



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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Committee against Torture

**Consideration of reports submitted by States parties
under article 19 of the Convention**

**Follow-up responses of Moldova to the concluding observations of the
Committee against Torture (CAT/C/MDA/CO/2)***

[14 February 2011]

* In accordance with the information transmitted to State parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

Response of the Republic of Moldova on the implementation of the recommendations of the Committee against Torture, adopted at its 922nd meeting held in Geneva on 19 November 2009

Foreword

1. On 11 and 12 November 2009, the Government of the Republic of Moldova presented to the Committee against Torture its second periodic report on the implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Following the presentation, the Committee highlighted a number of concerns on the subject matter, with observations and recommendations for implementing the Convention.

2. Taking into account the recommendations of the Committee, the text of the periodic report and the concluding observations have been placed on the official website of the Ministry of Interior (www.mai.md), while an inter-Ministerial working group has been created, with the participation of representatives from the General Prosecutor's Office, Ministry of Justice, Supreme Court of Justice, Ministry of Defence, Ministry of Health, Ministry of Labour, Social Protection and Family, Ministry of Education, Centre for Human Rights, United Nations Development Programme and non-governmental organisations active in the field of human rights, to ensure the initiation and implementation of the recommendations in paragraphs 13, 15, 16, 20 and 24 of the concluding observations.

3. Pertinent to the subject of human rights protection is the development of the National Human Rights Action Plan for 2011-2014, which contains a chapter entitled "Prevention and fight against torture". On 2 September 2010, the draft Action Plan was approved by the Government and will be sent to Parliament for examination and adoption.

Measures undertaken and results obtained

Reply to recommendation (a), paragraph 13

4. Part of the obligation to comply with articles 3 and 7 of the Optional Protocol to CAT, the Parliament of the Republic of Moldova adopted on 26 July 2007 Law no. 200 on the amendment and complementation of the Law no. 1349 on Ombudsmen of 17 October 1997, by which ombudsmen has been given the mandate to ensure the prevention of torture nationwide. Realising the need to involve the civil society in the torture eradication process, a Consultative Council has been created within the Centre for Human Rights (CHR) to offer advice and assistance to the ombudsmen as part of the national torture prevention mechanism. Aimed at ensuring civil society a torture-prevention role, the members of the Consultative Council and the Ombudsman have equal powers as provided for in article 24 of the Law on Ombudsmen, while conducting regular and unplanned visits to detention places, thus ensuring full compliance with the Optional Protocol to CAT. The members of the Council are free to conduct preventive visits without the participation of the ombudsman or members of his/her staff. By ensuring unrestricted access by the civil society to detention places, as well as their empowerment with some of the functions of the ombudsman, The Republic of Moldova has confirmed its commitment to transparency and pluralism when monitoring torture, and shown its intention to broker an efficient cooperation between the civil society and the Government.

Reply to recommendation (b), paragraph 13

5. The burden of covering the necessary expenses to arrange preventive visits, including remuneration of the experts who are involved in carrying out these visits and/or monitoring is on the Centre for Human Rights.

6. Aimed at improving the efficiency of the national torture prevention mechanism, service contracts have been signed with the members of the Consultative Council. Thus, 57,800 MDL have been allocated from the 2010 budget of the CHR to pay experts who participated in preventive visits in places where persons are or could be deprived of their freedom (provisions of paragraph 39 of the Regulations of the Centre for Human Rights, approved by Decision no. 57 of the Parliament of the Republic of Moldova on 20 March 2008). The remuneration constitutes a strong advantage in ensuring the financial independence of the representatives of the national torture prevention mechanism (NTPM).

