

*Resource Center for Human Rights (CReDO)*  
*Moldovan Institute for Human Rights (IDOM)*  
*Roma National Center (CNR)*

**FINAL DRAFT**

ALTERNATIVE REPORT TO THE  
2nd Report of the Republic of Moldova on the  
Stage of Implementation of the  
UNITED NATIONS CONVENTION AGAINST TORTURE  
(UN CAT)

**Alternative Report on Implementation of UN CAT by Moldova**

**About organizations**

**Resource Center for Human Rights (CReDO), [www.CReDO.md](http://www.CReDO.md):**

- [List of issues on the most stringent problems related to civil and political rights](#), for Human Rights Committee (in cooperation with Moldovan Institute for Human Rights and National Roma Center);
- [Report on the Implementation of the ICCPR \(civil and political rights\) for 2003-2009 by Modova, submitted to UN Human Rights Committee](#), 97th session, October 2009 (in cooperation with Moldovan Institute for Human Rights and National Roma Center);
- [Security, Liberty and Torture in the Aftermath of April 2009 events](#) (in cooperation with Moldovan Institute for Human Rights);
- [Policy paper on the creation of national preventive mechanism against torture to implement the provisions of the Optional Protocol \(OP CAT\) to UN Convention against Torture ratified by Moldova in March 2006 \(includes specific legislative and normative amendments\)](#),
- [Paper on Policy alternatives on the ratification of art.22, art.21 to UN Convention against Torture and creation of the adequate institutional framework for the implementation](#),
- [Freedom of assemblies in the electoral context 2009](#)
- [Implementation of freedom of assembly polices in Moldova - 2008](#)
- [Analysis and account of the events on 6-7 April 2009 \(updated\)](#)
- [Monitoring freedom of assembly policies and legislation in the Republic of Moldova](#) – 2007,
- [Paper on Policy alternatives on the ratification of First Optional Protocol to UN Covenant on Civil and Political Rights](#).

**Moldovan Institute for Human Rights (IDOM), [www.IDOM.md](http://www.IDOM.md):**

- [Protection of people living with HIV/AIDS in the Republic of Moldova \(REPORT\)](#),
- [Advocacy for the Respect Human Rights in Psychiatric Institutions in the Republic of Moldova \(REPORT\)](#),
- [Promoting Respect for Human Rights in Prisons \(REPORT\)](#),
- [Mental Health Policy and Human Rights in Psichiatic Institutions](#)

**Promolex Association, [www.promolex.md](http://www.promolex.md):**

- Research "Human Rights in Moldova's Transnistrian Region", [PDF version](#),
- The Right to Freedom of Movement in the Transnistrian region of Moldova, [PDF version](#),
- Report on human rights violations in Moldova - 2006 Retrospective, [PDF version](#).

**Roma National Center (CNR), <http://www.roma.md>:**

- Human Rights Report on the situation of Roma in Moldova-2009,

Soros Foundation, [www.soros.md](http://www.soros.md)

[Entrenching Impunity](#), 2009

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## ***Introduction***

Overview of the torture related areas is presented below from the perspective of the positive and negative developments and some quick recommendations.

The Judiciary. Only last couple of years the judiciary has been moderately strengthened, it had to slowly recover from a very intrusive earlier political influence, important institutional development has taken place, yet to produce the results.

Progressive developments:

- a. Superior Magistrates Council strengthened its role and lately became more autonomous in its functions,
- b. National Institute of Justice has just started to provide more professional and targeted training to judges and prosecutor,
- c. Modest improvement in the leadership of the judiciary,
- d. Courts receive separate budgets and improved its autonomy in managing finances and cases,
- e. Judges salaries have moderately improved and it became more attractive for the talented graduates,
- f. Only recently, the procedure for judges' selection has slightly improved, it is a modest improvement as compared to 2003-06 very much political appointments and removal of inconvenient judges without proper evidence presentation.

Negative developments:

- a. Government reduced Parliament role to monitor, hold executive accountable for the policies, have the Parliamentary debates to scrutinize the policies proposed by the Government,
- b. Frequent assertion of the political will on the judges and the judiciary through informal ways,
- c. Economic courts remain far easily influenced and un-transparent courts,

No changes:

- a. Government capacity to produce qualitative and maximizing public utility policies has remained almost unchanged, only during the last year, some moderate progress has been achieved that yet to produce any impact.
- b. Judiciary is still not independent: political influence (nomination), financial dependence, professional qualities and access to the judiciary,
- c. Courts case management is outdated, low technical and judges support facilities,
- d. Unacceptable quality of judgments (motivational part, coherence and consistence)
- e. Quality of human capital and professional training is inadequate and insufficient,
- f. Insufficient capacity of Ministry of Justice to strategize, formulates, implement and evaluate policies.

ECHR relevant cases:

- Article 6 (access to justice, fair trial), 43% of cases:
  - (2004, Prodan, 1P1), (2004, Luntre, 1P1), (2004, Prodan, 1P1), (2004, Pasteli, 1P1), (2004, Sirbu, 1P1), (2004, Bocancea, 1P1), (2005, Daniliuc, 1P1), (2005, Baibarac, 1P1), (2005, ASITO, 1P1), (2006, Popov, 1P1), (2006, Lupacescu, 1P1), (2006, Lupacescu, 1P1), (2005, Macovei, 1P1), (2006, Lungu, 1P1), (2006, Istrate, 1P1), (2006, Ermiciev,

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- 1P1), (2006, Lozan, 1P1), (2006, Draguta, 1P1), (2006, Braga, 1P1), (2006, Melnic, 1P1), etc - non-execution of judicial decision,
- (2005, Zilberman) failure to summon properly to court procedure, etc
  - Direct costs of bad policy to society: 235 000 E,

Recommendations:

- Improve quality of judges professional education, including content and court management system,
- Provide more independence and self-governing of the Superior Council of Magistrates,
- Improve transparency of the judiciary and judgment procedure and access to court decisions and files,
- Improve Ministry of Justice and Superior Council of Magistrates policy making, evaluation capacities based on evidence and situations,
- Promote judiciary ethical standards and empower judges professional association and Superior Council of magistrates with ethical standards rulings,
- Judiciary budgeting process shall be more transparent for the public and targeted investment (including management capacity) and operation costs,
- Presentation of the comprehensive data and statistics on the courts workload, type of cases, progress of cases, allocation of cases per judge, nature of entry cases and progress through the judiciary,
- Profound and comprehensive reform with the Ministry of Internal Affairs: developing policy capacity, problem strategic orientation, separation of enforcement (police commissariats, inspectorates) from policy-making (ministry), ethical standards and internal meritocracy and professionalism,
- Promote independence of the Prosecutor office,
- Strengthen courts final decisions executions

Security and liberty of person, freedom from torture. Some moderate changes in the legislation and institutions and yet to improve practice, some areas require more substantial reform.

Progressive developments:

- a) Recent creation of the national preventive mechanism for against torture composed of the civil society members,
- b) Use of alternative detention practices, probation introduced,
- c) Legislation for non-detention penalties introduced,

No changes:

- some categories of persons are being investigated while under the custody of the police,
- frequent use of the administrative detention with low guarantees
- widespread of institutional residential care for adults, children, etc
- conditions of detention in prisons only moderately improve,

ECHR recent cases on Article 5 (security and liberty of person):

- (2005, Becciev) violation by non-communication of motives of arrest/detention,
- (2005, Sarban) violation by non-communication of motives of arrest/detention,
- (2005, Holomiov) lack of legal reasons for detention,
- (2005, Boicenco) detention without sufficient grounds, refusal of lawyer to access to information for defense

ECHR recent cases on Article 3 (prohibition of torture):

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- 1. Paladi v Moldova, 2009; 2. Straisteanu and Others v. Moldova, 2009; 3. Breabin v Moldova, 2009; 4. Gurgurov v. Moldova, 2009; 5. Buzilov v. Moldova, 2009,
- (1. Pruneanu vs. Moldova, 2. Colibaba vs. Moldova, 2007) ineffective remedy;
- (1. Istratii etc. vs. Moldova, 2. Paladi vs. Moldova, 2007), failure to provide medical assistance to detainees,
- 1. Istratii etc. vs Moldova, 2. Modârcă vs. Moldova, 3. Ciorap vs Moldova, 4. Turcan vs Moldova, 2007) inadequate conditions of detention,
- 1. Pruneanu vs Moldova, 2. Colibaba vs Moldova, 2007), illtreatment of detainees and detained,
- 1. Ilășcu etc vs Moldova and Russia, 2. Corsacov vs Moldova, 3. Boicenco vs Moldova, 2006) iltreatment of detainees,
- 1. Ilășcu etc vs Moldova and Russia, 2. Ostrovar vs Moldova, 3. Becciev vs Moldova, 4. Șarban vs Moldova, 5. Boicenco vs Moldova, 6. Holomiov vs Moldovei, 2006), conditions of detention
- 1. Corsacov vs Moldova, 2. Boicenco vs Moldova, 2006), ineffective investigation and remedy
- 1. Holomiov, effective remedy, iltreatment,

Recommendations: Article 3 (freedom from torture), Article 5 (security and liberty of person):

- Law on preventive detention and Law on execution of penal penalties to modify to guarantee the basic material conditions for detention, security, access to relatives, right to remedy at national level,
- Policies for the alternative to detention,
- Change Penal Code sanctions to mild responsibility for small offences,
- Adjust places of preventive detention and prisons to humane conditions
- Review performance policy in Police system and Prosecutor office,
- Improve technical capacity in Police and prosecution to use modern intelligent means of investigation,
- Improve policies to hold perpetrators responsible for the violations, independence of investigation authorities and judiciary,
- Separate temporary detention places from the investigative authorities (Police),
- Provide independent and immediate access to medical services of people in preventive detention,
- Provide training on human rights sensitive policing

## ***Recommendations***

Regarding torture:

- Conduct a thorough, transparent, and independent investigation into the policing of demonstrations, pay particular attention to allegations of unlawful use of force by law enforcement officers, including force leading to death, and to allegations that police failed to act in a timely and appropriate manner to control violent elements in the crowd, and examine both individual responsibility and command responsibility.
- Enact and enforce legislation that requires all law enforcement agents, including riot police and members of the Special Forces, to wear identification, and provide all law enforcement agents with uniforms that include appropriate identification;
- Review the training given to law enforcement officials on use of force to ensure that it fully integrates established human rights principles and obligations
- Conduct a thorough, independent and transparent investigation into the allegations of ill-treatment by police officials during apprehension and in custody.
- Ensure that all persons deprived of their liberty on charges of a penal nature have the right to confidential access to a lawyer, to notify a family member or other person of their choosing of their arrest, and to humane conditions of detention, including access to independent medical care;
- Amend the Criminal Procedure Code to specify a time frame within which prosecutors should act to open a criminal investigation into any credible allegation of torture or ill-treatment, and clarify that prosecutors must consider the individual and cumulative physical and mental impact of treatment or punishment,
- Ensure full and unrestricted access to all places of detention by the National Preventive Mechanisms in all places as provided in OPCAT as well as give access to all relevant information necessary to execute its mandate;
- Investigate all cases of refusal to National Preventive Mechanism to visit places of detention and apply sanctions to the responsible persons;
- Investigate the process which resulted in judges holding hearings in police commissariats in conditions falling short of international fair trial standards, and take appropriate disciplinary action against judges found to have violated articles 32, 215, or 218 of the Code of Criminal Procedure, which require judges to provide well-reasoned justifications whenever holding a hearing outside of the court, to take measures to protect trial participants at risk of violence, and to record and inform prosecution officials of any breach of human rights revealed in the course of hearings
- Reform law and practice to ensure that all persons deprived of their liberty or charged with a criminal offense receive legal assistance in accordance with international standards. To that end, the Bar Association and the National Council on Legal Aid should investigate the practice of the provision of legal aid to persons apprehended or charged in the April events, and take appropriate disciplinary action against lawyers who failed to exercise their professional responsibilities.

Regarding Center for Human Rights,

- improve procedures for the appointment of the Ombudsman, so that this ensures the appointment of the persons with professional and human rights societal recognition, capable and knowledgeable in the area;
- promote financial and working and resourceful autonomy of the National Preventive Mechanism in full compliance with the OPCAT and human rights civil society statements and positions;

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- strengthen Human Rights Center effectiveness and strategic orientation towards the prioritised issues of torture, children rights, freedom of assembly rights and other issues by making use of the all available instruments that the Center posses the comparative advantages as: policy recommendations, situational reviews, constitutional petitions, negotiation power, etc,

To the Institutions of the Ministry of Internal Affairs

- Speeding up the transmission of the Temporary detention isolators of the Ministry of Internal Affairs in the subordination of the Ministry of Justice;
- Excluding cases of detention of the preventive arrested persons in the institutions subordinated to the Ministry of Internal Affairs, with the possibility to return the person into the police custody only when there is no other possible solution and for the possibly shortest period of time;
- Excluding cases of detention of persons during the night in places of detention of the District Police stations of Chisinau Municipality, as well as the administrative arrest penalty enforcement in these places;
- Modification of the programs of professional improvement of the police officers and of the personnel of the temporary detention isolators in order to reduce the percentage of application of the prohibited methods of investigation and behavior modeling in the spirit of respect for the detainees' rights and their human dignity;
- providing immediate access to the parliamentary advocate and the members of the Advisory Board in the places of detention subordinated to the Ministry of Internal Affairs;
- Explaining and make aware the police officers that torture and inhumane treatment applied to the detainees, or threat of application of such treatment is prohibited, and that the perpetrators of these acts and those who tolerate them will be punished harshly;
- Performing an independent and effective, with celerity investigation, complaints, in which is made reference to the application of torture or the application of any other ill-treatment;
- Reforming the procedure and the body responsible for the disciplinary sanctions of the police officers allegedly committing torture and iltreatments, so that it becomes autonomous, independent, transparent and fully empowered to carry out its tasks;
- Ensuring interrogations are performed in the places specifically adjusted for carrying out such procedural actions, the insurance of the detainee's right to a defendant;
- Guaranteing the right of the detainee to thorough and confidential medical examination providing, at the exit and entry into the places of detention;

To the Institutions of the Ministry of Justice

- Speeding up selection process of the investor that will provide new construction of the criminal proceeding isolator instead of the one of the Bernardazzi No.3 street, Chisinau Municipality;
- Undertaking all necessary measures, including the allocation of additional resources to ensure adequate supply of the detainees (quality, quantity and diversity), according to the rules established in the Government Decision No.609 of 29.05.2006;
- Conducting an assessment of the situation in the penitentiary institutions of the Republic of Moldova in order to determine the allocation of funds for the repair works of the food blocks, bath rooms, and housing sectors;

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- Undertaking the re-planification of the housing sectors by splitting the large bedrooms in some penitentiaries in smaller vital units;
- Replacing vacancies in the medical services of the penitentiaries with additional medical staff (doctors and nurses) in order to ensure effective care for prisoners;
- Watching over the observance of the sanitary-hygienic rules in the penitentiary, on the state and cleanliness, clothing and bed clothes of the detainees;
- Organising systematic training of the personnel of the penitentiary system, mainly those from the escort and surveillance, on the Rights of detainees, including the right to life and right not to be subjected to torture, inhuman or degrading treatment, to make them aware of the manifestation inadmissibility of such a conduct;
- Promoting, in particular by the administrations of the Penitentiary Institutions of the constructive relations, which would place the relations of confrontation between prisoners and staff, which will reduce tensions, and will enhance the security and order in prison;
- Engaging of the penitentiary's personnel in the firm repression of All hostile demonstrations or acts of persecution against the convicted;
- Calculating the occupancy level of the penitentiaries by its reporting to 4 meters norm, in order to have a clear picture of the actual situation of the penitentiary system;
- Completing renunciation to the use of chains in the penitentiary system;
- Organising an impartial survey of the ill-treatment cases of the detainees;
- Immediate reporting to the parliamentary advocate of the cases in which the penitentiary's medical staff finds that the convicted person has been subjected to torture, cruel, inhuman or degrading treatment or other ill-treatment and on cases of violent death, death from unknown reasons and death from accidents at work;
- Replacing the positions from the socio-educational departments, focusing on the psychologist ones, so that all detainees would have access to effective individual counseling, and the real possibility to participate in the cultural and Educational activities;
- Engaging prisoners with particular problems, hazardous or sentenced to life in the cultural-educational activities, the involvement of the detainees in setting up the content of some of the activities carried out with them, so as to generate their interest.

**Regarding National Preventive Mechanism**

- Ensuring financial resources necessary for the functioning of the National Preventive Mechanism,
- Ensuring equality and plurality of the National Preventive Mechanism (Consultative Council as the core of the National Preventive Mechanism) so that the working rules and procedures are open clear and transparent, where each member is equal and equally valued;
- Ensuring the specially designed secretariat necessary and adequate for the functioning of the National Preventive Mechanism, subordinated and serving specifically the National Preventive mechanism,
- Ensuring the presence of the adequate working rules and open clear procedure for the functioning of the National Preventive Mechanism.

**Regarding ensuring effective remedies in cases of torture and illtreatment**

- Ensuring plurality of medical evidence to be presented in the courts procedures and during the investigations regarding the torture and illtreatment cases,

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- Improve the accessibility of the alleged victims of torture and illtreatment to the legal medical evidence examination carried out in autonomous and independent manner,
- Improve quality and capacities to investigate cases of torture and illtreatment through an independent complaints mechanism (autonomous and independent from the Ministry of Interior), effectiveness of the Prosecutor General,
- Modify the Moldovan legislation to ensure the accessibility of the civil compensations of the committed torture and illtreatments separate and independent from the compensations available through the criminal procedure,
- Place the practice of the burden of proof on the authorities to prove the acts of torture and illtreatment rather than on the victims of torture and illtreatment;
- Make available adequate legal aid for the victims of torture and illtreatments,
- Suspend investigated police officers and state officials that are charged with torture cases from their duty and provide adequate support and protection as well as anonymity or confidentiality of the torture victims.

Regarding situation in Transnistria

- Government should actively involve in the promotion of human rights in the region, by engaging with the authorities and the governments of the Russian Federation, Ukraine and others;
- Government should comprehensively follow and report at all levels the violations of human rights in the region;

## **Article 1. Definition of Torture**

### **- torture definition**

The Moldovan legislation bans the use of torture, inhuman or degrading treatments or punishments and guarantees the protection of human beings against such kind of actions from the part of the law enforcement agencies. This article was introduced in the Criminal Code together with its application from 12 June 2003. The Criminal Code was hardly amended with article 309<sup>1</sup> which stipulates sanctions against encroachment upon provisions as regards prohibition of torture, inhuman treatments or punishments by the representatives of the law enforcement agencies on 30 June 2005. Until 2007, the representatives of law enforcement agencies, having admitted of the encroachments listed above, were drawn to criminal responsibility according to article 328 of the Criminal Code, but due to its specific make-up, the actions of torture could not be permanently framed in the stipulations of the present article.

In the course of the year 2005 a list of encroachments of the provisions as regards the prohibition of torture, degrading or inhuman treatment or behaviour were found. At the same time, the creation of a defence and counteract mechanism of this phenomenon in the Republic of Moldova must be hailed. Thus, a criminal case corresponding to the provisions of article 3091 of the Criminal Code of the Republic of Moldova with regard to representatives of the authorities was initiated, simultaneously, 300 criminal cases were started in 2005 in conformity with article 328 of the Criminal Code stipulations, which constitutes 11,5% more in comparison with the year 2004 (269 criminal cases). From the total number of crimes, 81 criminal cases were started corresponding to article 328 par.2 letter a) “excess of power accompanied by the use of violence” and 10 criminal cases were started corresponding to article 328 par.2 letter c)“Excess of power accompanied torture”.

The phenomenon of inadequate behaviour of the authorities towards people deprived of liberty remains unexplainable and extremely alarming for the whole society. In penitentiaries the detainees are not reeducated, and the greatest majority commits other offence after being set free as a result of inadequate treatment. It may seem that 300 criminal cases are too little to call it phenomenon, but we must take into consideration the fact that this number of criminal cases doesn't represent the reality. During last year more news and information about such cases were broadcast in mass-media.

The persons, who suffered as a result of questioning, being put to physical pressure or brutality, can address the organs of the local court according to the principle of the established territorial competence, but the result of their examination doesn't reflect the reality. We cannot say that these complaints are examined on an unsatisfactory level, but the major problem remains to be the belated addressing of these persons to the competent bodies. Thus, with the time passing, it is almost impossible to assess certain corporal lesion on the body of the so-called victim caused as a result of the brutal actions of the representatives of the authorities. On these grounds, many complaints are reduced to a formal examination and therefore, to the issue of a formal decision. We cannot evaluate the real number of cases of brutality of detainees because no statistics is given on this subject.

*Case study of M. The person in question was ill-treated by the police fellow-workers from Dubasari. In the summer 2005 the person was suspected by the police of embezzling goods. He was ill-treated physically and mentally on the grounds that he avoided confessing his guilt of his own accord. As a result the petitioner lodged a complaint to the ombudsman. Having learned this, police fellow-workers brutalized him repeatedly and detained him in accordance with the stipulations of articles 166-167 of the Criminal Proceedings Code of the Republic of Moldova. During the detention the defendant was ill-treated by the policemen countless times; as a result he lodged a repeated complaint to the parliamentary lawyers. This complaint was handed out for examination to the Court of Dubasari district. The latter issued a resolution of intact of the criminal proceedings without holding medical-legal examination in the view of confirming or nullifying the evidence of the detainee or without giving hearing to him. So much the more, the court didn't even dispatch the copy of the resolution of the detainee in the view of offering him the possibility to lodge an appeal.*

## - Impunity for torture actions in Moldova

Only in the beginning of 2009, the European Court on Human Rights has found Moldova to be in violation of its Article 3 obligations to prevent torture and ill-treatment five times.<sup>1</sup> In his February 2009 report on his June 2008 visit to Moldova, the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment concluded that “ill-treatment during the initial period of police custody is widespread.”<sup>2</sup> He found that police use torture to extract confessions:

*Torture methods such as severe beatings, with fists, rubber truncheons, and baseball bats, including on soles, electro-shocks, asphyxiation through gas masks, putting needles under fingernails and suspension are used in order to extract confessions from suspects. In general these acts are performed when suspects refuse to “cooperate”. The torture and ill-treatment is normally inflicted avoiding visible marks (by putting cloth around the wrists when suspending, beating on soles, fabric around the baseball bat used for beatings etc.).<sup>3</sup>*

The Special Rapporteur also identified conditions at some police detention facilities to be “a major concern,” noting that “in Bălți, Comrat, and at Chișinău police headquarters, the conditions amounted to inhuman treatment. In those police stations, persons were held in small, badly ventilated cells with little or no daylight sometimes for several weeks or even months.”

The Special Rapporteur noted that “the large majority of complaints are not properly investigated and rejected quasi-automatically,” and that [j]udges, prosecutors or penitentiary personnel hardly ever initiate investigations, even if there is medical or other evidence that torture was committed.” Among the reasons he identified were prosecutorial discretion including over access to independent medical examinations and over when to initiate investigations, which resulted prosecutors refusing to investigate “the overwhelming majority” of complaints; a lack of independent medical examinations, and “forensic examinations to assess torture allegations [that] are the exception rather than the rule and are often carried out too late [...and] also tend to only record the marks without indicating how they were caused;” a lack of independence of judges, an insufficient number of professional and independent lawyers and insufficient remuneration for them, and a failure by police to respect the confidentiality of meetings with lawyers, in particular at the early stages of police custody; “threats routinely used by the police in order to deter detainees from filing complaints [and] a worrying number of allegations of reprisals against complainants”; and non-action of penitentiary authorities and medical personnel regarding allegations of torture.<sup>4</sup>

In its 2007 report to the Moldovan government, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT) stated that one third of the current and former detainees it interviewed during its September 2007 visit to Moldova reported physical ill-treatment in police custody.<sup>5</sup> In the vast majority of cases this abuse took place at the time of interrogation, and

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<sup>1</sup> See, Paladi v Moldova, 10 March 2009; Straisteanu and Others v. Moldova, 7 April 2009; Breabin v Moldova, 7 April 2009; Gurgurov v. Moldova, 16 June 2009; Buzilov v. Moldova, 23 June 2009, at [www.echr.coe.int](http://www.echr.coe.int).

