representatives of the Ministry of Justice claimed that they will identify solutions in this regard. During the monitoring period, this "solution" was not voiced.

We remind you that in Penitentiary no. 17 in Rezina there are 123 detainees sentenced to the maximum punishment.

### *m. Escort activity*

As a result of the salary reform, there was affected a category of employees of the National Penitentiary Administration responsible for guarding and escorting detainees. Thus, the penitentiary system had to deal with the situation and ensure the escort process in the absence of vacancies. The number of guard and escort service supervisors is relatively small compared to the flow of escorts. In some penitentiaries, employees from other subdivisions and technical services were involved, only to ensure the necessary number of staff involved in the escort. According to the annual balance report of the NPA, 20880 escort missions were carried out, in their process 78079 detainees were escorted.

Another compartment that needs urgent attention and involvement is the increase and improvement of NPA car fleet. Most special vehicles (40) do not comply with CPT standards and do not provide decent and safe conditions of transport, including long-term stay in them.

**The People's Advocate encourages the Government to support the initiative of NPA in order to purchase at least 10 medium-capacity car transport units (12/15 seats), 3 ambulance-type transport units, 2 high-capacity transport units (21/27 seats) bus type and 3 high capacity transport units (21 seats) truck type.**

#### *n. Violence between detainees*

According to NPA data, there were recorded *bodily injuries* during the year: *1203 cases detected* among detainees (2018-1038) which is an increase of 13.71%, *306 cases from police inspectorate isolators* (2018-248) indicator increasing by 18.95%, *897 cases detected in convicts on the territory of the penitentiary* (2018-790), the most frequent cases being registered in: Penitentiary no. 13 in Chisinau - 319 injuries, of which 168 from the Police Inspectorates (hereinafter PI); Penitentiary no. 11 in Balti - 148 injuries, of which 90 from the PI; Penitentiary no. 17 in Rezina - 143 injuries; of which 26 from the PI; Penitentiary no. 4 in Cricova - 86 injuries; Penitentiary no. 18 in Branesti - 72 injuries; Penitentiary no. 16 Pruncul - 68 injuries; Penitentiary no. 1 in Taraclia - 58 injuries; Penitentiary no. 5 in Cahul - 58 injuries, of which 22 from the PI; Penitentiary no. 15 in Cricova - 49 injuries; Penitentiary no. 12 in Bender - 47 injuries; Penitentiary no. 9 Pruncul - 42 injuries; Penitentiary no. 2 in Lipcani - 31 injuries; Penitentiary no. 3 in Leova - 26 injuries; Penitentiary no. 6 in Soroca - 24 injuries; Penitentiary no. 7 in Rusca - 15 injuries; Penitentiary no. 8 in Bender - 13 injuries; Penitentiary no. 10 in Goian - 4 injuries.

All information about the injuries was investigated and reported to the respective section of the General Prosecutor's Office. However, out of the total number of bodily injuries, *179* were determined as a result of *altercations between detainees*. The number of violent acts between detainees is constantly increasing by 45.25% compared to 98 cases reported in 2018.

**The Ombudsman considers that NPA must continue its efforts to prevent and repress acts of violence and intimidation among detainees, paying particular attention to the causes and origins of the phenomenon; take the necessary measures to ensure that prison staff no longer rely on the informal hierarchy of detainees in order to maintain order and security; take the necessary measures to ensure that the right of detainees to lodge complaints is effective, while**

**ensuring that such complaints do not provoke pressure from prison staff; launch an in-depth examination of the staff, in particular the security service, and review the number of staff units of the penitentiary institution in order to expand it and ensure the appropriate number of supervisory staff; take steps to train prison staff in the field of security and safety, including the concept of dynamic security, the application of force and means of coercion and the confrontation of violent detainees, taking into account preventive and neutralizing techniques such as negotiation and mediation.**

***o. Application of physical force and special means***

Penitentiary institutions resorted to the application of physical force for disobedience in 351 cases and in 300 cases to the application of special means (handcuffs). There are not included cases of verbal abuse. At the same time, NPA registered only 27 complaints regarding the abuse of the application of special means, and no service investigation was ordered. We remind you that the legality of the application of physical force and special means belongs to the competence of the law enforcement bodies. We mention that there have been no cases of application of the firearm as a special means.

The People's Advocate is of the opinion that the Intervention Guide should be completed / readjusted with clear actions for the application of force and special means in closed spaces. These mechanisms must be applied uniformly by all employees, and detainees must be informed of the consequences of disobedience.

***p. Attacks on employees***

The number of attacks on employees is maintained. In 2019, 16 cases of attempted attack were registered (in 2018-20 cases of attack) in the penitentiaries: Penitentiary no. 3 in Leova, Penitentiary no. 5 in Cahul, Penitentiary no. 9 Pruncul, Penitentiary no. 10 in Goian, Penitentiary no.11-Balti, Penitentiary no. 13 in Chisinau, Penitentiary no. 17 in Rezina and Penitentiary no. 18 in Branesti. In all cases, there were filed criminal cases. There are not included cases of verbal abuse, intimidation and offense by detainees / informal leaders.

The People's Advocate received more information about the ongoing abuses against employees. It seems that the criminal punishment for non-compliance with legitimate requirements is not exactly drastic to discourage the mentioned phenomenon. The lack of mechanisms to protect

employees against mental abuse and physical attacks is a major problem for human resources in prisons. We are of the opinion that in the conditions of increasing the influence of the criminal subculture, the insufficient number of employees, the authorities must return to this subject in order to overcome the possible risks of proportions. The use of physical force to oppose resistance in favor of Art. 233 of the Executive Code, likewise, is not the most reasonable and timely solution.

***q. Reporting injuries and allegations of torture***

According to the reasoning established by par. 3, Art. 232 of the Executive Code, the doctor performing the medical examination has the obligation to record in the medical file the traces of violence, cruel, inhuman or degrading treatment or other ill-treatment or violence / aggression, the person's statements convicted in connection with them and **to immediately notify the head of the penitentiary institution**, who notifies the prosecutor and the People's Advocate or the People's Advocate for Children's Rights, in case of minors.

At the same time, according to point 12 of Order no. 77/572/408/639-o / 197/1589 (joint) for the approval of the Regulation on the procedure for identification, registration and reporting of alleged cases of torture, inhuman treatment and degrading, **medical workers are obliged to send** complaints, statements or other information about alleged acts of torture, inhuman or degrading treatment, immediately, but not later than 24 hours **to the prosecutor**, regardless of whether or not he notified the head of the penitentiary<sup>213</sup>.

The contradictions between the organic norm and an interinstitutional order regarding the subject responsible for reporting acts of ill-treatment, make it impossible to apply in practice Order 77/572. According to a research conducted by the PAO in 2019, the person in charge of reporting incidents, cases, etc. is the duty officer within the penitentiary institutions. Thus, the doctor / nurse reports internally, and externally it is done by the duty officer. The latter informs the head of the penitentiary, with the additional notes of the deed. Regarding the assessment of the existence of acts of torture and the circumstances of the trauma, the nurses in the penitentiaries claimed that they did not have such ability and competence. This can only be done by a forensic pathologist who specializes in the field. Forensic doctors in prisons do not exist.

In practice, there were no cases of refusal by penitentiary institutions to submit additional information to the People's Advocate Office in special press releases.

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<sup>213</sup> [https://www.legis.md/cautare/getResults?doc\\_id=38969&lang=ro](https://www.legis.md/cautare/getResults?doc_id=38969&lang=ro);

## SITUATION OF PERSONS RETAINED AND DETAINED BY THE POLICE

### *a. Dynamics of retention and pre-trial detention*

In 2019, there were retained 6331 people, of which 313 women and 40 minors. Likewise, 28 men and 100 women were retained (mostly in Chisinau).

In 13 functional police isolators there were placed 6812 retained persons. Out of the total number of detainees, 75 people had physical / mental disabilities; 191 patients with HIV / tuberculosis; 68 foreigners; 17 people in a state of intoxication, as well as 204 people with various bodily injuries. At the same time, 818 people retained by other institutions were placed / detained in the Chisinau detention center.

### *b. Situation of new type isolators*

We must mention that the successes registered by the General Police Inspectorate on the segment of ensuring the minimum conditions of pre-trial detention were thanks to the European institutional support, as well as its insistent policy. Another aspect is the support of other donors in developing and adjusting internal structural work procedures for employees and the work of the police<sup>214</sup>.

In 2019, 9 preventive detention isolators out of 15 expected were renovated and put into operation. Therefore, **under renovation** there are: 3 isolators (Chisinau, Anenii Noi and Ungheni Police Department); **in reconstruction**: 3 isolators (Sorooca, Balti and Comrat); **put into service**: 9 isolators (Criuleni, Hincesti, Orhei, Causeni, Cimislia, Cahul, Edinet, Sangerei, Rascani); **suspended**:

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<sup>214</sup> Order of the General Police Inspectorate no. 126 of 29.03.2019 for the approval of the Framework Regulation on the organization and functioning of the Detention and Escort Section / Service of the territorial subdivisions of the GPI; Order of the GPI no. 217 of 21.06.2019 for the approval of the Activity Instruction of the Detention and Escort Service / Service during the escort and transportation of persons in the custody of the Police; Order of the General Police Inspectorate no. 380 of 21.10.2019 for the approval of the Instruction on the organization and operation of pre-trial detention facilities subordinated to the General Police Inspectorate as well as the necessary measures for their safety; Order of the General Police Inspectorate no. 444 of 15.11.2019 for the approval of the Standard Operating Procedure regarding the mechanism for providing medical assistance to persons detained and in pre-trial detention; Order of the MIA no. 797 of 10.12.2019 on the standard operating procedure regarding the assurance of the right to an interpreter or translator during the detention, guarding, escorting and transportation of detained persons;



25 isolators: Anenii-Noi, Balti, Bender, Cahul, Causeni, Cimislia, Criuleni, Donduseni, Dubasari, Edinet, Hincesti, Orhei, Riscani, Singerei, Soroca, Straseni, Telenesti, Ungheni, Vulcanesti, Leova, Basarabasca, Comrat, Briceni; **is to be suspended**: Rezina.

Currently, there **operate** 13 isolators, such as: Police Department of Chisinau, Calarasi, Cantemir, Ceadir-Lunga, Drochia, Falesti, Floresti, Glodeni, Nisporeni, Ocnita, Rezina, Stefan Voda, Taraclia

*c. Allegations of ill-treatment in retention and detention*

According to the General Police Inspectorate (GPI), no detainee has filed complaints regarding the conditions of detention, the quality of medical care, access to a lawyer, lack of the right to telephone calls or ill-treatment / torture. A single case of "torture" received by the General Police Inspectorate, as indicated by a prosecutor, the detainee was transported to the headquarters of a subdivision, by employees of a subdivision of the Police, with the allegation of being forced to plead guilty in a criminal cases. On this fact, the General Police Inspectorate notified the territorial Prosecutor's Office.

At the same time, according to the NPA's annual balance report, the penitentiary institutions registered **306 cases of bodily injuries to arrivals from the isolators of the police inspectorates**. These figures show that the situation is contrary to the reporting made by the General Police Inspectorate.

Further, the data of the General Police Inspectorate show that 110 incidents were registered regarding the ill-treatment of 175 police employees on detention, being initiated 83 criminal cases. It is unbelievable that in the 110 cases of ill-treatment there were no consequences of bruises, injuries, etc. towards the detained persons. Moreover, it is serious that they were not registered by the medical workers of the police inspectorates despite the series of approved operational protocols.

**The People's Advocate reaffirms to the GPI and its territorial subdivisions to record / report any cases of injuries / violence / acts of ill-treatment when retaining and detaining the person in accordance with CPT rules. The General Police Inspectorate must implement correctly and according to the CPT's suggestions the content of medical examinations, in particular, in the part related to allegations of ill-treatment in detention or retention.**

*d. Situation of old type isolators*

"Old" isolators remain in poor working condition until all isolators to be refurbished are put into service.

For example, 305 people were placed in the Falesti isolator (degrading conditions); 104 people were placed in the Comrat isolator (deplorable conditions), 9 people were placed in the Floresti isolator (no toilets, humiliating conditions) and 199 people in Ceadar-Lunga.

In the pre-trial detention facility of the Stefan Voda Police Inspectorate (visit from August 2019), the visiting team repeatedly found the detention of people in cells in the absence of bed linen, sleeping pillows, lack of privacy in the toilet, insufficient lighting, unbearable smell, etc. Likewise, one of the 5 people kept in the isolator was detained since June 22, 2019 (with periodic exits and entries from the isolator), i.e. more than 72 hours than the allowable limit.

And during the visit in November 2019 to the Briceni Police Inspectorate, the PAO employees found degrading / inhuman material conditions in the isolator. These were not improved after the last monitoring visit in 2018. According to the Briceni PI administration, no capital investments were made, given the GPI's intention to open a new type of isolator at Edinet PI, to which the detained persons are to be transported. In addition, the Ombudsman's team **found that there was no heating in the isolator**, which required the detainees and the supervisor to endure the cold. According to the Head of the Briceni Police Inspectorate, the situation has worsened as a result of an underground leak from the respective network, which implies enormous investments, given that the isolator is not required. In view of the circumstances found, as well as the reasonableness of the isolator's activity during the cold period of the year in the absence of the heating, **the People's Advocate issued an opinion recommending urgently the identification of solutions for repairing the pipe leading the thermal agent to the isolator and, where it is impossible within 15 days, to stop the activity during the cold year, and the detained persons to be placed in another nearby isolator. Placing people for a short time in the isolator under those conditions is inadmissible.** On December 30, 2019, the PAO was informed about the decision of the General Police Inspectorate and the Briceni Police Inspectorate to suspend the isolator's activity on the recommendation of the Ombudsman, which preceded the reopening of the Edinet Police Inspectorate, renovated from European funds. Likewise, the Briceni Police Inspectorate mentioned that no person was placed in the respective isolator since November 7, 2019 - nowadays.

It should be noted that, despite the unrest related to the opening of new isolators and the cessation of the activity of the old ones, the inspectorates in the territory still lack space for the

temporary detention of suspects until their documentation within the prescribed period. In such a situation, people are kept in the hallway, inside the guard units and cannot leave the institution. The GPI is to identify a solution in this regard. Still here, we mention the lack of accommodation necessary for the service activity of disadvantaged police employees compared to people detained in good conditions. Such a situation is undesirable and can create frustration on their part.

***e. Detention over 72 hours***

During his visits, the People's Advocate continued to identify detainees beyond the legal 72-hour period. We remind you that the European norms require that this term be reduced to 48 hours.

*On the contrary*, the People's Advocate warns the management of the police inspectorates that the detention of detained persons cannot exceed 72 hours, and if there are legal / solid / authorized reasons that this person must be in state custody and after the expiration of the 72 hours, the detained person is to be transferred to the custody of a penitentiary. The People's Advocate reiterates that the general rule regarding the observance of the right to liberty and security presupposes the observance of the 72-hour term.

In 2019, the General Police Inspectorate urgently requested the presentation of the opinion on the draft Instruction on the organization and operation of remand officers under the General Police Inspectorate and the necessary measures for their safety. Although, this opinion was submitted within the requested term, the General Police Inspectorate *forgot* to inform the People's Advocate about the final decision on the cited draft.

On this note, the People's Advocate recommends to the General Police Inspectorate to exclude from the prerogatives of the police, the detention of persons in pre-trial detention facilities of over 72 hours. The People's Advocate warns the management of the General Police Inspectorate / Territorial Subdivisions, etc. that the police custody of detainees can not exceed 72 hours, and if there are legal / solid / authorized reasons that this person must be in custody state and after the expiration of the 72 hours, the retained person is to be transferred to the custody of a penitentiary. The People's Advocate reiterates that the general rule regarding the observance of the right to liberty and security presupposes the observance of the 72-hour term.

Or, according to the provisions of Art. 175, 175<sup>1</sup> of the Executive Code of the Republic of Moldova, the execution of pre-trial detention is ensured by penitentiaries, through the criminal investigation isolators within the NPA.

## SITUATION OF FOREIGNERS IN PUBLIC CUSTODY

Paragraph (1) of Article 64 of Law 200/2010 on Foreigners provides that several categories of foreigners may be placed in public custody, the foreigner who did not execute the return decision or who could not be returned within the time limit provided by law, the foreigner who crossed or tried to cross the state border illegally, the foreigner who entered the country during the period of interdiction previously ordered, the foreigner whose identity could not be established, the foreigner declared undesirable, the foreigner against whom the expulsion was ordered, if there is a risk of abduction of the foreigner. Placement in public custody is performed at the Temporary Placement Centre for foreign nationals in Chisinau (CPT's).

The Temporary Placement Centre for foreign nationals has two blocks of flats, one of which is for families with or without children, an administrative building, a walk-in yard, a sports yard, a gym, a documentation office, meeting rooms, a medical salon, an isolator. On average, 100-120 foreigners are placed in the CPT's on an annual basis.

Women are placed separately from men. Receiving food and activities according to the daily schedule for women, is also carried out separately from those of men. CPT's staff working with women placed are of the same sex. Families placed in the Center benefit from separate accommodation.

Even if the material conditions at the Temporary Placement Centre for foreign nationals appear to be good, access to the Centre's facilities is limited. The bathroom is open once, twice a week, the rest of the days it is locked. The cells in which people are detained are closed during the night (starting from 22:00), so people do not have access to the toilet during the night, nor can they visit the prayer room to pray in the evening (problems have been identified especially during Ramadan).

Food for detainees is delivered through the catering service. Foreigners from outside the CIS complain about its quality. People placed who have the opportunity, procure their own dairy products, eggs, rice. Religious food preferences are not respected. Muslims complain that halal food is not served and they are forced to buy food themselves or stay hungry<sup>215</sup>.