7. Although within the CHR there are public servants with competences to implement the obligations which arise from OP-CAT, the structure did not provide, until now, a distinctly specialized and adequately equipped division. In line with the efforts to improve the efficiency of NTPM activities, a working group was created within the institution and tasked with developing a new draft law on ombudsmen, which would include a reformulation of the Centre's structure, and an amendment of the remuneration scale for its staff. This would allow the creation of a distinct unit entrusted with well-defined tasks and competences in accordance with the requirements set out in international instruments. Presently, the working group is in the process of developing the adequate legal framework based on an efficient institutional functioning, as confirmed by the representatives of the General Directorate for Human Rights and Home Affairs of the Council of Europe.

Reply to recommendation (c), paragraph 13

8. After the visits carried out in detention places by the representative of the NTPM, a working methodology was developed for mobile groups, and the Ombudsman's office issued guidelines on the following:

- Control in special institutions within the police commissariats, which relate to the treatment of detained persons and/or persons exposed to a preventive measure in the form of arrest;
- Control of special institutions within the administrative misdemeanours area and/or of persons exposed to a sanction in the form of administrative arrest;
- Particularities in cases of detention and/or arrest of minors;
- Monitoring of penitentiary institutions;
- Monitoring of detention places and special institutions within the police commissariats;
- Template report on carrying out a preventive visit to the institutions within the subordination of the Ministry of Interior and the Ministry of Justice;
- Control of psychiatric hospitals and psycho-neurologic boarding schools.

9. Although the visits of the NTPM representatives reveal some of the problems, which are in turn mostly generated by lack of financial resources, the current findings allow the conclusion that adequate reactions have been taken by the authorities to the recommendations and follow-up activities of the ombudsman. Thus, during this year, efficient cooperation with the authorities has been established, which has visibly materialized in the monitored institutions, including the adjustment of the special institutions of the Ministry of Interior, as prescribed in the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. In that respect, the Ministry of Finance has allocated 2.2 million MDL from the reserve fund to fully repair the buildings (Governmental Decision no. 511 of 22 June 2010).

10. As provided for under the cooperation agreement between the National Ombudsman Institution and the Ministry of Interior, signed on 25 May 2010, all police commissariats have been supplied with information desks providing data on the structure, tasks and status of the NTPM, rights and obligations of detained/arrested persons, including persons who have been exposed to ill-treatment or other abuses by police agents.

11. These actions were implemented by means of the project, "Support to strengthening the National Torture Preventive Mechanism as per OPCAT", implemented by UNDP Moldova, in cooperation with the Centre for Human Rights.

Reply to recommendation (d), paragraph 13.

12. Pursuant to article 178 of the Enforcement Code:

(1) During the exercise of the mandate, the following have the right to visit the institutions which ensure the detention of persons, without additional permission:

- (a) The Chairman of the Parliament of the Republic of Moldova;
- (b) The President of the Republic of Moldova;
- (c) The Prime Minister of the Republic of Moldova;
- (d) The Member of Parliament;
- (e) The Ombudsman, the members of the Consultative Council and other persons who accompany them;
- (f) The General Prosecutor of the Republic of Moldova, the Prosecutor who undertakes control of the implementation of the Criminal Court decisions in his/her jurisdiction;
- (g) The competent decision-making public servant of the hierarchically higher body to the institution or the body which ensures the implementation of the criminal court decision;
- (h) The judge examining the criminal case, according to jurisdictional competence;
- (i) The representative of the international organisation who, according to national and/or international legislation to which the Republic of Moldova is a party, holds this right;
- (j) The member of the monitoring committee.

(2) The institutions which ensure the detention of persons may be visited by other persons with additional permission from the administration of the institutions or from the decision-making public servants of the body hierarchically higher than the institution or on the basis of a court decision. In case of preventive visits, also on the basis of the decision of the criminal investigation body or the court, when the case is pending in criminal procedure. The relevant article gives an exhaustive list of all persons entitled to this right. Thus, based on the intention to adequately implement the above-mentioned provisions, the administration departments of the penitentiary institutions unconditionally, as stipulated in the law, ensures access to persons to detention places for their efficient fulfilment of the competences with which they have been invested.