<sup>2</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to the Republic of Moldova, A/HRC/10/44/Add.3, February 12, 2009, para. 26.

<sup>3</sup> Ibid., para. 27.

<sup>4</sup> Ibid., para. 67.

<sup>5</sup> Committee makes its confidential reports directly to the government concerned, but states may request publication of the Committee’s report along with the state’s comments. An ECPT delegation carried out a visit to Moldova during July 27- 31, 2009, to assess the authorities’ response to allegations of police ill-

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generally included slaps, punches, kicks and truncheon blows or blows struck with other blunt objects on handcuffed detainees, but in some cases included beatings while suspended from a bar, blows to the bottoms of the feet, and asphyxiation using a plastic bag or of a gas mask.<sup>6</sup>

National Preventive Mechanism, mandated by the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, have largely agreed with these findings, saying in the government's December 2007 submission to the UN Human Rights Committee,

*Regretfully, in the Republic of Moldova respect to dignity of a person arrested or detained is far from perfect. Torture, inhuman or degrading treatment are frequent occurrences, a fact that requested that the Criminal Code be supplemented with article 309/1 ("Torture"). The most severe violations in this area occur during criminal investigation. The detained persons are treated as potential criminals with no account of the principle of the person being presumed innocent until proven guilty. The necessary evidence and statements are obtained by constraints and excess of authority, threats and interdictions. Psychological methods to influence a person are frequently applied and the right to petition is denied. In view of their situation detained persons have no opportunity to send immediate complaints to the Centre for Human Rights or to other institutions regarding inadequate treatment by criminal investigation staff. This opportunity is granted later when the event has already occurred and the facts invoked by petitioners cannot be proved.<sup>7</sup>*

Shortcomings in Moldovan law reconfirms these problems. The Criminal Procedure Code sets no time limit in which prosecutors must act to investigate complaints of torture or ill-treatment, and in practice prosecutors are often slow to open investigations. A recent amendment to the Criminal Code criminalizing torture, while commendable, failed to also criminalize cruel, inhuman or degrading treatment,<sup>8</sup> leaving it to prosecutors' discretion whether to treat these acts as "abuse of power or abuse of job prerogatives," "excess of power or excess of job prerogatives," or simple assault. In doing so, the law encourages prosecutors to characterize police ill-treatment as simply unlawful use of force, rather than an array of psychological and physical abuses that taken cumulatively may rise to the level of torture.

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treatment during the post-election events in April 2009 in Chișinău. Rapport au Gouvernement de la République de Moldova relatif à la visite effectuée en Moldova par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 14 au 24 septembre 2007, CPT/Inf (2008) 39, <http://www.cpt.coe.int/documents/mda/2008-39-inf-fra.htm> (accessed July 19, 2009), para. 13; Council of Europe anti-torture Committee visits Moldova, August 8, 2009, <http://www.cpt.coe.int/documents/mda/2009-08-04-eng.htm> (accessed August 5, 2009).

<sup>6</sup> Rapport au Gouvernement de la République de Moldova relatif à la visite effectuée en Moldova par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 14 au 24 septembre 2007, CPT/Inf (2008) 39, <http://www.cpt.coe.int/documents/mda/2008-39-inf-fra.htm> (accessed July 19, 2009), para. 13.

<sup>7</sup> Republic of Moldova, Second Periodic Report of the Republic of Moldova to the Human Rights Committee, December 26, 2007, CCPR/C/MDA/2, paras. 239, 240; Center for Human Rights of Moldova, Report on the Activities of the National Mechanism for Torture Prevention, 2009, pp. 64-72.

<sup>8</sup> The Criminal Code does include a provision on "inhuman treatment," but it refers only to crimes against peace and humanity's security and war crimes. Criminal Code of the Republic of Moldova, art. 137.

## ***Article 2. Effective measures to prevent acts of torture***

### **- Security and liberty of person**

The phenomenon of formal execution of procedural documents regarding the seizure and detention of persons for certain administrative or criminal offenses. Even though certain progress was made, which was shown, the situation still requires further efforts. Thus, the number of acquitted persons increased by 37, and the number of closed criminal cases increased by 397. It is important to know that the number of criminal cases investigated in 2006 decreased by 1053 as compared to the previous period. It could seem that the number of closed cases or acquitted persons is not an indicator of the quality of criminal case investigation; still we tend to believe that they do reflect the real state of things, because during court sessions they take into account and verify all the evidence gathered by the criminal prosecution bodies. A relatively similar situation according to the same statistics occurred during the examination of petitions regarding preventive detention and extension of the detention term, as well as during the examination of cases of administrative contraventions.

In 2006 several cases of arbitrary deprivation of liberty were registered. The case of the «Hyde Park» Association members and followers is particularly relevant, given that they were detained by police officers and deprived of their liberty for a period of time exceeding the legal norm. Detention reasons: unauthorized organization of public meetings, resisting detention and disrespectful attitude toward police officers. Each time the court found them innocent of what they were being charged with, and still their complaints did not awake the attention of prosecutors, who refused to initiate any criminal cases and establish the guilt of those who admitted, favored and committed legal infringements.

Once the situation regarding arbitrary detention in criminal cases had redressed, we could notice an increase of the number of persons detained in administrative cases, by 2907 cases. In such a way the police authorities initiate (make up) administrative cases against certain persons suspected for committing crimes or those who can provide information about the suspects, and afterwards solicit the court to apply measures of deprivation of liberty in order to intimidate the person and obtain the necessary information. This is how they get additional time during which they perform criminal prosecution actions with the violation of the right of defense.

### **- Events following Parliamentary elections in April 2009**

The Moldovan government has consistently denied that its law enforcement officers engaged in widespread abuses against demonstrators and detainees, saying that any injuries to demonstrators can be attributed to lawful use of force against persons who were resisting arrest and who had earlier jeered and thrown stones at police. Yet multiple interviews with demonstrators and by-standers point to a pattern of torture and inhuman or degrading treatment against detainees in police custody, and excessive use of force against demonstrators and bystanders who at the time posed no threat to police and who sometimes did not even know that plainclothes officers arresting them were police. The fact that authorities attempted to disguise the identities of the law enforcement officers participating in abuses and to restrict detainees' access to family members, to lawyers of their own choosing, and to members of Moldova's national torture prevention mechanisms, only underscores the unlawful nature of these acts.

Statistics as of June 29, 2009. Initial analysis of earlier versions of the database appear in Institute for Human Rights and Resource Center for Human Rights, Security, Liberty, and Torture: April 2009 Events in Moldova, <http://credo.md/arhiva/documente/MoldovaLibertyTortureApril2009%20v8.pdf>.

Conclusions from findings:

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- Police responded with blunt brutality and untargeted, largely unjustified arrests, beatings and intimidation;
- Arrests and detention in the Ministry of Interior custody has been widely and systematically used as a response by the police;
- Comprehensions and detentions went in a substantial number of cases with no explanations of the motives and reasons;
- An important number of minors and children have been detained (some ill-treated);
- Police has widely and systematically used Ill-treatments upon the apprehension, and in the places of detention;
- Access to legal aid and juridical assistance has not been provided in a substantial number of cases (amounting to systematic);
- Access to doctor and medical services have not been provided;
- Police actions resulted into life casualties (at least 2, with strong evidence) and required hospital and ambulatory treatment;

Moldovan authorities have not published a comprehensive list of persons detained in relation to the April events, and the data they have published is often contradictory and fails to account for hundreds of apprehensions. The human rights organizations have been able to determine that date of apprehension in 411 of the 674 cases it examined. Of these, 394 apprehensions took place during the period from April 7 through April 12, 2009. However, in late April 2009, the Ministry of Internal Affairs informed Council of Europe Commissioner for Human Rights Thomas Hammarberg that it had detained 106 people in the aftermath of April 6-7, 2009 on suspicion of criminal offenses, and 216 people on administrative charges, for a total of only 322 apprehensions. Moreover, since the Ministry of Internal Affairs has not acknowledged any new apprehensions following Commissioner Hammarberg's visit, this means the Ministry of Internal Affairs has failed to account for 352 apprehensions.

The Human rights organizations believe that the authorities' failure to provide comprehensive, detailed information on all apprehensions related to the April 6-8, 2009 demonstrations, including the dates and reasons for apprehension and releases, and information on any subsequent charges, is intended to disguise a pattern of arbitrary detention. Many of the apprehensions and detentions the human rights organizations investigated appear to have been arbitrary, whether because they do not appear to have been based on a reasonable suspicion that the person has committed an offense, they depended on arbitrary application of vaguely-worded administrative offenses or, as subsequent sections demonstrate, they failed to follow basic procedural rules in Moldovan law; in a number of cases arrests were arbitrary for multiple reasons. International law prohibits arbitrary arrests as a violation of the right to liberty and security of person

Persons detained: 1) Most of the persons have been detained on 7th (38%) and on 8th (39%) April, 2) Detention of persons continued on 9th, 10th, 11th and after 12th April with decreasing rate;

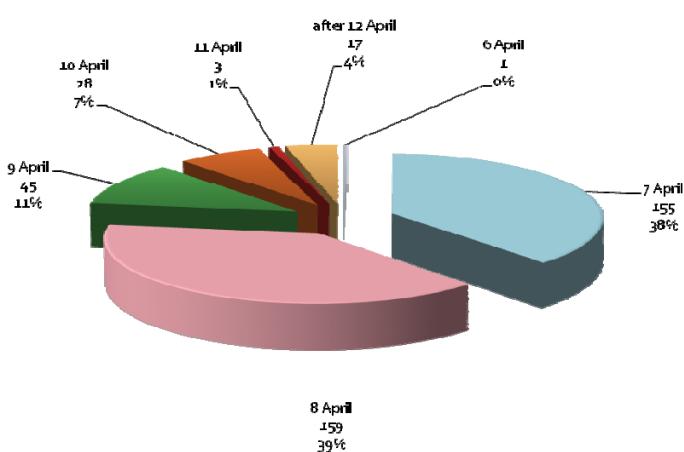
While it is difficult to know the exact circumstances of arrest in all cases, a number of factors suggest that many arrests took place without reasonable suspicion of criminal activity. First, in a number of cases the human rights organizations investigated, prosecutors justified arrests with "form" charge sheets and arrest warrants that appear to have little if any relation to the actual facts of the individual cases. In other cases, prosecutors asked and courts agreed to extend preventive arrest warrants without providing any arguments to justify continued detention. Second, a number of the people the human rights organizations interviewed described being apprehended with large numbers of other people, none of them engaged in criminal acts at the time of their apprehension. In some cases these were individuals who were apprehended on the evening of April 7-8, 2009, when entire bus loads of people were taken into custody, making it highly unlikely that police had specific information on any individual bus passenger. In other cases police appear to have randomly swept up people who were in the downtown area at a given time or

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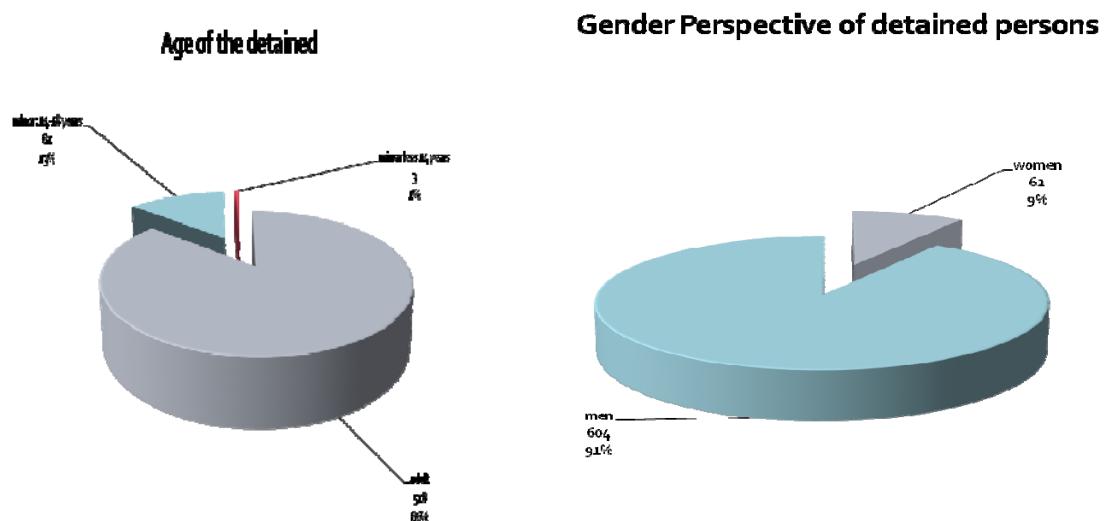
targeted people based on their dress—especially those who wore sports clothes and shaved haircuts sometimes associated with gang culture. Often apprehensions were carried out with excessive force, as the testimonies in this and subsequent sections demonstrate.

Plainclothes police apprehended 17-year-old S.M. at between 01:00 and 02:00 on April 8, 2009, as she passed through the National Square while returning home from a disco. Police at the Centru Comissariat beat her repeatedly, denied her access to a lawyer or doctor, extorted hundreds of dollars from her tutor for the promise of S. M.’s release, and demanded that the tutor pay for their fast food meals and phone cards. Police finally released S. M. after three days without explaining the reason for her apprehension.

**Day of detention**



Age of the detained: 1) 14% of the detained have been minors of up to 18 years; 2) Available data shows that around 100 minors have been detained by the police, 3) - 9% of the detained are women, mostly of student age;



Human rights organizations have collected information on 82 cases of children taken into police custody, including three children under age 14 and thus below Moldova's age of criminal responsibility, and 79 children age 14 to 16, and thus below the minimum age of criminal responsibility for all but the most serious offenses.<sup>9</sup> Children reported police beatings during apprehension in 27 of the 44 cases were the Crisis Group was able to collect information on children's treatment during apprehension. The case of fourteen-year-old A. B. is particularly notable for its arbitrariness and the level of police violence.

On April 10, 2009 plainclothes police apprehended fourteen-year-old A. B. and a friend from the main street of the central market as they walked home from shopping for bicycle parts and tools. They then took the boys to a forested area and beat them so brutally that A.B. lost consciousness. A.B. was then taken unconscious with broken bones to the Buiucani police station, and was later released without charge. He received no medical treatment at the police station, although his injuries were so serious was later hospitalized for several days. His torture complaint, which was publicized in the Moldovan media, is one of only four complaints of torture that the Prosecution Office had agreed to investigate as of July 2009.<sup>10</sup>

A. B. told the Crisis Group that shortly after noon on April 10, 2009 he went to the central market to shop for bicycle tools:

*While I was coming back near McDonald's I met my friend [name withheld], who I had known for about two days, from April 8th. I knew him because I had had a problem with my bike wheel and [name withheld] had helped me. So when I didn't buy anything I proposed to [my friend] that we go home walking. . . . We had crossed the street near the Government Building when we saw a person in blue Adidas sportswear running toward us from behind, running in the same direction we were walking. I was*

<sup>9</sup> Criminal Code of the Republic of Moldova, art. 21.

<sup>10</sup> The Prosecution Office has also opened a criminal investigation in three complaints under Criminal Code article 328, on excessive use of power or exceeding the job prerogatives, and one complaint under Criminal Code article 152(2) on intentional infliction of bodily injuries. Comments of the Moldovan authorities on the Report of Mr. Thomas Hammarberg, Commissioner for Human Rights concerning his visit to Republic of Moldova from 25-26 April 2009, in Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, Following his visit to Moldova 25 to 28 April 2009, CommDH(2009)27, July 17, 2009, p. 14.ChișinăuChișinău

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*wearing sportswear too, but with a hood on the jacket. We were turned to watch the running guy and while we were watching he suddenly stopped and grabbed me by my hood.*

*The runner held my hands behind my back. At the same time another person in civilian clothes came to help the runner. That one was wearing trousers and a leather jacket and was a bigger man physically than the runner. The man in trousers said, “Why did you break windows at the Presidency and the Parliament?”*

*This was about 2 pm, because just before we crossed the street we asked someone the time.*

*There was a private car, an Opel Vectra, and [my friend] and I were both put in the car. The two plainclothes men took us to a place we didn’t know. They didn’t introduce themselves, but the whole way they were speaking to us in ugly language, saying they would kill us. It took about 15 minutes to get there. When they opened the door they hit me on my head and elsewhere and at some point I lost consciousness.*

*The next thing I remember, I woke up in the basement of the Buiucani Police Commissariat. I recognized it because I’d been there before. Afterwards, two people in plainclothes took me upstairs in the police commissariat. I saw a police captain upstairs who was sitting and smoking and didn’t say anything. I don’t remember much else.*

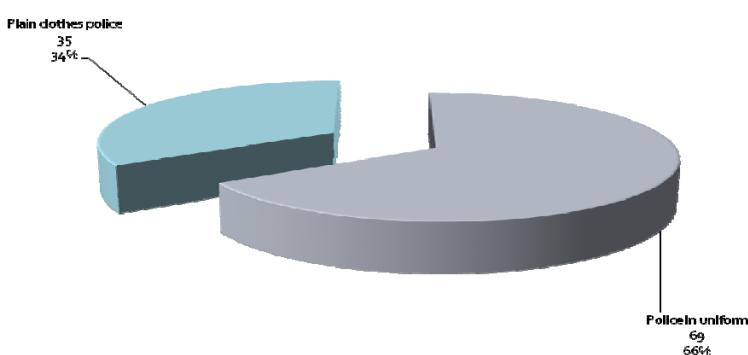
*At about 4:30 they threw me out near my school. They took me there in the same car but I don’t know if it was the same people. They never said why they did this.*

AB believes that the police targeted him because he was known to them from previous problems he had had at school that hadn’t resulted in arrest because of his young age, and because he had been present downtown on April 8:

*I think the police went after me. The police had chased me on April 8 and 9 but they hadn’t been able to catch me. On April 8 I was walking in the central area and the police were chasing people and throwing them on the ground and hitting their heads on the ground. But I ran away. Then on April 9 I was playing football at a stadium and three police in plain clothes came and took me to the commissariat but then they released me. They told me it was because I was in the center of town during the events and I told them, “I wasn’t there, show me some proof.” And then they released me. I didn’t see a lawyer or a prosecutor and I didn’t sign any papers, not on April 9 or April 10. On the April 9 they released me after 15 minutes. On April 9 it was at the Special Investigation Section [of the Center for Combating Economic Crimes and Corruption] near here. I think police keep harassing me because I was wearing sports clothes and because I usually shave my head.*

**Detention authorities:** 1) 34% of the detained interviewed claimed they were detained by the plain clothes persons acting as in behalf of public order agents; 2) In most cases persons have not identified themselves as police;

### Who detained?



Severity of sanctions and penalties: 1) Most widely used sanction has been the administrative arrest for 10-20 days (36%), followed by 30 days arrest (26%); 2) Arrest at home (2%), interdiction to leave locality (0%), fine (10%) amounts to only some small fraction of all detentions; 3) Authorities prefer administrative arrest for maximum period of time.

In late April 2009 the Ministry of Internal Affairs stated it had detained 106 people on suspicion of criminal offenses and 216 people on suspicion of administrative offenses related to the April 6-8, 2009 demonstrations, a number significantly lower than the apprehensions the Crisis Group documented for the same period. The human rights organizations was able to collect information on the type of administrative sanction issued in 133 of these cases; in 102 cases individuals were held on suspicion of violating Administrative Offense Code article 164 (on petty hooliganism) and/or article 174 (on insubordination with ill-will to the order or legitimate request of the police), two vaguely worded offenses that Moldovan police use both as a means of social control and because the Administrative Offense Code allows them to circumvent fundamental protections for criminal suspects.<sup>11</sup> In particular, the hooliganism charge sets no limit on how long a suspect can be held without judicial review.<sup>12</sup> Moldova's National Mechanism for Torture Prevention has previously criticized the widespread and arbitrary use of these articles in Chișinău, noting that "most police officers do not have the proper training to know exactly in what circumstances they can arrest a suspect of committing an administrative offense."<sup>13</sup>

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<sup>11</sup> Moldovan law distinguishes between criminal offenses, covered by the Criminal Code, and lesser offenses, covered by the Administrative Offenses Code. The Administrative Offenses Code of 1985 defines petty hooliganism as "words or swearing expressions in public places, offensive addressing or solicitation of citizens and other similar actions, which disturb the public order and citizens' calm," and insubordination as "insubordination with ill-will to the order or legitimate request of a police officer, of another employee of the internal affairs bodies or of a person on duty or public duty to maintain public order and prevent criminality." A new Administrative Offense Code, Law 218 of October 24, 2008, came into force on May 31, 2009 and addresses some of these shortcomings, but also increases authorities' powers of search and seizure. The provisions discussed in this report apply to the laws in force during April 2009, Administrative Offense Code of March 29, 1985 (amended), arts. 164, 174.

<sup>12</sup> Administrative Offense Code of March 29, 1985 (amended), art. 249.

<sup>13</sup>The National Mechanism for Torture Prevention found that "most of the people" detained in Chișinău's district police commissariats were held under Administrative Offenses Code articles 164 and 174, and said that police abused "any time they have the opportunity" the Administrative Offenses Code's provision allowing detention until the case is examined by court. Center for Human Rights of Moldova, Report on the Activities of the National Mechanism for Torture Prevention, 2009, pp. 65, 70.

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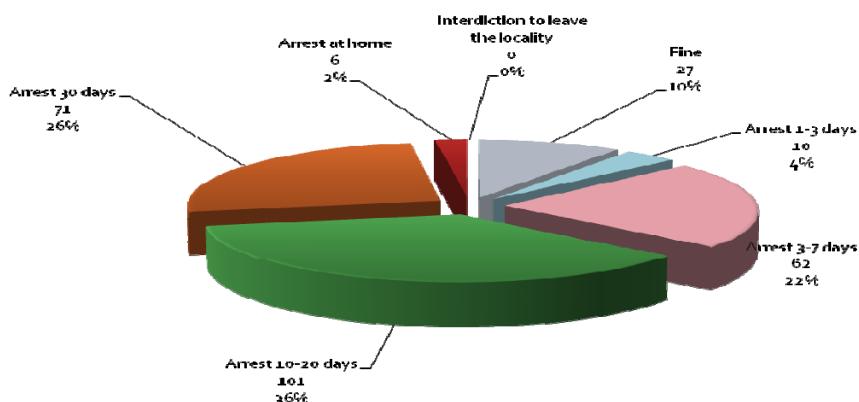
Police appear to have routinely used these charges both to justify detaining demonstrators when they had no evidence of criminal activity, as in the case of J. K., whom police arrested downtown late on April 7, 2009, while she waited for a friend in downtown Chișinău so they could return to their home village together. J. K. told,

*At about midnight most people had left the square. I and my friends were waiting for another person so we could go home. We were by the Arc d' Triumph. It was very cold and I was lightly dressed so [my relative] and I went to the mini bus. I was some distance from the square. When we got close to the mini bus I could hear shooting and we started to run away. We got to the minibus and we left. When we were almost to the exit of Chișinău a police car stopped the mini bus. They asked the driver for documents and the driver didn't want to give them. Then a police bus of Special Forces arrived and surrounded the mini bus. Two of the Special Forces sat next to the driver and made him drive to the police station. They said, "Be quiet, don't panic or it will be worse [for you]." They didn't say where we were going.<sup>14</sup>*

JK was later charged with petty hooliganism and insubordination to a police collaborator under the Administrative Offenses Code and sentenced to five days administrative arrest.<sup>15</sup>

The European Committee against Torture, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and Moldova's National Mechanism for Torture Prevention have previously criticized Moldova for this practice of using administrative proceedings to circumvent fundamental protections for criminal suspects.<sup>16</sup>

### Severity of the detention sanction



According to authorities, as of July 15, 2009 the Chișinău Military Prosecution Office had received 97 complaints of police ill-treatment in relation to the April demonstrations, including 48 complaints of excessive force during apprehension and 49 complaints of ill-treatment inside police commissariats. Of

<sup>14</sup> Interview with J. K., July 2, 2009.

<sup>15</sup>Ibid.