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<sup>215</sup> See [http://ombudsman.md/wp-content/uploads/2019/04/Raport-CPTS-06.12.18\\_DpT-1.pdf/](http://ombudsman.md/wp-content/uploads/2019/04/Raport-CPTS-06.12.18_DpT-1.pdf/);  
[http://ombudsman.md/wp-content/uploads/2019/07/Raport-anual-de-activitate-CpPT-2018\\_Romana.pdf](http://ombudsman.md/wp-content/uploads/2019/07/Raport-anual-de-activitate-CpPT-2018_Romana.pdf);

***a. Right to information***

Following the findings of the People's Advocate, the detainees are formally informed about the reasons for their placement at CPT's. They are not translated and explained the conclusion of the court by which they are placed in public custody. Detainees are unaware of their rights, in particular the right to state-guaranteed legal aid and the right to challenge the actions of state authorities and the courts.

***b. Access to health care***

Detainees have access to medical assistance, which is provided by the medical service of the Border Police Department. There is a medical office and medical isolator in the Center, but there is no doctor or nurse employed. There were cases when people were provided with the necessary medical assistance only following a written address to the CPT's administration, the verbal addresses being previously ignored.

It is important to note that the CPT's administration and employees do not know how to work with HIV-positive people, in July an HIV-positive person was isolated from other inmates in a room, had separate cutlery, and all employees and guards knew about his HIV status.

***c. Psychological assistance to strangers***

CPT's does not have a psychologist's office. Taking into account that on August 1, 2019, inside the GIBP, the medical service that serves the persons placed in CPT's, there was opened an office for the psychologist. The office is intended for GIBP employees and migrants in difficulty. In this regard, the CPT's administration was encouraged to refer distressed foreigners to the services of the GIBP psychologist.

**In fact, no person was referred to that service, and at the written application of one of the detainees, the CPT's ignored the request.**

***d. Arbitrary detention***

Arbitrary detention is prohibited. However, during the monitoring period, there were identified cases of detention beyond the term provided by the court ruling. The CPT's administration considers that the beginning of the public custody is the time when the person was brought to the CPT's.

Respectively, when the placement term expires, the person is released at the time he/she entered the CPT's.

**The People's Advocate is of the opinion that the term for taking into public custody derives from the moment when the court pronounces the operative part of the court decision. De facto, the transport of the person from the court premises to the CPT's takes several hours (eg: Cahul-Chisinau or Balti-Chisinau). This can affect the period of detention. At the same time, it would be a solution if the court expressly indicated the date and time of the placement, as well as the date and time of the end of the placement period.**

*e. CPT's staff*

CPT's employees are not prepared for work in a multicultural and diverse context. Detainees face language barriers in communicating with guards. Some employees do not speak English. In addition to language issues, the attitude and behavior of CPT's staff and guards is racist and xenophobic. Detainees are cursed and verbally humiliated by some guards and staff members. For example, the citizens of Bangladesh and Turkey have learned insulting words from the lexicon used by employees in conversations with foreigners<sup>216</sup>.

**The People's Advocate concludes that the BMA / CPT's is to adopt a policy of tolerance towards foreigners, and the employment of staff must comply with the principles of non-discrimination against foreigners / origin / race / language, etc.**

*f. Allegations of ill-treatment*

The People's Advocate received information about allegations of violence by guards, degrading and inhuman behavior towards guards. Due to insecurity, fear and dependence on the institution, including threats - detainees refused to file complaints.

People who write complaints about the conditions or the attitude of CPT's employees are victimized by various sanctions: threatened with placement in isolator; they have no access to food; they do not have access to the telephone; they are threatened with being sent to prison or returned to

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<sup>216</sup> [http://ombudsman.md/wp-content/uploads/2019/12/Studiul\\_Situatia\\_str%C4%83inilor\\_FINAL.pdf](http://ombudsman.md/wp-content/uploads/2019/12/Studiul_Situatia_str%C4%83inilor_FINAL.pdf);

their country of origin where they will be tortured, etc<sup>217</sup>. In the interests of security, the People's Advocate cannot communicate the data of the petitioners<sup>218</sup>.

***g. The situation of the person up to CPT's***

During the monitoring period, the issue of illegal deprivation of liberty was identified at the pre-judicial stage (placing persons in public custody). The aliens were detained in unarranged offices within the regional offices of the BMA or in the regional offices of the GIBP for more than 3 hours, without any record of detention, before they were accompanied to court at the meeting on the BMA Approach for placing the person in public custody.

There were 5 reported cases when people had to sit in chairs for 6 to 9 hours without any detention minutes. Also, there was reported a case where a lady claimed to have been detained by BMA officers for 24 hours. She allegedly spent the day in chairs, and at night she was placed in a center for the homeless (miserable conditions), without any detention minutes. Subsequently, she was placed in public custody.

Another case happened in Cahul district. The foreign citizen was detained on a Friday at 13:00, being deprived of liberty until 18:00. Later, he was transported to an institution that looks like a penitentiary where he stayed until Monday morning. From there, he was transported to the Chisinau Court, which ordered his placement in public custody. During the detention period, the person was forced to sign documents, their contents not being translated. The foreigner was detained for 3 days, without understanding what was happening.

***h. Victims of trafficking in human beings placed at CPT's***

There were situations when the Bureau for Migration and Asylum invoked the argument that the foreigner is listed in certain criminal cases, which turns public custody into pre-trial detention for foreigners. Moreover, these arguments were copied from one approach to another, without taking into account the real situation of foreigners. In the case of the 26 Bangladeshi citizens in public custody during the monitored period, the use of the argument "existence of a criminal record" was

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<sup>217</sup>[https://bloknot-moldova.md/news/uvidet-moldovu-i-okazatsya-v-bolnitse-istoriya-bezh-1190569?fbclid=IwAR27evFA4mNxKo1ct8vDCMPlv\\_9CTitxW9H3Aq3qm\\_RUh72Rgvxp-n7YoJ4;](https://bloknot-moldova.md/news/uvidet-moldovu-i-okazatsya-v-bolnitse-istoriya-bezh-1190569?fbclid=IwAR27evFA4mNxKo1ct8vDCMPlv_9CTitxW9H3Aq3qm_RUh72Rgvxp-n7YoJ4;)

<sup>218</sup> <https://bloknot-moldova.md/news/bezhenets-rasskazal-ob-uzhasakh-s-kotorymi-on-stol-1143478;>

not a reasonable justification, as the persons were listed in criminal cases as victims of illegal migration. Likewise, the tendency to place victims of trafficking in human beings in public custody is maintained, a fact that is contradictory to par. 1, Art. 64 of Law 200/2010.

## REMOVAL OF FOREIGNERS FROM THE REPUBLIC OF MOLDOVA

### *a. Declaring the foreigner as an undesirable person*

Declaring the foreigner as an undesirable person is a measure ordered by the competent authority for foreigners, the Bureau for Migration and Asylum (BMA), against a foreigner who has carried out, carries out or in respect of whom there are strong indications that he intends to carry out activities likely to endanger national security or public order.

In practice, the decisions to declare an undesirable person are limited to:

*"In accordance with the provisions of Art. 55 of Law 200 of 2010 on Foreigners in the Republic of Moldova, I DECIDE: To declare the citizen (country of origin, name, surname, date of birth), as an undesirable person on the territory of the Republic of Moldova for a period of \_\_\_\_ years."*

At the date of issuing the decision regarding his / her declaration as an undesirable person, the foreigner's right of residence ceases de jure. The decision to declare the foreigner an undesirable person shall be drawn up in duplicate, in the state language and in a language of international circulation, and shall contain the reasons de facto and de jure, as well as information on possible remedies. If the foreigner is present, a copy of the decision is handed to him/her against signature. If the foreigner is not present, the communication is made either by mail with acknowledgment of receipt, to the address declared by the foreigner as a place of residence or by posting at the BMA headquarters, if the address where the foreigner lives is not known.

Article 56 of Law no. 200/2010 on Foreigners in the Republic of Moldova prohibits informing the foreigner declared an undesirable person, on the data and information that were the basis for the decision. The law also maintains this prohibition for the phase of the examination in court of the contestation of the decision regarding the declaration of the foreigner as an undesirable person.



The decision on declaring the foreigner an undesirable person may be challenged by him / her in court, within 5 working days from the date of communication. The lawsuit does not have the suspensive effect of executing the decision on declaring the foreigner an undesirable person. The case regarding the contestation of the decision to declare the foreigner an undesirable person is examined within 30 calendar days from the date of receipt. The decision of the first instance is final and enforceable, but can be appealed in the appellate court.

In justified cases and in order to prevent the occurrence of imminent damages, the court may, at the request of the plaintiff, order the suspension of the execution of the decision until the resolution of the action on the merits. The court will urgently examine the request for suspension, the decision rendered in this case being legally enforceable.

In practice, there have been cases where, at the initiative of the SIS, asylum seekers were declared undesirable, who were still in the administrative procedure for examining their asylum applications, or immediately after an administrative decision rejecting the asylum application, but during the period offered by the legislation, for contesting in the administrative contentious courts. **These situations violate the provisions of Law 270 of 2008 on Asylum in the Republic of Moldova, which, in paragraph 1) of Article 11 provides: "No asylum-seeker shall be expelled or returned from the border or from the territory of the Republic of Moldova." The legislator did not provide for any exception to the enunciated legal norm.**

It is worth mentioning that the Constitutional Court, in point 31 of its decision no. 3 of 14.01.2019, ruled that if the SIS considers that an asylum seeker poses a danger to national security or public order: "The Bureau for Migration and Asylum has the task of analyzing whether there are reasons to believe that the person poses a danger to national security or public order, without formally approving the conclusion of Security and Intelligence Service".

Likewise, the Ombudsman warned that asylum seekers are protected by international and national rules and on refugees. Therefore, the requirements of the Convention Relating to the Status of Refugees, which in Art. 33 stipulates "No Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." This protection applies to both refugees and asylum seekers located in or on the border of the country and should be understood in terms of risks that may arise in any country to which the person may be

sent and not only in their country of origin. origin. **The SIS must not abuse the return obligation when the BMA has not completed the protection procedures**<sup>219</sup>.

The case of Ozdil and others, renamed the "case of the Turks" removed from the Republic of Moldova, without following any legal procedure, on September 6, 2018 is an example of declaring undesirable persons in order to camouflage an extradition or "illegal transfer of persons"<sup>220</sup>.

### ***b. The principle of non-refoulement***

The principle of (**non-refoulement**) is the key element of refugee protection under this Convention. This principle applies to the return of persons who are in the territory of the state, both for those who entered legally and for those who entered illegally.

In the context of torture, the principle of non-refoulement means that no state will expel, return or extradite a person to another state when there are serious grounds for believing that he or she would be exposed to the danger of torture. **The Ombudsman reiterates that derogations from the principle of non-refoulement are not permitted under any circumstances.**

The People's Advocate recalls the ECtHR's position: when the human right in question is an absolute right (prohibition of torture or the right to life), non-return becomes an absolute right and cannot be the subject of any exception, either in law or in practice. This practice applies **regardless of national security considerations, other public interests, economic pressures or large flows of migrants.**

The 1951 Refugee Convention expressly stipulates in Article 33 that: "*... No Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his / her life or freedom would be threatened on account of his / her race, religion, nationality, membership of a particular social group or political opinion.*"

The principle of non-refoulement applies both to returns to the country of origin, to the country where the refugee would face persecution, and also to the country from which the refugee would have returned to such territories.

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<sup>219</sup> The People's Advocate response act no. 06-2/35 of 31.10.2018 to the SCJ, BMA and SIS;

<sup>220</sup> See ECtHR in Ozdil and Others v. The Republic of Moldova, pp. 54-57 (application 42305/18);

During the monitoring period, no violations of the right to apply for asylum at border crossing points were identified. Such cases have been identified at the “Chisinau International Airport” crossing point, such as: ignoring asylum applications; failure to provide access to the asylum procedure; immediate return to the country of origin or take-off; detention on the territory of the airport for a long period; failure to inform the BMA of the arrival of applicants for protection or late information about this fact, etc.

During the preventive visit to the "Chisinau International Airport" border crossing on December 5, 2019, the People's Advocate noticed a family of Iraqi citizens, including two other foreigners in the airport departure hall who were there on December 4, 2019, at 18:20 i.e. over 22 hours. The border police employees mentioned that the access to food and water to the inadmissible foreigners was ensured by the AIR Moldova company. The company's representative informed the team that within that term he would have provided foreign citizens with food vouchers worth MDL 100 / person per meal. However, foreign nationals mentioned that they received these vouchers only once. There is no confirmation between the statements of the company, the police and the victims. This fact is not documented / recorded by any party. Likewise, foreign citizens did not have access to the open air and their access to luggage was restricted. Subsequently, during the discussions, the citizens told the visiting team that they had been persecuted in their country of origin, which is why they flatly refuse to return to their country of origin. We mention that the right to apply for asylum was not explained by the border police employees, who acted in the return procedure. A list of rights of foreigners / inadmissible / asylum seekers does not exist. We find that some responsibilities of the border police in these situations are formally fulfilled. It is the duty of the State (through the border police) to immediately make known the information about those rights and procedures in a language they know, which is not respected in the present case.

If the People's Advocate had not made the visit on December 5, 2019, the Iraqi family with a minor would have been returned. They managed to apply for asylum in the Republic of Moldova, without being returned to their country of origin<sup>221</sup>.

### *c. National security*

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<sup>221</sup> [http://ombudsman.md/wp-content/uploads/2020/02/Raport\\_PTF-AIC\\_31.01.2020.pdf](http://ombudsman.md/wp-content/uploads/2020/02/Raport_PTF-AIC_31.01.2020.pdf);

Stricto sensu, according to Law no. 112/2008 on the approval of the National security conception of the Republic of Moldova, the only act that provides the notion of "national security" - National security is the fundamental condition of the existence of persons of the Republic of Moldova, the Moldovan state and is an objective of the country. The objectives of the national security of the Republic of Moldova are: ensuring and defending the independence, sovereignty, territorial integrity, constitutional order, democratic development, internal security, strengthening the statehood of the Republic of Moldova.

A special place in this sense belongs to the defense and promotion of national values, interests and objectives. National security is not only the security of the state, but also the security of society and the citizens of the Republic of Moldova, both on the territory of the Republic of Moldova and abroad. The national security of the Republic of Moldova is achieved through appropriate measures of a political, economic, diplomatic, social, legal, educational, administrative and military nature, through intelligence, counter-intelligence, and through the effective overcoming of crises, in accordance with the legislation in force and with international law.

Therefore, foreign citizens can be declared undesirable easily and at any time based on the wording of Law no. 112/2008. Respectively, there is a need for sufficient and plausible arguments for any approach to national security conditions. The justification that "national interest" is the exclusive prerogative of the SIS bodies is not plausible, or "national" reveals that it affects the general public, i.e. these decisions must and can be known to society, part of the State."

#### ***d. Respecting the principle of family reunification***

Also here, the People's Advocate reminds about the protection of family life before a decision is made to declare the person undesirable, located on the territory of the country. Separation of family members can have devastating consequences for their well-being and ability to rebuild their lives. This is true for everyone, but especially for people who have fled persecution or serious injury and lost their families during forced travel and flight.

In the case of beneficiaries of international protection, family separation can affect their ability to engage in many aspects of the integration process, from education and employment to the root, as well as harming their physical and emotional health. Therefore, family reunification is a fundamental aspect for bringing normalcy in the lives of such persons.

While European Union law provides refugees and holders of subsidiary protection - the two types of beneficiaries of international protection - equal treatment in most areas, the differences remain, inter alia, in family reunification under the Family Reunification Directive. Unlike refugees, beneficiaries of subsidiary protection do not enjoy the favorable conditions associated with the right to family reunification.

After 2015, most EU Member States have seen a significant increase in the number of asylum seekers arriving on their territory, along with an increase in the number of beneficiaries of international protection who want to reunite with their families. In order to establish some form of control over this unprecedented flow of persons, Member States have moved away from granting refugee status to granting subsidiary protection, thus limiting the possibility for beneficiaries to reunite with their families.

According to many legal experts, the fact that beneficiaries of subsidiary protection face stricter family reunification requirements than refugees, they do not take into account the particular circumstances of forced displacement and the corresponding difficulties they are likely to face in meeting these stricter requirements<sup>222</sup>.

In 2019, 30 foreigners were declared undesirable persons, compared to 599 persons declared undesirable in 2018<sup>223</sup>.

#### ***e. Removal under escort***

The removal of the foreigner under escort involves his / her accompaniment by the specialized staff of the Bureau for Migration and Asylum (BMA) to the state border crossing point open to international traffic or to the country of origin, transit or destination.

Removal under escort applies by BMA decision to the following categories of foreigners who have not executed the previously issued return decision and have not voluntarily left the territory of the Republic of Moldova at the expiration of the term granted by the previously issued return decision; who have crossed or attempted to cross the state border illegally or whose identity could not be established; who entered the Republic of Moldova during the period of interdiction previously ordered; which have been declared undesirable; against whom the expulsion was ordered; who has

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[http://www.europarl.europa.eu/thinktank/ro/document.html?reference=EPRS\\_BRI%282020%29646176&fbclid=IwAR096tTnxZomiZIUfsHfbB\\_22ANkA7ZCtbNnCX88ITM1ThSwt2wW51RGBLE;](http://www.europarl.europa.eu/thinktank/ro/document.html?reference=EPRS_BRI%282020%29646176&fbclid=IwAR096tTnxZomiZIUfsHfbB_22ANkA7ZCtbNnCX88ITM1ThSwt2wW51RGBLE;)

<sup>223</sup> [http://ombudsman.md/wp-content/uploads/2019/12/Studiul\\_Situatia\\_str%C4%83inilor\\_FINAL.pdf;](http://ombudsman.md/wp-content/uploads/2019/12/Studiul_Situatia_str%C4%83inilor_FINAL.pdf;)

not complied with the obligation to report regularly to the subdivision of the competent authority for foreigners which has imposed the measure or left its territorial jurisdiction; it does not prove a living space on the territory of the Republic of Moldova; he / she cannot prove his / her identity; there are other objective reasons determined by his / her behavior.

In 2019, 73 foreigners were escorted away.

#### ***f. Return of foreigners***

The Bureau for Migration and Asylum, by its decision, orders the measure of return from the territory of the Republic of Moldova and applies the ban on entry into the Republic of Moldova for a certain period. By the return decision, the stay of a foreigner is declared illegal and the foreigner is obliged to leave the territory of the Republic of Moldova within a certain period.