13. Additionally, as an exception, section 2, paragraph 195 of the Security Service Regulations of the Department of Penitentiary Institutions, approved by Order no. 106 of the Ministry of Justice of 6 March 2003, stipulates that women accessing penitentiaries for

men must mandatorily be accompanied by representatives of the penitentiary (duty guard) to ensure their security and physical integrity.

14. Meetings have been organised with the ombudsmen to ensure elimination of impediments to the activity of the national torture preventive mechanism, established and implemented by the ombudsmen and the Consultative Council within the Centre for Human Rights. The mechanism of visiting detention places under the Ministry of Justice, without additional permissions, was established at these meetings, along with immediate actions to register alleged cases of breach of fundamental human rights.

15. Equally valid, the administration of the penitentiaries have received briefing notes and additional legal and regulatory provisions in the field, aimed at raising the awareness of the institutions on the powers of the national torture preventive mechanism.

16. It is worth mentioning the decision of the Minister of Justice on the designation of a Counsellor within the civil society on issues related to respect of human rights – a new experience in the history of justice in the Republic of Moldova. Thus, the Counsellor of the Minister of Justice was appointed Director of the Institute for Human Rights of Moldova (IHRM) – an independent, non-profit organisation, created to protect human rights. As Counsellor of the Minister of Justice, he has the right to unlimited access, at any time and to any penitentiary institution. The respective decision highlights the efforts of the Government to consolidate the partnership with the civil society.

Reply to recommendation (e), paragraph 13

17. During the reporting period, there have been no such cases registered of agents of the penitentiary system or detention facilities under the subordination of the Ministry of Interior.

Reply to recommendations (a) and (b), paragraph 15

18. With regard to the investigation of the events which took place in April 2009, the Prosecutors have registered and investigated 108 complaints on alleged cases of torture, inhuman or degrading treatment or punishment by police agents.

19. Based on the examined complaints, 58 criminal cases have been initiated, including 29 on torture, 17 on abuse of power or breach of duty competences, including:

- in one case, based on the initiative of the prosecutors, the initiation of a criminal investigation was ordered into the complaint of abuse of power and breach of duty competences by some decision-making public servants from the Ministry of Interior, including the Special Destination Police Brigade (SDPB) “Fulger”, whose agents used physical violence on a number of people during the night of 7 to 8 April, in the centre of the capital;
- in two cases, criminal investigations were ordered into the actions of the decision makers of the Buiucani sector police commissariat for acts of violence and illegal arrest of a group of persons, among whom, citizens Angela Donos and Tataian Roman, and into the alleged ill-treatment of citizen Victor Pascal;
- in one case, a criminal investigation was ordered into the complaint of average intentional injury of corporal integrity caused to citizen Valentina Cuşnir;
- in one case, a criminal investigation was ordered into the raid against citizen Oleg Brega;
- in one case, a criminal investigation was ordered into the attempt to commit murder by a masked police agent, presumed to be an agent of SDPB “Fulger”, who used an AK-type gun and shot at the car of citizen Murzac;