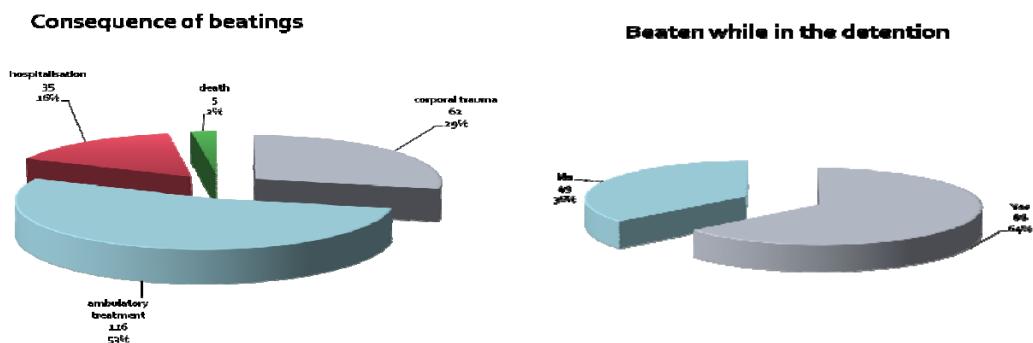
<sup>16</sup> See, Rapport au Gouvernement de la République de Moldova relatif à la visite effectuée en Moldova par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 14 au 24 septembre 2007, para 11; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mission to the Republic of Moldova, February 12, 2009, para 77.

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these, the Prosecution Office had only opened criminal investigations in nine cases; in 35 cases it had refused to open criminal investigations, and 51 cases were still pending.

#### Treatment of the detained in the aftermath of April 2009 events in Moldova

Beatings: 1) 81% of the detained have been beaten and ill-treated in the moment of apprehension; 2) 64% of the detained state they have been beaten and abused while in the detention custody; 3) 5% claim they were also beaten in the police cars while transported to the places of detention; 4) Of those beaten in detention, 56% witness they have been beaten with legs and punched; 42% were beaten with ribbons (bastons) and 2% of the detained claimed sexual abuse by the police; 5) 5 cases of the alleged death as a result of the police brutality are reported and documented (2 with strong evidence, filed cases at the European Court of Human Rights); 16% of the detained say they underwent the hospital treatment after ill-treatment by the police; 53% of the detained state they underwent ambulatory medical treatment;



(c) Even though there were arranged a lot of courts for trials, judges are bound to develop judgment activities in their own offices - that is prohibited by the Superior Court of Magistracy's decision. People continue to be brought in handcuffs in front of the Judge in his office not in the Judgment Office. Superior Court of Magistracy motivates it by the lack of free space related to the examined cases number.

(d) At 05.08.2009 by the Government decision number 459, the Regulation that establishes *inter-alia* and continuous training of interprets and translators was approved. Although, up to this date there is no regulation in this respect and the translating services were of bad quality and have not been monitored by a professional body.

#### Fair trial in the aftermath of April 2009 events

On April 8, 2009, in Balti and April 10, 2009, in Chișinău, judges held hearings in at least three police commissariats to review prosecution requests for preventive measures under the Criminal Procedure Code and issue sentences under the Administrative Offenses Code. According to the Chairperson of Moldova's Superior Council of Magistrates, these were the first such hearings in the country's history, and reflect an extraordinary effort to respond to a large number of apprehensions. Lawyers representing clients at the General Police Commissariat describe a chaotic scene, with regular judges apparently acting as investigating judges, and prosecutors and judges issuing formulaic charge sheets and arrest warrants that lacked reference to the specifics of individual cases and often were riddled with errors. In many cases

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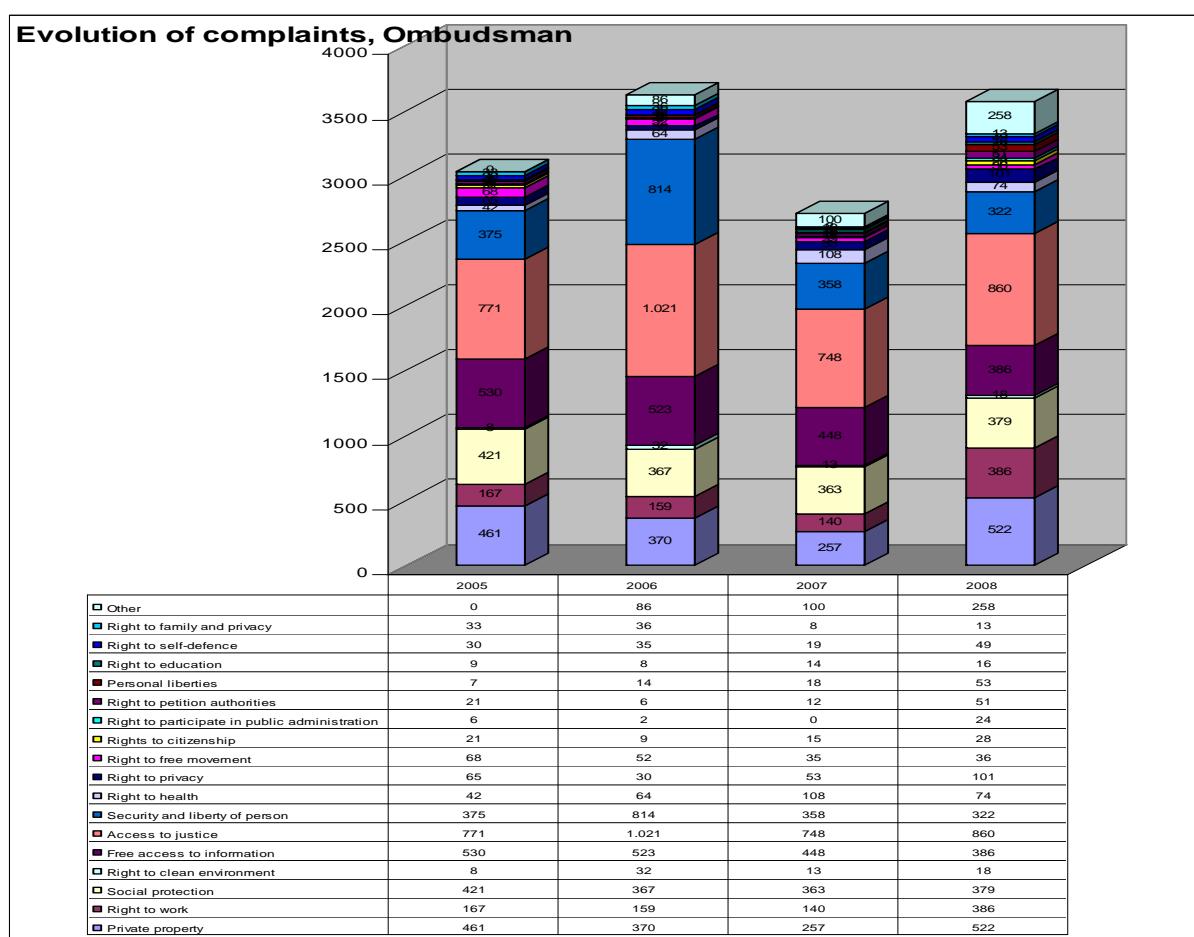
accused persons had no lawyer, or only a lawyer arranged by the police who failed to provide an effective defense. Accused persons described attending hearings they didn't understand, sometimes held in the presence of police who had abused them, and presided over by judges who failed to ask about ill-treatment or order forensic examinations or medical care, even when the accused had visible injuries.

Some lawyers described the scene at the General Police Commissariat on April 10, 2009, when he defended six clients facing prosecution under article 285(3) of the Criminal Code: “In the narrow corridor of the police station I saw 30 persons standing face to the wall waiting for police to call them. Initially they were brought to the prosecutor to sign a statement—the quality of the suspect—and then they were taken to a judge. I was there from 09:00 to 18:00 accompanying my clients. There were other lawyers there and we all had to wait for hours. On average each person stood up for four hours facing the wall. Generally they were allowed to turn their heads, it wasn’t that strict. The lawyers could approach their clients [as they stood facing the wall]. The offices with the judges were very small, only the judge and the court clerk sat in a chair. The detainee would come in one by one with a lawyer, prosecutor, and a police officer. The process was pretty much formulaic with the decisions pretty much filled in. The lawyers wanted to protest against the process and against the trials being held in the same institution as the detention. One lawyer even told a judge he was part of the governing party and the judge said there was an order allowing these trials. The judges said the statement was by the Superior Council of Magistrates. There does exist an article in the Code of Criminal Procedure that allows in an exceptional situation that the judge may hold the trial elsewhere. But there was no statement, so we lawyers are using this as the basis for our appeal. No one has seen such a document; it doesn’t exist”.

**- Center for Human Rights**

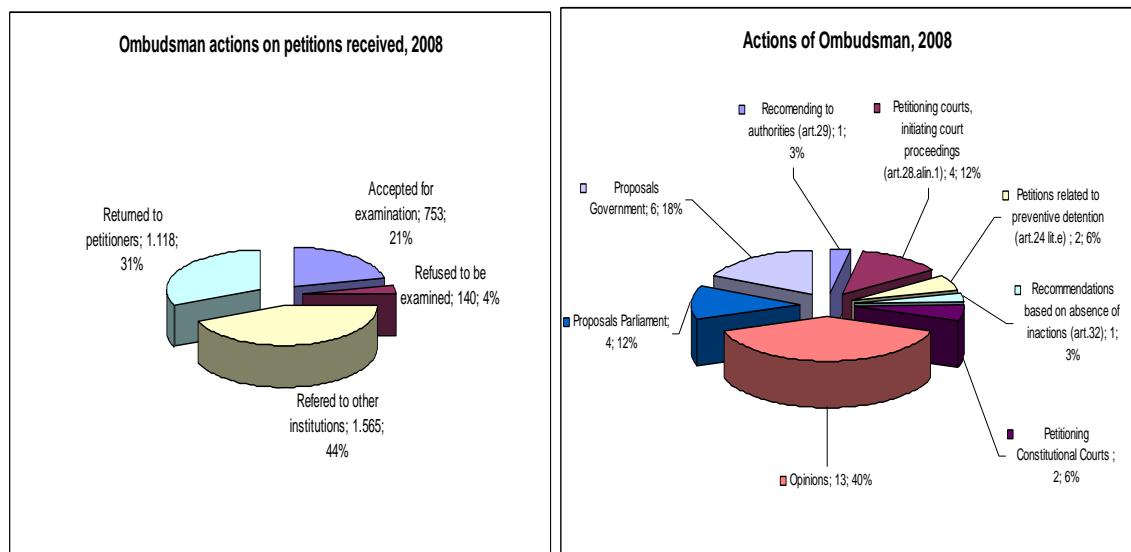
7. Please provide information on the mandate of the Centre for Human Rights and its compliance with the “Paris Principles” adopted on 20 December 1993. What are the resources available to the Centre for Human Rights? Please also indicate how many investigations into allegations of torture have been initiated by the Centre for Human Rights and what the outcome of such investigations is. How are the recommendations of the Centre for Human Rights implemented? Please provide information, including statistics, on the number and types of complaints of torture and other forms of ill-treatment proscribed by the Convention which were received by the Centre for Human Rights since the examination of the State party’s initial report in 2003.

Center for Human Rights (Ombudsman) does not publish the information on the financial resources used in the course of the year. The information published on the web-site allows the classification of the information as below:



Most of the complaints fall under the area of “access to justice and fair trial”, “right to legal aid”, “right to petition authorities”, “social protection”, “private property” and “right to work”. In 2008, the Ombudsman accepted for the examinations only 21% or 753 complaints and 44% or 1 565 referred to other institutions.

Ombudsman actions on the accepted petitions:



**- Importance of the Transparency in the appointment of the Ombudsmans.**

In Autumn 2008, human rights organizations adopted a common public appeal.

Concerns:

*Selection of the parliamentary advocates is not transparent and accessible to the relevant candidates.* Parliamentary commission on human rights should elaborate its position and the juridical commission should have presented in public the candidates for the public review based on the UN and CoE requirements<sup>i</sup>.

Recommendations

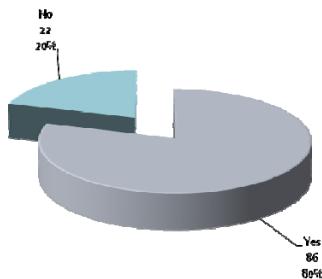
- Carry out the process of appointment of the Parliamentary advocates by a competition process that is open, foreseeable and transparent, available for the human rights legal professionals to apply to the process of selection;
- The candidates and the procedure of selection should follow the criteria and principles of Paris<sup>ii</sup> on the functioning of the specialized institutions for the ombudsman and the recommendations of the Council of Europe<sup>iii</sup>;
- Respect fully the high professional competence and established reputation in the area of human rights as well as deserved trust provided in art. 3 of the Law on parliamentary advocates and the Resolution of the Parliamentary Assembly of the Council of Europe<sup>iv</sup>,
- The proposed candidates for the examination before the Parliament fall short to comply with the requirements and criteria established by international practice.

**- Access to lawyer in the aftermath of April 2009 events.**

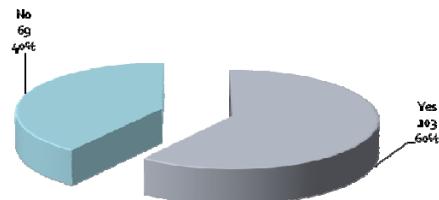
Statistics as of June 29, 2009. Initial analysis of earlier versions of the database appear in Institute for Human Rights and Resource Center for Human Rights, Security, Liberty, and Torture: April 2009 Events in Moldova, <http://credo.md/arkiva/documente/MoldovaLibertyTortureApril2009%20v8.pdf>.

Access to defence, lawyer: 1) 40% of the detained claim they have not had access to the lawyer within the legally provided term under the law; 2) 64% of the detained say they have been asked to sign documents on the accusation and depositions, they did so in the absence of the juridical assistance; 3) only 3% of the detained say they have signed the accusation and deposition documents in the presence of the juridical assistance; 4) 20% of the accused detained say they had not juridical assistance during the court proceedings against them (resulting in arrests);

Presence of the lawyer in court



Access to lawyer (3 hours adult, 1 hour minor)



#### - Situation of Roma and policing

10. What measures is the State party taking to combat police violence against persons, belonging to minority groups, including Roma, Muslims and persons of African and Asian descent, and to change the behaviour of police and law enforcement officials towards them? Please provide information on the measures taken to ensure the effective investigation of complaints about police violence against persons, belonging to minority groups.

The Centre for Human Rights of Moldova has only about 5 cases of discrimination by ethnic principle. No one of them was investigated by the criminal authorities in accordance with 176 and 346 of Criminal Code of the Republic of Moldova. Research of Roma National Center shows that there is lack of information regarding this issue. In February 2008 the Moldovan Government has submitted its periodic report to CERD Committee and thus has failed to answer all this questions regarding government initiatives towards improving the employment, housing, healthcare, education, social assistance and access to public services for Roma people.

Law-enforcement bodies, the police in particular, manifest a discriminatory attitude, hostility, abusive behaviour and even violence towards the Roma and display lack of understanding towards these people, many of whom live in highly difficult conditions. Therefore The Roma National Center presents a few cases in regard to the law enforcement attitude<sup>17</sup>.

*Money extortion from a Roma family from Floresti district.* In May 2008, around noon in the village Trifanesti, Floresti district, three men wearing civil clothes stopped their car; model OPEL, at the house of C.N. (52 years old). They presented themselves as police officers and came into the house to search for drugs. C.N was at home with his eldest son, C. M. (20 years old, disabled) and his wife C. M. In reply to the police officers Mr. C.N. requested the prosecutor decision and asked why they had not invited the local community police officer. The police officers replied that such laws do not exist and they do not need such a decision. After Mr. C.N. replied that they do not have any drugs and they can search if they want but demanded to invite some other people to witness the search. The police offices ignored the request of Mr. C.N. During the house search one police officer (identified later as Ghenadie Varvarovici, police officer in Floresti District Police Station) interviewed C.N. outside writing down notes while the

<sup>17</sup> The Roma National Center does not give full names in the cases described below in order to assure protection and security of the Roma victims but they are available in our database of cases collected during the 2008 year.

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others (these two police officers were identified later being from Chisinau, working in the Buiucani Police Station and their names were Mr. Jurcovschi Pavel and Mr. Ghiba Oleg) started to search the house. They searched all the four rooms but did not find anything and then Mr. Jurcovschi asked Ms. C.M to bring the ladder so that they could look at the roof. Ms. C.M could not follow them but saw how Mr. Jurcovschi Pavel threw a small thing under the bed and asked her to pick it up. The police officers came out of the house with a tiny bag (having a size of a fist) and found drugs (cannabis) inside of it. Ms. C. M replied that they did not have drugs in the house and the bag was thrown by the police officers. The police officers got very angry and asked Mr. C.N to follow them to the Floresti Police Station. At the police station Mr. C.N. was brought to the office of Ghenadie Varvarovici. They kept him in the office next to the wall for a few hours and then started to interrogate him, asking Mr. C.N where he had got the drugs from. Mr. C.N replied that the drugs do not belong to him and he is not going to touch the drugs. The police officers left Mr. C.N. in the office with another local police officers, who was making bad jokes about him. Later when Mr. Jurcovschi came it was around 19.00 in the evening and hit him in the head and said "...do you want to go to the jail or you'll give us USD 500 and we'll forget everything?"

The police officers had pressured Ms. C.M. who also followed to Floresti district Police Station in order to find out what was going on. She showed her willingness to pay only USD 300 and asked the officers to release her husband immediately. On the second day, Ms. C.M. filled a complaint against the police officers at the Floresti Prosecutor office, which was registered by Mr. Ion Timofeevici Vacari. On the next day, Mr. Ghiba Oleg, one of the police officers invited Ms. C.M. to Floresti district police station where he asked her to withdraw her complaint from the prosecutor. After one week Ms. C.M. was again asked to come to Floresti district Police Station, where she met Mr. Oleg Ghiba. She was asked to sign some documents regarding the rights and obligations under the article 64 of Penal code. Later the local police officer from the village Trifanesti, Floresti district met Mr. C.N. and asked what problems he had had with the police. He did not clarify the situation and replied that they had bothered him because he is a gypsy.

In an intervention of the Roma National Center our monitor never got a reply from the police officers that such a case had ever existed and that this is something made up by the Roma. The Roma National Center has suggested filling a complaint at court against the police officers, but Mr. C.N. and C.M refused to do this as they do not have confidence in the judiciary system.

*Misconduct of police officers with the Roma from Straseni.* At the beginning of October 2008, in the town of Straseni, around 10 O'clock in the morning two men who introduced themselves as police officers entered the courtyard of Mr. C.V. (who is 24 years old) and asked Mr. C.V. to follow them to the police station because he was claimed for having committed a theft. There were two cars, and in the other one he saw one of his brothers and his sister-in-law who were picked up from the bus station in Straseni. They shackled Mr. C.V. and put him in the second car. Driving down the streets in Straseni near the center of the town they saw another brother of C.V., Mr. C.N. and forced him also to get in the car. Then they left for the police station in Chisinau (Buiucani district) where they arrived around 11 O'clock. They took all four people into different offices. After a few hours that Mr. C.V. had been standing next to a wall alone, one of the police officers came in and asked him to sign some papers. He obviously refused as it was written that a mobile phone had been stolen and he was witnessing the incident. Then the police officer mentioned that if he does not sign the paper he will beat him or he will be put in a prison. After several attempts the police officer left him alone again. Then another policeman came in and they went into another office where there were more policemen present and there he was verbally injured on the grounds of his ethnicity, and one of the policemen started to imitate as he would take off the clothes and dance, after which he punched Mr. C.V in the head. Mr. C.V mentioned also that his request to go to the toilet went ignored as the police officers pretended that they had not heard him.

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Similarly, mistreatment and psychological pressure was applied by policemen to Mr. C.V's brothers Mr. C.N and Mr. C.P as well as his sister in law Ms. A.T who reported later to the Roma National Center that they had been forced to confess a theft. They were all kept in the police station for over nine hours, without food nor water and even being able to use the toilet. For instance, Ms. A. T. was interrogated if she had stolen the phone and further threatened that the brothers would stay in prison if she did not tell who did it. They were all kept in the police station until 19.00 in the evening after which Ms. A.T was taken into another office to be identified by the victim and then she was summoned to be present at the police station again the following day. After one week Ms. A.T reported to the Roma National Center that she was imposed a fine of MDL 300 (~23 euro) as an administrative offence under the art. 167 Administrative Code.

In the intervention of the Roma National Center, we witness that all the persons brought to the police station were kept more than three hours and they were not accused officially. They were not even recorded in the visitors' registry. In a discussion with the vice-chief of the criminal police station of Buiucani, Mr. Roman Railean had unofficially mentioned that "he had spent gasoline bringing them to Chisinau and they must think what to do". At the end, no official accusations were brought to them.

*Roma family from Merenii Noi, Anenii Noi district was harassed by local policemen.* In May 2008, in the village of Merenii Noi, Anenii Noi district, around 5 O'clock in the morning, four men entered the house of Mr. F.P. and presented themselves as policemen and said that they had to search the house, because a valuable object had been stolen. There was only his son, Mr. F.P. at home and he did not allow them to commit the house search as long as his father was not at home and claimed that they did not have such a thing in their house. The policemen insisted that they had all the necessary papers for the investigation although they failed to present them when asked. The son of Mr. F.P wanted to invite some neighbors to witness the examination. The policemen pulled Mr. F.P. back to the house calling him "a stinky gypsy". During the house search, the policemen broke some furniture, for example a bookshelf. After the house search they did not find anything and asked the son of Mr. F.P. to sign some papers, and when leaving, they said: "this time we didn't find anything but next time we'll do it for sure!" Mr. F.P. reported to the Roma National Center that the local policemen from Merenii Noi village do not like the Roma and they always try to intimidate their family and this was not the first time. A few months ago he was also taken to the police station with his brother and sister and they were accused for having committed different illegalities.

It was at the end of August 2008, around 8 O'clock in the morning when the son of Mr. F.P., Mr. F.M. was close to the Mayoral Office that a local policeman, Brailean Victor drove there with an unknown person. The policeman took Mr. F. M. and told him to get in the car. They went to the police station in Anenii Noi and entered an office where there were three other policemen. They accused him of stealing 1000 euro from a person from the village. Mr. F.M. told them he had not stolen the money. One of them took him to another office, locked the door and kicked his legs and abdomen. After this, he was taken into another office where there was also the head of the police station, who told him to do what they wanted or otherwise they would beat him. The policeman had used an aggressive tone and called him with bad words, injuring his ethnicity. Mr. F.M. stayed there from 8.00 morning until 19.00 evening, without being able to sit or make a call to inform his parents. After that, the local policeman took him and they went to the local police station where he was given a paper for signing in order to be liberated of all this. After this case Mr. F.M. was not able to walk for a month because of the pain in his legs.

*The police officers harassed a Roma woman.* On October 10th 2008, around 15 O'clock a Roma woman Ms. B.B. who works as a trader in the Central Open Market in Chisinau was insulted on the grounds of

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her ethnic origin by a person dressed in civil clothes who introduced himself as a police officer. The man attacked her and asked her to stop selling goods. When the Roma National Center got involved the other two policemen from the Central Open Market came to the place in order to clarify the situation. Later Ms. B.B was invited to follow to the police station to explain what had happened. The policemen did not ask Ms. B.B to write a written declaration, so the RNC helped Ms. B.B. to fill in a complaint against the policemen. The case is still under investigation.

### - Police abuses while policing assemblies

Freedom of assembly in Moldova in the past years can be analyzed in the light of two different legal frameworks that regulated the exercise of this freedom. On April 22, 2008 in Moldova came into force a new law on assemblies. The period prior to this date is characterized by multiple violations of freedom of assembly. Until 22.04.2008 the authorization procedure was in force creating the possibility of imposing more restrictions and obstacles from local authorities and police.

On 22 April 2008, the new law on assembly entered into force. The new law is the culmination of a long-term effort to create a more favorable legal framework to facilitate the realization of freedom of assembly rights in Moldova. The old law on assembly had been the source of constraints on the realization of freedom of assembly, and in some cases before the European Court of Human Rights, the Court found violations of the ECHR against the Republic of Moldova for violations of freedom of assembly rights.