The return decision may be issued against the following categories of foreigners: who have entered the territory of the Republic of Moldova illegally, whose stay in this territory has become illegal, whose visa or right of residence has been annulled or revoked, who have been denied extension of the right of temporary residence, whose right of permanent residence has ceased, whose application for recognition of stateless status has been rejected, the procedure in question has been terminated or whose stateless status has been revoked, for former asylum seekers.

In 2019, there were issued 397 return decisions of foreigners.

#### ***g. Summary of the case of Ozdil and others v. Republic of Moldova, 11.06.2019.***

The applicants were teachers in a network of “Orizont” schools, private educational institutions in Moldova, which have been operating since 1993. On the morning of September 6, 2018, the applicants were arrested at their home or on their way to work and were taken in an unknown direction by people wearing civilian clothes. Later, the Moldovan Security and Intelligence Service made several statements regarding a large-scale counterterrorism operation that took place that day, during which seven foreign nationals suspected of links to an Islamist organization were arrested and removed from the territory of the Republic of Moldova, in collaboration with the secret services of other countries.

The ECtHR reiterated that while the investigation of terrorist offenses is undoubtedly the responsibility of the authorities with special missions, this does not mean that the authorities have full freedom of action under Article 5 to arrest and detain suspects in police institutions without effective control to national courts and, for example, to the Convention's surveillance institutions, whenever it considers that a terrorist offense has taken place.

The Court reiterated that a person who is subject to a measure based on national security considerations must not be deprived of all guarantees against arbitrariness. He or she must, *inter alia*, be able to verify the measure in question examined by an independent and impartially competent body in order to examine all relevant factual and legal grounds, to determine the legality of the measure and to censure possible abuse by the authorities. Before that control body, the person concerned must benefit from contradictory procedures in order to present his point of view and reject the arguments of the authorities. ... the national courts could not, in any event, have examined the real reasons for the expulsion, since the national legislation did not provide that the Secret Service note which served as a ground for expelling the applicants should be made available to the judges.

Likewise, the Court reiterates that the Convention does not guarantee, as such, the right of a foreigner to enter or reside in a particular country. However, the expulsion of a person from a country where close family members live may constitute a violation of the right to respect for family life, in accordance with Article 8 § 1 of the Convention<sup>224</sup>.

## SITUATION OF PERSONS IN MILITARY UNITS

On June 3, 2019, photos and a message regarding allegations of ill-treatment of a soldier of the Military Brigade no. 2 in Chisinau<sup>225</sup> were posted on the social network "Facebook".

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<sup>224</sup> See *Boultif v. Switzerland*, no. 54273/00, § 39, ECHR 2001 IX;

<sup>225</sup> <https://www.facebook.com/groups/396011323875941/>;

Immediately, the People's Advocate ordered the verification of the respective allegations. Allegations of cruel ill-treatment have come true. On the evening of June 1, 2019, the Petty Officer C., d.o.b. 1998 physically assaulted, applying several blows to the back, lower limbs in the canteen and the dryer of the unit with hard contentious objects (from the words of the victims: an iron from bed / stool) on three soldiers in time for various reasons. The lesions were identified only on June 3, 2019, at 08:20, when the military-victims reported to the Subunit Commander.

The military inspectorate of the Ministry of Defense of the Republic of Moldova has initiated an investigation. Likewise, the Chisinau Prosecutor's Office was informed about the detected facts, and the officer admitted the deed. On June 26, 2019, the criminal case started based on Art. 368 of the Criminal Code was submitted to the court.

Following this visit, the People's Advocate noted that the military in term are often subjected to acts of ill-treatment or humiliation for disciplinary purposes, which can easily reach the appropriate criminal qualification Art. 166<sup>1</sup> of the Criminal Code (torture / ill-treatment). The People's Advocate is also concerned about the lack of mechanisms to protect the military in time against acts of ill-treatment, violence, etc.

## **SITUATION OF PERSONS ADMITTED IN PSYCHIATRIC HOSPITALS**

In principle, hospitals should be safe places for both patients and staff. The mentally ill must be treated with respect and dignity, and in a human manner that respects their decisions and personality. Absence of violence and abuse on the part of staff to patients, or between patients, is a minimum requirement.

That being said, it must be added that sometimes the use of physical force against a patient cannot be avoided, to ensure the safety of both staff and patients.

Creating and maintaining adequate living conditions for patients, as well as a normal therapeutic climate - a major task for hospital staff - means the absence of aggression and violence between patients and against staff. For this reason, it is essential that staff be provided with appropriate managerial training in order to be able to meet in an ethically appropriate manner the challenge that an agitated patient and / or violent constitutes it.



The quality of living conditions and the treatment of patients inevitably depend, to a considerable extent, on the resources available. It is necessary to recognize that in a serious economic situation, sacrifices must be made, even in medical institutions. However, in the light of the findings made during certain visits, we would like to emphasize that there are fundamental necessities of life, which must be provided by the state in all circumstances to the persons he takes care of them. These needs include adequate food, heating and clothing as well as - in medical institutions - adequate medication<sup>226</sup>.

There are three psychiatric hospitals in the Republic of Moldova, subordinated to the Ministry of Health, Labour and Social Protection.

PMSI Chisinau Clinical Psychiatric Hospital provides: hospital psychiatric care for adults and minors in the south and center of the country (18 districts and Chisinau municipality); hospital care for the mentally ill suffering from tuberculosis; coercive treatment with rigorous supervision of mentally ill people who have committed crimes, performed at the decision of the court; coercive treatment under ordinary supervision, performed at the decision of the court; stationary medical-military examination of MIA, MJ, carabineer troops, border guard troops and pre-military personnel; outpatient psychiatric counseling in outpatient conditions. It has 740 beds (in 2020 30 beds will be reduced). In 2019, 6791 patients were hospitalized and 6713 patients were discharged. According to the gender criterion, 3442 men, 3187 women and 324 children were treated. 690 patients were denied hospitalization, and 184 refused hospitalization by their own decision. 25 patients were hospitalized based on Art. 28 of the Law on mental health, without free consent, based on the court decision. At the same time, 26 patients died in hospital. The duration of hospitalization was 32 days (in 2018 - 31.9 days). CPH Chisinau received 36 complaints from patients regarding the disagreement with the established diagnosis, dissatisfaction with the treatment received, the disagreement with the hospitalization and the behavior of the medical staff. The hospital has a deficit of 93 functions out of 747 units, according to the approved staff statements. In 2019, 66 people were hired and 106 resigned.

PMSI Balti Psychiatric Hospital is an inpatient, monospecialty medical care unit (psychiatry - narcology) for the northern region of the country (11 districts and Balti municipality) that provides services: adult psychiatric care, child psychiatric care, narcology (chronic alcoholism); narcology (drug addiction); narcology (psychosis); medical coercive measures. It has 530 beds. In total, CPH Balti provided services for 8008 cases, of which 5257 cases - adults, 562 cases - children, 1584 cases

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<sup>226</sup> Excerpt from CPH findings;

- chronic alcoholism, 200 cases - drug addiction, 405 cases - psychosis. 11 patients were hospitalized for coercive treatment. The average length of hospital stay was 21 days. The hospital has a deficit of over 113 employees from the 543 specialized positions. The situation regarding the technical staff is also not optimistic.

PMSI Orhei Psychiatric Hospital serves the center of the country by providing primary examination services, treatment, inpatient examination of recruits, coercive treatment with regular supervision and (d) treatment of narcologically ill patients. It has 145 beds, of which 40 (men's psychiatry), 40 (women's psychiatry), 30 (somatogeriatrics), 30 (narcology) and 5 beds in isolator.

In the process, 2245 patients were hospitalized (1306 psychiatric profile and 939 narcological profile) and 2212 discharged. 19 patients died. The average length of hospital stay is 23.8 days. At the beginning of 2019, 136 people were active in the hospital, from 161 approved personnel states.

In 2019, the PAO received 373 syntheses from the Chisinau Psychiatric Clinical Hospital - **344** syntheses, Balti Psychiatric Hospital - **1** synthesis, Orhei Psychiatric Hospital - **28** syntheses. Respectively, 14 deaths were reported (13 deaths + 1 suicide); 247 patients were detected with lesions (153 cases at hospitalization and 102 cases of lesions in custody); 8 suicide attempts; 5 cases of employee abuse; 3 cases of self-injury; 3 cases of violence between patients and another 3 cases of incidents per staff. Similarly, we note that of the total number of reported cases, according to gender statistics, 57% were patients and 47% were men.

In 101 cases, psychiatric hospitals resorted to counseling, the application of special means of containment, the method of chemical immobilization of patients. In most reports, the immobilization time was 30 min. These actions took place under supervision. Consequences would not have occurred. From the studied information, we summarize that the medical staff often applies the drug immobilization, either 2 or 3 times in the same day on a patient, or every day. In 2 cases of death, we note that patients would have died after drug immobilization (on the same day). In other cases, the immobilization was applied as a disciplinary sanction, for example for attacking the employee.

Cases of abuse by nurses (men's wards) have been described (with reservations). Likewise, in only one case was reported the involvement of private security services "Bercut" to "calm" the patient at the CPH in Chisinau. Following the involvement of Bercut employees, the patient ended up with an ecchymosis in the eye region.

At the same time, the Chisinau Police Directorate registered 2 cases of death of patients at the CPH in Chisinau (falling from their own height with a blow to the head), on which the initiation of

criminal prosecution was refused; 12 cases of bodily injuries (falling from one's height with causing injuries); 3 cases of suicide attempt (self-mutilation); 3 reported cases regarding illegal hospitalization, which were not confirmed; 18 cases of violent acts between patients; 3 cases of employee outrage and 1 case of application of physical force on the patient, on which the refusal of the criminal investigation was ordered.

The Orhei Police Inspectorate registered 102 complaints from the PH in Orhei. Only in one case there was started material contravention, based on Art. 78, para. 1 of the Contravention Code, regarding a patient. The Balti Police Inspectorate registered 13 materials regarding the beneficiaries of the CPH in Chisinau and the Temporary Placement Center for People with Disabilities in Balti. No employee of CPH in Balti had the status of suspect in any criminal case.

**The People's Advocate urges the relevant institutions to develop, approve operational procedures regarding protective restraint / immobilization, obligations and responsibilities of employees, as well as tools to protect employees against abuses of violent patients.**

## **SITUATION OF PERSONS IN PLACEMENT CENTERS OF PERSONS WITH DISABILITIES<sup>227</sup>**

In the Republic of Moldova there are 6 temporary placement centers for people with disabilities (TPCPD) for adults and another 3 for children<sup>228</sup>. The centers provide temporary placement services for adults / minors, under the management and coordination of the National Social Assistance Agency. In 2019, the PAO employees made 2 monitoring visits to the Temporary Placement Center for People with Disabilities (adults) in Branzeni, Edinet District<sup>229</sup> and the Temporary Placement Center for People with Disabilities (adults) in Badiceni, Soroca District<sup>230</sup>. The recommendations submitted to the investment institutions were partially implemented.

### ***a. Dynamics of persons in custody***

As of June 30, 2019, in the records of TPCPD in Branzeni, Edinet district, there were 232 beneficiaries, out of which 134 men and 98 women. In 2019, 3 beneficiaries were hospitalized in the

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<sup>227</sup> Temporary placement centers for people with disabilities or ex-psychoneurological boarding schools (hereinafter TPCPD);

<sup>228</sup> CPPVPD Chisinau, CPPVPD Cocieri, TPCPD Balti, TPCPD Badiceni, TPCPD Branzeni, TPCPD Cocieri, CPTCD Orhei, CPTCD Hincesti and CPTCSP Soroca ([www.anas.md](http://www.anas.md));

<sup>229</sup> [http://ombudsman.md/wp-content/uploads/2019/08/Raport\\_CPBrinzeni\\_Edinet\\_04.06.19.pdf](http://ombudsman.md/wp-content/uploads/2019/08/Raport_CPBrinzeni_Edinet_04.06.19.pdf)

<sup>230</sup> [http://ombudsman.md/wp-content/uploads/2019/08/Raport\\_CP-Badiceni\\_Soroca\\_27.06.19.pdf](http://ombudsman.md/wp-content/uploads/2019/08/Raport_CP-Badiceni_Soroca_27.06.19.pdf)

institution, and 11 were discharged. 7 beneficiaries died during the reporting period. The average rate of stay in the institution is over 10 years in about 70% of cases. Most are accommodated by small children.

On December 31, 2019, 451 beneficiaries were placed at the TPCPD in Balti (ceiling of 550 people), of which 219 women and 232 men. 6 beneficiaries were hospitalized, and another 8 discharged from the institution. 22 beneficiaries (9 women + 13 men) died during the monitoring period. The average institutionalization rate of the person is 14.8 years.

At the TPCPD in Cocieri, Dubasari district at the end of the year there were 338 beneficiaries, out of which 186 men and 152 women. 4 people were placed, 2 - reintegrated into the family, 31 re-evaluated, another 2 beneficiaries had the potential for reintegration into the family, and 10 beneficiaries - with the potential for employment. 10 beneficiaries died during the monitoring period. The average institutionalization rate of the person is 15 years.

In 2019 at the TPCPD in Badiceni, Soroca there were 380 people. 7 cases of death. 121 people were accommodated at the Temporary Placement Center for Elderly People with Disabilities, of which 46 women and 75 men. We observe a static dynamic of the residents in the institution. The discharge rate is relatively low.

#### ***b. Human resources***

The Branzeni Center employs 141 persons, of which 107 women and 34 men, 132 employees being close to retirement age. The ratio between employees and beneficiaries is 1:5.

The Balti Center employs 230 people, 43% being over 55 years old and after retirement. The ratio between employees and beneficiaries is 1:54.

164 employees work in the Cocieri Center. The ratio between employees and beneficiaries is 1:7. In the Center from Badiceni, there work 208 employees. These data reflect an almost critical situation with regard to the human resources involved in providing assistance to persons with disabilities remaining in the institution. The rate of profile specialists (non-medical) is generally very low. The degree of employee satisfaction is minimal, according to the balance sheet reports, the remuneration is not motivating. The average salary of an employee is between MDL 3600 (village) - 4700 (city). And, the maintenance of a beneficiary is MDL 6500. This imbalance affects residents as well as national policy on deinstitutionalisation.

### *c. Material placement conditions*

The material conditions of accommodation are different from one institution to another. In general, they are not adapted to the specific requirements and needs of residents.

For example, at the *TPCPD in Branzeni*, on the halls of the residential blocks there is a TV, refrigerator, toilet (sanitary block) and shared bathroom. The material conditions in block III were good (renovated thanks to an external grant), in block I and II - satisfactory (moisture on the walls in the hallway and in some living rooms, damaged floor). The administration noted that the blocks were included in the overhaul program, but financial resources are limited. The toilets are not delimited by partitions or individual doors, which does not ensure the privacy of the beneficiaries. The administration said it would address the shortcoming.

Following the visit, the People's Advocate considers the placement of the beneficiaries in the Placement Center in block III as being good (the capital repair is performed), **and the material conditions in blocks I and II are contrary to the provisions of Art. 3 of the European Convention on Human Rights. Branzeni PC is not accommodated for people with locomotor disabilities, and the beneficiaries who have problems with the lower limbs with difficulty climb the stairs not adapted to the living spaces.** Some wheelchair users have not left the room for a long time. One of the immobilized people claimed that she was never taken out. At the same time, it was held in high humidity by itself.

According to the employees of the Branzeni Placement Center, as well as from the words of some beneficiaries, they have access to the bathroom once a day. In block III the pipes are placed in a niche, which is locked and the hot water is turned on by the employees for security purposes. The visiting team noticed that no doors or partitions are installed in the toilet and bathroom, including the bidets without a lid. Access to the toilet, however, is only possible for one person, the space between the sinks is narrow for their use by two people at the same time. The administration stated that those installations were the summary of the tenderer's bid, which was to provide for those omissions. The administration stated that it would make every effort to remove the above comments. The material conditions after the overhaul were good.

Instead, in blocks I and II the situation is deplorable. The toilets are in poor condition. The toilets are located above the floor level, with two stairs, which limits the access of people with locomotor disabilities.

At the same time, at the *TPCPD in Badiceni* the beneficiaries are accommodated in two residential blocks of two floors each - blocks "A" and "B" 10 groups in each block (a total of 20 groups). The placement center has a medical block. On the 1st floor is located the isolator in which at the time of the visit were detained 9 people with tuberculosis. The kitchen is located on the 2nd floor, but the beneficiaries are fed in the living rooms, because there is no canteen. In all the blocks of the Placement Center the material conditions are relatively satisfactory. **The People's Advocate came to the conclusion that Badiceni PC is not accommodated for people with locomotor disabilities, and the beneficiaries who have problems with the lower limbs with difficulty climb the stairs not adapted to the living spaces.**

According to the employees, as well as from the words of the beneficiaries, they have access to the bathroom once a day. Beneficiaries do not have access to personal belongings, they are stored in separate lockers, and the key to the closet is held by the nurse / nurse on duty. Likewise, the beneficiaries cannot use the bedside tables, as they are locked with a padlock. The floor in the living rooms is made of linoleum, which is damaged. In the toilet / bathroom the tiles are damaged. The mattresses are in deplorable condition or old.

The Badiceni Placement Center has a block called by the beneficiaries "good" - group 7 in which 14 beneficiaries are placed in the 4 rooms (2 rooms of 4 beneficiaries each and 2 rooms of 3 beneficiaries each).

The toilet spaces are delimited by partitions and doors, but the sinks do not have a lid. Moisture persists in the shared bathroom, including due to low ventilation. The shower is organized in the same room of the shared bathroom. The placement center has a kitchen, consisting of 4 sections (boiling section, vegetable section, bread storage, meat storage). The employees communicated that 4 people work in three shifts (15 employees in total) as well as 2 beneficiaries are employed in the canteen. According to the employees, the beneficiaries are provided with sufficient food, eat 3 times a day and have two "snack" meals - at 11.00 min. and 16.00 min. The menu is made every day for the next day. Dietary meals are prepared only when the beneficiaries have worsening health conditions.