- in another case, a criminal investigation was initiated into the alleged influencing of minor Gumeni to change his testimony on police officer Octavian Gutu, who has ill-treated him;
 - in the case of the death of citizen Valeriu Boboc, a criminal investigation was initiated into the report of severe intentional injury of corporal integrity, which led to the death of the victim, and abuse of power or breach of duty competences, which resulted in severe consequences.
20. Additionally, in four other cases, criminal investigations were initiated into duty negligence committed by decision makers within the police commissariats of Centru and Ciocana commissariats, where the investigations are still pending.
21. Out of the total number of criminal cases, 27 dossiers, in which 43 police agents have been incriminated, have been finalised and sent with the incrimination conclusions to the courts of law.
22. On criminal cases under the management of the Prosecutors, 14 staff members of the Ministry of Interior had been suspended from duty. These procedural measures are still applicable to 9 defendants, because the courts of law accepted the claims of 5 defendants.
23. In 25 other criminal cases, the Prosecutor's office ordered the suspension of the criminal investigations on the grounds that the police officers who acted illegally had masks on their heads or the victims had been tortured while their faces were to the wall or with their heads down, therefore their identification was not possible.
24. On these facts, which relate to use of violence in police commissariats by persons who cannot be identified, a criminal investigation was ordered into duty negligence committed by decision makers of the police commissariats of Centru, Buiucani and Ciocana sectors of the Chisinau municipality; three of them have been sent with incrimination conclusions to the courts of law.
25. At the same time, on 24 May 2010, the General Prosecutor's Office created a new division to fight against torture, and tasked with the study of the phenomenon of torture and ill-treatment generally, and the establishment of all factors, causes and conditions which allow for the existence of the phenomenon, generalisation and investigation of cases of torture with an analysis of the vulnerable aspects which arise during the examination of complaints, use of all legal measures to reinstall citizens' breached rights, conduct of a criminal investigation on cases of torture with increased social significance, training of prosecutors from regional and specialised prosecutions offices which carry out checks and criminal investigations on such cases, etc.

Reply to recommendation (c), paragraph 15

26. By means of the decision of Prime Minister Vladimir Filat of 15 April 2010, the Special Committee on the identification of civil individuals and policemen who have suffered from the events of 7 April 2009 was created to coordinate and develop necessary actions to help the victims who have suffered from the events of April 2009. The Committee was chaired by the Minister of Justice, and comprised representatives of the State Chancellery, Ministry of Labour, Social Protection and Family, Ministry of Interior, Ministry of Health, Ministry of Education, Ministry of Finance and the non-governmental organisation "Institute for Human Rights of Moldova".
27. The Committee issued a public appeal to civilians and policemen who have suffered from the events of 7 April 2009, to present written complaints, supported by papers and proof, in order to benefit proportionally from the allowances and financial compensation for injuries suffered, and depending on the case, other rehabilitation benefits offered by the

Government of the Republic of Moldova. Additionally, the information presented by the authorities and non-governmental organisations was analysed.

28. Thus, 14 civilians, 4 employees of the Ministry of Interior, and one employee of the State Guard and Protection Service have benefited from rehabilitation measures, including financial support, financial compensation or other rehabilitation benefits. At the same time, according to data provided by the Institute of Human Rights of Moldova and the Centre for Rehabilitation of Torture Victims “Memoria” within the project, “Advocacy for Human Rights,” in the context of the crisis generated by the parliamentary elections in April 2009 in the Republic of Moldova, and financed by the Law Programme of Soros Moldova Foundation, civilians have benefited from rehabilitation assistance and free legal aid, as well as medical and psychological documentation provided for cases of alleged torture, inhuman and/or degrading treatment.

29. In this respect, most of the civilians have preferred to go the legal way to obtain compensations for the sufferings caused by the events of April 2009, as many had initiated procedures before the creation of the Special Committee, and had benefitted from free legal aid from IHRM.

30. On 15 September 2010, the Committee finalized its investigation and proposed to the Government a series of actions to support civilians and policemen who have suffered as a result of the events of April 2009. In particular, it referred to the allocation of allowances in an amount to be established by the Government, delivery of necessary medical assistance, provision of special study scholarships, assistance with payment of debts, assistance in eliminating restrictions to leave the country, delivery of adequate buildings to implement a psychological rehabilitation project, management of sanatorium rehabilitation services for civilians and policemen who have suffered from the April 2009 events.

31. As a result of the proposals, the Prime Minister of the Republic of Moldova instructed the responsible authorities to determine, by 1 October 2010, the amount of allowances, identify the financing source, and develop the draft normative act, for approval by the Government.