The introduction of the notification procedure has meant that restrictions on assemblies are imposed by the police during the event. The new law introduced further guarantees for assemblies and their organizers. The evidence shows that in practice there is some progress regarding the use of restrictions by the police, while monitoring has shown that at times the police still intervene unjustifiably with assemblies. The courts' rejection of police interventions proves this hypothesis, while the imposed restrictions rely on legislation on administrative sanctions rather than on the new law on assemblies. *This means that the new law has managed to outlaw unjustifiable police intervention under the assembly law and has imposed more scrutiny, yet the police have unjustly used the administrative sanctions law to impose restrictions. This situation will require awareness-raising and a shifting in police attitude to ensure they work to the spirit of the new law.*

Concerns remain with regard to the positive obligations of the police to protect and facilitate the assemblies, the cooperation of the police with the local authorities and the prosecution of the perpetrators of the freedom of assembly rights.

The evidence shows that in practice there is some progress regarding the use of restrictions by the police. The monitoring shows that the police still intervene unjustifiably with assemblies. The courts' rejection of police interventions proves this hypothesis, while the imposed restrictions rely on the legislation on administrative sanctions rather than on the new law on assemblies. *This means that the new law has managed to outlaw unjustifiable police intervention, under the law on assemblies, and has imposed more scrutiny on the police to intervene with the assemblies, yet the police have started to unjustly use the administrative sanctions law to recourse to the imposition of the restrictions. This situation will require awareness-raising and a shifting in police attitude to ensure they work to the spirit of the new law.*

Growing number of the aggressive third party intervention in the assemblies is not properly matched by the police actions. The positive obligations of the police to enforce the law by facilitating assemblies remain one of the critical problems. These could be possibly explained by the lack of the sufficient

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capacity and not adequate attitude towards the role of the police in facilitating the assemblies. *The failure to exercise the positive obligation jeopardizes the exercise of the freedom of assembly rights.*

Prosecution of the perpetrators of the freedom of assembly rights has not been endorsed in practice by the Prosecutor's office. The evidence presented shows that there is an increasing unjust interferences with the exercise of the assembly rights on behalf of the aggressive third party actors as well as by the police. In both cases the assemblies result into de facto suspension and/or seizure not agreeable to the organizers of the assemblies. In some cases courts even endorse that interferences with the assemblies are illegal. Relevant complaints to the prosecutor to act on the cases of the violation of the freedom of assembly rights remain unanswered. *The failure to prosecute the perpetrators of the freedom of assembly rights creates the police and aggressive third party impunity and unaccountability.*

### Case studies illustrating the above findings

*18.12.2008. Police abusive intervention.* On 18.12.2009, Anatol Mătăsaru intended to carry out a peaceful assembly using a donkey and a big in police and prosecutor clothes showing his attitude towards the work of these institutions. Anatol Mătăsaru has been detained before the demonstration at his place, so that the animals and his car were blocked by police. Police limited Matasaru right to movement, no charges have been brought. At a moment, one policeman declared that Matasaru urinated in public space and immediately 3 policemen in civilian clothes detained him, while the other policemen in police clothes watched the happening. Overall, there were more than 10 policemen in uniform and 9 policemen in civilian clothes, 2 road policemen, 5 police cars and a special operational police from General Police Commissariat. Video recording of the event:

[http://www.publictv.md/ro/Retinut\\_in\\_troleibuz\\_de\\_politisti-20.12.2008](http://www.publictv.md/ro/Retinut_in_troleibuz_de_politisti-20.12.2008)

*29.01.2009. Police intervention.* On January 29, 2009 Mr. Anatol Matasaru pursued a solitary protest in front of the General Prosecutor office in Chisinau. The action took place on the pavement in front of the building of the General Prosecutor. During the protest A. Matasaru used graphic and sound hyperbolized satirical means. The protest was interrupted by police representatives after less than 15 minutes under the accusation that the protester did not comply with the conditions of the declaration. The protester was violently detained by police 4 officers. The court acquitted the protester A. Matasaru in a process initiated by the police upon these events. Video recording of the event:

[http://www.publictv.md/ro/protest\\_porcator\\_de\\_ziua\\_procuraturii-29.01.2009](http://www.publictv.md/ro/protest_porcator_de_ziua_procuraturii-29.01.2009)

*30.04.2008 Case of Oleg Brega.* On 30.04.2008, 3 members of the Hyde Park organization held a protest against the editorial policy of the national TV station. The protest was held in front of a concert hall, where a 50 years anniversary concert of the TV station was going to take place. One of the protesters wore a canvas with inscriptions: "Courage, Protest" and "50 years of lies". Immediately after the arrival of the protesters in front of concert hall they were surrounded by several plain clothes police officers, including high position officers in the municipal police. For almost 10 minutes the policemen blocked discreetly physically the protesters. At one point, under the pretext of committing violence, the protesters were detained by police and taken to the police station.

All protestors were detained in the police station for 21 hours. In the trial initiated by the police, all the protesters were acquitted, but not before one of them executed a 3 days sentence of administrative arrest. Video recording of the event: [http://www.publictv.md/ro/20080430\\_hyde\\_park\\_palatul\\_national-17.03.2009](http://www.publictv.md/ro/20080430_hyde_park_palatul_national-17.03.2009)

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*10.05.2008 case of Ghenadie Brega.* On 10.05.2008, Ghenadie Brega has come out to protest on National Square, as a result that he could not find out where his brother Oleg Brega, had been. His brother had been detained for 2 days under the administrative arrest for the peaceful manifestations carried out earlier. Gh. Brega asked to be communicated where his brother had been. After 15 minutes of peaceful assembly, - 2 policemen approached (V. Olaru – deputy chief operational police Chișinău and C. Avornic chief special police “SCUT”). The later aggressed verbally and physically the demonstrator and detained him transporting to the police station. Gh. Brega has been detained for 48 hours, the court acquitted him. The two policemen have been sanctioned disciplinary later on. Video recording of the event:

[http://www.publictv.md/ro/20080510\\_ghenadie\\_brega-17.03.2009](http://www.publictv.md/ro/20080510_ghenadie_brega-17.03.2009)

***Case studies on the positive obligation of police to ensure order and security during assemblies***

*05.10.2008 Bălți.* On 05.10.2008 Liberal Party has organized a protest action in Balti in front of the entrance in city park next to the City Hall. The decision to protest in this place followed the refusal to allow the protest in the front of the Stefan cel Mare statute. The meeting had as an objective the protest against the presence of the Russian Army in Transnistria and calling for its withdrawal. Around 20 policemen participated in the demonstration, carrying posters and disseminating flyers. Around 15 minutes later, a group of 30 persons approached the demonstrators and started to verbally aggress the demonstrators, they have also attached the posters, turned them down, destroyed, have seized the informational materials and have left the place. The protest has continued. In a while, the violent group returned and deprived the demonstrators of the rest of the materials by physically aggressing the demonstrators. Both groups have entered into violent clashes. The demonstrators had to stop the protest. The police have always been present on the spot and had not intervened. The protest has been duly notified.

*03.02.2009 Human rights organisations protesting in front of General prosecutor Office.* On 03.02.2009 around 40 people, representatives of several NGOs protested in front of the General Prosecutor Office in Chisinau asking for compliance with the rights to freedom of assembly. The peaceful protesters were violently attacked with spray and abusive words by a group of 6 aggressors. Within 1-2 minutes altercations and violence occurred between aggressors and demonstrators. After 2-3 minutes the aggressors left. Although representatives of the police were present at the assembly in plain clothes, they have not intervened in any way to ensure public order and security of the peaceful assembly. Police limited its actions only to the video shooting of the incident. Video recording of the event:

[http://www.publictv.md/ro/manifestare\\_ong\\_libertatea\\_de\\_intrunire\\_si\\_altercatii\\_la\\_procuratura-04.02.2009](http://www.publictv.md/ro/manifestare_ong_libertatea_de_intrunire_si_altercatii_la_procuratura-04.02.2009)

List of Issues:

3 a) provide information on whether the responsibility over places of temporary detention was fully transferred from the Ministry of Internal Affairs to the Ministry of Justice

The responsibility for the temporarily detention was not trasfered from the Ministry of Internal Affairs to the Ministry of Justice. General Police Commissarits isolator and the cels within the Police commissariats are under the jurisdiction of the Ministry of Interior.

3 b) practice of “administrative police detention” was abolished, information on the measures taken to ensure that the fundamental safeguards against torture and ill-treatment of detainees subjected to the administrative police detention are available in practice

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The practice of us of the administrative detention is used widely in Moldova. Below are few examples of the use of the administrative detention as sanction during the Aprilie 2009 events:

**Criminal Case was stopped and an administrative case was innitiated.** On the 8th of april 2009, X was recognised as a suspect according to the art 187 al.2 (robbery), art 287 al.2 (huliganism) Criminal Code. According to the ordonance of central prosecution on 9.04.09 there was disposed the ending of the criminal investigation and starting an administrative for art 164 al.1 (not so grevious huliganism), art 174 al.1 (insobordonation to a policemen)

**Starting administrative cases on several articles.** Y was arrested on the 13.04.09, he was charged with several art from Contraventional Code: 164 al.1 not so grevious huliganism, 174 insobordonation to a policemen, 174/5 physically oposing to a policemen, 174/6 offenceing a policemen.

**Judicial process in the commissariat and administrative arrest.** Z arrested on the 9.04.09 near the Agrarian University of Moldova by two civil persons, which presented themselves as policemen. They forced him to get in their car and he was taken to Riscani Commissariat. He was forced to turn off his mobile phone, tortured and intimidated, and he was forced to sign some papers without being allowed to read them. The trial was held on 10.04.09 in CPS Rîșcani, the judge was not assisted by the assistant and the lawyer was refused access to the trial (two policemen were standing in front of the CPS Rîșcani). The Judge issued the decision on administrative arrest for the duration of 3 days starting from 09.04.2009, on the basis of art. 164, paragraph 1 of the Code of Administrative Contraventions of the RM.

3 c) concept and purpose of “preventive detention”, Does “preventive detention” differ from “preventive custody”, envisaged by the Law on Preventive Custody

3 d) What practical measures have been taken to ensure that persons detained by the police have unrestricted access to a defence attorney from the outset of custody and can notify relatives in a timely manner? Is there a monitoring mechanism in place to guarantee the quality of free legal aid? How does the State party ensure the right of a detainee to request an independent medical doctor, in the absence of such a request by the authorities?

In practice the access by lawyer is subject to permission from the investigating police officer.

5. Does the State party’s domestic law specifically provide that no exceptional circumstances whatsoever, or an order from a superior or a public authority, may be invoked as justification of torture?

During the April 2009 events the police have received a blank order to use any measures necessary including beatings and other means upon the detained.

### ***Article 3. Nonrefoulement***

Foreign citizens and the stateless have the same rights and obligations as the citizens of the Republic of Moldova, with the exceptions established by Law. Foreign citizens and the stateless can be extradited only on the basis of an international convention, in conditions of reciprocity or on the grounds of Court decision.

The right of sanctuary is accorded and withdrawn only in conditions of law with the respect of international convention which encloses the Republic of Moldova. A series of laws have been adopted in the view of guaranteeing the rights of refugees and migrants in Moldova, as for example, Law nr. 269 from 09 November 2004 “Regarding exit and entrance in the Republic of Moldova”, Law nr. 1518 from 06 December 2002 „With regard to migration”, Law nr. 1286 from 25 July 2002 „With regard to the statute of the refugees”.

Moldova adhered to the Convention on the statute of the refugees” concluded in Geneva on 28 July 1951, which defines the notion of the refugee as „the person who is out of the country whose citizen he is as a result of justified worries to be baited because of his race, religion, nationality, belonging to a social group or his political opinions”.

#### **- Transdnistria region**

Due to the difficult political situation, the law enforcement agencies of the Republic of Moldova did not exert effective control over the Transnistrian region. Because the Transnistrian authorities have created their own judiciary and law enforcement system, the real collaboration of the law enforcement agencies is practically impossible.

This state of things creates conditions for finding solutions at the level of subdivisions of the law enforcement agencies, which in order to investigate cases make use of unofficial appeals to their colleagues from the other bank of the Nistru. But this unofficial collaboration leaves enough place for human rights violations of the Moldovan citizens.

There were cases when the persons have been detained by the constitutional authorities but were further transmitted for investigation and judging to the separatist “judiciary bodies”, fact that put at risk the persons security, life, health and freedom of these people. We consider that the transfer of innocent persons (taking into account the principle of presumption of innocence until the judgement is adopted and the fact that the Moldovan authorities are entitled to investigate and examine cases) for investigation and judging to the illegal separatist forces represent a serious violation of the people’s right to life and physical and psychic integrity. The state has the obligation to protect the rights and freedoms of its citizens and is also responsible for their violation, or the transfer of people (even on unofficial way) to the illegal and unconstitutional bodies, still represents a grave problem for the ensuring the rights of Moldovan citizens under its jurisdiction.

The life and security of the people cannot be guaranteed by an illegal regime, which has usurped the state power and keep it in a military way. Numerous cases of murder or disappearances of inconvenient persons remained undiscovered and even have been not investigated by the law enforcement agencies. We can state that in the course of 13 years, the Transnistrian territory has been partially “cleaned” of inconvenient persons. A great part of them took refuge to the right bank of Nistru, the other being simply liquidated.

Such practices exists till now, sometimes for a different reason – depriving them of their property. Thus, there were cases when people suddenly died just before perfecting documents on the property over some

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important fixed assets. Sometimes there are cases of murder just in the street in a mafia way, the victims being representatives of the business, police or local administration. Many ex-workers in the law enforcement agencies recognise that the Transnistrian militia uses the force against the suspected or arrested persons in order to obtain confessions and consider that without torture most of cases wouldn't have been discovered. Some data show that in over 80% of the cases the torture is used as a means of discovering the offences.

The criminal code of Transnistria still provides for death penalty in case of serious criminal offences but the execution of the penalty is still under moratorium.

## ***Article 5. Measures to establish torture jurisdiction***

14. Convention in all territories under the State party's jurisdiction, including the left bank of the Dniester river.

Cases from Transdnistria region of Moldova

### **- Anatol Mospan case.**

The case of the young Anatol Mospan is the most notorious and shocking case ever brought to the attention of the public. Even though there were attempts to cover up his death, Anatol's parents have managed to get the mass media and NGOs specialized in human rights involved in the case. Moreover, for the first time, the Transnistrian mass media managed to make such a case public. Several pictures of Anatol's body bearing signs of torture and violent death were shown on a local news edition in order to document the evidence of abuse. This case has no other precedent for the mass media from the left bank of the Nistru River. Unfortunately, using various pretexts, the pictures were taken from Anatol's parents and relatives and were never returned.

Being enrolled on 28th December 2007, originating from Lunga village (Dubasari districts), Anatol passed away in a *military unit* in Tiraspol on 2nd January 2008. Heart failure was, according to *official documents*, the cause of Anatol's death. However, after having seen Anatol's body, his parents and relatives declared that his death was caused by torture and violence.

*The authorities* and responsible persons from the *military structures* informed the parents of their son's death and commanded his immediate military burial. The relatives, however, ignored these instructions and decided to open the coffin and dress Anatol as a civilian in order to give him a traditional burial. This is how they had found out the real cause of Anatol's death.

Initially the case was widely covered by the local and national mass media. As a result, the *prosecutor's office* and other *structures* from the region announced the initiation of a serious investigation and the punishment of those responsible for Anatol's death. However, to the disappointment of the relatives, the *military prosecutor's office* from Tiraspol changed the original version (i.e. dilated cardiomyopathy – acute cardiac insufficiency) several days after the murder. It was announced that the death shall continue to be investigated in order to identify how a young person with such severe health problems could be allowed to enroll in the army. We believe that this gesture was an attempt to divert the public's attention from the reality of the situation. Moreover, on 8th January 2008 the so-called *ministry of defense* from Tiraspol published a press release, in which it publicly threatened all people and organizations that spoke the truth, and qualified such facts as slander and misinterpretation of the facts. Initially many statements were made and various commissions were created both for the investigation of the case as well as for monitoring the situation within the *military structures* in the region. The case was discussed even by the *Supreme Soviet* (local parliament), which created a working group and examined a report on it made by a representative from the local *military prosecutor's office*. According to this *document*, the investigation did not establish any signs of violence on the young body of Anatol Mospan, and the cause of death was *confirmed* to be cardiac arrest. Therefore, to the extreme disappointment of the public, the criminal file was closed and all further *investigations* were purely formal. This is exactly how the separatist authorities "solved" the Mospan case.

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Anatol Mospan's relatives contacted the Promo Lex Association to speak about what had really happened. They also noted that the pictures that could have served as evidence had been taken away by the *local representative* of the *ombudsman* from the region. Since they did not know where else to go for support, Anatol's close ones solicited the assistance of the Promo Lex legal advisers.

We believe that it is our duty to notify to the public opinion of all the events that occurred during the examination of this case. The first argument is that Anatol Mospan is a Moldovan citizen. Consequently, based on the application, information and documents produced by the relatives, on 15.01.2008 Promo Lex published a press release and notified the constitutional and legal authorities from Chisinau about it (General Prosecutor's Office, the MHAetc.). Subsequently, the General Prosecutor's Office of the Republic of Moldova notified us that on 16.01.2008 a criminal investigation was initiated on the grounds of art.145, para.3, lit. f. of the Criminal Code of the Republic of Moldova.

At the same time, Promo Lex specialists, together with their colleagues from the region of Transnistria, prepared all the necessary demarches addressed to Transnistrian authorities. All of these were done for the purpose of making an objective and detailed analysis and examination of all the aspects and circumstances of the case. The demarches were to be sent to Anatol Mospan's relatives to be signed. We were, however, surprised when Anatol's relatives warned us to cease any contact and correspondence with them because they had been placed under observation. We believe that the *security services* from the region (the *MGB*) found out that the constitutional authorities opened a criminal file at the request of the relatives of the young person murdered within the paramilitary structures. Consequently, *MGB* representatives visited the Mospan family, threatened them and forbade them to sign any documents or speak to journalists or representatives of civil society from the right bank of the Nistru River. Anatol's family did not manage to sign the papers, even though they originally declared that they would request the repeated examination of the circumstances of the case and even agreed to the exhumation of the body if needed. The local press published some information that Anatol's relatives received monetary compensations for the damage. According to statements by some locals, the *MGB* has unofficially dispatched a post (car) at the residence of the victim in order to observe his relatives as well as the people who visit them.

**- Eugen Kolobyskho case**

Another very severe case was brought to the public's attention on 6th February 2008, exactly one month after the death of Anatol Mospan. This is the case of an Ukrainian citizen named Eugen Kolobyskho who was 19 years old, originated from Tiraspol, was recruited on 29th July 2007, evaded the military unit in the month of September and asked his relatives to make all efforts to secure his transfer to another unit. Since the relatives did not succeed in doing so, the young man supposedly escaped one more time and disappeared from the unit at the end of October 2007. In December his body was found in the waters of the Nistru River (wearing a military coat). Since the relatives were not able to identify it immediately, they insisted on sending the body to Russia for examination and the latter certified Eugen Kolobyskho's death by drowning.

The separatist authorities managed to open a criminal file against this young man who had supposedly escaped for the second time. However, Kolobyskho's relatives stated that the young man had injuries caused by violence. Moreover, before his death, Kolobyskho had told his parents that his *comrades* extorted money, humiliated and insulted him. He had informed the *military administration of the unit* of the problems, abuses and irregularities occurring within the structure. We believe that his claims served as grounds for his mysterious death. At the same time, his family's claims regarding his enrollment and subsequent transfer to an Ukrainian military unit, i.e. to the country they all were citizens of, could serve as another reason for his death. The relatives stated that, as citizens of Ukraine, they had requested his

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enrollment in the military structures of their country – Ukraine, but were refused of their request because the separatist regime wanted to avoid any *dangerous* case precedents.

As in the case of Anatol Mospan, the General Prosecutor's Office of the Republic of Moldova opened a criminal file but like usual, the constitutional legal authorities did not take any further action beyond that. Furthermore, Eugen Kolobyshtko's parents addressed the public in the region and created a Committee of soldiers' mothers. Now, parent committees officially exist within every *military unit* in Transnistria. However, these organizations have no power and few members. The soldiers are still afraid to defend their own rights.

## ***Article 6.***

14. Convention in all territories under the State party's jurisdiction, including the left bank of the Dniester river.

### **- Transdnistria region**

Due to the difficult political situation, the law enforcement agencies of the Republic of Moldova did not exert effective control over the Transnistrian region. Because the Transnistrian authorities have created their own judiciary and law enforcement system, the real collaboration of the law enforcement agencies is practically impossible.

This state of things creates conditions for finding solutions at the level of subdivisions of the law enforcement agencies, which in order to investigate cases make use of unofficial appeals to their colleagues from the other bank of the Nistru. But this unofficial collaboration leaves enough place for human rights violations of the Moldovan citizens.

There were cases when the persons have been detained by the constitutional authorities but were further transmitted for investigation and judging to the separatist "judiciary bodies", fact that put at risk the persons security, life, health and freedom of these people. We consider that the transfer of innocent persons (taking into account the principle of presumption of innocence until the judgement is adopted and the fact that the Moldovan authorities are entitled to investigate and examine cases) for investigation and judging to the illegal separatist forces represent a serious violation of the people's right to life and physical and psychic integrity. The state has the obligation to protect the rights and freedoms of its citizens and is also responsible for their violation, or the transfer of people (even on unofficial way) to the illegal and unconstitutional bodies, still represents a grave problem for the ensuring the rights of Moldovan citizens under its jurisdiction.

The life and security of the people cannot be guaranteed by an illegal regime, which has usurped the state power and keep it in a military way. Numerous cases of murder or disappearances of inconvenient persons remained undiscovered and even have been not investigated by the law enforcement agencies. We can state that in the course of 13 years, the Transnistrian territory has been partially "cleaned" of inconvenient persons. A great part of them took refuge to the right bank of Nistru, the other being simply liquidated.

Such practices exists till now, sometimes for a different reason – depriving them of their property. Thus, there were cases when people suddenly died just before perfecting documents on the property over some important fixed assets. Sometimes there are cases of murder just in the street in a mafia way, the victims being representatives of the business, police or local administration. Many ex-workers in the law enforcement agencies recognise that the Transnistrian militia uses the force against the suspected or arrested persons in order to obtain confessions and consider that without torture most of cases wouldn't have been discovered. Some data show that in over 80% of the cases the torture is used as a means of discovering the offences.

The criminal code of Transnistria still provides for death penalty in case of serious criminal offences but the execution of the penalty is still under moratorium.

### ***Article 11 Systematic review of interrogation rules***

17. Please provide information regarding the interrogation rules, instructions and methods currently existing in Moldova. Please also indicate the frequency with which these are reviewed. Please provide an update since the examination of the State party's initial report. Provide information on the current composition and activities of the Complaints Committee established under article 177 of the new Criminal Procedure Code to deal with complaints lodged by inmates from penitentiary institutions against illegal actions of the penitentiary administration, violations of regime, as well as other actions infringing on the legality in places of detention. provide statistical data with respect to the number of complaints received by the Complaints Committee, as well as a number of persons accused, tried and convicted following the referral of these complaints to the Committee.

18. Please provide updated information, including statistics, disaggregated by sex, age, ethnicity and crime, on the number of imprisoned persons and the occupancy rate of the accommodation capacities, covering the entire reporting period. Please provide information on whether the new Criminal and Criminal Procedure Codes address the legacy of imprisonment policy of the Moldavian Soviet Socialist Republic, which relied heavily on the deprivation of liberty as a mode of punishment also for petty crimes, thus contributing to the overcrowding of prisons. Is there a system of alternative punishment, especially for minor crimes? Is the practice of making use of amnesties as a means for decreasing prison population still being applied in Moldova

21. What means does a detainee have to document any bodily injuries suffered while in detention? Are confidential medical examinations upon arrival and departure from places of detention compulsory under the State party's law? The Committee has received allegations about the issuance of an internal document or verbal order from the Ministry of Health and Social Protection, through which all medical institutions were instructed not to deliver medical certificates attesting to the illtreatment and use of torture, including death, in the aftermath of the events of 7 April 2009 in Chișinău. Please explain what measures are taken to ensure access to medical care, and what guarantees are provided that medical personnel and institutions are impartial and able to assist persons claiming torture in the verification of their complaints?