Additional food is provided for beneficiaries placed in the isolator. The food supply takes place following the auctions, with a periodicity of once every 6 months. The distribution of food takes place through "buckets" in each group. Beneficiaries are involved in cleaning vegetables, washing dishes and the floor.

*d. Right to health care*

The Badiceni Placement Center has 3 medical stations with 3 procedure rooms. In item A - 116 beneficiaries, in item G - 123 beneficiaries and in item V - 107 beneficiaries. Within the Placement Center, 21 nurses work in 5 shifts (nurses for 12 hours, and nurses for 24 hours). According to the organization chart of the institution: psychiatrist (employed for 0.5 salary and comes from Soroca 2 times a week); therapist (1.5 salary), phthisiopulmonologist (0.25 salary), dentist (0.25 salary, but more often the administration of the Placement Center transports the beneficiaries to the Soroca Health Center and pays for them. **Most beneficiaries have dental issues. However, the guaranteed programs include only extractions and not the possibility of treating dental / stomatologic conditions, implants, etc.**

According to the chief doctor and the medical staff, the staff employed in the medical service at the Branzeni PC is insufficient for the number of placed residents. However, the institution does not face difficulties in supplying medicines. The auction takes place once a year, and if necessary it can take place at 6 months. According to the interviewees, the used syringes are burned in the boiler room. In the medical department are located the offices of the dentist, the therapist, the procedure room "A", the pharmacy and the pharmacy warehouse.

Following the random examination of some medical files, the visiting team found that there were no information agreements for medical interventions, or they were signed only at the time of placement in the institution. Also, from 10-15 medical cards of the verified beneficiaries it was observed that the agreements on the first page were all signed with the dates 14.04.2019 or 15.04.2019 (agreement for therapeutic treatment, treatment indicated by the psychiatrist, and in one was signed influenza vaccine agreement), which would demonstrate that these agreements are not taken separately in each case, as needed.

According to the chief doctor and the medical staff, the staff employed in the medical service at Branzeni PC is insufficient for the number of placed residents. However, the institution does not face difficulties in supplying medicines. And, in the medical department are located the offices of the gynecologist, the dentist, the office of phthisioprocures, a laboratory, a procedure room as well as a room for visitors. At the time of the visit, there were no treatment actions in those offices. Following the examination of some medical files on the occasion, the visiting team found that there were no

agreements for information on medical interventions, or they were signed only at the time of placement in the institution.

**The People's Advocate reminds the Placement Centers about the need to respect the right to information about the treatment offered to the beneficiaries, as one of the essential elements to ensure the patient's rights to health. The Ombudsman also recommends that the medical service regularly review the beneficiaries in order to establish the conformity of the necessary medical treatment, in particular of the beneficiaries with illnesses.**

*e. Occupational activities / social integration*

The Branzeni Placement Center assumes that "occupational therapy" is applied. Although, there is a Work Therapy Workshop, composed of confectionery, creation, embroidery, tailoring, it seems that only a few beneficiaries are involved in the embroidery workshop and only at the time of the visit. Moreover, the visiting team was given the impression that the embroidery work carried out by one of the nurses in the women's block had taken place only to prove to the Ombudsman's team that the beneficiaries were busy. The same concerns were observed in all housing sectors. Immediately upon entering the institution, the nurses initiated the process of intensive washing of the halls, the living spaces (involving the beneficiaries), removed the beneficiaries from the living rooms to the TV and bathroom, as well as completed only where they managed the cabinets with brushes and toothpaste. Most beneficiaries confirmed that *"it's good here, they don't beat us, the food is good, etc."*, which raises reasonable concerns about the treatment of the beneficiaries.

Likewise, there is a non-functional "carpentry workshop" office, due to the lack of an instructor, but also for security reasons. According to the employees, the occupational therapy program includes: household chores (animal care, greenhouse work), on the territory of the institution (landscaping, planting flowers), tailoring workshop (embroidery and tailoring), maintaining cleanliness in living rooms. *De facto*, only a few beneficiaries are involved in the above-mentioned activities. For the most part, beneficiaries are not involved in activities for their development and socialization.

The Branzeni Placement Center has a library, located in the basement. A beneficiary of the institution is employed as a librarian for 0.5 salary. He, as well as other beneficiaries mentioned that practically no one comes to the library, because they are illiterate or cannot read. Most books are artistic literature. A laptop and speakers are in the librarian's records.



In the Badiceni Placement Center there is a sewing workshop in which 12 girls are involved and a furniture workshop in which 8 men work. Some beneficiaries deal with weaving. According to the administration (which could not be verified) there are individual plans for the beneficiaries and once every 6 months the social worker assesses the situation of the beneficiaries. De facto, only a few beneficiaries are involved in the above-mentioned activities. For the most part, beneficiaries are not involved in activities for their development and socialization. The placement center has an office where the barber shop is located (the barber employed for 1 salary). There are no family planning programs. Badiceni PC has a greenhouse where employees (carpenters and auxiliary workers) and some of the beneficiaries work.

**The Ombudsman recommends that placement centers review occupational programs and initiate useful and necessary development and socialization activities for beneficiaries. Likewise, the People's Advocate reminds that the role of the social worker is very important in the social institution. Lack / regime of work (emergencies) raises serious doubts about the efficiency of the activity of this important employee in the institution. Moreover, a single employee reported to the large number of residents is insufficient, given that the social worker has not only the mission of documentation and social records, but also the reintegration of beneficiaries. The lack of him / her as well as of the employed psychologists leads to vices in the system of assistance and social integration of the guardians.**

#### *Incidents / abuses / ill-treatment*

According to Badiceni PC employees, alcohol abuse (at the time of receiving the card allowance) is the main factor that causes aggression and violence in the institution (beneficiary-beneficiary, employee-beneficiary and vice versa). Since the beneficiaries can go out of the institution freely, they mostly go to the shops in the locality, where they consume drinks or go to the locals, who also offer them alcoholic drinks, often of poor quality. Badiceni PC works with the local authorities, the district police officer in order to overcome the conflict situations.

However, the problem of alcohol abuse prevention predominates. The contravention sanctions do not determine the responsibility of the beneficiaries. The nurses mentioned that they were abused multiple times by the beneficiaries who consumed drinks.

The placement center does not have a register in which it would record data on behavioral incidents and crises, the application of inhuman or degrading treatment, and acts of torture. There were analyzed the Register of records of the receipt and transmission of complaints of information statements and the Register for the registration of excited beneficiaries.

According to Branzeni PC employees, alcohol abuse (at the time of receiving the allowance on the card) is the main factor that causes aggression and violence in the institution (beneficiary-beneficiary, employee-beneficiary and vice versa). Given that the beneficiaries can go outside the institution freely, they mostly go to the shops in the locality, where they consume drinks or go to the locals, who also offer them alcoholic drinks, often of poor quality. Branzeni PC works with the local authorities, the district police officer in order to overcome the conflict situations. However, the problem of alcohol abuse prevention predominates.

Incidents and behavioral crises are recorded in the Register of conflicts between beneficiaries. Likewise, this register briefly describes the incidents and measures applied. An example of settling the conflict in that section is *"The Sanitary has calmed them down"*. Likewise, the Branzeni Placement Center has the Register of records of complaints and requests of the beneficiaries of PNI from Branzeni village, Edinet district. At the time of the visit, there was no entry in that register.

**The People's Advocate recommends NSAA / Placement Centers:**

- to take measures regarding the repair of residential blocks;
- to organize as often as possible and when necessary outdoor walking actions of the beneficiaries in wheelchairs or immobilized in bed (if the state of health allows);
- to inform the beneficiaries about the treatment offered;
- to request the treatment agreement or medical interventions whenever necessary;
- to periodically re-examine the beneficiaries / medical files in order to establish the conformity of the necessary medical treatment, especially of the beneficiaries with diseases;
- to hire psychologists, educators, social workers, etc. in the institution, or to identify other solutions for overcoming the vices in the system of assistance and social integration of the custodians;
- to review occupational programs for beneficiaries and initiate development and socialization activities useful and necessary for beneficiaries;

- to conduct training sessions with beneficiaries on adverse health effects for the purpose of preventive actions against alcohol abuse, smoking, violence, etc .;
- to initiate literacy, reading, learning, painting, etc. programs for the beneficiaries;
- to keep records of incidents / conflicts / ill-treatment in the Registers of Complaints and Conflicts;
- to contribute to the increase of the satisfaction of the employees' work (salaries, equipment, etc.).

## **CHAPTER IV THE ACTIVITY OF THE PEOPLE'S ADVOCATE OFFICE**

### **THE CONTRIBUTION TO THE LEGISLATION IMPROVEMENT PROCESS**

According to Art. 16 of the Law on the People's Advocate (Ombudsman) no. 52 of 03.04.2014, one of the attributions of the People's Advocate is to contribute to the improvement of the legislation in the field of human rights and freedoms. To this end, the People's Advocate submits to the subjects with the right of legislative initiative proposals and recommendations for improving the legislation in order to eliminate the causes and conditions that create premises for violation of human rights and freedoms, issues opinions on draft normative acts concerning human rights and freedoms, sets out views on the compatibility of national legislation with international legal instruments in the field of human rights and freedoms, the Constitutional Court notes.

In carrying out the task of improving the legislation in force, the People's Advocate and the People's Advocate for Children's Rights formulated 18 proposals to amend the normative framework, which were submitted to both subjects with the right of legislative initiative at Government and Parliament level. A large part of the proposals have been accepted by the authorities concerned, but the elaboration of the draft amendments and completions of the respective normative acts is delayed. On the other hand, the proposals to the normative framework in the field of social and economic rights, for the most part, are not accepted, motivating the lack / non-identification of financial means.

As a subject with the right to notify the Constitutional Court, in 2019, the People's Advocate submitted 3 notifications to the Constitutional Court. The object of the constitutionality control referred to the obligation to submit the declaration of assets and personal interests in electronic form, without taking into account the persons who do not have an identification number; voting abroad on the basis of an identity card or expired identity documents; the inclusion in the contribution period necessary for establishing the right to pension of the period of care of the severely disabled person regardless of his / her age.

At the same time, in 2019 the People's Advocates submitted 4 opinions / Amicus Curiae to the Constitutional Court with reference to the notifications under examination procedure, with impact in the field of human rights, of which 3 at the request of the Court, and one on their own initiative.

The activity of the People's Advocates on this segment is established as a priority in the Strategic Development Program for 2018-2022 to influence public policies, the regulatory framework and administrative practices by promoting the integration of international human rights standards. The People's Advocates pled on an effective dialogue with the Parliament, the Government and the main actors in the field of justice. Therefore, the actions of the People's Advocates in 2019 were focused on identifying gaps in the normative framework, according to the principles of the Human Rights-Based Approach (HRBAP), and improving it, participating in the debate on human rights issues in parliamentary committee meetings, providing opinions with reference to the subjects under examination procedure at the Constitutional Court.

In 2019, 42 draft normative acts were examined, on which the People's Advocates expressed their point of view in terms of their compliance with human rights standards.

The most frequent opinion of the People's Advocate was requested by the State Chancellery at the proposal of the Ministry of Justice, the Ministry of Health, Labour and Social Protection and the Ministry of Internal Affairs.

Also, in order to prevent the violation of fundamental human rights and freedoms, if the People's Advocate considers that certain draft normative acts could infringe human rights and freedoms, he intervenes ex officio to the competent authorities with proposals and recommendations for improving the projects. of normative acts placed on the official pages for public consultations. In this context, although he was not asked for his opinion, the People's Advocate considered it necessary to comment on the draft Government decision on the national strategic planning framework and the requirements for public policy documents (single number 684/CS/2019), issued by the State Chancellery<sup>231</sup> and placed for public consultations on the website <https://particip.gov.md>. Given the desideratum that in a democratic state public authorities exist for the people, the People's Advocate advocated the integration of the Human Rights-Based Approach (HRBAP) in the national strategic planning framework, so that this approach constitutes the guideline in the activity of public institutions, people-centered. In order to integrate the Human Rights-Based Approach into public policies, it is imperative that the national strategic planning framework contains the principles that should guide public authorities in this process. For this reason, it has been proposed to revise the principles underlying strategic planning so that they focus on and comply with the basic principles of

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<sup>231</sup>Examined at the meeting of the Secretaries-General on November 7, 2019

the HRBAP, such as *universality, indivisibility and interdependence, equality and non-discrimination, participation and empowerment and accountability.*

Given that the summary of objections and proposals is not always published, it is difficult to trace which of the proposals submitted during the project consultation process were accepted. The People's Advocate considers it important for public authorities to ensure a transparent process in this regard, as well as for draft normative, administrative acts that may have a social, economic, environmental impact (on lifestyle and human rights, on culture, health and social protection, on local authorities, public services).

## **TORTURE PREVENTION ACTIVITY**

In 2019, as part of the efforts to prevent torture there were made 56 preventive visits and a monitoring visit to places of deprivation of liberty<sup>232</sup>.

The Directorate for the Prevention of Torture within the People's Advocate Office made 31 visits out of the 19 planned in places of deprivation of liberty, as follows:

- police inspectorates - 9 visits
- penitentiaries - 9 visits
- temporary placement centers for people with disabilities (adults) - 2 visits
- military units - 1 visit
- border crossing points - 5 visits
- border police sectors - 3 visits
- subdivisions of the Bureau for Migration and Asylum - 2 visits

For the first time, within a partnership with the public association "Law Center of Advocates" joint monitoring visits were made to the border crossing points in order to verify the situation regarding the observance of the rights of foreign citizens, asylum seekers, etc. Some observations from these visits were reflected in **the Thematic Report "Observing the Rights of Foreign Citizens in State Custody"**, submitted in Chisinau on International Migrants Day<sup>233</sup>.

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<sup>232</sup> 57 visits by the Directorate for the Prevention of Torture and the Council for the Prevention of Torture;

<sup>233</sup> [http://ombudsman.md/wp-content/uploads/2019/12/Studiul\\_Situatia\\_str%C4%83inilor\\_FINAL.pdf](http://ombudsman.md/wp-content/uploads/2019/12/Studiul_Situatia_str%C4%83inilor_FINAL.pdf);

Following the preventive visits, 10 visit reports were prepared with recommendations in order to improve the behavior towards persons deprived of liberty, to improve detention conditions and to prevent torture. The People's Advocate submitted 8 reaction acts based on the visit reports, formulating to the authorities 68 recommendations - 54 recommendations were accepted and executed, 5 recommendations were not accepted and 9 recommendations are in the process of execution. So:

- **Penitentiary no. 13** in Chisinau received 6 recommendations, of which 2 were executed and 4 remained unanswered;
- **The temporary placement center for persons with disabilities in Badiceni** received 10 recommendations, of which 8 were executed and 2 are in the process of execution;
- **The temporary placement center for persons with disabilities in Branzeni** received 11 recommendations, of which 8 were executed and 2 are in the process of execution;
- **The Stefan-Voda Police Inspectorate** received 2 recommendations, one of which was executed;
- **Penitentiary no. 3 in Leova** received 11 recommendations, out of which 8 were executed, and 2 are in the process of execution;
- **Penitentiary no. 18 in Branesti** received 5 recommendations, of which 4 were executed, and one was not accepted;
- **Penitentiary no. 1 in Taraclia** received 13 recommendations, of which 12 were executed, and regarding a recommendation the situation is not clear enough;
- **The Briceni Police Inspectorate** received 10 recommendations (including the cessation of activity), all of which were executed, with the cessation of the activity of the isolator.

On June 21, 2019, at the Academy of Sciences of the Republic of Moldova, the People's Advocate publicly submitted **the Thematic Report "The situation regarding persons detained and in police custody"**<sup>234</sup>. The event was attended by over 140 participants, representatives of the Ministry of Interior, GPI and territorial subdivisions, NGOs, academia, lawyers, anti-torture volunteers, etc. The People's Advocate reiterated the importance of respecting human rights and national and international regulations. At the same time, the Ombudsman emphasized the need to ensure the rights and safety of the person in the process of detaining and holding them in police custody. The report was prepared by national experts Mihaela Vidaicu and Elena Croitor, PhD in

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<sup>234</sup> <http://ombudsman.md/wp-content/uploads/2019/06/Raport-Situatia-persoanelor-retinute-RO-Web.pdf>;

criminal law, following the findings of the team of the Directorate for the Prevention of Torture in 32 document visits to police inspectorates in 2018. The report contains empirical-scientific findings on to the phenomenon of procedural detention. The activity was carried out thanks to the financial support provided by the Department of Justice and Human Rights of the Soros Foundation-Moldova within the project "Management of detention and detention in police inspectorates of the Republic of Moldova", implemented by the People's Advocate Office.

In 2019, the People's Advocate reacted strongly in resonant cases, such as Gheorghe Petic versus Ungheni Police Inspectorate, Nisporeni Police Inspectorate, General Prosecutor's Office of the Republic of Moldova, Balti Court, Orhei Court, Penitentiary no. 17 and Penitentiary no. 13<sup>235</sup>; Serghei Cosovan versus Penitentiary no. 16 and the National Penitentiary Administration<sup>236</sup>, case of C and others c. Military Brigade 2 "Stefan cel Mare" from Chisinau<sup>237</sup> etc. As a result of the reactionary actions, the situation of the mentioned persons improved.

In 2019, there were analyzed approximately 400 operative summaries of the penitentiary system and 373 operative summaries on the situation in psychiatric hospitals and temporary placement centers for people with disabilities. In several cases, the People's Advocate initiated ex officio investigations.