32. Thus, by means of Governmental Decision no. 956 of 15 October 2010 on aid offered to persons who have suffered from the events of 7 April 2009, the allocation of financial compensation for a total of 222.7 thousand MDL was decided as follows:

- **Ministry of Labour, Social Protection and Family – 144.2 thousand MDL**, including 74.2 thousand MDL for sanatorium rehabilitation services, and 70.0 thousand MDL for allowances in an amount of 5 000 MDL for civil individuals who have suffered from the events of 7 April 2009;
- **Ministry of Education – 52.0 thousand MDL** in financial support to Damian Hincu so that he could repeat the study year in France which he forego due to the events from 7 April 2009;
- **Ministry of Interior – 21.2 thousand MDL** for the delivery of sanatorium rehabilitation services to police agents who have suffered from the events of 7 April 2009;
- **State Protection and Guard Service – 5.3 thousand MDL** for the management of sanatorium rehabilitation services to Constantin Slobodeniuc.

Reply to the recommendation under paragraph 16

33. Pursuant to Order no. 35 of 22 February 2007 of the Department of Penitentiary Institutions on the adoption of duty clothes, the employees of the penitentiary system mandatorily wear identification badges to ensure their identification. Additionally, under

the above-mentioned Order, the Regulations on wearing the duty badge by the penitentiary employee were adopted.

34. At the same time, the Ministry of Interior ordered 3,500 badges with identification elements, which have been distributed to SDPB “Fulger”, “SCUT”, rifleman troops, Directorate of Traffic Police, and the Patrol and Sentinel Regiment, as well as the regional units of the MoI. Further to Order no. 261 of 11 August 2010 of the MoI, the Regulations on the use of identification badges by MoI employees were adopted.

Reply to recommendation (a), paragraph 20

35. Taking into account the recommendations of the Committee against Torture, the draft National Human Rights Actions Plan for 2011-2014 contains a set of objectives pertinent to this issue. Thus, one of the priorities is the delivery of qualified legal aid to the victims of torture and other ill-treatment through the implementation of the following actions:

- development of methodological recommendations on delivery of qualified legal aid for cases of torture and other ill-treatment;
- training of barristers on delivery of qualified legal aid for cases of torture and other ill-treatment.

36. Another objective relates to the rehabilitation of the victims of torture, which will be concretized in the following:

- development of partnerships in the field of medical and social rehabilitation of torture victims;
- strengthening the capacities for using civil remedies in cases of torture and other ill-treatment.

37. At the same time, all persons in the territory of the Republic of Moldova, including victims of torture and maltreatment, benefit from full medical assistance under the mandatory general medical insurance programme.

38. First aid and primary medical aid are offered to both insured and non-insured persons from the mandatory medical insurance funds.

39. Medical rehabilitation assistance and physiotherapy is offered to patients in the amounts prescribed by the Methodological Rules, based on the prescription from the family doctor, physiotherapist or specialized doctor.

Reply to recommendation (b), paragraph 20

40. Aimed to ensure compliance with decisions of the European Court of Human Rights, actions have been taken at the national level with regard to individuals and the general public in the direction of the prevention of similar breaches in the future.

41. Usually the Court imposes on the State the payment of certain compensation benefits for individuals. Depending on the case, action may be taken to re-launch investigations at the national level into complaints of torture by claimants, with the aim of bringing to justice persons who have applied torture. At the same time, pursuant to article 17 of Law no. 353-XV of 28 October 2004 on the Governmental Agent, the General Prosecutor has the right to initiate, on behalf of the State, regressive claims on persons whose actions, committed intentionally or due to serious guilt, have become the reason for the adoption of decisions by the Court on payment of compensation or out-of-court settlements.

42. All court decisions are fully translated and sent to all national authorities as well as posted for public access on the website of the Ministry of Justice (www.justive.gov.md). Summaries of court decisions are published in the Official Journal of the Republic of Moldova, in both the Romanian and Russian languages.

43. Additionally, pursuant to the fulfilment of the tasks provided for in article 2 (g) and (j) of the Law on the Supreme Court of Justice (SCJ), the Plenary of the SCJ proposed to the Supreme Council of Magistrates by means of Decision no. 2 of 18 January 2010 the documentation for methodological assistance to judges with regard to issues of justice for 2010:

- Judicial errors committed by the courts of law, including in the context of the ECHR decisions against Moldova, in civil, administrative misdemeanours, criminal and administrative cases.