## **Article 12 Prompt and impartial investigation of torture**

European Court of Human Rights findings in Gurgurov vs Moldova (nr 7045/08) case on the inadequacy of the investigation and is very representative for the other cases of torture and illtreatment in Moldova:

“63...For an investigation to be effective, it may generally be regarded as necessary for the **persons responsible for and carrying out the investigation to be independent from those implicated in the events** (see e.g. *Barbu Anghelescu v. Romania*, no. 46430/99, § 66, 5 October 2004). This means not only a **lack of hierarchical or institutional connection** but also a **practical independence** (see for example the case of *Ergi v. Turkey* judgment of 28 July 1998, §§ 83-84, *Reports* 1998-IV, where the public prosecutor investigating the death of a girl during an alleged clash showed a lack of independence through his heavy reliance on the information provided by the gendarmes implicated in the incident).

1. The **investigation** into serious allegations of ill-treatment must be **thorough**. That means that the authorities must always make a serious attempt to find out what happened and should **not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions** (see *Assenov and Others*, cited above, § 103). They must take all reasonable **steps** available to them to **secure the evidence concerning the incident**, including, *inter alia*, eyewitness testimony and forensic evidence (see *Tanrikulu v. Turkey* [GC], no. 23763/94, §§ 104 et seq., ECHR 1999-IV, and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard.

2. ... It observes that the **Prosecutor General's Office expressed a clear opinion** on the matter at the beginning of the investigation and attempted to put **pressure on the applicant's lawyer along with other lawyers and to dissuade them from pursuing their complaints before international organisations specialised in the protection of human rights** (see paragraph **Error! Reference source not found.** above). This led to the finding of a violation of Article 34 of the Convention in *Colibaba v. Moldova* (no. 29089/06, § 67, 23 October 2007).

3. The Court further notes a series of serious shortcomings in the investigation conducted by the national authorities. The Court will confine itself to the following matters which it finds of particular concern. In the first place, **despite the applicant's complaint of 4 November 2005 about ill-treatment, he was only seen by a forensic doctor on 11 November 2005, that is, more than one week after the last alleged acts of ill-treatment**. The forensic doctor concluded that due to the delay in presentation for medical examination it was impossible to establish with precision the age of the applicant's injuries. He recommended hospitalisation in order to determine the causes of the applicant's condition; however, despite this clear recommendation, the applicant continued to be detained and was only able to be hospitalised after his release, on 9 December 2005. In the medical report which followed his hospitalisation some very serious injuries were found on the applicant's body, including a broken skull and a spinal injury. The prosecutor's office considered it necessary to order an additional medical examination of the applicant by a medical panel, to be carried out on the basis of existing medical reports. **The prosecutor's office addressed four questions to the medical panel, none of which was aimed at finding out the origin of the injuries to the applicant's head or spine. The medical panel appears to have limited its findings to the questions put by the prosecutor's office and did not refer to the earlier findings concerning the applicant's broken skull and injured spine.** Regrettably it did not pay attention to the findings concerning the fracture to the applicant's skull bones because it had not been presented with the original radiographic images. The panel also added that simulation by the applicant could not be ruled out and that only a psychiatric investigation could exclude that possibility. No such psychiatric investigation was ever conducted. On the basis of the medical panel's report and the statements of some of the applicant's cellmates, the prosecutor's office dismissed the applicant's complaint of ill-treatment on 18 January 2006. The prosecutor's office did not give any assessment of the findings in the medical report of 10 December 2005, a report which was made by doctors who had examined the applicant in person and on the basis of medical documentation.

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4. After several procedural events which lasted for more than two years and after the applicant had been recognised as having a second-degree disability, the prosecutor's office decided to obtain a new report from a medical panel. This time it addressed ten questions to the panel, none of which was aimed at finding out the origin of the applicant's skull fracture and spinal injury noted after his release. In a **report of 6 June 2008 a medical panel issued a report based on the applicant's medical history. The report did not contain any reference to the medical reports of 10 December 2005 and 15 February 2006 and focused mainly on the findings contained in the report of 11 November 2005 concerning the bruises and scratches on the applicant's knees and arms. Therefore it is not surprising that it found that "no clear clinical symptoms of head or spinal trauma can be found on Mr Gurgurov".**

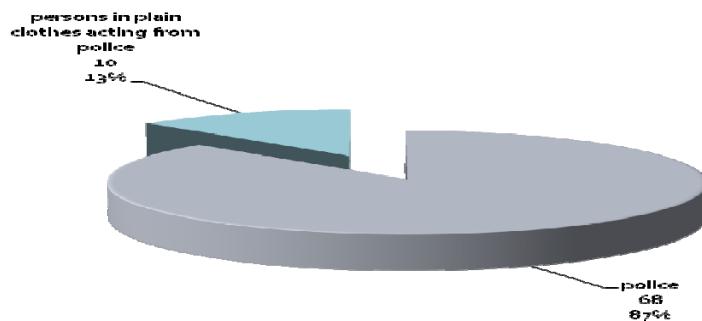
5. Besides the facts presented above, the Court notes that at no point **during the entire proceedings was the applicant given the chance to identify his aggressors and to be confronted with them as requested by him.** The manner in which the investigation was conducted allows the Court to conclude that the **prosecutor's office did not make any genuine efforts to investigate the case and discover the truth.** On the contrary, there are **strong indications that it was trying to cover up the facts and create impediments in such a manner as to make it impossible to identify and punish those responsible.**

6. In the light of the serious deficiencies referred to above, the Court considers that the domestic authorities did not fulfil their obligation to investigate the applicant's complaints of ill-treatment. Accordingly, there has been a violation of Article 3 of the Convention in this respect also.

23. According to the information before the Committee, as many as 200 persons were arrested by public security forces in the aftermath of the events of 7 April 2009 in Chișinău. In most of the cases, they have not been provided with prompt access to a lawyer of their choice. As of 11 April 2009, fifteen persons were still unaccounted for. Many of those arrested, including minors, have reported that they were subjected to beatings with clubs, plastic bottles filled with water, fists and kicking with feet during their arrest and police custody in district police stations, as well as in the General Police Commissariat of Chișinău. Many of the detained persons had physical marks that appeared to corroborate their claims. Reports of overcrowding and instances of denial of food and limited access to water and basic sanitary facilities were also reported. Two persons, Ion Tabuleac and Valeriu Boboc, died shortly afterwards allegedly of injuries inflicted by the police. Please explain whether these allegations of torture and other ill-treatment have been promptly, thoroughly and impartially investigated. If so, what is the outcome of such investigations?

**- Incidents of allaged torture and killing of two persons during April 2009 events**

**Perpetrators involved in beatings and ill-treatment**



- In 13% cases, the detained identified the ill-treatment perpetrators as the "persons in plain clothes" acting with the police consent and on police behalf while the detained in police custody;

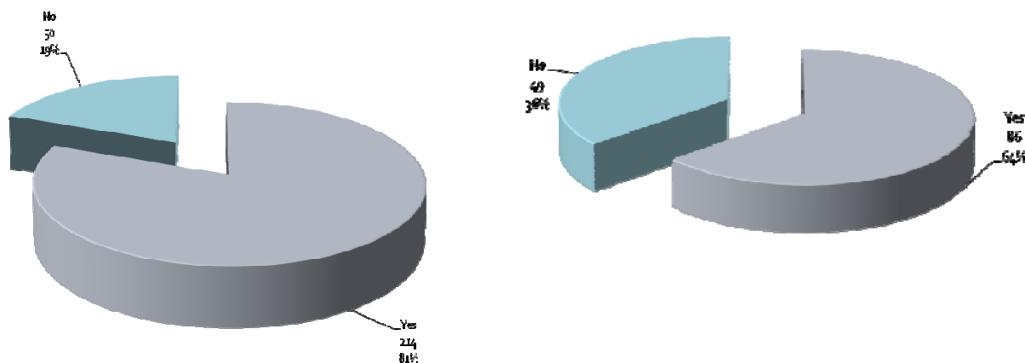
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- In 87%, police itself has been identified as ill-treatment perpetrator;

81% (or 234 of those interviewed) of the detained have been beaten and ill-treated in the moment of apprehension as they confirmed. 64% (64 persons of those interviewed) of the detained state they have been also beaten and abused while in the detention custody.

**Beaten while in the detention**

**Beaten upon apprehension**



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**Mihailov Vitalie – eye hemorrhage, bruises on neck and head, ecchymosis** - 35 years, stopped in the street by 3 policemen in front of Ministry of Interior on 15 April 2009. Have not participated in the event, has been requested to be identified, later beaten with legs.

**Ivantoc Andrei-** cerebral commotion, **fracture of finger, contusion of muscles** : former political detainee in Tiraspol in Ilascu group, 48 years, peaceful protestor, beaten in the street by police on 7 April in front of Presidency, transported to Emergency Hospital by a group of young persons.

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**Gumenii Chiril – cerebral comotion, open fracture leg, multiple contusion -** pupil of 8 A grade, from Nr.52 Chisinau, school, born 1988. Not participated in protests, detained on 9 April, in front of Government, beaten by unknown plain clothes persons, taken to the car, interrogated on the way on how many bottles he threw to the Parliament, beaten again.

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**Gheorghe Moisei – leg fracture and cerebral commotion,** 47 years, farther of 2 children, participant in protests, detained on 11 April, brought to Buiucani Commissariat and beaten, later to Center Commissariat and beaten again to sign documents and acknowledge participation.



There were identified at least two cases of suspicious deaths from the period during and immediately after the demonstrations on April 7 and 8, 2009 where the Prosecution Office and other officials have failed to adequately investigate the deaths, despite evidence suggesting the deaths may have been a result of police torture. In three cases, Prosecution officials initially claimed the deaths were due to intoxication or a fall, citing autopsies of questionable quality performed by the National Forensic Medical Institute.<sup>18</sup> In only one case, of Valeriu Boboc, did prosecutors ask for an additional autopsy, and then only after a witness came forward to report that they had seen police beating Boboc until he appeared to be dead. Prosecutors subsequently rejected that witness' request for witness protection. Authorities ruled the death of Ion Tibuleac to be the result of a fall from a pole, despite a witness' account that persons in a white Niva Ministry of Internal Affairs car dumped Tibuleac's body in front of the Chisinau Emergency Hospital on the night of April 7, 2009.<sup>19</sup>

#### Case of Valeriu Boboc

- “On the night of April 8, Valeriu Boboc and other men were peacefully sitting near the Triumph Arch in Chisinau's downtown, watching the events on the Great National Assembly Square. Suddenly we were surrounded by 50 armed policemen. The police ordered us to lay on the ground and started to beat us with clubs, legs and weapons,” the lawyer read out from the witness's testimonies. He was called to lay testimonies on June 1.

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<sup>18</sup> For a medical expert's assessment of these reports, see Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, Following his visit to Moldova 25 to 28 April 2009, para. 30.

<sup>19</sup> In contrast, the autopsy report states that Tibuleac's body was found on a road 3 km outside Chișinău's center. Tibuleac's parents have also questioned how authorities identified Tibuleac so quickly when the body returned to them had no identification. “General Prosecutor's Office Continues Investigating Boboc's Case,” July 10, 2009, <http://www.infotag.md/news-en/579698/> (accessed July 30, 2009); “Primarul Chișinăului confirmă al doilea deces în urma reprimării protestelor de la Chișinău,” April 15, 2009, [http://www.realitatea.net/primarul-chisinaului-confirmă-al-doilea-deces-in-urma-reprimării-protestelor-de-la-chisinau\\_496261.html](http://www.realitatea.net/primarul-chisinaului-confirmă-al-doilea-deces-in-urma-reprimării-protestelor-de-la-chisinau_496261.html) (accessed July 30, 2009); Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, Following his visit to Moldova 25 to 28 April 2009, para. 28.

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“Valeriu Boboc tried to cover his face with his hands, but after several hits he stopped moving,” the witness is reported to have said.

- Initially, Boboc's death certificate reported he got intoxicated by an unknown substance. The coroner's points out another cause of death – “acute cardio-vascular insufficiency, determined by heart stop, following application of force in the throat area.”
- Valeriu Boboc, aged 23, was taken in the police's custody on reason he would have participated in the April 7 violent events. Prosecutors keep saying he died because of unidentified intoxication. His family claim he was beaten to death by police. He left a wife and a child.



**Case of Ion Tibuleac**

- On the night of April 7, following the events of the capital, the body of a young man was thrown from a car of the Moldovan Ministry of Internal Affairs in the courtyard of the Emergency Hospital in Chisinau. The victim had broken ribs, deep wounds in the head and a fractured leg. According to witnesses, the lifeless body of a young 22 years was thrown from a white car; brand Niva, the Ministry of Internal Affairs. The next day, parents and Tatiana and Semion Tibuleac received news from doctors at the Emergency Hospital that their son had died electrocuted. They were asked to come to the hospital morgue with clothing for the deceased.

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- Tibuleac Ion, a young village Bolohani, Orhei district, suffered several injuries - broken ribs, internal bleeding, and broken leg.

- More on YouTube: [http://www.youtube.com/watch?v=0Yal2\\_4ZLw4&feature=related](http://www.youtube.com/watch?v=0Yal2_4ZLw4&feature=related)

**- Quality of investigation of torture and illtreatment acts**

As discussed earlier, as of July 15, 2009, prosecutors had yet to decide whether to open criminal investigations in 51 of 97 complaints of police torture or ill-treatment, and had rejected 35 complaints. In many cases the Crisis Group reviewed prosecutors give victims and their lawyers no explanation for the delays. In other cases, prosecutors rejected complaints on arbitrary grounds, for example finding that injuries were not torture or ill-treatment because they did not have “consequences dangerous to the victim’s health.” Such decisions deny victims their right to an effective remedy for torture and ill-treatment by excluding actions that may meet the definition of torture and ill-treatment in international law, which requires states to take into account the degree of physical and mental pain and suffering and the cruel, inhuman, or degrading nature of the treatment or punishment, and not simply the extent of physical injury. In delaying opening investigations, prosecutors also deny victims recognition as injured parties.

On June 12, 2009, the Prosecution Office refused to open a criminal investigation into A. T.’s April 14, 2009, torture complaint, on the grounds that a witness detained at the same time as A. T. testified he did not see police beating A. T. and that police officers testimony and a medical certificate stated that bruises on A. T.’s face and upper lip were not of a nature to cause danger to his health.

In a similar case, the Prosecution Office’s June 3, 2009 refusal to open a criminal investigation into A. L.’s torture complaint cites declarations of police officers; a forensic examination that rated that bruises to A. L.’s head, left ear, and thigh bone were “not dangerous to the victim’s health,” and failed to confirm evidence of a concussion; and the prosecutor’s analysis that assumes that police used lawful force against protestors on April 7, 2009, and since A. L. was a participant in the demonstrations, any use of force was therefore lawful. Equally disturbingly, the prosecutor refers to the torture complaint as a “denunciation” rather than a “complaint,” raising the possibility that A.L. or his lawyer might be prosecuted for false denunciation.

Prosecutors even have refused to open criminal investigations even when victims provided detailed information on alleged perpetrators. For example, G. M. submitted a torture complaint on April 23, 2009, which included the name and the position of the police officer who carried out the abuse. On July 14, 2009, the Prosecution Office ruled against opening a criminal investigation

Victims have little domestic recourse against prosecutorial delays or arbitrary decisions to refuse to open a criminal investigation. For example, S. D. submitted a torture complaint on April 24, 2009, but as of this writing, the prosecutor has not made a decision on whether to open a criminal investigation. On May 20, 2009, S. D.’s lawyer filed a complaint with the investigating judge over the prosecutor’s inaction, but the investigating judge merely referred the case back to the Prosecution Office. No action has been taken on a second complaint filed with the investigating judge on July 30, 2009.

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24. Please provide the Committee with information, including statistics, on the number and types of complaints of torture and other forms of ill-treatment received by the Department of Internal Security of the Ministry of Internal Affairs, the General Department of Criminal Investigation of the Ministry of Internal Affairs, the Department for Penitentiary Institutions of the Ministry of Justice, the territorial units of the General Prosecutor's Office since the examination of the State party's initial report in 2003. Please provide information on the measures put in place by the State party to avoid the duplication of their terms of reference with regard to the complaints of torture and other forms of ill-treatment. How is general public informed about the specific terms of reference of each of these entities?

Department of Internal Security of the Ministry of Internal Affairs (<http://www.mai.md/dsi>) is responsible for the disciplinary examinations of the cases against the policemen that are accused of torture, illtreatment and inhuman treatment. The Department presents the internal investigations findings and conclusions to the Commission. The Commission is composed of the Minister and/or vice-minister and heads of Minstry's Directorates. All the members of the Commissions are dependable and dependent on the Ministry itself. The outcome of the work of the Commission and also number of cases refered to the Commission is not public information. The only information that has been made public for 2009 was that 166 disciplinary sanctions applied (first quarter of the year), no other information is provided.

General Prosecutor Directorate on Police Suervision acts as the criminal investigation authority for the alleged cases of torture and iltreatment.

26. Information before the Committee indicates frequent impunity for law enforcement and prison officers accused of torture, ill-treatment and excessive use of force. Please describe the procedure to be followed in cases of complaints against police and prison staff misconduct. In particular, please describe the steps taken by the State party to ensure that the investigation of complaints is independent, prompt and effective. Who carries the burden of proof in such proceedings.

27. Further to the approval of the Regulations on Serving of Sentences by Convicted Persons on 16 June 2006, please provide information, including statistics, on the number of occasions when doctors that perform medical examinations have reported to the Department for Penitentiary Institutions and the territorial units of the General Prosecutor's Office their findings that a detained person had been subjected to torture and other cruel, inhuman or degrading treatment or punishment, as well as on the number of subsequent investigations, prosecutions and punishment of perpetrators.

To our knowledge, Penitenciaries send Special Notes (Communicate speciale) to Department of Penitentiary, Prosecutor General and Ombudsman where it indicates cases of iltreatment, torture. During the events in April 2009, on 11 April 2009, three members of National Preventive Mechsanism have seen one of these documents, requited a copy and to be sent to Ombudsman. The list indicated more than 30 persons brought into Penitentiary 13 from the Police Commissariats that had vivid marks of torture and iltreatment. Members of the National Preventive Mechanism prompted the Ombudsmana and prosecutor General to investigate cases.

## ***Article 13 Right to complain and witnesses protected against all ill-treatment or intimidation***

### **- Witnesses during April 2009 events**

Police beat D. while arresting her and others near the Government Building in downtown Chișinău on the night of April 7-8, 2009.<sup>20</sup> During her arrest she also witnessed police beating her friend, Valeriu Boboc, causing his death [See, Suspicious Deaths, above]. After her release D. appeared on Pro TV with her identity disguised and described police beating Valeriu Boboc; she is the only witness to have spoken publically about the incident. Following the airing of that interview, the authorities asked journalists from PRO-TV to reveal D.'s identity, and when they refused to do so, prosecution officials also pressured Boboc's father and his lawyer to reveal D.'s identity.<sup>21</sup> Then, in May 2009, D's landlord told her that an unknown man had visited the house where she was renting a room as a student and made inquiries about her with the landlord; leading D. to fear for her safety.

D's lawyer submitted a complaint to the General Prosecutor's Office on May 5, 2009, requesting an investigation into her ill-treatment on the night of April 7-8, 2009, which the Prosecution Office then split into two cases, one address her illegal detention and ill-treatment at the Buiucani Police Commissariat, and the second addressing the police's use of force during apprehension. On July 7, 2009 the Prosecution Office informed the lawyer that the complaint and related materials regarding the illegal detention and ill-treatment in the Buiucani Police Commissariat were transferred to the Buiucani Prosecution Office for investigation. A military prosecutor then informed the lawyer on July 27, 2009 that he had initiated a criminal investigation into the excess of power related to D's apprehension. The Buiucani Prosecution Office has yet to inform D. or her lawyer about any decision to open a criminal investigation into police abuse at the Buiucani Police Commissariat, and that prosecutor has only called D. to the prosecutor office to "give explanations" again about the same facts.

D's lawyer filed a request with the Buiucani Prosecutor Office on June 3, 2009, asking it to include D in the witness protection program, and then with hierarchically superior prosecutor on July 16, 2009; both rejected the request. The lawyer then appealed the prosecutor's refusal to the investigative judge, who on August 4, 2009 dismissed the request as ill-founded. However, the reasons the investigating judge cited either contradicted by the facts of the case or were procedurally invalid. First, the investigating judge held that the witness did not submit any request to the criminal investigation officer and the prosecutor to be included in the witness protection program, although the lawyer requested inclusion on June 3, 2009 and July 16, 2009. Second, the investigating judge held that the lawyer's allegation that D's landlord had been questioned about D. by an unknown man was not confirmed in a witness interview by the prosecutor. However, the lawyer was not present at this interview and the landlord was not called to court, making it impossible to confirm this point. Third, the investigating judge held that the complainant had not proved she was in danger, but did not provide clarification on this point. Fourth, the investigating judge held that D.'s testimony in the Boboc case were not conclusive for the detection of a crime or the objective examination of the criminal case, "because the witness does not describe a concrete person or persons that beat Valeriu Boboc, but states only that these were people in special uniforms and with masks on their

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<sup>20</sup> See Abuse in Police Commissariats, above, and D. and N. v. Moldova, Application no. 25397/09, lodged before the European Court of Human Rights on May 15, 2009.

<sup>21</sup> Interview with Vanu Jereghi, Chișinău, August 5, 2009.

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heads, and police officers in plain clothes, and that all beat him.”<sup>22</sup> However, Moldovan law does require the witnesses’ statements to be concluding or indicating the exact perpetrators for a witness to be entitled to protection, and it would be outside the competence of the investigating judge to make a judgement on evidence concerning another criminal case.

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<sup>22</sup> Decision (incheiere) of the court, case file no. 10-171/09, investigating judge, Buiucani District Court, Chișinău.

### ***Article 14 Enforceable right to fair and adequate compensation***

28. Please provide the Committee with information on cases in which redress and compensation was ordered by the courts for victims of torture or cruel, inhuman or degrading treatment or punishment, or for their families, during the reporting period. This information should include the number of requests made, the number granted, and the amounts ordered and actually provided in each case. Please provide an update on the implementation of the Law on Compensation for Damages Caused by Illegal Acts of Criminal Procedure and Preliminary Inquiry Bodies, the Judiciary and the Courts of 25 February 1998 since the examination of the State party's initial report CAT/C/32/Add.4, para. 116) in 2003. Please indicate how many victims have been compensated despite the perpetrator not being identified. Do investigations into such cases continue until the perpetrator(s) is/are identified and brought to justice?

#### **- Impossibility to request compensation for the acts of torture and illtreatment separately from the condemnation of torture through a criminal procedure**

In light of the findings by UN CAT in cases Dimitrov vs Serbia, Communication No. 171/2000, Dimitrijevic vs Serbia, Communication No. 207/2002, we draw the Committee attention on the fact that Moldovan legal system provides the right of the civil compensation for the acts of torture only after the condemnation in criminal procedure. Therfore, adequate compensation for the acts of torture is dependent on the outcome of criminal procedure in its final decision.

Article 14 of UN CAT is violated since in Moldova the complainant was denied a criminal remedy and has thus is barred from obtaining fair and adequate compensation in a civil lawsuit. Under the Moldova law there is one procedure through which compensation for criminal offences may be pursued: by criminal proceedings under Criminal Procedure Code following criminal proceedings and **no** civil action for damages under Moldova legislation. The criminal procedure is an option. Civil proceedings for damages arising from criminal offences until prior completion of the respective criminal proceedings are not available in principle.