In order to streamline the activity of monitoring places of detention by unifying approaches and working methods, 3 methodologies for monitoring places of detention have been updated: (1) "Methodological aspects regarding the performance of preventive visits in pre-trial detention facilities. Step by step visit "; (2) "Methodological aspects regarding the performance of preventive visits in penitentiaries. Step by step visit "; (3) "Methodological aspects regarding the performance of preventive visits in the institutions of temporary placement of persons with disabilities and psychiatric institutions. Step by step visit ". At the same time, with the support of the CoE in Moldova, 3 more methodological tools were developed: "Methodology for planning and conducting preventive visits by a National Mechanism for the Prevention of Torture in various places of detention"; "Checklist for planning and conducting pre-trial visits by a National Mechanism for the Prevention of Torture in Various Detention Locations" and "Guide for Interviewing Detainees". The

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<sup>235</sup> [http://ombudsman.md/wp-content/uploads/2019/07/RAPORT\\_Investigatie\\_Petic-FINAL.pdf](http://ombudsman.md/wp-content/uploads/2019/07/RAPORT_Investigatie_Petic-FINAL.pdf);

<sup>236</sup> <http://ombudsman.md/news/cazul-cosovan-s-demonstreaza-ca-eforturile-conjugate-pot-genera-schimbari-de-sistem-2/>;

<sup>237</sup> <http://ombudsman.md/news/comunicat-de-presa-8/>;



methodologies are to be applied by the members of the Council for the Prevention of Torture and the employees of the People's Advocate Office in the activity of torture prevention.

## **CLAIM MANAGEMENT AND INVESTIGATION**

The examination of claims regarding the violation of human rights and freedoms is one of the attributions of the People's Advocate, according to the Law on the People's Advocate (Ombudsman) no. 52 of 03.04.2014.

The People's Advocate examines the claims of individuals, regardless of race, ethnicity, colour, sex, language, religion, political opinion or other opinion, of national or social origin, wealth, birth or any other circumstances, who live permanently, find out or have been temporarily on the territory of the country, whose rights and freedoms are presumed to have been violated by the Republic of Moldova. Claims may be submitted in person or by mail, fax, e-mail or other means of communication. The request from a person in detention, from a person in the criminal investigation isolators, from the military in the military units is not subject to censorship and is sent by the administration of the respective institutions to the People's Advocate within 24 hours.

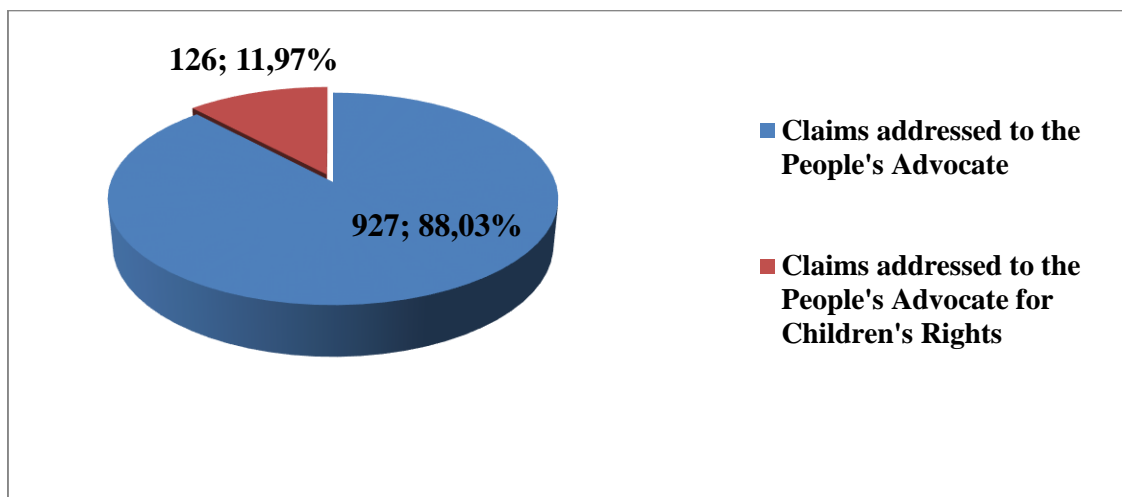
According to Art. 21 of Law no. 52/2014, after receiving the claim, the People's Advocate is entitled: to accept the claim for examination; return the claim without examination, explaining to the petitioner the procedure he is entitled to use to defend his rights and freedoms; submit the claim to the competent bodies for examination in accordance with the provisions of the legislation on petitioning.

Within 10 days from the date of receipt of the claim, the People's Advocate shall notify the petitioner of the decision taken. If the claim is returned without examination, the reasons for the return must be indicated. The decision to return the claim cannot be challenged. The repeated claim may be filed after the removal of the causes that served as the basis for the refund.

In the process of examining and investigating the claims, the People's Advocate documents from the first source about the alleged human rights violations. **Annually, the People's Advocate Office, including its representative offices, receives an average of about 1500 claims.** About 75% of these claims are returned without examination, because they do not fall within the competence of the People's Advocate or do not meet the admissibility conditions set out in Articles 19 and 20 of Law no. 52/2014. However, each petitioner is explained the procedure he / she is entitled to use to defend his / her rights and freedoms.

In the process of investigating the claims accepted for examination, the People's Advocate is entitled to address in court with requests in defense of the petitioners' interests; to intervene with the competent authorities with steps to initiate disciplinary or criminal proceedings against persons with positions of responsibility who have committed violations that have led to the violation of human rights and freedoms; to notify the police regarding the commission of the contravention provided in Art. 320 of the Contravention Code of the Republic of Moldova; to notify persons with positions of responsibility at all levels on cases of negligence in the service, breach of work ethic, procrastination and bureaucracy. The People's Advocate may also intervene in the proceedings to draw conclusions in order to defend the rights, freedoms and legitimate interests of persons.

**In 2019, 1053 claims were received by the People's Advocate Office. Out of the total number of claims (1053), 927 (88%) claims were addressed to the People's Advocate and 126 (12%) claims addressed to the People's Advocate for Children's Rights.**

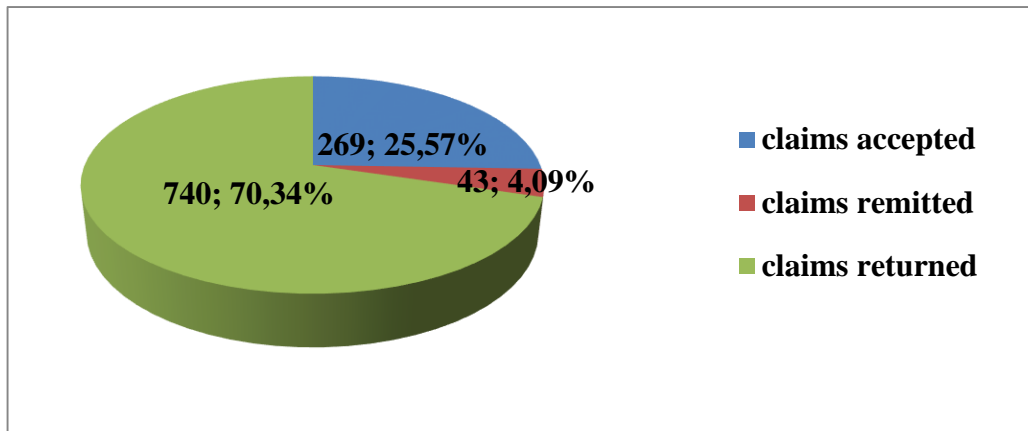


Of the 1053 registered claims, 270 (25%) were accepted for examination (209 claims accepted for examination by the People's Advocate and 61 claims accepted for examination by the People's Advocate for Children's Rights), with the taking of procedural actions, pursuant to Art. 25 of Law no. 52/2014.

43 claims (4%) were submitted to the competent authorities for examination according to competence.

Another 740 claims (71%) were returned based on the provisions of Art. 18, 19, 20 of Law no. 52. In each case, the addressees were explained the procedures which they were entitled to use to defend their rights and freedoms.

### Classification of claims according to the decision taken



According to the content of the claims received, the most alleged infringement of the following rights was most frequently invoked:

**The right to a fair trial - 234 claims.** The issues raised by the petitioners were related to the disagreement with the decision (sentence) of the court; the right to be assisted by an ex officio appointed lawyer; fair trial; judges' actions / inactions; delaying the examination of cases in the courts; non-execution of court decisions.

**The right to life, physical and mental integrity - 197 claims.** As in previous years, the precarious conditions of detention and the inappropriate actions of the employees of the penitentiary system were most often invoked. Detainees frequently requested the intervention of the People's Advocate for their transfer to other penitentiaries.

**The right to individual liberty and security - 67 claims.** Immediate lack of information about the reasons for detention or arrest was most often invoked.

**The right to health care - 88 claims.** The issues addressed are related to the accessibility of medical services, compliance with quality standards; the right to personalized treatment; the right to avoid unjustified suffering and pain;

**The right to private property and its protection - 46 claims.** The petitioners allege non-compliance with the debtors' property in the execution of the writ of execution by applying the seizure on movable and immovable property, exceeding the powers of the bailiff by abusively applying the seizure on the debtors' bank accounts, obtaining private property, fair compensation for expropriation, right to inheritance, overpayment for communal services, as well as others..

**The right to social assistance and protection - 83 claims.** The issues addressed were: the amount of the pension; procedures for granting social assistance / aid for the cold period of the year

and other social benefits; impossibility to pay for communal services; insurance in case of unemployment, illness, disability, old age, loss of livelihood.

**The right to petition - 33 claims**, in which the disagreement with the answers received from the authorities was invoked; their refusal to provide the requested information; lack of response; violation of the deadline for examining petitions as well as refusal to register petitions.

**In about 100 claims**, the petitioners requested information from the People's Advocate Office on the work of the institution, some aspects of human rights and the regulatory framework in force.

Of the 269 claims accepted for investigation, in 124 cases it was decided to terminate the examination of the applications in connection with the finding that the petitioner's rights or freedoms had not been violated. In 145 cases there was found the violation of human rights and freedoms and as a result of the intervention of People's Advocate, 108 people were reinstated, another 37 applications are under investigation.

In the process of investigating the claims, the People's Advocate undertakes certain procedural actions and issues certain types of documents, specific to the mandate, as follows:

<b>Procedural actions</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Opinion with recommendations on the measures to be taken for the immediate reinstatement of the petitioner Art. 24 of Law no. 52/2014)	62	65	129	57	41
Motion for initiating a criminal / disciplinary trial regarding the person with positions of responsibility who committed violations that generated considerable damage to human rights and freedoms (Art. 25 par. (1) letter b) of Law no. 52/2014)	4	9	13	9	7
Notification on the case of violation of work ethic, procrastination and bureaucracy (Art. 25 par. (1) letter d) of Law no. 52/2014)	11	19	6	9	1
Actions in court / intervention in the process to submit conclusions (Art. 25 par. (2) and (3) of Law no. 52/2014	2/2	9/7	13	1/11	4/12
Agreement for conciliation of the parties (Art. 23 para. (3) of Law no. 52/2014	1	2	2	1	-
Proposals regarding the improvement of the activity of the administrative apparatus (para. 6, point 7 of Law no. 164/2015)	2	1	4	-	8
Request for conducting judicial expertise (Art. 11 letter m of Law no. 52/2014)	1	1	-	-	-

### Opinions containing recommendations for the immediate reinstatement of the petitioner

According to Art. 24 of Law no. 52 / 03.04.2014, in cases where violations of the rights or freedoms of the petitioner are found, the People's Advocate presents to the authority or the person in charge, whose decisions, actions or inactions, in his opinion, violate human rights and freedoms, an opinion which will include recommendations on the measures to be taken for the immediate reinstatement of the petitioner. The responsible authority or person who received the opinion is obliged to examine it within 30 days and to inform the People's Advocate about the measures taken to remedy the situation. If the People's Advocate does not agree with the measures taken, he is entitled to address a higher hierarchical body to take the necessary measures to implement the recommendations contained in his opinion and / or to inform the public. The higher hierarchical body is obliged to communicate about the measures taken within 45 days.

During 2019, the People's Advocate did not exercise the right to address the higher hierarchical body, given the fact that the approved authorities complied with the recommendations submitted by the issued opinions.

In this regard, **41 opinions** were submitted to the central and local public authorities **with recommendations** on the measures to be taken for the immediate reinstatement of the petitioners, as follows:

The institution concerned	2019
<b>Ministry of Justice, including subordinate institutions</b>	<b>11</b>
<b>Ministry of Health, Labour and Social Protection, including subordinate institutions</b>	<b>10</b>
<b>Ministry of Internal Affairs, including subordinate institutions</b>	<b>6</b>
<b>Local public authorities</b>	<b>6</b>
<b>Ministry of Education, Culture and Research, including subordinate institutions</b>	<b>2</b>
<b>Government of the Republic of Moldova</b>	<b>1</b>
<b>National Union of Bailiffs</b>	<b>1</b>
<b>State Labour Inspectorate</b>	<b>1</b>
<b>General Prosecutor's Office</b>	<b>1</b>
<b>Ministry of Defence</b>	<b>1</b>

State Tax Service	1
Total	41

The recommendations submitted to **the Ministry of Justice** and subordinate institutions refer to the provision of necessary medical assistance and immediate treatment to persons in state custody, who seek medical assistance; supplementing the food ration of seriously ill detainees and identifying solutions to ensure the proper nutrition of all detainees; identification and permanent cessation of the use of detention facilities incompatible with minimum detention standards and norms, as well as the improvement of detention conditions in specific cases; providing detainees with appropriate clothing, mattresses and bedding; expanding the occupational, educational and social field in order to reduce the tense relations between detainees.

**The Ministry of Health, Labour and Social Protection**, including subordinate institutions, received recommendations to ensure the documentation of persons in state custody; to create a unique database of patients diagnosed with mental illness, accessible to the medical system; paying more attention to the process of medical examination of patients; undertaking measures for the current repair in temporary placement institutions for persons with disabilities, reviewing employment programs for the beneficiaries of these institutions; the effective application of techniques for the prevention and settlement of conflicts between beneficiaries; ensuring respect for and promotion of the child's rights.

The recommendations submitted to **the Ministry of Internal Affairs**, including subordinate institutions, refer to the undertaking of the necessary measures to exercise the effective control and the way of management of the contravention processes by the ascertaining agents within the Police Inspectorates of the country; the immediate cessation of the detention of persons retained for more than 72 hours, as well as their provision of pillows and bed linen; renovation of detention facilities as well as temporary detention cells.

**Local public authorities** have received recommendations on ensuring the observance and promotion of children's rights, establishing concrete measures to protect children at risk, ensuring the right to special protection of children separated from their parents, taking urgent measures to ensure access to local jurisdiction the local public authority to sufficient drinking water, as well as its transport from the place of capture to the place of consumption; taking into account the records of

persons who deserve or need social housing; ensuring the supervision of the land for the temporary storage of waste.

Recommendations were submitted to **the Ministry of Education, Culture and Research** regarding the elaboration of the internal training plan for teachers in the field of conflict management; the need to inform children about the importance of communicating dangerous situations inside or outside educational institutions; ensuring respect and promoting the rights of the child.

**The Government of the Republic of Moldova** was recommended to take measures to ensure the administrative processes regarding the establishment and payment of death benefits, as well as the amendment of the Regulation on the establishment and payment of death benefits.

Recommendations were submitted to **the General Prosecutor's Office** regarding the identification of quick and simple procedures for the staff of the Police Inspectorates, to inform the prosecutor responsible for investigating cases of torture of identified cases containing signs or allegations of acts of torture against retained persons (detainees) in pre-trial detention facilities.

A small number of recommendations are under consideration, and some institutions have given assurances to the People's Advocate and the People's Advocate for Children's Rights that they will make every effort to comply with the recommendations made.

### **Motions for initiating disciplinary or criminal proceedings**

According to Art. 25 letter b) of Law no. 52, based on the results of the examination of the notification, the People's Advocate is entitled to intervene with the competent authorities to initiate disciplinary or criminal proceedings against the person in charge who has committed violations that have violated human rights and freedoms.

In 2019, the People's Advocate requested the initiation of disciplinary or criminal proceedings in **7 cases** in which persons with positions of responsibility who committed violations that resulted in the violation of human rights and freedoms were targeted.

To the General Prosecutor's Office, **4 motions were submitted regarding the initiation of the criminal investigation** for the application of torture and / or ill-treatment against the persons in state custody, in the penitentiary. In all four cases, the refusal to initiate criminal proceedings was ordered, due to the lack of constitutive elements of the crime. 1 motion was submitted regarding the control of the legality of the actions / inactions of the Director of Penitentiary no. 13 in Chisinau, which

limited the access and meeting of lawyers with clients deprived of liberty. In this case, there was also refused the initiation of criminal proceedings, due to the lack of constitutive elements of the crime.

Two motions were submitted to the Ministry of Internal Affairs regarding the initiation of disciplinary proceedings against a senior officer of the Police Inspectorate regarding his actions / inactions within the procedure of retaining a citizen. The motions submitted were not satisfied and no disciplinary sanction was applied, on the grounds that no disciplinary violation was found.

### **Notification of persons with positions of responsibility at all levels on cases of negligence in office, breach of work ethic, procrastination and bureaucracy**

According to Art. 25 letter d) of Law no. 52, the People's Advocate is entitled to notify the persons with positions of responsibility of all levels on cases of negligence in office, violation of work ethic, procrastination and bureaucracy.

Based on this provision, in 2019 there was submitted a notification to the president of Comrat district. In this referral, the People's Advocate for Children's Rights warned the authority concerned about actions / inactions related to ensuring the right to opinion of children, child protection, thorough investigation of all cases involving children, training of employees of the Directorates for protection of the Child's Rights, in order to exclude mistakes from their work on protection of the Child's Rights.

The institution concerned stated that it would make every effort to ensure that the rights and freedoms of the child were respected.

### **General objections and proposals concerning the assurance of human rights and freedoms, the improvement of their activity**

Pursuant to point 8, par. 6) of Law no. 164 of 31.07.2015 for the approval of the Regulation on the organization and functioning of the People's Advocate Office, the People's Advocate Office elaborates and submits to public authorities, organizations and enterprises, regardless of type of property and legal form of organization, non-profit organizations and persons with positions of responsibility of any level general objections and proposals regarding the assurance of human rights and freedoms, to improve their activity.



Thus, during 2019, the People's Advocate Office submitted 8 general objections and proposals to the National Penitentiary Administration, the Ministry of Agriculture, Regional Development and Environment, the Superior Council of Magistracy, the Floresti Education Directorate.