44. On 19 January 2010, the Supreme Council of Magistrates approved the programme of delivery of methodological assistance to judges with regard to issues of justice for 2010 (the decision is published on the SCJ website, www.csj.md).

45. Additionally, in case of acknowledgment of breach of article 3 of the European Convention on Human Rights, the victim is entitled to request payment of moral and physical damages from the national court of law, and the court of law has the right, pursuant to article 385 of the Criminal Procedure Code to reduce the penalty against the defendant in compensation for the respective breaches.

46. Moreover, the Supreme Court of Justice examines such types of cases in civil procedures and tries, at the national level, to fulfil the claims of victims who have suffered from breach of article 3 of the European Convention.

47. The amount of damages is determined according to the case law of the European Court of Human Rights and national legislation.

Reply to recommendation under paragraph 24

48. Article 17 of the Law no. 411-XII of 28 March 1995 on Health Care provides for the right of every person to health care, irrespective of nationality, race, sex, social adherence and religion, by guaranteeing qualified medical assistance, delivered in accordance with the requirements of modern medicine, as well as through legal protection of the right to health care and repair of damages caused to health, when patients of contagious tuberculosis present a danger for persons around him/her – members of the family, those who live together, employment colleagues and other healthy persons – as they are exposed to the risk of tuberculosis infection.

49. Article 44 of the above-mentioned Law stipulates that patients with the active form of tuberculosis who evade treatment, breach the prescribed treatment or abuse alcoholic drinks or use drugs shall be forced to undergo treatment, as provided for in the legislation. It is a complex of measures, aimed at ensuring mandatory treatment of patients with contagious tuberculosis who present a danger for the entire society if they evade anti-tuberculosis treatment.

50. In this respect, it is not an issue of “forced confinement” or “detention” of persons with tuberculosis. Such persons are treated in special departments to avoid the danger of the spread of infection of tuberculosis in the society.

51. Such treatment is provided for under Law no. 153-XVI of 4 July 2008 on the control and prophylaxis of tuberculosis. Article 15 of this Law states that the patient of contagious tuberculosis who breaches the sanitary and anti-epidemic settlements or who avoids medical examination for tuberculosis detection or treatment of tuberculosis shall be

interned in a specialized institution for forced treatment, on the basis of a court decision. Thus, it cannot be said that there is a confinement or forced or illegal detention of a contagious person who is interned on the basis of a court decision.

52. Additionally, further to Government Decision no. 742 of 7 August 2009, the Regulations on the method of application of forced treatment of persons with contagious tuberculosis, clearly establishes the method of hospitalization in accordance with articles 308-311 of the Civil Procedure Code, and articles 307, 308 and 310 of the Enforcement Code. The said Regulations establish the mechanism by which mandatory treatment of patients with contagious tuberculosis takes place in special-treatment institutions, where all the conditions of qualified specialized medical assistance, sanitary and hygienic conditions of a specialized clinic are ensured, as provided for under the National Control and Prophylaxis Programme for tuberculosis, and the recommendations of WHO DOTS Programme. These conditions do not imply the use of forms of torture or other inhuman or degrading treatment on patients. In all specialized institutions where patients with tuberculosis are treated, the human rights, intimacy of the person, confidentiality of medical data are mandatorily respected, and actions are taken to avoid stigmatization or discrimination of the patients. Thus, the actions taken to treat people with contagious tuberculosis constitute mandatory treatment in a specialized institution.

53. The Ministry of Interior has developed methodological instructions concerning the actions to be taken by the police when documenting information on avoidance of treatment or breach of prescribed treatment by a person with tuberculosis. Those instructions oblige the officers of the Ministry of Interior to ensure confidentiality and non-discrimination of the patient.