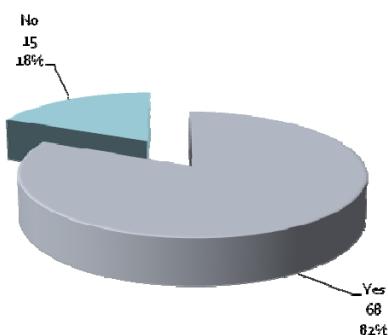
If the complainant had attempted to avail of this civil procedure recourse, any applicant would have been prevented from pursuing it as under Modlova legislation, claiming violations of his rights the institution of a civil action would have been impossible.

## ***Article 15 Evidence as a result of torture***

### **- Medical evidence after April 2009 events**

While large numbers of apprehended persons reported injuries,<sup>23</sup> in many cases the human rights organizations reviewed, detainees said that police failed to provide timely treatment to persons with serious injuries or actively denied treatment to persons who asked for it, and that paramedics responsible for examining detainees on admission and recording and treating injuries ignored or refused to treat injuries, and failed to record injuries, even when police inflicted injuries in their presence.

#### **Access to doctor**



The right to medical care is both a component of the broader right to health and a fundamental safeguard against ill-treatment in custody. International and Moldovan human rights organizations have previously criticized Moldovan police for failing to provide detainees with medical care and to conduct adequate medical examinations.<sup>24</sup>

<sup>23</sup> For example, 199 persons reported having injuries that required hospitalization or ambulatory treatment.

<sup>24</sup> For example, the National Mechanism for Torture Prevention has found that “detained persons have no access to medical care. . . . [and] their demands addressed to police officers to call a doctor remained unanswered. The parliamentary advocate, in several cases, at the request of prisoners that evinced pain, requested police officers to call a doctor.” The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has found that paramedics at police facilities are not independent and are only present during limited hours; no rules spell out when medical examinations should take place; those examinations that do take place are superficial and while in some cases bruises or pain are registered, no act is taken. The ECPT has previously identified shortcomings in the recording of injuries at IDPs, including superficial exams; some cases where detainees were not examined or were only examined two to three days after their arrival; exams taking place in the presence of police officers, exam reports signed by the attending police officer and attached to the detainee’s file where it would be accessible to police; a lack of interest in the circumstances that produced the injuries; a failure to systematically refer cases of injuries to the prosecution office for investigation. Center for Human Rights of Moldova, Report on the Activities of the National Mechanism for Torture Prevention, 2009, p. 71; Report of the Special Rapporteur on

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Moldovan authorities have asserted that since May 2008, all preventive detention facilities have had paramedics on their staff, and “all the people who are apprehended and placed into those institutions are examined at the moment of arrival with the medical conclusion on their health state and mandatory – on body injuries signs or other allegations of this type.”<sup>25</sup> However, the preventive detention facilities the authorities refer to include the Chișinău General Police Commissariat and the Balti Police Commissariat but not the four Chișinău district police commissariats where many demonstrators were held. Nor is there evidence to suggest that paramedics at Chișinău General Police Commissariat and the Balti Police Commissariat the actually examined and recorded detainees’ injuries or provided them medical care. A medical expert who accompanied Commissioner of Human Rights Thomas Hammarberg during on his April 2009 visit to the General Police Commissariat in Chișinău found that the records of injuries kept at that detention facility were “extremely cursory and superficial.”<sup>26</sup>

Several interviews the human rights organizations conducted with a number of persons who had been detained at the General Police Commissariat and the Balti Police Commissariat shed light on why medical records were so cursory. According to H.I, the formal “medical exam” upon his registration at the General Police Commissariat consisted of an interview lasting only seconds, which took place while police were actively beating him. [See, Torture and Ill-Treatment in Police Commissariats, above.]

Police in Balti beat L.M. on the face, kidneys, and stomach during apprehension and again at the Balti Police Commissariat. He told the human rights organizations, “During the medical exam the medic asked if anything hurt. I said, ‘It is already ok.’ The doctor saw the injuries but didn’t say anything. I saw someone else tell the medic, ‘This side hurts,’ but the medic only said, ‘Don’t lie on it.’”<sup>27</sup>

Police at the Balti Commissariat eventually stopped beating N. O. after seeing that he had recently had surgery, but then refused him medical care. He told that, “I was taken to the doctor [at the Commissariat], and I told the doctor that I had been beaten and I had injuries. The doctor said, ‘Everyone says they are beaten by policemen.’”<sup>28</sup>

Perhaps even more bizarrely, in the cases where paramedics did record injuries, the Ministry of Internal Affairs has used these records to attempt to discount injuries later documented by forensic exams by arguing that the paramedic exams show that the injuries “were caused while [detainees] were opposing the order forces in the Great National Assembly Square showing insubordination with ill-will to legitimate orders and demands of police collaborators.”<sup>29</sup>

Persons who had been detained at several different police commissariats told the Crisis Group that police refused medical treatment to some demonstrators injured during arrest on the night of April 7-8, 2009, and delayed treatment to others with serious injuries. H. I. said,

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torture and other cruel, inhuman or degrading treatment or punishment, Mission to the Republic of Moldova, February 12, 2009, p. 31; Rapport au Gouvernement de la République de Moldova relatif à la visite effectuée en Moldova par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 14 au 24 septembre 2007), para. 22.

<sup>25</sup> Comments of the Moldovan authorities on the Report of Mr. Thomas Hammarberg, Commissioner for Human Rights concerning his visit to Republic of Moldova from 25-26 April 2009, p. 16; Letter from Ministry of Internal Affairs Deputy Minister Valentin Zubic to Victor Ursu, Director, Soros Foundation Moldova, August 24,2009.

<sup>26</sup> Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, Following his visit to Moldova 25 to 28 April 2009, para. 22.

<sup>27</sup> Interview with L. M., July 4, 2009.

<sup>28</sup> Interview with N. O., July 4, 2009.

<sup>29</sup> Letter from Ministry of Internal Affairs Deputy Minister Valentin Zubic to Victor Ursu, Director, Soros Foundation Moldova, August 24,2009.

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There was a lot of blood in the bus. Some people were badly beaten. One had a serious injury to the head. One was bleeding badly and asked for a doctor but was refused. Before the bus started moving the two armed police by the driver aimed guns at us and told they had orders to shoot us if we moved. It took about 15 minutes to get to the General Police Commissariat on 6 Tighina Street. . . . The injured person who asked for a doctor finally got an ambulance after about 40 or 45 minutes. When the ambulance came one police officer told those with injuries to go to the ambulance but when I went because I had been kicked they said it wasn't serious even though I was cut to the bone [shows a dark wide scar several inches long on his left leg].<sup>30</sup>

C. D. told the human rights organizations that police beat him during his apprehension, while in police custody in a wooded area near the Government Building, and while at the Centru Police Commissariat. [See above.] Although he is an asthmatic who carries an inhaler, was bleeding from having fallen on broken glass earlier in the evening, and bore marks from the beatings, he did not receive a medical exam until he was transferred to Penitentiary 13 on April 10, 2009. In addition, police at the Centru Police Commissariat confiscated and broke his asthma inhaler while he was in the middle of an asthma attack:

After they hit me on the back I had difficulty breathing and asked a policeman for my inhaler and he said, "Oh, you are a drug addict." I explained that it wasn't narcotic but a medicine. But he didn't believe me and he broke it with his foot. Then the police began laughing. They probably thought they did a great thing.<sup>31</sup>

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<sup>30</sup> Interview with H. I., July 2, 2009.

<sup>31</sup> Interview with C. D., Chișinău, July 5, 2009.

## ***Article 16 Preventing acts of cruel, inhuman or degrading treatment***

31. According to the State party's report (CAT/C/MDA/2, paras. 287, 289, 291 - 292) confirmed by the information before the Committee, the material conditions of detention are disastrous, and in some instances life-threatening (living space per inmate, water and electric supply, hygiene, medical services, heating, nutrition, etc.), and amount to cruel, inhuman or degrading treatment.

33. According to information before the Committee (A/HRC/4/25/Add.1, para. 258 and A/HRC/4/37/Add.1, para. 453) lawyers are being threatened with criminal prosecutions under article 335 of the Criminal Code for 'misuse of official position' when they carry out their lawful professional activities for the protection of human rights, and in particular against grave human rights violations, such as torture. What measures has the State party taken to protect and prevent such harassment and violations? What mechanisms are in place, and have been used, to investigate those acts from public entities? Please provide data on complaints, investigations, prosecutions and conviction related to such acts.

34. Please describe the measures taken to combat racism and discrimination, in particular racially motivated offences and hate speech, against minority groups or foreigners, including prompt and impartial investigations into allegations of offences pursuant to articles 1 and 16 of the Convention. Please indicate the number of allegations of racially motivated offences and hate speech as well as convictions of perpetrators of such acts. Please provide information about the number of members of minority groups that are recruited into the law-enforcement agencies, especially from the Roma minority.

35. Please provide information on any independent inspections of Psychiatric hospitals of the Ministry of Health and Social Protection (State party's second periodic report, CAT/C/MDA/2, paras. 191 – 192), bodies undertaking these activities and follow-up. Please elaborate on the use and extent of any coercive measures (State party's initial report, CAT/C/32/Add.4, para. 64).

36. According to the information before the Committee, even though there is no criminal penalty under the State party's law for women who have abortions outside of the hospital, there were instances when these women were charged with intentional and premeditated murder and subsequently sentenced to long-term imprisonment. They encounter gender-based discrimination throughout their detention, prosecution and trial. In at least one case, a woman who had an abortion outside of the hospital and was experiencing continuous bleeding, was humiliated by prison guards and denied appropriate post-abortion care. The prosecution and the courts, meanwhile, repeatedly made biased remarks against her based on gender stereotypes and anti-abortion attitudes. What are the State party's law and practice with respect to doctors' obligation to report to the police women who undergo abortion outside of the hospital? What are the State party's law and practice with respect to criminal investigations, including interrogation and arrest of women that find themselves hospitalized and in need of potential life-saving medical treatment (CEDAW/C/MDA/CO/3, paras. 30 – 31)? Is the State party monitoring cases of preterm births or late term abortions that take place outside of the hospital? In such cases, how many women have been charged and how many have been sentenced for undergoing an illegal abortion? In such cases, how many women have been charged and how many have been sentenced for murder or infanticide? What measures has the State party adopted to ensure that the authorities are aware of the vulnerable situation of women who terminate their pregnancies?

### **- Cases of illtreatment**

The National preventive mechanism has found people with visible injuries. Such cases have been encountered at the Centru and Botanica Police Stations, Chisinau Municipality. Most people reported that they were subjected to physical and mental pressures immediately after their detention, within the first queries that usually take place at the top floors of the Police Stations. ***Here might be mentioned the Centru Police Station, Chisinau Municipality and the Department of Operative Units of the Ministry of Internal Affairs.*** A majority of detainees, being in preventive arrest, have complained that they were ill-treated by the police officers in order to

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determine them to admit their guilt in committing the crimes for which they were detained, or to plead guilty and in other crimes, which were not committed by them. Those that were stating that they have not been ill-treated, have declared that it is due to the fact that they initially agreed to make statements.

Referring to the persons from the places of detention subordinated to the Ministry of Internal Affairs, the parliamentary advocate notes that most of them are detained in violation of the fundamental guarantees.

Speaking about the information of a close relative or another person, most detainees reported to the parliamentary advocate that they have been informed and made use of this right. However, there were cases where some detainees have complained that their relatives were not informed of their detention, or that they were informed in several days of their detention. In other cases, the detainees had doubts regarding the information of their relatives on their detention, given that this was done by the police officers. There have been also cases when the detention of people was known by their relatives from other sources.

A serious problem affecting the freedom and security of the person remains the detention in the District Police stations of Chisinau municipality of the persons under administrative arrest and / or intoxicated. Only the detained persons for committing crimes, with some exceptions, have access to a lawyer, not the same being attested on the persons detained for committing an administrative offence. As regards the access of the detained persons to a lawyer, the parliamentary advocate established that most often, they are interviewed prior to the preparation of minutes of detention in the absence of a lawyer. The results parliamentary advocate on their ill-treatment. The results of the visits showed that the detained persons are not explained their rights, in particular the right to keep silent, the right to not testify against him or against his close relatives, the police officers being limited to the simple handing over of the information on the rights of the alleged, accused, defendant.

First of all, the verbatim records on the administrative detention and the minutes on administrative contraventions are drafted with multiple procedural violations - in some of them missing the signature of the detained person / the offender, in others the refuse of the detained person to sign the minutes it is confirmed only by the endorsement of the same police officer, who is actually the only person certifying this fact. In the majority of minutes is missing the endorsement on explaining the rights and obligations of the offender. There are rare cases where the police officer brings to the person's knowledge the reasons for his/her detention, a fact confirmed also by the detainees during the held discussions with the parliamentary advocate.

### Case study of minor D.DM.

*The minor D. M. was arrested at school, along with other two children, on 03.09.2008 by 12.30 P.M. by the Hincesti Police station, being suspected of committing a theft. Subsequently he was escorted to the Police Station of Hincesti, where he was ill-treated by the police officers in order to recognize the guilt in committing the theft, being caused lesions.*

*Within the investigations conducted by the parliamentary advocate it was ascertained that on 08.09.2008 at 10.30 AM the minor D. M. was hospitalized in the Hincesti district hospital with the diagnosis "Craneo-cerebral traumatism. Cerebral concussion". Being consulted by the neurologist, the specialist in diseases of the nervous system, the minor has been established the diagnosis of "Mild cerebral concussion". However, he was given appropriate treatment as for the mild cerebral concussion, a fact as well noted in the medical record. The child status at that time was a little disturbed.*

*In this context, we wish to mention that according to the report of medical-legal examination No.310 of 30.10.2008 the minor D. M. has been established lesions, which may have been caused as a result of the trauma by a contusive hard object, with a limited surface, possibly in the indicated time and circumstances, and it is qualified as lesion without bodily health damage. Also it was found that a legal representative was not informed on the detention of the child, a fact which in accordance with the provisions of art.477 par.(3) of the CPC of RM should necessarily be recorded in the minutes of restraint. Moreover, despite the fact that the child was inside the Police station more than 6 hours, the police officers have not made any verbatim record of restraint, although they were obliged to do it in 3 hours from the moment of his freedom depriving. The provisions of the Code of Criminal Procedure on hearing of minors, were infringed too, the minor D. M. being heard in the absence of the legal representative, defender and teacher / psychologist. Despite all the violations*

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*admitted by the police officers, on 19.11.2008 the Hincesti Prosecutor's Office provided for the non-bringing of the penal action due to the lack of criminal offence elements. At the same time, by the ruling of December 12, 2008, the court has established a number of omissions and violations admitted when investigating the cases of ill-treatment of the minor D.M., compelling the Hincesti Prosecutor's Office to remove them.*

*After the intervention of the parliamentary advocate on the ill-treatment case of the minor by the police officers of the Hincesti Police station, the Prosecutor's General Office intervening on the case in the hierarchical order, has started on 25.12.2008 the criminal proceedings under art.309№ par. (3), let.b) c ) of the CC of RM.*

#### - conditions of detention in Police commissariats during April 2009 events

Detainees reported police beat them in 234 of 684 cases where the Human rights organizations were able to collect information on treatment at police commissariats in Chișinău. Moldovan authorities acknowledge that some detainees may have been injured while in custody at Chișinău police commissariats, but argue that these injuries were incurred “while [detainees] opposed the resistance to the police forces, in order to demonstrate disobedience with dishonesty to legitimate demands of the police officers.”<sup>32</sup>

In fact, police beatings in commissariats were widespread and part of a larger pattern of torture and ill-treatment intended to punish individuals for their real or perceived political views and to coerce confessions that would support the government’s theory that the demonstrations were part of an organized plot to overthrow it. In many cases police beat suspects in front of a large number of other police of various units and ranks for long periods of time and over several days, suggesting that the beatings could only have been carried out with the knowledge and approval of high ranking officers. Police continued to beat detainees even when prosecutors and judges were present at the commissariats, suggesting police correctly assumed that they would not face prosecution for these acts.

Memoria Rehabilitation Center for Torture Victims summarized the methods police used against the 65 victims her organization is treating:

*During the April events the common methods of torture were beatings, intimidation and psychological pressure, such as threats of long term detention for 25 or 30 years, forcing the detainee to strip naked and make physical movements so that their genitals would touch the dirty floor, and then telling them that in the next room they would be raped and that the detainees had to choose the method of rape. These methods were used against women and men. Men especially told us that the most traumatic abuse was the sexual abuse, the use of verbal sexual abuse, threats to sodomize them with a baton, a bottle, or another object. We also have cases of the use of the “telephone” method—simultaneous beatings on both ears. It produces post-trauma deafness. This was especially used in the Ciocana Police Commissariat. There it seems to have been used by one particular police officer, who was identified by detainees because of his protruding ears....We also had many cases of trauma from beatings. For example, we have two cases of people with broken noses from beatings in Centru Police Commissariat.<sup>33</sup>*

The General Police Commissariat houses Chișinău’s Temporary Isolation Facility (IDP) and the majority of people arrested during the April 7-12 period were processed at this facility. Both international and

<sup>32</sup> Comments of the Moldovan authorities on the Report of Mr. Thomas Hammarberg, Commissioner for Human Rights concerning his visit to Republic of Moldova from 25-26 April 2009, p. 16.

<sup>33</sup> Interview with Ludmila Popovici, director, Memoria Rehabilitation Center for Torture Victims, Chișinău, July 1, 2009.

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Moldovan human rights bodies have previously found this commissariat to be a site of police ill-treatment of detainees.<sup>34</sup>

The Crisis Group reviewed 124 cases of individuals initially detained at the General Police Commissariat, in addition to 22 cases of individuals who were initially taken to smaller police commissariats and then moved to the General Police Commissariat at later dates.<sup>35</sup> Males apprehended on the night of April 7 and morning of April 8 described being forced to stand in the cold in uncomfortable positions for hours while police subjected them to random beatings, and then having to pass through a “death corridor”—a hallway lined with uniformed and plainclothes police who beat them as they passed. In some cases the abuse continued during crucial procedural stages, as when police beat detainees during interrogation or while ordering detainees to review and sign arrest minutes or submit to medical examinations. Both men and women we interviewed described being forced to remove their clothing and perform sit-ups, squats, and other exercises while naked under the pretext that police were checking for contraband. Sometimes the same detainees were forced to strip multiple times, although they had not left the commissariat.

H.I. described his arrival at the General Police Commissariat on the night of April 7, 2009, saying, “We were literally thrown out of the bus and beaten as we exited. We were told to keep our hands behind us, and were hit randomly on our bodies and told to stand at the wall. We had to stand with our hands on the wall, our legs spread, and our heads down. They told us we would be hit if we moved.”<sup>36</sup>

Police continued to bring other apprehended persons, making them stand with their hands on the wall during processing. H. I. said,

*We stood for about four hours. I couldn't feel my arms and hands any longer. Anyone who moved was hit on the legs, back, or head. I was hit. One by one we were taken inside. I was told to pick up my belongings but when I reached down to get them a police officer grabbed me by the hair and threw me inside [the isolator]. The first blow was to my head with a hard object and my eyes went dark for a moment. I fell and then stood up quickly. There were many policemen, mainly in plain clothes. I had to pass the “tunnel of death”—there were police on both sides hitting me anywhere they could reach. On the left of the corridor there was a person sitting at a table who said he was a doctor. I spoke to him for five seconds at most. The doctor asked, “What bothers you?” But I couldn't answer because the police kept hitting me. I was told to strip and do exercises, sitting down and up. While I was still naked I was hit with a knee to the back by a police officer who was cursing me. I was then told to dress, which I did quickly because I was afraid. Then I was taken to the end of the corridor where I had to stand with my hands up on the wall and my head down. A plainclothes police officer asked me if I had gone through “the whole process.” He said, “Who carried it out?” and when I said I didn't know he pushed my head into the wall. With my head down I had to enter a room with a table and two police, one with a mask half covering his face and a huge baton. He was very big. After they took my data he hit me again.<sup>37</sup>*

Police continued to interrogate and beat H. I. even after a judge ordered his release.

### The Case of E. F.

<sup>34</sup> See, for example, Rapport au Gouvernement de la République de Moldova relatif à la visite effectuée en Moldova par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 14 au 24 septembre 2007, para. 14; Center for Human Rights of Moldova, Report on the Activities of the National Mechanism for Torture Prevention, 2009, p. 68.

<sup>35</sup> Out of 296 cases where the Crisis Group was able to determine initial and subsequent places of detention.

<sup>36</sup> Interview with H. I., July 2, 2009.

<sup>37</sup> Interview with H. I., July 2, 2009.

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Police detained E. F. at about midnight on the night of April 7-8, 2009 while he and others were in a bus returning home after having participated earlier in the demonstrations. He described his arrival at the General Police Commissariat this way:

*When I got out of the bus in the Commissariat yard I saw a lot of people standing with their faces to the wall and hands up. Police threw us out of the bus and ordered us to put our feet apart, place our belongings on the ground in front of us, and take the same position as the others. If we tried to do another additional movement, they hit us. There was one policeman who was instigating the others to hit us. From the beginning they said that those under 18 years old should make a step ahead and they were taken away with the other women.*

*After some time, we went in the yard so they could take my fingerprints and take a picture of me. Then we came back to the wall in the same position. Then I went to the commissariat again. There was one police officer that was pushing us through a corridor of lined with policemen in civilian clothes and in uniforms who were hitting us with everything they could, hands, feet, batons. This is what I found out later was called “the death corridor.”*

*After this corridor, I was interrogated at a table. While one was writing, I was bent with my hands on my back and several people were hitting me-- they wanted to “treat” my lungs, because I said I was hurt. Among my stuff they found a camera and some pictures I had taken in the square, a purse with [several hundred] Lei and four calendars with [Liberal Democrat Party leader Vlad] Filat. They told me to count the money while I was beaten. I couldn’t concentrate and I counted [a few hundred] Lei and started from the beginning. Then they made me to sign document that they completed, and then they took me to a corridor and hit me again because I still had my watch and shoelaces. They ordered me to take off my clothes and make five knee-bends, and they hit me with a plastic bottle with water and then I had to go through the corridor again. Those from the corridor were angry at seeing me again. I have noticed certain solidarity between them, there was no policeman that didn’t try to hit me.*

*In the middle of the day they started to take everyone out of the cell, one by one. . . At 16:00 I was taken to a room with a person in plain clothes who started interrogating me. He asked me if I am an [opposition] party member, and when I said “yes” he became aggressive and started telling everyone there that he found the organizer. When I said that my left kidney hurt, he put me with my face to the wall and started to hit me on my right kidney.... [At 19:00 I was taken to see a prosecutor.] After that, I was taken to a corridor forced to take off my clothes and make knee-bends. I was beaten again and there was no place for me in a cell. In the end they found a cell, but there was no air circulation or ventilation there.<sup>38</sup>*

J.K. told that she and another woman apprehended with her on the night and morning of April 7-8 escaped the “death corridor,” but police still strip searched them, forced them to stand in uncomfortable positions for long periods, and subjected them to sexually humiliating language and other ill-treatment.

*Every time I was moved from one room to another I had to strip and be searched. The police always used bad language. For example, they called me very ugly words, like [an extremely offensive term for prostitute] .... Every time the police entered [the cell] we had to stand up with our hands behind our backs. No one explained anything. At night the police would come in every two or three hours to wake us up and we would have to stand up while the police checked our names and then left. For three days I had no food. We were interrogated, asked questions about what party we belonged to, and who paid us to come. They used psychological pressure to try to scare us. One said, “Do you realize you have been used, like a condom?”<sup>39</sup>*

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<sup>38</sup> Interview with E. F., July 2, 2009.

<sup>39</sup> Interview with J. K., July 2, 2009.