The general objections and proposals submitted to **the National Penitentiary Administration** refer to the need to establish an efficient internal mechanism for the correct record of the specific documentation and terms indicated in the Executive Code regarding the application of sanctions, ensuring the transmission of Reports on preventive visits by members Council for the Prevention of Torture in the libraries of penitentiary institutions under the NPA, take effective measures to implement existing mechanisms to ensure the right to petition and inform detainees, strengthen the capacity of prison staff to effectively apply conflict resolution techniques.

**The Ministry of Agriculture, Regional Development and Environment** has been warned of the need to draw up regional waste management plans, step up controls on the storage and management of waste from all sources and chemicals, and give priority to environmental education of the population.

**The Superior Council of Magistracy** was warned about the obligation of court employees to comply with the Regulation on digital audio recording of court hearings, continuous monitoring and control on compliance with the provisions of the above-mentioned regulation, as well as ongoing training of court employees on the application of the rules set out in the Regulation on digital audio recording of court hearings and the use of the Integrated Case Management Program.

**The Floresti Education Directorate** was given recommendations regarding the warning of the employees of the school system regarding the conditions for attracting children in activities for developing skills through work and issuing certificates of studies in time, in order to avoid omitting the period for submitting files to the next stage of education.

The issues raised by the People's Advocate and the People's Advocate for Children's Rights in general objections and proposals were addressed by the authorities concerned in a constructive manner. Thus, the National Penitentiary Administration issued a circular warning the collaborators of the penitentiary system to ensure detainees the opportunity to exercise the right to petition, the right to information and ensure access to justice.

The Floresti Education Directorate planned to carry out during the study year the monitoring visits in the general education institutions in order to monitor the implementation of the normative acts regarding the observance of the child's rights.

The Superior Council of Magistracy warned the judicial environment on the importance and obligation of the observance by the employees from the courts of the audio-digital recording procedure of the court hearings, as well as of the procedural-civil and procedural-criminal legislation.

The Ministry of Agriculture, Regional Development and Environment has developed and finalized the feasibility study for waste management regions, intensified controls on the implementation of *Law no. 209/2016 on waste* and conducts campaigns and activities of information, education and ecological training.

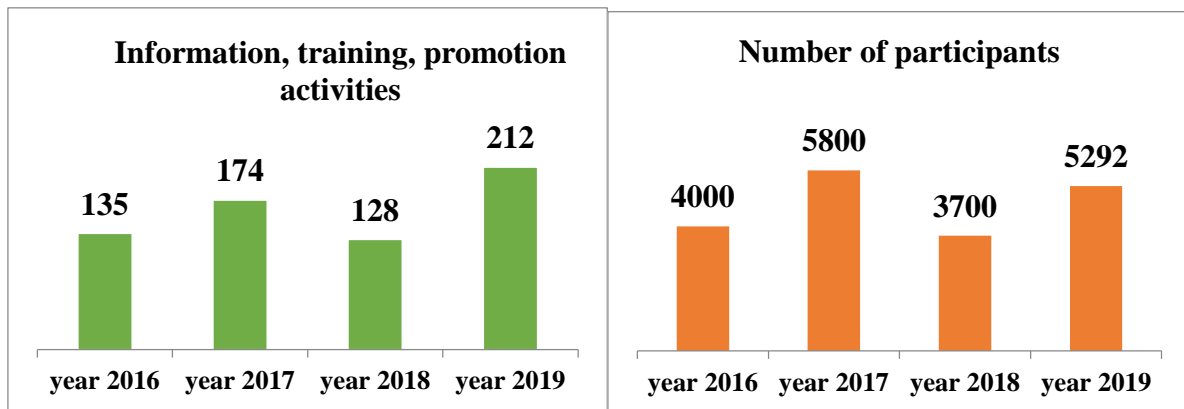
## **EDUCATION IN THE FIELD OF HUMAN RIGHTS: THE CONTRIBUTION OF THE PEOPLE'S ADVOCATE OFFICE**

In 2019, the People's Advocate Office continued to strengthen its capacity to organize training activities in the field of human rights, according to methodologies and procedures established by the institution, in accordance with training programs developed for certain target groups of professionals. The number of training activities increased, from 29 in 2018 to 83 in 2019, of participants - 530 - in 2019 compared to 397 in 2018, but, last but not least, the degree of satisfaction of the participants, the impact of the trainings.

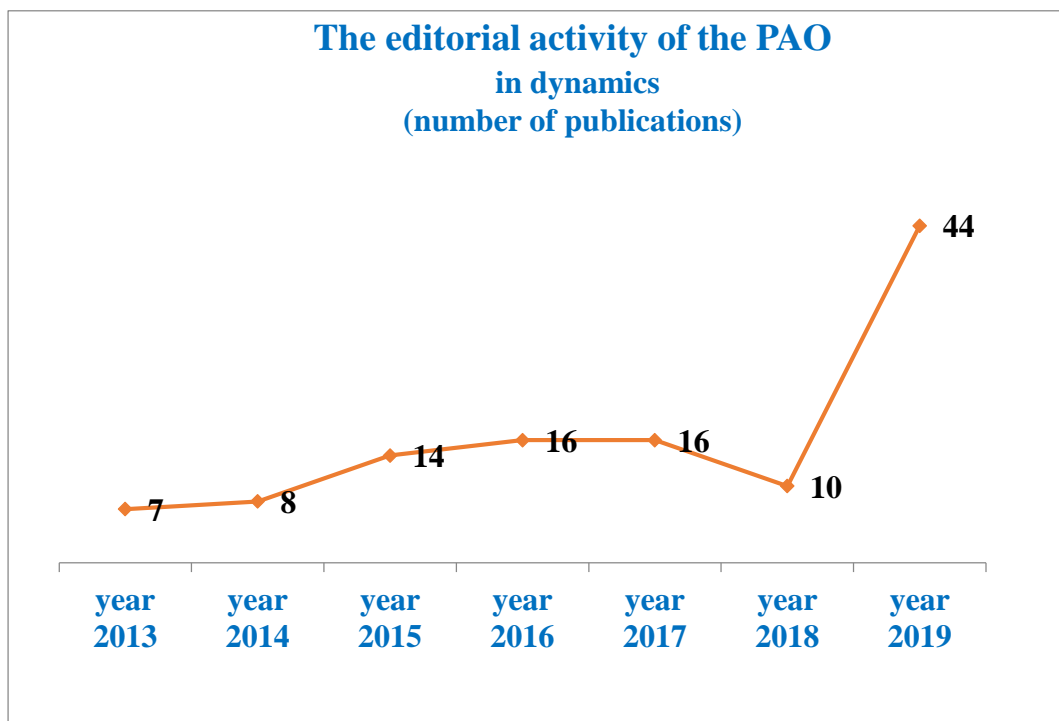
Also, the institution took a first step towards evaluating the format and content of teaching the discipline on the functions and responsibilities of the People's Advocate / People's Advocate for Children's Rights at law schools in higher education institutions in the country. The activity will continue in 2020, by conducting research on the quality of studying the discipline on national and international mechanisms for the protection of human rights in higher education institutions. Following the preliminary evaluation and the conduct of the study, recommendations will be made on the number of hours, the study program of the discipline "Legal protection of human rights", currently existing in some higher education institutions, as well as - proposals on the inclusion of a similar discipline at other higher education institutions.

The representatives of the Advocate's Office informed in **104 activities, meetings, visits** over **3122 persons** on various topics in the field of human rights. Current issues in the field of human rights were also addressed at the over **26 events: conferences, round tables, meetings, mobilization and awareness actions, with the participation of 1640 persons.**

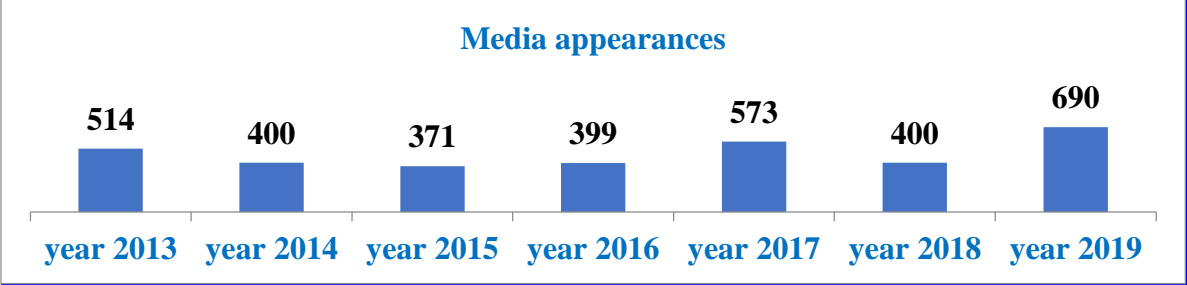
In total, in 2019, 212 training, information and promotion activities took place in the organization of the officials of the People's Advocate's Office.



Last year, the institution of the People's Advocate published **44 informative materials**. From the resources provided in the Office's budget, **21 publications** were published, with the financial support of international organizations. The Ombudsman's Institution published **23 informative materials**. All publications cover priority areas of the institution's activity and provide useful information to persons.



In 2019, the media interest in the People's Advocate Office also increased. Thus, last year the number of press releases about the activity and initiatives of the People's Advocate, the People's Advocate for Children's Rights increased from 400 last year to about 700 in 2019.



## PROMOTING HUMAN RIGHTS THROUGH TRAINING

In 2019 the field of training activity was marked by the increase of the institution's capacities and ensuring the continuity of the training process on human rights.

The training activities took place in several directions and covered various topics depending on the target group of training beneficiaries. Thus, the course prepared in 2018 for the employees of the penitentiary system was continued and completed.

It started developing a separate module "Prevention of torture and ill-treatment of persons in state custody, practical aspects of prevention, responsibility for the application of torture", which was tested in 6 activities (12 hours).

In 2019, the carabinieri training process began. The theme proposed by the People's Advocate Office, established following the process of determining the training needs of the carabinieri, is related to one of the aspects of the carabinieri's activity – observance of human rights in the process of ensuring freedom of assembly. Thus, the People's Advocate Office developed the training course "Observance of human rights in the process of ensuring freedom of assembly" (16 / 8 hours), course curriculum, content and planning of activities, as well as methodological materials. The training was carried out in several IGC units, including with the participation of the carabinieri in the initial training course. The People's Advocate Office organized and conducted 15 training sessions (60 hours) and included 135 carabinieri. In parallel, a training course was developed for the carabinieri from the unit in Comrat, which has some peculiarities and is developed in Russian.

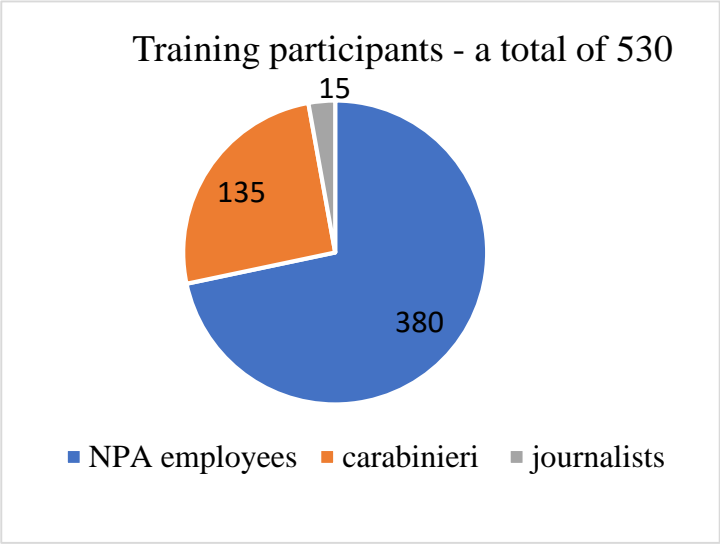
Also, in 2019, a training course for journalists was developed - "Hate speech and discrimination in the press. Preventing and combating hate speech and discrimination in the activity of journalists". It includes 8 hours and took place with the participation of 15 journalists from Comrat.

In the context of the adoption of Law on Whistleblowers no. 122 of 12.07.2018 and the appointment of the People's Advocate as an authority that can provide protection to whistleblowers, at the PAO has started the development of the training course "Whistleblowers" for civil servants, health workers and other categories of employees.

All these training courses were developed and carried out in compliance with the general methodology of the design of training programs, developed and implemented by the People's

Advocate Office, in the context of strengthening institutional capacity in the segment "Education and training in human rights".

*Training activities carried out in 2019:*

Index	Achievement									
Number of training hours / activities	<p><b>Total - 200 hours / 83 activities</b></p>	<p>132 hours / 66 activities - National Penitentiary Administration</p> <p>60 hours / 15 activities - General Inspectorate of Carabinieri</p> <p>8 hours / 2 activities - journalists from Comrat (radio, TV, written press)</p>								
Institutions, target groups		<ul style="list-style-type: none"> <li>• National Penitentiary Administration</li> <li>• General Inspectorate of Carabinieri</li> <li>• Journalists from ATU Gagauzia</li> </ul>								
Number of participants	<div style="text-align: center;"> <p>Training participants - a total of 530</p>  <table border="1" style="margin: 0 auto; border-collapse: collapse;"> <caption>Training Participants Distribution</caption> <thead> <tr> <th>Group</th> <th>Number of Participants</th> </tr> </thead> <tbody> <tr> <td>NPA employees</td> <td>380</td> </tr> <tr> <td>carabinieri</td> <td>135</td> </tr> <tr> <td>journalists</td> <td>15</td> </tr> </tbody> </table> </div>		Group	Number of Participants	NPA employees	380	carabinieri	135	journalists	15
Group	Number of Participants									
NPA employees	380									
carabinieri	135									
journalists	15									
Degree of satisfaction of participants	<p>Assessment of participants, according to the questionnaires completed at the end of the training:</p> <p>73% - positively appreciated the impact of the training</p> <p>86% - highly appreciated the trainer's performance</p> <p>78% - would like to be trained in other human rights topics</p>									

<p>Topic</p>	<p><b>Course for employees of the penitentiary system:</b></p> <p>The training course initiated in 2018 in the field of respect for human rights within the penitentiary system, for the employees of the system, which includes the topics:</p> <ul style="list-style-type: none"> <li>– Prevention of torture and ill-treatment in the penitentiary system</li> <li>– National and international standards in the field of torture prevention;</li> <li>– Mechanisms for the protection of the human rights of persons deprived of their liberty;</li> <li>– Protection of the rights of minors in the penitentiary system.</li> </ul> <p>The course was completed with a new activity for psychologists and social workers in prisons: "Ensuring and respecting human rights in the process of preparing the detainee for release from detention"</p> <p><b>Carabinieri course: "Respect for human rights in the process of ensuring freedom of assembly"</b></p> <p>A course curriculum was created and the program, course and methodological support were prepared.</p> <p>4 basic training activities (of 4 hours each) were carried out and 1 additional activity was elaborated ("Respect for human rights in the interaction with the media within the process of ensuring the freedom of assembly").</p> <p>An alternative version of the course (Comrat Representation) in Russian was developed.</p> <p>The course included the following aspects:</p> <ul style="list-style-type: none"> <li>– General notions about human rights</li> <li>– The provisions of the Law on Assemblies</li> <li>– Types of meetings</li> <li>– Stopped meeting, conditions for stopping meetings</li> <li>– Responsibilities of participants, organizers</li> <li>– Ensuring public order in meetings</li> <li>– The decision-making algorithm in the process of ensuring order in meetings</li> <li>– Respect for public order and respect for human rights in meetings.</li> </ul>
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	<p><b>The course “Hate speech and discrimination in the press. Preventing and combating hate speech and discrimination in the activity of journalists ”.</b></p> <p>2 training activities were carried out with the participation of journalists from Comrat.</p> <p>Topics included:</p> <ul style="list-style-type: none"> <li>– Hate speech. The notion and peculiarities of hate speech.</li> <li>– Hate speech in public. How we determine the existence of elements of hate speech</li> <li>– Hate speech in political and social discourse. The dangers of hate speech and vulnerable groups</li> <li>– The consequences of hate speech</li> <li>– Prevention of hate speech in the media.</li> </ul> <p><b>"Whistleblowers" Course</b></p> <p>The project of the program was prepared, partly the methodical support</p>
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## Contribution to human rights education by making recommendations in the field of formal and non-formal education

In 2019, the People's Advocate aimed to monitor the state of affairs regarding the training on the functions and attributions of the People's Advocate at the law faculties in the country and at other faculties where the discipline / module “Legal protection of human rights” is taught. To this end, a questionnaire was developed with general questions about the mission and role of the People's Advocates, their competencies, the students will only tick the correct answers from the proposed options.

To create a general opinion about the state of affairs, only a few higher education institutions were selected, from Chisinau, Balti, Cahul and Comrat. A total of **319** students from SUM, the Faculty of Law and the Faculty of International Relations Political and Administrative Sciences (FRISPA) were interviewed; from the State University of Comrat, Faculty of Law; from the “Alecu Russo” State University from Balti, Faculty of Law; from Trade Co-operative University of Chisinau, Faculty of Business, Administration and Law; as well as from the State University „B.P.Hasdeu” from Cahul, Faculty of Law.



The questionnaire included 8 closed questions, with a low degree of complexity, for which several variants of answers were proposed.

Following the verification of the questionnaires, it was found that the future lawyers have superficial knowledge about the People's Advocate Institution and about its role in promoting, protecting and preventing human rights violations. The surveyed students do not know well enough the attributions of the People's Advocates, they do not know the fact that the People's Advocate's Office is an autonomous and independent institution, there are confusions regarding the category of persons who can appeal to the PAO and divided opinions regarding the institution that appoints the People's Advocates. Some students believe that the People's Advocate Office is a legal entity that carries out entrepreneurial activity, whether it is the Regional Office of the International Union of Lawyers or the Associated Office of Lawyers or a non-governmental organization.

The necessary conclusion is that at present, for various reasons, students from law and other faculties who train specialists in fields close to the law system do not fully acquire the necessary knowledge on national mechanisms for the protection of human rights, so that he / she can later exercise his / her professional duties effectively. Future prosecutors, judges, police officers, lawyers do not have a very clear impression of the role and place of the People's Advocate in the national system of human rights protection and have little chance that, without self-training, they can act knowingly for the protection of human rights in exercise of functional duties.