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Police at the General Police Commissariat continued to beat newly arriving detainees for several days after April 7, 2009. Public Defender Olesea Doronceanu told that police at the General Police Commissariat beat her client, P. Q., with batons when the Ciocana Police Commissariat sent him to spend the night there at 22:30 on April 9, 2009 and again at 23:00 on April 10, 2009 when the Ciocana Police Commissariat sent him back to the General Police Commissariat pending transport to Penitentiary 13.<sup>40</sup>

C. D. told that police at the General Police Commissariat beat him twice on April 10, 2009 when police at the Centru Police Commissariat transferred him there pending transfer to Penitentiary 13:

*On April 10th or so we were moved to the General Police Commissariat. We were beaten again there. Probably the police were “hungry” for new victims and so they beat us badly in the corridor on the way to the cell and in the cell....[Then] immediately after midnight the cell door opened and they started to bring us out of the cell. We were very tired. We were told, “Now we will accompany you to the vehicle but you will have to run.” There were seven police on each side on the way to the car. They told me, “The faster you run the fewer blows you will get.” But it was impossible to run fast because they treated you like a soccer ball. Among us were two people who had lost consciousness on the way to the car and were also put in the vehicle, a kind of truck. There was a guy in uniform in the vehicle who beat each of us with a piece of iron. He didn’t miss a chance to beat us. They didn’t tell us anything—not where we were going, not what they were going to do with us. Finally we discovered that we were being taken to Penitentiary 13.<sup>41</sup>*

The human rights organizations reviewed information on 38 people initially detained at the Buiucani Police Commissariat in connection with the April demonstrations. Seventeen reported beatings while in custody at the police commissariat, three said they were not beaten, and information was not available on the remaining cases.

Public Defender Olesea Doronceanu described to the Crisis Group her client D.’s treatment when police took D., two other women, and approximately 20 young men to the Buiucani Police Commissariat on the night of April 7-8, 2009, after first beating them near the Government Building. [See, Suspicious Deaths, below.]

*At the Buiucani Police Commissariat police ordered the young people to get out of the car quickly, with their hands behind their heads, and beat the ones that were not moving fast enough. Then the police stopped them in a corridor where they made the young people stand with their hands against a wall and beat them if they tried to speak or move. After 10 to 15 minutes police moved them to another corridor, where police made them kneel, facing the wall, with the hands behind their heads. Police then took the young men one by one to an office, and D. heard police order them to take off their pants, and then heard the sounds of beatings and screams. When the police returned the young men they had visible injuries, and one was returned completely naked. Police then took the women to the office and insulted and shouted at them but did not beat them. Police released the three women at approximately 05:00 on April 8, 2009 and told them to leave the city. They were not given a reason for their arrest or release.<sup>42</sup>*

On April 14, 2009, D. received a medical examination that confirmed a 16 by 15 centimeter injury to her foot, however the doctor indicated the wrong foot on the report. Provisional results of a medical examination conducted after her release by the Memoria Rehabilitation Centre for Torture Victims, also found evidence of post traumatic stress syndrome and cranial trauma.<sup>43</sup> D.’s lawyer submitted a complaint to the Prosecutor General’s Office on May 5, 2009, requesting an investigation of the police abuse, but as

<sup>40</sup> Interview with Public Defender Olesea Doronceanu, Chișinău, July 29, 2009.

<sup>41</sup> Interview with C. D., Chișinău July 5, 2009.

<sup>42</sup> Interview with Public Defender Olesea Doronceanu, August 11, 2009.

<sup>43</sup> Memoria Rehabilitation Center for Torture Victims, Extract from the medical file, May 15, 2009.

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of this writing prosecutors still have not opened an investigation. The Crisis Group reviewed information on 67 people initially detained at the Centru Police Commissariat in connection with the April demonstrations. Twenty-two reported beatings while in custody at the police commissariat, 3 said they were not beaten in custody, and information was not available in the remaining cases. Police at the Centru Police Commissariat have previously been implicated in torture and ill-treatment of detainees.<sup>44</sup>

Plain clothes police took C. D. and about 30 other demonstrators to the Centru Police Commissariat at about 01:00 on April 8, 2009, after first beating them near the Government Building. He described his treatment at the commissariat:

*We were brought to the big space in the courtyard, all together. I remember that the walls had blood on them. I was standing about a meter from the wall and there was blood near the ground.... We were standing facing the wall with our hands behind our heads, on all three walls, standing close to the wall so as not to see the police officers' faces. . . . The police told us that among the police there was also a prosecutor who would charge us. We stayed there for 1 ½ hours. They would occasionally beat us for no reason.*<sup>45</sup>

At about 04:00 police took C.D. and three other detainees for interrogation:

*There were police in plain clothes and in uniform, and they beat us in this office. There were three of us and three or four police. They told us they were going to charge us with administrative offenses. They used a lot of verbal aggression. They said very bad things about us and our parents. They were saying these procedural things while they were beating us with their hands and feet. [Name withheld] was hit at one point with a chair on his back and he had a concussion and afterward when I spoke to [Name withheld] he couldn't remember very much. We were there for about 40 minutes. . . .*

*At 15:00 or 16:00 the police started to take us to different offices and again beat us. One by one we would go to the investigator's office. [Police investigator, name withheld] and another person were sharing that office. The investigator said, "Are you still intending to scream "Down with the Communists on the National Square?" I said yes and then he hit me several times on my body. Then he began asking questions, like why was I in the National Square. A lot of the questions weren't clear. At some point I asked for a lawyer but he just hit me again. . . . After an hour with the investigator they returned me to the cell. . . .*

*I spent another four or five hours in the cell and then they took us out to the office where the police had earlier told us we would be charged administratively. We were four detainees to start, but one was released.... They gave us blank sheets of paper and told us to sign them. I said, I won't sign anything without seeing and reading it." They said, "If you want to read we'll take you to the library. Right now you just have to sign and we'll take care of the writing." I didn't sign anything. Of out of the three of us one signed and two of us didn't and they beat the two of us who didn't sign with fists and feet. The guy who signed was hoping he would be immediately released but it didn't happen—then took him back to the cell too.*<sup>46</sup>

The Crisis Group reviewed information on 26 people initially detained at the Ciocana Police Commissariat in connection with the April demonstrations. Thirteen reported beatings while in custody at

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<sup>44</sup> The Center for Human Rights drew attention to the Centru Police Commissariat and the General Police Commissariat as two places where Parliamentary Advocates had found detainees “with visible injuries” during visits in 2008, saying that “most people [the Parliamentary Advocates interviewed] reported that they were subjected to physical and mental pressures immediately after their detention, within the first queries that usually take place at the top floors.” Center for Human Rights of Moldova, Report on the Activities of the National Mechanism for Torture Prevention, 2009, p. 68.

<sup>45</sup> Interview with C. D., Chișinău July 5, 2009.

<sup>46</sup> Interview with C. D., Chișinău July 5, 2009.

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the police commissariat, one said he was not beaten, and information was not available in the remaining cases.

According to Public Defender Oleasea Doronceanu, police apprehended her client, P.Q., at his home on April 9, 2009, beat him, and then took him and a few other detainees to the Ciocana Police Commissariat where police there beat and tortured him to obtain a confession. She told us,

*He was beaten by three police officers in plain clothes. One held him on the ground while another beat him with a baton, then the third one hit him hard in the face, until he lost consciousness. They made him confess he stole things from the Parliament. One police officer even threatened him with a gun. Another one said if he did not confess they would bring him to the cell in the basement where “operi” [officers in the Ministry of Internal Affairs’ Department of Operational Services] would come with masks and would beat him severely. He was not allowed to call his father or his lawyer. The police called a lawyer who came after he had confessed that he was on the Parliament square and took some things that were thrown in the bushes.<sup>47</sup>*

P.Q. and his younger brother R. S., who was 17 years old in April 2009, are both being prosecuted for robbery under article 187 of the Criminal Code, a crime punishable by 7 to 15 years imprisonment and a fine of 5,000 to 20,000 Lei (roughly 320 to 1,285 Euro). Prosecutors have thus far refused to open an investigation into the two brothers’ complaints of police abuse. [See, The Failure of Prosecutors to Effectively Investigate and Prosecute Other Cases of Torture and Ill-Treatment, below.]

The Crisis Group interviewed three people whom police detained at the Balti Police Commissariat on April 7, 2009, on suspicion of participating in the demonstration. Two reported police beatings while in custody at the commissariat. The third, X. Y., said police beat him as he stood with his hands on the wall of the Penitentiary awaiting transport to the commissariat, but did not beat him at the commissariat.<sup>48</sup>

Police apprehended L.M. during a demonstration in Balti on the afternoon of April 7, 2009 and held him overnight at the Balti Police Commissariat. He described his treatment to the Crisis Group:

*When we got to the police station we were treated with violence. We were taken down a hall and taken to an area where we were about 30 or 40 people. But pretty quickly they took out the minors and we were only about 24 or so people left, all of us adults. We were outside with our hands up in two rows in an outside area with walls but no roof. There was a tall guy with a red face who was beating us on the kidneys. We were standing with our hands up on the wall and the police officer was kicking us. They asked our birth dates and then started taking the minors out of the group but kept beating those of us who were left. It took them about an hour to take out all the minors, so they were beating all of us at during that time, even the minors.*

*I was there about 2 ½ hours. Others were there shorter periods, and some longer. One by one they took us first to medical control, then to the police block where we were interrogated and cruelly beaten. While I was waiting in the hall to be interrogated I heard one police say, “I think he is a leader. Because of these bastards our colleagues in Chișinău had serious injuries.”*

*During the interrogation we were hit on the kidneys, kicked, slapped on our faces and ears. They were saying, “Why did you go out? You are stupid. You animal.” [The interrogation] lasted maybe an hour or an hour and a half. I asked to make a call but they said it was too late to make a call. They said I would be sent to Cricova prison for 20 years because I was trying to overthrow the state. They said that the opposition parties were using us: “Tell us who paid you! How much did Romania pay you? Two hundred, 300 Lei?” They couldn’t believe we would go out to demonstrate on our own. They made us sign a paper.*

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<sup>47</sup> Interview with Public Defender Oleasea Doronceanu, July 29, 2009.

<sup>48</sup> Interview with X. Y., Balti, July 4, 2009.

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*Some of us read it, some of us were too shocked [to read it]..... When they were taking our birthdates and names they also asked our addresses and sometimes a police officer would say, “Oh, you live there? I am responsible for that sector. I will make your life sweet!”<sup>49</sup>*

N. O. told the Crisis Group that police at the Balti Commissariat beat him for nearly three hours, only stopping after he repeatedly told them he had recently had surgery:

*I was taken out of the car and ordered to put my hands behind, and then I was forced to put my hands up. During this time I was kicked a lot of times. I didn't see who was hitting me, just because we had no right to turn our heads and look around. The policemen took my cell phone, and one policeman pushed my head to the wall so hard that it left blood on the wall. In the yard, there were a lot of protestors keeping their hands up to the wall. After a while we were taken to the side of the yard where two policemen were sitting at the table, one of them was from the New Balti district. He took my phone and shoelaces. He told me to sign a document. I wanted to read it but he didn't allow me, so then I wrote that I disagree ... During this whole time they were beating me. After I told them several times that I had a surgery, one of them pulled up my t-shirt to verify. After that I wasn't beaten anymore.*

I was taken in the yard again, and again put with my face to the wall and hands up. During this time I heard one of the policemen hitting a protestor and saying in Russian “na jri moldavskui zemliu” (Eat the Moldavian ground.”). There also was a girl with a tricolor painted on her face. One of the policemen was threatening her that they will rape her one by one, and then she lost consciousness.<sup>50</sup>

#### - Conditions of detention in preventive detention

Conditions from the most of penitentiary institutions under the administration of constitutional authorities, so as the ones from the east region of Republic of Moldova, are hard and sometimes dangerous for life. There are still persisting cases of ill-nutrition, diseases, tuberculosis, small cells in comparison with the number of persons within it, lack of ventilation system. The visits of the Consultative Council for the prevention of torture, parliamentary advocates, NGOs and international institutions' representatives ascertain the existence of several problems within penitentiary institutions: insufficiency of financial means, overpopulation, disagreeable conditions (sanitary-hygienic, bad illumination and lack of ventilation) and even dangerous for life; negative attitude towards detainees, limited possibilities of integration into the working process; low quality feeding etc.

| **In** 2008, the European Committee for preventing inhuman or degrading treatments and punishments, who has positively estimated the efforts of penitentiary management with the view of ensuring the rights of detainees. According to the UN special Rapporteur on Preventing Torture, the conditions from institutions for preventive detention under the police custody represent a source of danger, especially those from Balti and Tiraspol, where persons are detained in small cells, badly ventilated, overpopulated and with no access to the daylight. Most of them are preventively arrested without a definitive decision, fact that seriously infringes the principle of innocence.

Built yet within the period 1839-1864, the penitentiary Nr.13 from Chisinau disposes, according to specialists, of most unfavorable detention conditions out of all penitentiaries from Moldova. The insulator has a capacity of 651 detention places, while there are currently detained 1076 persons. In this context, it is alarming the fact of increasing cases of law infringements committed within penitentiaries, inclusively by those institutions' employees. More than two thousand persons are yearly discharged from detention places, and 60% of them are returning in penitentiaries.

<sup>49</sup> Interview with L. M., July 4, 2009.

<sup>50</sup> Interview with N. O., July 4, 2009.

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According to PID, at the present there are more than 7 thousand persons detained in Republic of Moldova's penitentiaries, 5 thousand of them being able-bodied. Only 36% of detainees are drawn into working process. According to the Execution Code of Republic of Moldova, penitentiary detainees "can be drawn into work". Thus, detainees have more than once claimed the inaccuracy in calculating working hours and those non-deducted once according to the sentence; and NGOs from this field are claiming that detainees are drawn into work as within institution, so as outside of it, not being remunerated for all the work performed. It happens that the detainee repairs on his own account the cells in all penitentiaries where he is transferred. However, once being discharged from detention places, economic agents and services for provision of employment are reticent while hearing about hiring persons with criminal antecedents. Exconvicted persons are encountering the same problem while going to a medical consultation or concluding their identity papers.

The UN Special Rapporteur recognizing some efforts made by the Government to reduce the overcrowding in prisons, such as e.g. the application of alternative measures to deprivation of liberty (see par. 32, A/HRC/10/44/Add.3). However, during 2009 were made improvements of living conditions : e.g. within the Penitentiary nr. 9 is opened from August 2009 a „Child and mother's home”. It is for the imprisoned mothers and their child before 3 years.

*De facto*, the Committee for Complaints is not functional because it depends on financing from the Government.

### **- Conditions of detention in prisons**

In the Constitution of the Republic of Moldova there are no provisions which guarantee the rights of detainees, but they are understood from the disposition of the preamble of the Supreme Law and, respectively, of general provisions on fundamental rights and freedoms.

With all this, the Parliament approved the Executional Code, which stipulates the execution of the sanctions of criminal right. This Code regulates directly the use of rights and freedoms of the detained people and establishes, at the same time, their obligations, while the notion and purpose of criminal responsibility are defined in article 61 of the Criminal Code. From the very beginning we will present the declarations of Mr Ion Plesca, vice-president of the parliamentary Commission for human rights, who mentioned that "in our insulators we have the hell on Earth. People live in a room of 5-6 square metres. They sleep in turn, two hours each, changing their places. The prisons are not aired.".

Parallel with these affirmations, after examining the "Information on courts activity for the year 2005", we certify that 14103 people in comparison 12751 people condemned in 2004, out of which 3193 persons were deprived of liberty(2005) in comparison with 3019 persons in 2004. The number of minors deprived of liberty is also increasing, which constituted 224 persons in 2005 in comparison with 194 people in 2004.

The number of condemned people increased effectively for a series of offences as, for example:

- intentional murder (art.145 CC of RM) from 240 to 274 persons;
- serious intentional damage of corporal integrity or health (art.151 CC of RM) from 274 to 368 persons;
- human traffic (art.165 CC of RM) from 26 to 59 persons;
- theft (art.188 CC of RM) from 212 to 276 persons;
- appropriation in big and extremely big proportions (art.195 CC of RM) from 544 to 640 persons;
- smuggling (art.248 CC of RM) from 101 to 248 persons;
- active and passive corruption (art.324-325 CC of RM) from 54 to 104 persons.

Problem of punishing by depriving of liberty suggests not only the theoretical existence of the imprisoned, but also the presence of a material base in the view of equipping and organizing penitentiary institutions in such a way as to assure carrying out the role of the punishment. The penitentiary

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institutions must possess a special building that would assure the safety of detaining the persons deprived of liberty, to shelter the administrative, guard and supervising personnel. It must correspond to the regime of detention and possess separate rooms for the administration, the detainees, work, studies etc. As regards the places of detention from the Republic of Moldova, there are still many breaches of law because these institutions do not correspond to international standards, to a great extent because of lack of adequate financial support.

In conformity with the legislation in force, the norm of the living space for a convict cannot be less than 4 square metres.<sup>214</sup> Practically, these conditions are not respected in penitentiary institutions. The cells are too small, they room more convicts than the established norms. In the prisons of detention pending trial there is no sufficient free air from the exterior, the light is poor, they practically do not have heating and ventilation. Generally, the detention institutions do not possess spaces for strolls in the open.

Personal hygiene. As far as this subject matter is concerned, there are multiple deviations and encroachments in the penitentiary institutions. It is necessary to ascertain that, according to stipulations of articles 245, 246 of the Code of Execution, the convict is assured the possibility to satisfy the physiological needs in clean and decent conditions, according to his necessity, he is assured the possibility to bathe and is allowed to wear his own clothes. Yet, the detainees need to be assured with a bed and bed clothes, which must be changed at least once a week. These rights of the detainees are violated very often, the cause is the insufficiency of budgetary means, destined for maintaining the penitentiary institutions. After the inspections carried out by the Committee of Torture Prevention in diverse penitentiary institutions, a series of recommendations were set forth to the state. At present we have to ascertain the fact that exactly as previously, the needs of penitentiary institutions are not fully satisfied. This reason served as an argument to condemn the Republic of Moldova by ECHR in the case Becăciev versus Moldova (paragraph 41).<sup>215</sup> The fact of insufficient material support of the penitentiary institutions could cost Moldova considerable sums in the quality of material and moral prejudice.

Nutrition. In conformity with stipulations of article 247 of the Executional Code, the people deprived of liberty are assured free of charge warm food three times a day and, at the same time, permanent access to drinking water. In our opinion, the most serious violation can be certified on this subject-matter, simply because everyone can imagine the real value of the sum of about 3,6 lei per day.<sup>216</sup> We consider that the food in penitentiary institutions is on a level inferior to the established norms. This fact can and, probably, leads to more serious problems that affect the detainees' health. Moreover, what can we say about human treatment if the person is not assured the minimum of food necessary for physical existence. We sustain that insufficiency of food can be treated even as torture.

Here we will consider a problem certified in Insulator nr. 3 from Chisinau and Insulator of the detention pending trial of the General Police Station from the capital. These two insulators keep people preventively arrested by the bodies of legal proceedings from Chisinau. Not all the police stations have conditions to assure food to the detainees. Thus, food is assure only to the detainees from insulators nr.3 and that of the GPS from Chisinau. The majority of arrested people from Chisinau are kept in the insulators mentioned above. Only in the view of carrying out criminal proceedings, they are freed from the insulator and detained temporarily (during the day) in the cells of the Police Stations, where they are not fed. In cases when the arrested people are transported to the Police Stations, in the morning they are given the breakfast, which constitutes of a slice of bread and warm water. in rest, during the day they are not assured with food. This is, in our opinion, a major problem which affects seriously the rights of people who are deprived of liberty just temporarily.

Here we can also mention the declarations of Mr Andrei Vicol, general-deputy director of the Penitentiary Institutions Department: "Because of poor financial supply, the expenses for keeping the detainees cover only 47% of the needs. Only 3,6 lei are allotted for daily feeding of a person (practically, the equivalent of 0,3 dollars USA) which is much more less than the valid norms".<sup>217</sup> The declarations of Ion Zepca, deputy chief on logistics of the penitentiary from Cricova are also relevant, who says that "the daily nutrition of each detainee consists of 450 gr bread, 450 gr potatoes, 100 gr pickles and other

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vegetables".<sup>218</sup> As it is seen, the daily menu of a detainee does not even foresee meat, fish or dairy products, necessary for physical existence.

**Medical Assistance.** In conformity with the provisions of article 249 of the Executorial Code, the people deprived of liberty are assured the right to medical assurance, which is offered as many times as it is needed or on demand, by qualified personnel, free of charge, being offered free of charge medicines. In conformity with stipulations of article 251 of the Executorial Code, the medical investigation is done initially, on reception in the penitentiary institution, during the detaining period on demand and periodically, but not less than once in six months. Here it is necessary to make reference to the case "Sarban versus Moldova", examined by ECHR. In this case, Moldova was sanctioned for not assuring medical assistance on the necessary level, and for banning the doctors outside the penitentiary institutions to accord medical assistance. We can also mention the repeated refusal of offering medical assistance to ex-minister of Defence, V. Pasat, who was in 2005 in detention pending trial. These two cases of refusing medical assistance lead to the conclusion that such encroachments and deviations are admitted with regard to the majority of detainees who demand medical assistance. Anatol Vizitiu, chief of the medical unity of the penitentiary institution from Cricova, relates that the given institution was supplied only with 10% of the total need of medicines. 63 cases of tuberculosis were detected.

863 persons were detained in this penitentiary, that is, 7,3% of all the detainees had been affected. With all this, the most serious problem here is according medical assistance by psychiatrist, because, according to the declaration of Anatol Vizitiu, 85% of the detainees from the penitentiary from Cricova had diverse psychic diseases, while the penitentiary lacks a psychiatrist.<sup>219</sup> We are sure that such a situation is common to almost all the penitentiary institutions from the republic. In this order of things, we have to mention again that Moldova did not carry out its obligations as regards distributing a doctor to each Police Station in the view of examining the detained people. We underline that this fact can favour some abuses and deviations from the part of the police workers.

**Correspondence with outside world.** The process of connecting the detainees with the outside world can be divided conventionally in six compartments:

- a) the correspondence and telephone communication of the detainees, a right guaranteed by article 229 of the Executorial Code, which stipulates that the detainee has the right to receive and send from his own account letters, telegrams, petitions without limiting their number. Partially, the correspondence of the detained person can be censored, with the exception of the correspondence with the barrister, the Committee for Complaints, the bodies for legal proceedings, the Prosecution Office, the Court, the authorities of central public administration, international intergovernmental organizations. At the same time, the detainee has the right to a telephone communication at least once in two weeks of ten minutes length with the spouse, a relative, or another person he chooses. It is regrettable, but necessary to mention the violations and deviations with regard to public telephones in most of penitentiaries, so much the more in insulators of detention pending trial. When speaking about the correspondence of the detainees we certify cases of violating this right, as regards correspondence with persons with whom it should not be censored included.
- b) receiving and sending parcels, packages with provisions and banderols, a right guaranteed article 230 of the Code of Execution. There have not been registered serious violations and deviations as far as this subject is concerned. With all this, the most numerous deviations are certified in the Insulator nr. 3 from Chisinau, where daily there are queues of 30-50 persons who try to send packages to the detained relatives.
- c) meetings, right guaranteed by article 232 of the Executorial Code, which confers the detained person the right to a short length meeting at least once a month, and long length meetings at least four times per year. The most numerous deviations can be observed on this subject. Thus, the procedure of allotting meetings is not strictly regulated by the legal norms, thus, leaving room for abuses and deviations from the part of administration of the penitentiary institution, which can profit from the occasion of allowing or groundlessly banning meetings.
- d) strolls, rights guaranteed to the detainees in conformity with the stipulations of article 234 of the Code of Execution. As regards this subject, there are also many violations and deviations on the simple grounds that the Insulators of detention pending trials do not possess rooms for strolls in the open. During

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the detention in insulators (generally, in these institutions are temporarily detained persons whose guilt has not been confirmed yet by the courts, thus, at the moment they are not considered guilty according to the principle of innocence assumption) the persons deprived of liberty for periods from 2-3 days to 2-3 months cannot walk in the open.

Education and occupancy in prison. In conformity with stipulations of articles 259-261 of the Executional Code, the detainees are offered the right to education, including professional education, they also benefit from actions aimed at improving their cultural level. Yet, there are some drawbacks here too. According to statistical data of the Ministry of Internal Affairs, in 2005 17878 persons were attracted to criminal responsibility, 16325-for the first time.