## **PROMOTION OF HUMAN RIGHTS IN THE COMMUNITY**

In 2019, the People's Advocate Office organized 130 activities for information and promotion of human rights, involving 4762 people - beneficiaries of rights.

Within 33 activities, was pursued the purpose of informing about the role and mission of the People's Advocates. On October 22, there took place the Open Day at the PAO, attended by PAO partners, representatives of public institutions.

During the previous year, the People's Advocate Office elaborated and submitted at some public events several studies and reports: The report on the observance of fundamental human rights and freedoms in 2018; Thematic report on the observance of the rights of aliens in state custody; Thematic report on the observance of the rights of children in state custody; Thematic report on the situation of persons retained and in police custody; Thematic report on the assessment of the level of

ensuring the patient's right to safety and quality of medical equipment; Thematic report on palliative care.

Several promotion / information actions were carried out on the fight against torture, discrimination and hate speech.

The [#EuNUAplic166<sup>1</sup>](#) [#EuRespectDemnitateaUmana](#) Campaign took place between June 20-27, during which 36 information panels entitled “ Torture Prevention” were sent to the General Police Inspectorate and Temporary Placement Centers for People with Disabilities.

At the same time, in October, the mobilization action was organized on the social networks [#MoldovaFaraUraSiDiscriminare](#), which included a contest for the best anti-discrimination slogan. The winners of the contest in an event that took place on the occasion of the International Day of Tolerance. Opinion makers, human rights activists and politicians also took part in the action, launching anti-discrimination and hate speech messages.

In the context of the 30th anniversary of the UN Convention on the Rights of the Child, 35 advocacy / information actions on child rights took place, with the participation of 1,050 children and 300 adults. The People's Advocate for Children's Rights organized *the Annual Children's Forum*, as well as regional meetings to consult the opinion of children in Balti and Comrat, several meetings, competitions on the occasion of the International Children's Day.

On June 1, the People's Advocate for Children's Rights organized a public activity entitled "Know your rights", with the aim of informing children about the rights and responsibilities that children have.

The protection of street children and the problems of premature children, the role of guardianship bodies in the process of defending the child's right to family, the role of guardianship authorities in realizing the rights of children in the Transnistrian region were discussed at round tables organized by the People's Advocate for Children's Rights, including in regions.

## EDITORIAL ACTIVITY

The need to inform the representatives of national minorities in their language about the Ombudsmen and their work, about various aspects of combating discrimination was the reason why the People's Advocate Office with the support of the OSCE Mission to Moldova edited in six languages (Romanian, Russian, Bulgarian, Romanian, Ukrainian, Gagauz) information materials: *Who is the People's Advocate ?*, *Who is the People's Advocate for Children's Rights?* and *Anti-discrimination mechanisms*.

Traditionally, *the Report on the observance of human rights in the Republic of Moldova in 2018* was printed, the paper being distributed to libraries in the country to the general public at events organized by the PAO.

The activity in 2019 on one of the priority areas for the Ombudsman - the right to health, following an extensive monitoring ended with the publication of **the Report on the implementation by the Republic of Moldova of the Resolution on the consolidation of palliative care as a component of integrated treatments lifetime (adopted at the 67th World Health Assembly on May 24, 2014)**, the paper was printed with the support of the Soros Foundation Moldova. In the same thematic area continued the elaboration and editing of the series of leaflets "**14 patient rights**", initiated a few years ago by the PAO, with three leaflets: **The right to respect for patient time, the patient's right to personalized treatment, the right to quality standards**.

By Law no. 122 of 12.07.2018 on Whistleblowers, the People's Advocate was assigned the role of protection of integrity warnings. Given the fact that the company is not sufficiently well informed about this attribution of the Ombudsman, the institution printed with the support of UNDP Moldova *two informative materials about Whistleblowers*, in Romanian and Russian.

Detainees apply to the People's Advocate Office with many requests, so the need arose to print the leaflet *How to contact the People's Advocate if you are in detention?* The publication provides that category of petitioners with further explanations on the procedure for submitting and examining the Ombudsman's application.

An important category of beneficiaries of PAOs are the elderly. For this category of beneficiaries, the leaflet *the Rights of the elderly was elaborated, published in three languages: Romanian, Russian and Gagauz*.

Several informative materials needed for the work of the Children's Ombudsman have been edited or re-edited: *the People's Advocate for Children's Rights (children's leaflet)*, *the Children's*

*Council of the APDC, the Recommendations of the UN Committee on the Rights of the Child, the UN Convention on the Rights of the Child, the Report observance of children's rights in the Republic of Moldova*, the last three being published with the support of UNICEF Moldova. The materials are distributed during the events organized by the Children's Ombudsman and at other activities: meetings, audience, conferences, training and information activities.

## **HUMAN RESOURCES MANAGEMENT**

Structurally, the People's Advocate Office consists of the People's Advocate and his deputies, the People's Advocate for Children's Rights, the Secretary General, the structural subdivisions with the status of directorates, sections, services and territorial representations. The general management of the Office is exercised by the People's Advocate. The organizational and administrative work of the Office shall be conducted by the Secretary-General.

According to Article 34 of *the Law on the People's Advocate (Ombudsman) no. 52/2014*, the People's Advocate Office provides organizational, legal, informational and technical assistance to the People's Advocate in order for him to exercise his duties. In the territory, the activity is carried out through the 4 representations: Balti Representation, Cahul Representation, Comrat Representation, Varnita Representation.

By *Law no. 164/2015 for the approval of the Regulation on the organization and functioning of the People's Advocate Office*, was approved the limit staff of the institution in number of 65 units. The limit may be amended by Parliament on a reasoned proposal from the People's Advocate.

The organizational structure of the People's Advocate Office includes:

***Structural subdivisions:***

1. Public Policy and Legislation Directorate;
2. Monitoring and reporting department;
3. Torture Prevention Directorate;
4. Child Rights Directorate;
5. Directorate for the management and investigation of applications;
6. Directorate for the Promotion of Human Rights and Communication;
7. Financial-administrative section;

8. Internal audit service;
9. Internal management support service;
10. Human resources service;
11. Legal service;
12. Secretarial service.

***Territorial subdivisions:***

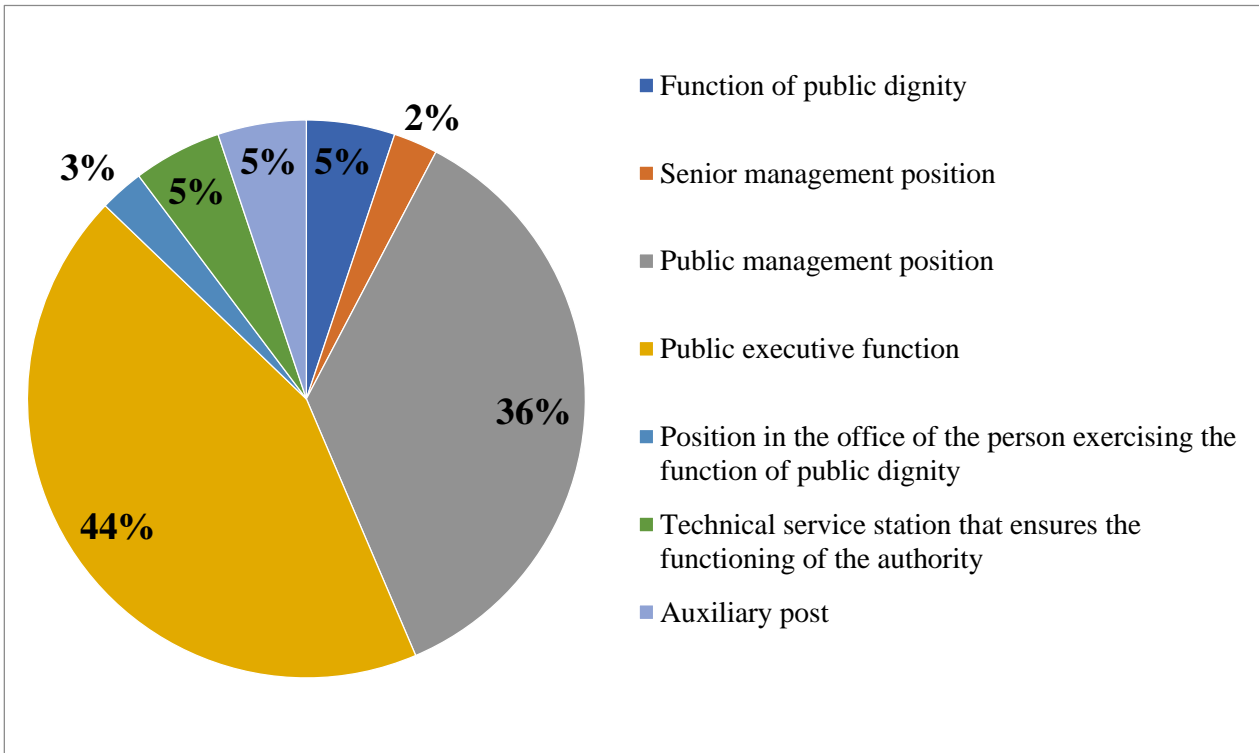
1. Balti Representation;
2. Cahul Representation;
3. Comrat Representation;
4. Varnita Representation.

At the end of 2019, 39 employees worked in the People's Advocate Office. The staff of the Office is composed of civil servants, staff employed in the People's Advocate's Office, technical service staff and other staff.

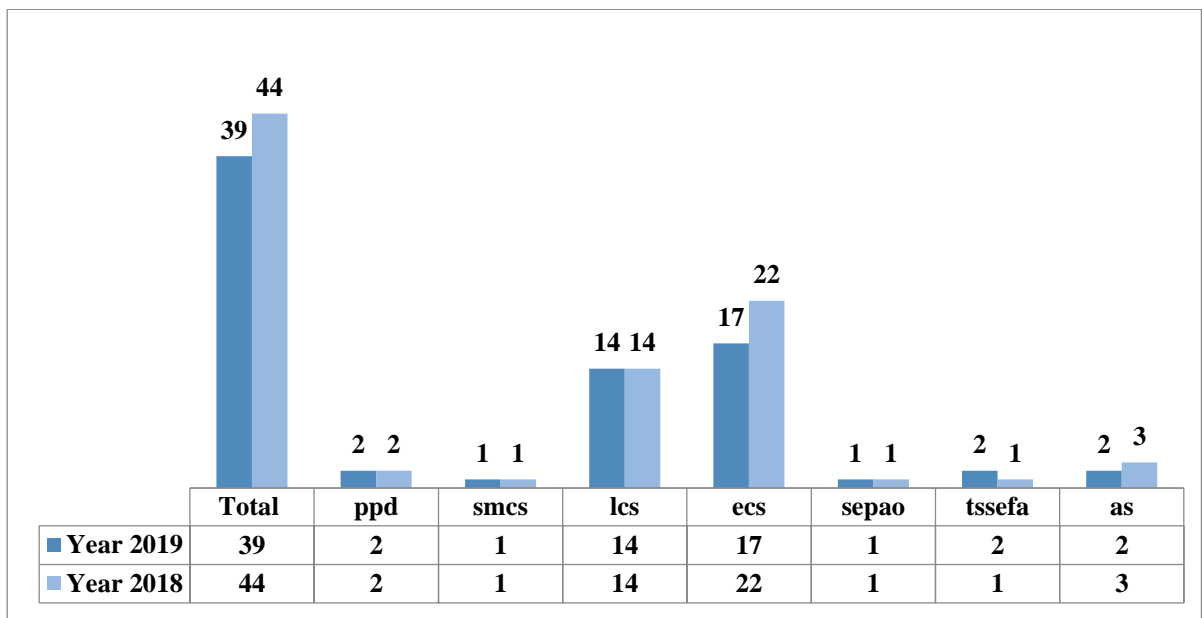
**Staff structure by socio-professional categories**

<b>Category of public office / position</b>	<b>Number of persons in 2018</b>
Persons with public dignity (ppd)	2
Senior management civil servants (smcs)	1
Leading civil servants (lcs)	14
Executing civil servants (ecs)	17
Staff employed in the People's Advocate's Office (sepao)	1
Technical service staff ensuring the functioning of the authority (tssefa)	2
Auxiliary staff (as)	2
<b>Total</b>	<b>39</b>

### The structure of functions and positions within the People's Advocate Office

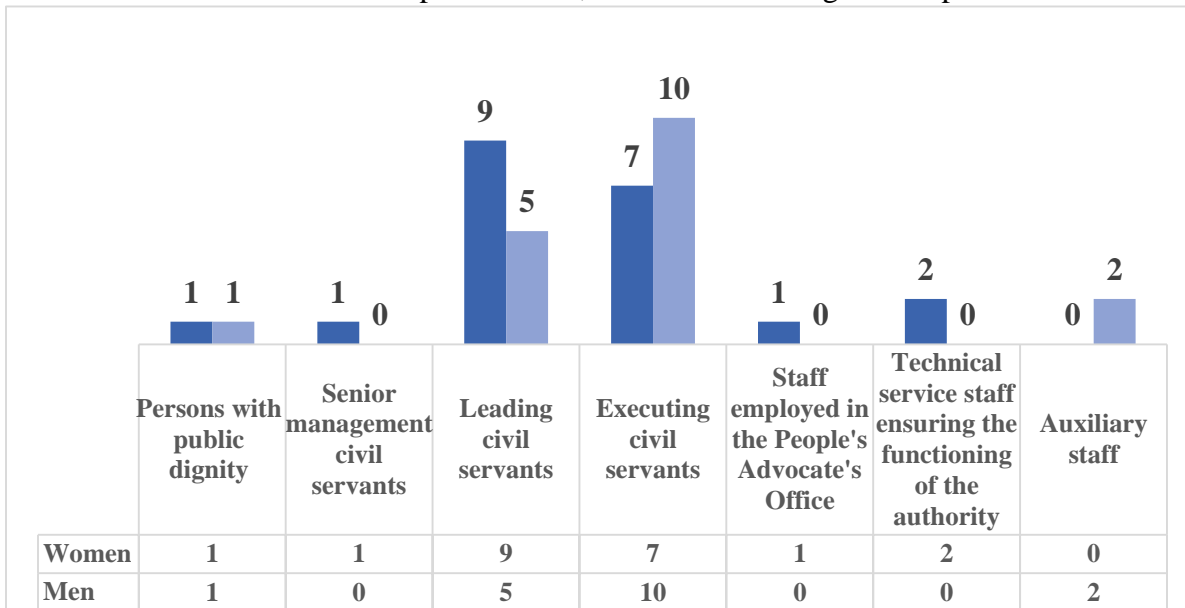


The analysis of insurance of the People's Advocate's Office with human resources implies the dynamic analysis of the total number of employees and by categories, year 2019 in relation to 2018:



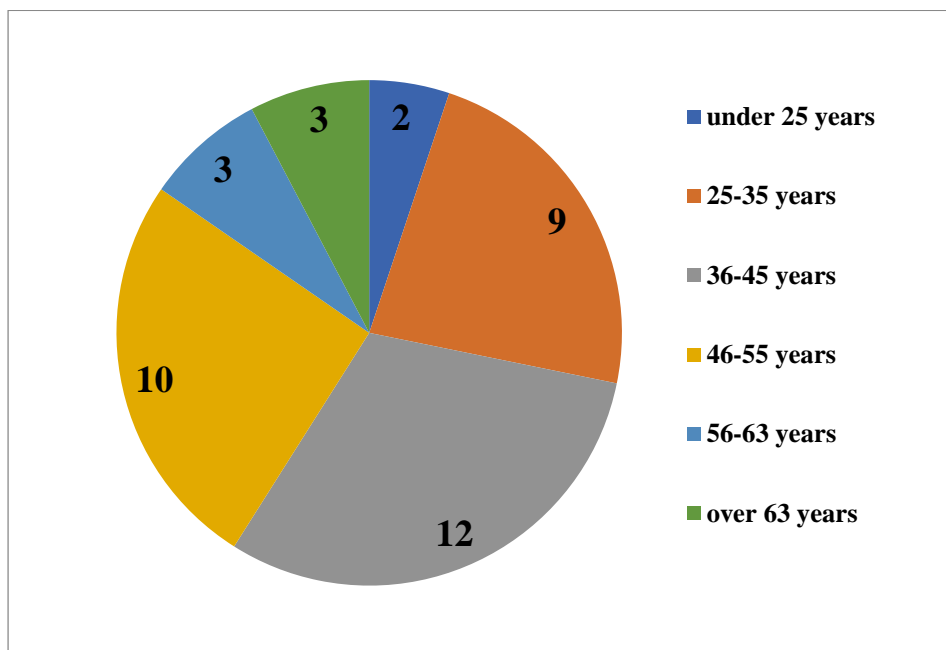
### Gender structure of employees

The analysis of the structure of the staff highlights the fact that, according to the gender structure, within the institution women predominate, their number being 21 compared to 18 men.

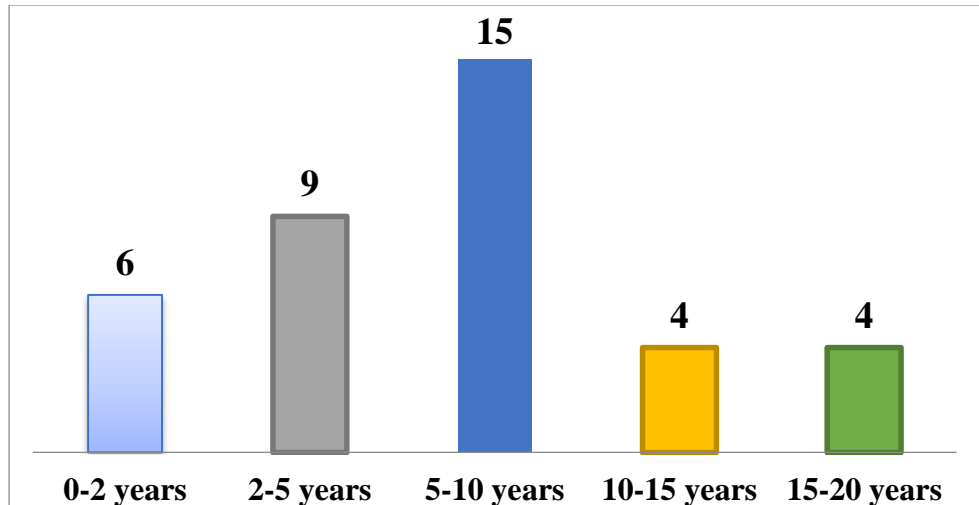


### The structure of the group of employees based on age

The analysis of the structure of the group of employees by age shows mainly from the numerical point of view of the persons in the age range of 36-45 years.



### The structure of the staff on the basis of seniority within the People's Advocate Office, persons



Within the People's Advocate Office there are employed 32 civil servants, all holding qualification degrees.

During 2019, 4 new civil servants were confirmed in office.

The occupation of public positions is carried out in accordance with the provisions of *Law no. 158/2008 on State Functions and the Status of Public Servants*, of the *Government Decision no. 201/2009 regarding the implementation of the provisions of Law no. 158-XVI of July 4, 2008 on State Functions and the Status of Public Servants*.

The employment of staff in other socio-professional categories is carried out in accordance with the legislation in the field of labour law.

In 2019, 7 competitions for vacant / temporarily vacant public positions were announced; 2 contests out of the 7 announced was impossible to complete, the reason being the lack of candidates.

Thus, during the reference period, 3 persons were appointed / employed / re-employed, of which:

- by competition, 1 executive civil servant was appointed;
- 1 person was hired to ensure the technical service of the institution;
- 1 person was re-employed in the public executive position, following the partially paid leave for child care.

During 2019, the service / work relations were terminated by resignation, dismissal of 9 persons by transfer, thus the staff turnover rate was 23%.



### Continuous professional development

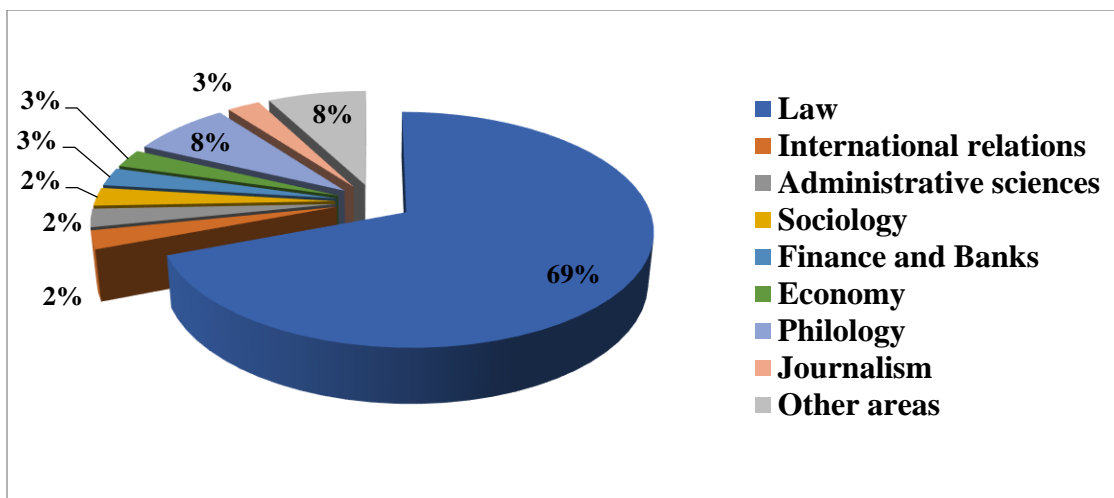
The professional training of the employees increases the level of accomplishment of the mission / strategic objectives of the public authority. The institutional development of the People's Advocate Office, the improvement of procedures and working systems depends, to a large extent, on the initial training of employees and their continuous professional development.

Within the People's Advocate Office, from the number of categories of functions / positions, only the auxiliary staff has studies in technical vocational education, the other categories have bachelor's degree, cycle I and master's degree, cycle II:

Number of employees with vocational training in technical vocational education	Number of employees with a single field of vocational training in higher education	Number of employees with several fields of vocational training in higher education	Number of employees with vocational training in undergraduate and master's higher education	Number of employees with several fields of professional training in undergraduate and master's higher education
2	14	1	20	2

Depending on the field of training, the ranking states:

No. of crt.	The field of professional training, cycle I - bachelor's degree	Number of employees
1.	Law	27
2.	International relations	1
3.	Administrative sciences	1
4.	Sociology	1
5.	Finance and Banks	1
6.	Economy	1
7.	Philology	3
8.	Journalism	1
9.	Other areas	3

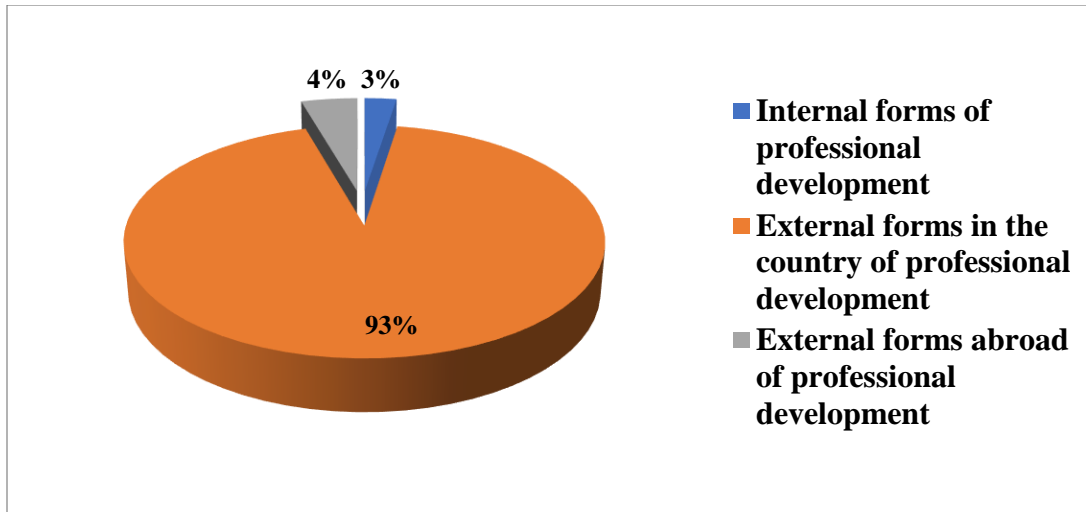


The process of continuous professional development within the People's Advocate Office is organized and carried out according to the following principles:

- observance of the civil servant's right to professional development;
- the obligation of professional improvement;
- orientation towards training needs;
- decentralization of the process of continuous professional development;
- liberalization of training services.

The continuous *professional development* of the employees of the People's Advocate Office is achieved through training activities of different types and forms, in order to deepen and update knowledge, develop skills and model attitudes / behaviors necessary for the effective exercise of duties.

In 2019, the People's Advocate Office motivated and ensured the participation of 41 employees in training activities, including those whose service / employment relationships subsequently ceased, a total of 2674 hours, of which external in the country (2486 hours), external abroad (120 hours) and internal (68 hours).



In order to effectively accomplish the mission / strategic objectives of the institution, the People's Advocate Office establishes important requirements for the training programs.

Depending on the professional development needs of different categories of employees, concrete objectives are set, for the realization of which training programs are needed:

1) of a **general nature**, including regarding the civil service and the status of the civil servant, offered, mainly, by the Academy of Public Administration.

2) of a **specialized nature**, of which:

- a) in the field of fulfilling the mandate;
- b) in the field of human rights.

The main partners of the People's Advocate Office in the process of professional development in the field of fulfilling the mandate and human rights are the Council of Europe, the United Nations Development Program - within some institutional development projects.

## FINANCIAL MANAGEMENT

In accordance with the limits of the budget approved for 2019, MDL 13302.8 thousand were allocated for financing the activity of the People's Advocate Office. These were distributed to cover expenses in two components:

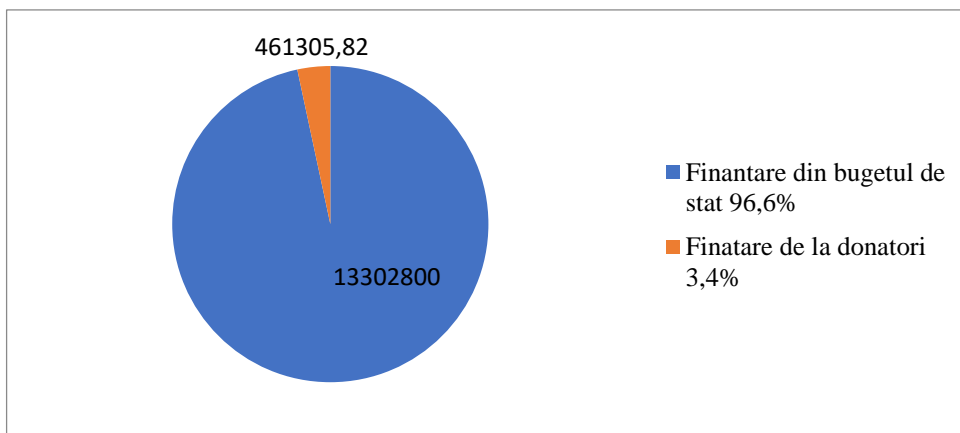
- Control over the observance of human rights - allowances in the amount of MDL 12593.6 thousand.

- The national mechanism for the prevention of torture - allowances in the amount of - MDL 349.2 thousand.

Additionally, during 2019 the institution benefited from voluntary donations in the amount of MDL 461305.82 from:

- **SOROS Foundation** for the implementation of grant projects:
- Management of detention and detention in the Police Inspectorates of the Republic of Moldova ”(MDL 67283,37)
- Evaluating the progress registered by the Republic of Moldova in consolidating palliative care and contributing to their integration in the public health system of the Republic of Moldova ”(MDL 301722,45)
- **UNICEF Moldova** (MDL 92300) for the implementation of activities according to the collaboration agreement “Strengthening the capacities of the People's Advocate for Children’s Rights to monitor and report on the observance of children's rights in the Republic of Moldova”.

**Financing of the People's Advocate Office, 2019**



*Translation of the diagram:*

Financing from the state budget 96,6%

Financing from donors 3,4%

The level of execution of the PAO budget as of 31.12.2019 is 80.2 percent. Execution on each budget line is represented as follows:

<b>Name of expenses by components</b>	<b>Planned, thousands of MDL</b>	<b>Executed, thousands of MDL</b>	<b>% execution</b>
<b>Control over respect of human rights</b>			
Staff expenditure	7112,1	6581,1	92,5
Goods and services	4740,8	3233,4	68,2
Social benefits	106	88,3	83,3
Other expenses (membership fees in international organizations)	224,2	223,5	99,7
Procurement of fixed assets	345	345	100
Procurement of stocks of rolling stock	928,9	459	49,4
<b>Total per component</b>	<b>13457,0</b>	<b>10930,3</b>	<b>81,2</b>
<b>National mechanism for the prevention of torture</b>			
Goods and services	60	35,6	59,3
Remuneration of the members of the MNPT Council	289,2	111,2	38,5
<b>Total per component</b>	<b>349,2</b>	<b>146,8</b>	<b>42,0</b>
<b>TOTAL</b>	<b>13806,2</b>	<b>11077,1</b>	<b>80,2</b>

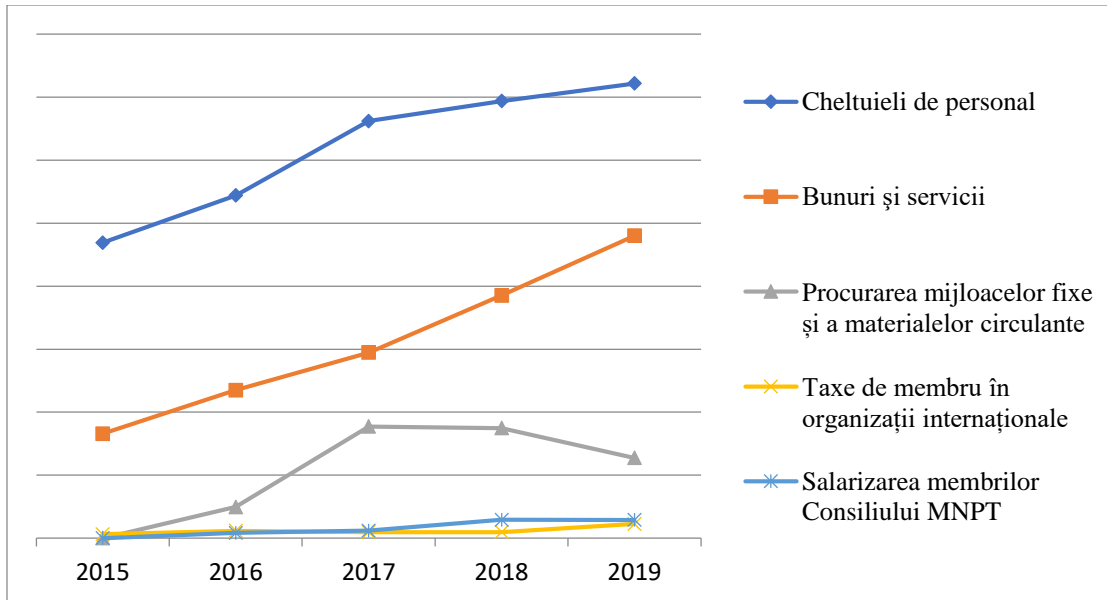
During the year, the financing of the activities and needs of the institution was carried out operatively, within a few calendar days, so that all payments to employees, the state budget, debts to suppliers were made on time. Both during the year and at the end of it, there were no debts with an expired payment term.

In 2019, the volume of allocations for financing the institution increased and, at the same time, the allocations for financing the activities carried out by the People's Advocate and the People's Advocate for Children's Rights were increased, in the exercise of the attributions provided by Law no. 52/2014, from MDL 6.4 million in 2015 to MDL 13.3 million in 2019 or by 107.8%.

In dynamics, this increase is represented as follows:

<b>Name of allowances, thousand of MDL</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
<b>Control over respect for human rights</b>					
Staff expenditure	4691.7	5440.2	6622.3	6939.5	7218.1
Goods and services	1656.5	1912.3	2940.2	3796.1	4740.8
Procurement of fixed assets and circulating materials		493.7	1640.3	1699.5	1273.9
Membership fees in international organizations	62.5	116.8	95.6	96.1	224.2
<b>Total per component</b>	<b>6410.7</b>	<b>7963</b>	<b>11298.4</b>	<b>12531.2</b>	<b>13457.0</b>
<b>National mechanism for torture prevention</b>					
Goods and services		436.6	5	56.5	60
Remuneration of the members of the MNPT Council		83.5	118.3	291.7	289.2
Procurement of fixed assets and circulating materials			131.1	47.2	
<b>Total per component</b>		<b>520.1</b>	<b>254.4</b>	<b>395.4</b>	<b>349.2</b>
<b>Total allowances</b>	<b>6410.7</b>	<b>8483.1</b>	<b>11552.8</b>	<b>12926.6</b>	<b>13806.2</b>

### Funding of the People's Advocate Office in Dynamics (2015-2019)



*Translation of the diagram:*

Staff expenditure

Goods and services

Procurement of fixed assets and circulating materials

Membership fees in international organizations

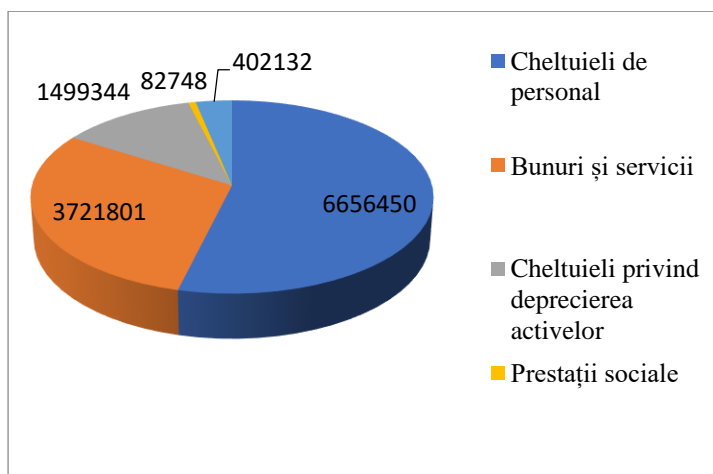
Remuneration of the members of the MNPT Council

During 2019, the People's Advocate Office had expenses in the amount of MDL 12362.5 thousand. They can be grouped into three large groups, namely:

- **Staff expenses** - constitute about 53.8% of the total expenses (remuneration of employees' work, payment of contributions and mandatory bonuses in the state budget, payment of benefits for employees according to legal provisions).
- **Expenses for goods and services** - about 30.1% of total expenses (maintenance of the institution - electricity, heat, water, security, rental services, repairs, cleaning, hiring experts in various fields, training services, logistics jobs with furniture, equipment, office supplies, travel, etc. and expenditure on the use of stocks).
- **Expenses regarding the depreciation of assets** - about 12.1% of the total expenses (expenses regarding the wear of fixed assets and the amortization of intangible assets)

- **Social benefits** - about 0.7% of total expenses (expenses related to the payment of benefits for temporary incapacity for work paid from the employer's financial means and benefits paid upon termination of employment)
- **Other expenses** - about 3.2% of the total expenses (payment of remuneration for the work of members of the Council for the prevention of torture for visits and meetings, payment of membership fees in international organizations, other expenses).

#### Distribution of expenses of the People's Advocate Office



*Translation of the diagram:*

Staff expenses

Goods and services

Expenses regarding the depreciation of assets

Social benefits

The increase of the financing for the activities organized in order to fulfill the mandate of the People's Advocate and the People's Advocate for Children's Rights led to the increase of the visibility of the institution and to the realization of the Annual Activity Plan of the institution in proportion of 85%.

Taking into account the fact that some of the activities were carried out through direct payments from donors, the institution managed to save financial means allocated from the state budget.