At the same time, 2551 persons were let free from penitentiary institutions. It is unknown how many of 1553 persons repeatedly attracted to criminal responsibility during 2005 will be condemned and deprived of liberty included. It is not known if any of 2551 persons freed from detention places will commit crimes again. Making a simple analysis of these data, we can certify that out of 2551 people set free from detention places, about 60% are exposed to commit new offences and, respectively, attracted to criminal responsibility. Thus, we consider that it is necessary to take all possible and necessary measures (in spite of hard financial situation) in penitentiary institutions in the view of increasing the process of re-educating, schooling and improving the cultural level of the convicts. This thing will have a double impact. Firstly, the social-moral level of the convicts will increase, secondly, it will contribute to minimizing the relapse among the convicts.

Another aspect that would contribute to professional instruction of the detainee is his involvement in labour activities. It would be efficient to open different kinds of workshops in penitentiary institutions aimed at employing the detainees. In this way, the persons in question could use a lot of their free time performing productive and useful activities, these activities would assure the detainee with pecuniary means, and, finally, would contribute to his professional development. It is necessary to point the positive experience of the penitentiary from Cricova, where the detainees can be involved in producing building materials or confectioning diverse goods produced by "Zorile" factory. In this way they have salaries (about 1000 lei/per month and other legal privileges). Another kind of deviation from respecting human rights in penitentiary institutions refers to carrying out medical-legal investigations, especially in cases of traumatism or death. In such cases, the procedure of carrying out such investigations is closed, the relatives or other close persons are not informed about the investigation, thus, the harmed party or relatives do not have the possibility to be present at the procedure or to suggest solutions. We cannot notice the fairness of the procedures in such cases because the doctors who ascertain the lesions are employees of the penitentiary institution and, respectively, are submissive to the administration of the penitentiary. Cases of violence among the detainees are met very often. The majority of cases refer to small incidents, yet, there are cases of using violence when the consequences are tragic. In this sense, it is necessary to mention an extraordinary case. During the plenary meeting of the Parliament from 24.11.2005, the deputy Vlad Cubreacov informed the General Public Prosecutor about the death of the citizen Veaceslav Cantaragiu,222 who died at the beginning of November 2005 (death certificate from 05.11.2005). V. Cantaragiu (judo champion of the Republic of Moldova), was detained in a penitentiary institution and died as a result of traumatic break of the duodenum and a close trauma of the abdomen. They could be caused only be hitting. In this case it is important that the person died at the beginning of November, but the beginning of the investigations was solicited by the Members of Parliament on 24.11.2005. This fact proves that the competent bodies did not examine the respective case in quicker terms, which was indispensable as they had the possibility and the obligation to self inform.

Another problem of the penitentiaries is the lack of qualified personnel and, as a matter of fact, the insufficiency of supervising staff. For example, in that very penitentiary from Cricova, 863 detainees are supervised at night by only 6 people. The state must assure a better guard of the penitentiaries not only for the security of the penitentiaries, but also for the security of the supervising personnel and, eventually, of the population living near the penitentiaries. Finally, we emphasize that human rights in penitentiary institutions are violated very often and more attention must be paid to this phenomenon. We comment this position by the fact that the situation in penitentiary institution nr.13 from Chisinau was discussed within

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a secret meeting of the Parliament from 28 December 2005, as a result of examining the report of a special committee of the Parliament, without making known the results of this document. The declaration of “AMN” Parliamentary fraction leader Veaceslav Untila is relevant in this case. He says: „the data presented by the committee are “shocking” and “out of common”, the fundamental human rights are violated in the most brutal way”.<sup>223</sup> This declaration removes all the doubts which refer to the real situation from this penitentiary and reflects indirectly the real situation in all the penitentiaries from the country.

### - conditions of detention in psychiatric institutions

*General description of the psychiatric institutions.* At present, circa 4500-5000 persons with full legal capacity are placed in 9 psychiatric institutions in Moldova. There are three psychiatric hospitals under the Ministry of Health of the Republic of Moldova (Chisinau, Orhei, and Balti) and four psycho-neurological boarding houses for adults under the Ministry of Social Protection, Family and Child (v.Cocieri - r.Dubasari, v.Brinzeni - r.Edinet, v.Badiceni - r.Soroca, and mun. Balti). In addition, there are two institutions for minors under the latter Ministry (in Hincesti for girls, and in Orhei for boys). All psychiatric facilities are located in the northern part of the Republic and moreover outside the respective towns, which negatively impacts the contact between patients and their relatives.

*The situation in the psychiatric hospitals in the Republic of Moldova.* IDOM has noted that in psychiatric hospitals of Moldova torture is applied by the administration of tranquilizer medicines. Medicines are prescribed for patients without correction. The tranquilizer medicines given without individual adjustment, cause strong physical pain to the person. A representative case is that of D.A. - president of the NGO of invalids “Walking together”.

In July 2006 the complainant was placed in psychiatric hospital in Chisinau. Hospitalization was conducted without the consent of the person that is forced. DA refused to sign the application on the free consent under internment. He also refused to sign the application on the acceptance of treatment and risks incurred in connection therewith. For refusing to sign the application for hospitalization DA was closed in isolating where he was given Amenazin (drug) without proof. Because of unbearable pain caused by injections of Amenazin, DA, after 7 days spent in isolating signed application for hospitalization.

The psychiatric clinics are sometimes even used as places of detention. Detainees are reportedly transferred from police custody and held for up to two or three weeks in psychiatric institutions without a diagnosis.( See Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak (A/HRC/10/44/Add.3, 12 February 2009))

The situation in the psycho-neurological boarding houses. Some institutions, such as the psychiatric boarding house of Cocieri, make use of an isolator, an isolation cell equipped with nothing more than metal bed frames where patients are sent to for punishment. The decision to place the persons in this isolator is taken just by the doctor. Although law of mental health stipulates that the decision to apply the coercive medical measures is taken by the court, taking into account doctors' opinion, in reality the decision is taken solely by the doctor. The placement in the isolator represents a kind of „punishment”, which has the goal to intimidate those who reclaim their rights.

The isolator is present also in the psychiatric hospitals. IDOM witnessed patients in the institution of Brinzeni (Edinet) that were fixed to their beds with iron chains on their ankles. The patients had marks and wounds suggesting physical force against them.

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There is another practice in the boarding houses to interrupt the pregnancy, without patients' consent, „forced abortion”. The representative case is the case of a patient from boarding houses from Balti. She was in her 7 month of pregnancy, when she was brought to the hospitals from Balti. There the doctors gave her the drugs which provoked an abortion. During the intervention woman could hear her baby crying. The conditions of detention in psychiatric institutions are inhuman and degrading. Specific for these institutions are bad conditions (obnoxious smell, low temperature in the rooms). Some categories of persons are deprived of the right to walk out of having personal property, etc.

At the Psycho-neurological Home in the village of Cocieri, the CPT's delegation heard many allegations of physical and verbal ill-treatment of residents by orderlies. The Committee has recommended that the selection procedures for orderlies be reviewed and a comprehensive training programme developed for

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them. Measures to avoid arbitrary placements in psycho-neurological homes have also been recommended.<sup>51</sup>

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<sup>51</sup> Rapport au Gouvernement de la République de Moldova relatif à la visite effectuée en Moldovapar le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 14 au 24 septembre 2007, sursa: <http://www.cpt.coe.int/documents/mda/2008-12-04-eng.htm>

## ***Other issues***

### **- National Preventive Mechanism Access to places of detention**

37. With regard to Moldova's ratification of the Optional Protocol to the Convention against Torture on 24 July 2006 (State party's second periodic report, CAT/C/MDA/2, para. 56), please provide information on the current status of the independent National Preventive Mechanism(s) at the domestic level and the activities it/they undertook. According to the information before the Committee, between 7 and 13 April 2009, members of the Consultative Council for the Prevention of Torture (National Preventive Mechanism under OPCAT) established within the Parliamentary Human Rights Advocates office were refused access to many police stations, including the General Police Commissariat of Chișinău and the Central, Buiucani and Rîșcani District Police Commissariats in Chișinău. They were only able to visit the pre-trial detention centre (SIZO) No. 13 on 11 April 2009 after more than an hour of negotiations and with the intervention of the Ombudsman. Furthermore, on 14 and 15 April 2009, the Consultative Council was given very restricted access to Ciocana District Police Commissariat and access to Rîșcani District Police Commissariat only when the Ombudsman arrived. The Committee has also received allegations that the Parliamentary Human Rights Advocates have been strongly advised by the authorities not to speak out about human rights violations or assist with visits to detention centres. Please provide an explanation and elaborate on what measures are being taken by the State party to prevent similar occurrences in the future. How does the State party ensure that police officers at all levels are properly informed of the legal functions and duties of the Consultative Council against Torture?

Moldova has signed OPCAT and ratified it in March 2006. In August 2007, by law passed by the Parliament it created the National Prevention Mechanism (NPM). The implementation of NPM has been one of the Moldova-EU Action Plan 2006-08. NPM could grow into one of the mechanisms to address systematically the causes of torture by collecting various relevant data and information on places of detention, visit and make the places more open and transparent, generate specific policy recommendations and raise the awareness on the problems for the decision-makers and the society. In relation to NPM, one identifies several required aspects for the intervention: insufficient experience and capacity of NPM to undertake effectively its tasks, opportunity to explore the NPM potential to act complementary with other mechanisms and adding the value in addressing preventively and systematically the issues of torture in the places of detention. One crucial aspect lies with the capacity and knowledge of the individuals who will serve in the NMP to undertake these responsibilities, the other is the receptiveness of the relevant authorities to the work and outputs of the activity of the NMP.

As a state party to the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Moldova is required to designate and maintain one or more independent visiting bodies tasked with preventing torture and ill-treatment. In Moldova these functions are assigned to four ombudspersons known as Parliamentary Advocates (PAs) who are also responsible for monitoring a broad range of human rights, and to the National Mechanism for the Prevention of Torture (NPM), an advisory board to the Parliamentary Advocates composed of ten civil society members and chaired by the senior Parliamentary Advocate.<sup>52</sup> The Crisis Group believes that the repeated and extensive obstacles these bodies faced in attempting to fully monitor the treatment of detainees in the April events demonstrates that as currently constituted, these mechanisms lack the authority, resources, and staffing needed to effectively fulfill their mandate under the OPCAT. In particular, authorities' restrictions on NPM members' access to places of detention and detainees, and the Center for Human

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<sup>52</sup> See Parliamentary Advocates Law 1349 of October 17, 1997, as amended by Law 200 of July 26, 2007; Center for Human Rights of Moldova, Report on the Activities of the National Mechanism for Torture Prevention, 2009.

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Rights' failure to support the functions of the NPM during the April events calls into question the government's commitment to meeting its legal obligation to prevent torture and ill-treatment.

The OPCAT requires that national monitoring bodies be functionally independent and have the necessary resources to perform their duties, which include regularly examining the treatment of persons in detention.<sup>53</sup> In particular, states must grant these bodies "access to all places of detention and their installations and facilities," the opportunity to have private interviews with the persons deprived of their liberty as well as with any other person who the national preventive mechanism believes may supply relevant information; and the liberty to choose the places they want to visit and the persons they want to interview. States must also supply these bodies with access to all information concerning the number of persons deprived of their liberty, and their treatment and conditions of detention.<sup>54</sup>

At the time of the April demonstrations Moldova had only four Parliamentary Advocates and five National Mechanism for Torture Prevention members available to monitor police treatment of demonstrators,<sup>55</sup> who were held in at least 12 places of detention in five cities.<sup>56</sup> The work of the PAs and the NPM members was further hampered by Ministry of Internal Affairs officials who repeatedly denied them access to places of detention under its control otherwise restricted their ability to fulfill their mandate.<sup>57</sup>

NPM told that the police commissar in Drochia only agreed to allow him access to detainees there after "a very long discussion," and then prevented him from meeting privately with the detainees:

*In the Drochia Police Commissariat I asked to interview detainees individually but I wasn't allowed to. The Commissar was listening at the door, and I asked him to leave and he wouldn't leave. It was an interview with a woman who was saying she was beaten. We were in a 2 by 3 meter room with a steel door and I tried to close the door and the police held it open... I saw more than 22 people still detained at the Drochia Police Commissariat, including a girl, even though the Commissar had said there were only 14 people detained on charges related to the events of April 7 and that all were to be released that day. He also said there were no girls there.*

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<sup>53</sup> Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Optional Protocol to the Convention against Torture), adopted by G.A. Resolution A/RES/57/199 of 9 January 2003; entered into force June 22, 2006; ratified by Moldova on July 24, 2006, arts. 18(1), 18(3), 19(a).

<sup>54</sup> Optional Protocol to the Convention against Torture, art. 20.

<sup>55</sup> National Mechanism for Prevention members told the Crisis Group that other members had dropped out due because the work was difficult and not well remunerated. Senior Parliamentary Advocate Anatolie Munteanu blamed the Parliament for failing to appoint replacements for members who had resigned or otherwise become inactive. Interview with Nicolae Radita, National Prevention Mechanism member and director of the Roma National Center, Chișinău, June 30, 2009; Interview with Parliamentary Advocates Anatolie Munteanu, Oleg Efrim, Aurelia Grigoriu, and Tamara Plamadeala, Chișinău, June 30, 2009.

<sup>56</sup> These were: the Chișinău General Police Commissariat; the Botanica Police Commissariate; the Buiucani Police Commissariat; the Centru Police Commissariat; the Ciocana Police Commissariat; the Riscani Police Commissariat; the Operational Services Department of the Ministry of Internal Affairs; Penitentiary 13; the Vulcănești Police Commissariat; the Taraclia Police Commissariat; the Drochia Police Commissariat; and the Ministry of Internal Affairs Temporary Detention Center for Minors.

<sup>57</sup> The Center for Human Rights' 2009 report of its activities highlights the difficulty it has faced in carrying out its monitoring activities at Chișinău's General Police Commissariat and its SCUT unit; the Centru, Buiucani, and Riscani district Police Commissariats in Chișinău; and Police Commissariats in Balti and Bender, among others, and notes that Ministry of Internal Affairs staff continue to interfere in its work even after the ministry issued a circular to the heads of its subdivisions calling their attention to the powers granted under the Law on Parliamentary Advocates. Center for Human Rights of Moldova, Report on the Activities of the National Mechanism for Torture Prevention, 2009, p. 65-66.

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NPM member told that on April 9 and 11, 2009, police in Chișinău denied the him and his NPM colleagues access to detainees eight times, adding “In four cases we were not allowed entry at all, and in four we could see empty cells—we were given a tour of empty rooms.”

Senior Parliamentary Advocate Anatolie Munteanu confirmed that police had prevented PA and NPM monitors from visiting the Riscani and Buiucani Police Commissariats on April 9, 2009, and the Centru and Buiucani Police Commissariats April 11, 2009, but discounted the impact of these bans, saying “according to my information at the time there were no people held relating to the April events in those facilities on April 9 and 11 as they had already been transferred.”<sup>58</sup> However, the Crisis Group has data on detainees held at the Riscani Police Commissariat on April 9, 2009, and a NPM member witnessed detainees being released from the Buiucani Police Commissariat late on April 11, 2009.

NPM member told,

*“I tried to visit Rascani Police Commissariat at about 22:00 on April 9 with a member of Amnesty International. I showed the guard my National Mechanism for Torture Prevention papers that allow me to visit and the guard said, ‘We have orders not to allow anyone entry.’ So then I left and went to the Buiucani Police Commissariat. Outside there was a quarrel with a woman who said she had gotten a call from her son saying he and three others were being held at the commissariat. The guard was refusing her entry, holding an automatic weapon and being aggressive. Then two boys came out and she recognized them and they told her that her son would exit soon. This was about 23:00. . . . I again asked the guard if he would inform the commissar of my request to visit but he said, ‘No, come back tomorrow.’”<sup>59</sup>*

More importantly, the police refusal to allow the Public Advocates and NPM members to visit at a time when they claimed no detainees were present should have immediately raised suspicions because it suggests that police may have been engaging in activities to conceal abuses committed on previous days that the monitoring bodies should have investigated. Indeed, NPM members reported that even when they did have access to police commissariats, police generally denied them access to admission, exit and medical registries, and limited which parts of the facilities they could see.<sup>60</sup> Public Advocate Munteanu’s apparent willingness to take at face value police statements regarding the presence of detainees is particularly troubling given his own findings of police abuses at these same facilities in 2008.<sup>61</sup>

National Mechanism for Torture Prevention members have also raised concerns about the quality of investigations conducted by Parliamentary Advocates, saying they fail to incorporate basic principles for monitoring places of detention like checking registries of detainees and examining all rooms in the facility.<sup>62</sup> They also noted that Ministry of Internal Affairs officials appear to grant greater access to

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<sup>58</sup> Munteanu also said Parliamentary Advocates or NPM members eventually made 35 visits to facilities supervised by the Ministry of Internal Affairs between April 8 and June 30, 2009. Interview with Parliamentary Advocates Anatolie Munteanu, Oleg Efrim, Aurelia Grigoriu, and Tamara Plamadeala, Chișinău, June 30, 2009.

<sup>59</sup> Interview with Nicolae Radita, Chișinău, June 30, 2009.

<sup>60</sup> Interview with Nicolae Radita, Chișinău, June 30, 2009; Interview with Sergiu Ostaf, Chișinău, June 30, 2009.

<sup>61</sup> See, for example, Center for Human Rights of Moldova, Report on the Activities of the National Mechanism for Torture Prevention, 2009, pp. 67-71.

<sup>62</sup> See, for example, the ECPT’s comments on the importance of accurate and comprehensive registers as a fundamental safeguard, and the standards it considers when evaluating police interrogation rooms. The ECPT has noted that “to be fully effective,” visits by independent monitoring bodies should be regular and unannounced, include private interviews, and “should examine all issues related to the treatment of persons in custody: the recording of detention; information provided to detained persons on their rights and the actual exercise of those rights (in particular the three rights referred to in paragraphs 40 to 43); compliance with rules governing the questioning of criminal suspects; and material conditions of detention.” Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or

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Public Advocate Munteanu, who formerly headed the criminal justice department of the Office of the Prosecutor General, than to NPM members who, they argue, conduct more thorough monitoring.[See, Inadequate Government Response, below, for a discussion of how the working relationship between prosecutors and police has promoted police impunity.]

NPM member said,

*Twice we went on visits as members of the National Mechanism to Prevent Torture with [Parliamentary Advocate] Anatolie Munteanu. During those visits the Parliamentary Advocate did not support us when police denied our request to have access to all registers and to make provisional copies of them for proper analysis. The same thing happened when police denied our requests to visit the offices of the police within the commissariat so we could investigate reports of detainees being held in offices and even in the auxiliary buildings of the police commissariats.*

NPM member was eventually able to see registries at the General Police Commissariat when he visited it on April 27, 2009, with the medical expert who accompanied Council of Europe Human Rights Commissioner Thomas Hammarberg on his April 25-28, 2009 visit to Moldova. “That is when we discovered that there were about 90 more people in the medical register than were recorded in the regular register. We told PA Munteanu but he refused to do anything about it.”<sup>63</sup>

NPM members assert that Parliamentary Advocate Munteanu also fundamentally disagreed with them on the role of the NPM, seeing it as an information gathering body subsidiary to his position rather than as an independent body authorized to conduct its own ad hoc visits and issue reports on its findings and recommendations, although his predecessor had favored ad hoc visits. In particular, NPM members said that since Autumn 2008, they had faced constant attempts to reduce and limit the NPM’s previously established role under the first chairman of the National Preventive Mechanism, and to gradually transform the body into simply a visiting body that does not discuss strategically issues and concerns regarding combating torture, does not issue public statements or enter into discussions with the relevant authorities, and does not have a say in the content and analysis of public reports based on its visits. They also noted that the NPM as a body lacks even part-time dedicated support from Center for Human Rights technical and administrative staff, as such staff is subordinated in practice to the current chairman of the Parliamentary Advocates. In NPM opinion “This is a clear tendency toward degrading the quality and the spirit of the Advisory Body as provided by OPCAT as a result of intentional wrong actions from within the Center for Human Rights”.

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Punishment, “The CPT Standards,” CPT/Inf/E (2002) 1 - Rev. 2006, p. 7, para. 40, p. 11, paras. 37, 39; p. 16, para. 50.

<sup>63</sup> Interview with NPM member Sergiu Ostaf, Chișinău, June 30, 2009.

## **- Acceptance of art.21 and 22 of UN CAT**

38. Is the State party considering making the declaration under articles 21 and 22, recognizing the competence of the Committee to receive and consider communications?

### **- policy considerations to accept art.21 and 22 by Modovan Government as submitted by CReDO**

The coming section is based on the policy paper - [Paper on Policy alternatives on the ratification of art.22, art.21 to UN Convention against Torture and creation of the adequate institutional framework for the implementation](#). Guvernul Republicii Moldova intenționează să accepte competența ComCAT creat în baza CAT. Obligațiunea de a recunoaște competența ComCAT de a examina comunicările individuale și comunicările interstatale se conține în Planul individual RM-UE. Actualmente se studiază oportunitatea găsirii soluției practice pentru a onora obligațiunea asumată.

CAT are cîteva obiective principale:

- 1) crearea instrumentelor individuale de redresare a cazurilor de încălcare a drepturilor omului de a nu fi supus torturii (art.22) prin acțiunile intenționate ale agenților statului (art.1), neadmiterea returnării (refoulment) persoanei sub pericolul de a fi supus torturii (art.3), garanțiile procedurale, etc
- 2) obligațiunea statului de a adopta politicile comprehensive în domeniul prevenirii torturii prin măsurile legislative, administrative, judiciare, educaționale (art.art. 2, 4, 10),
- 3) acceptarea comunicărilor din partea altor state privitor la cazurile de tortură (art.21),
- 4) crearea condițiilor, prin consumarea expresă, pentru a desfășura investigațiile din partea ComCAT privitor la cazurile de încălcare a CAT,
- 5) examinarea periodică a rapoartelor privind implementarea CAT.

Moldova a ratificat Protocolul adițional la CAT care prevede un mecanism național detaliat de prevenire a cazurilor de tortură. Convenția Europeană a Drepturilor Omului oferă un instrument eficient de redresare a cazurilor de tortură (art.3). În final, Guvernul examinează posibilitatea ratificării Protocolului opțional la Pactul cu privire la Drepturile Civile și Politice cu un instrument de examinare a plângerilor individuale care protejează dreptul persoanei de a nu fi supus torturii și tratamentelor inumane (art.7) și crearea condițiilor umane în locurile de detenție (art.10).

### *Concluzii, recomandări*

Art.22 (comunicările individuale) al CAT crează un instrument suplimentar de protecție individuală. Acest instrument este comparabil după perceptia de eficiență și eficacitate cu ComDO în baza PDCP, totodată este inferior sistemului de plângeri individuale în baza CEDO. În practică se demonstrează că CAT (art.22) deține un singur avantaj comparativ față de celelalte instrumente, relativă rapiditatea în examinarea cazurilor: de la 6 luni pînă la 2 ani, media fiind în jur de un an și cîteva luni. În practică, pentru statele care au ratificat sau acceptat juristică instrumentelor internaționale comparabile cu cele care sunt în vigoare și pentru Moldova, art.22 a devenit în majoritatea cazurilor un instrument de protecție contra cazurilor de returnare (refoulment) a persoanelor în jurisdicțiile în care persoanele date pot deveni victime tratamentelor contrare prevederilor CAT (95% din cazuri).

Instrumentul creat în baza art. 22 nu a fost utilizat în practică.

În aceste condiții, recomandăm recunoașterea competenței ComCAT de a examina comunicările individuale în baza art.22 și comunicările interstatale în baza 21.

Aceste instrumente vor oferi mecanisme suplimentare de protecție la cele deja existente, vor crea un sistem mai consistent de protecție contra cazurilor de tortură și a tratamentului inuman, astfel oferind beneficii suplimentare cetățenilor și creând o imagine pozitivă a Republicii Moldova.

Totodată, costurile de implementare a mecanismelor art.22 și art.21 sunt foarte mici și incomparabile cu beneficiile obținute. Cum ne demonstrează statistică comparativă a practicilor din țările cu același nivel de dezvoltare și a situației în acest domeniu, în perioada următoare de cel puțin 3 ani, există o foarte mică probabilitate de apariției a cazurilor în baza procedurilor art.22, art.21. Petiționarii preferind celealte proceduri existente. Din perspectiva de lungă durată (7-10 ani), în baza statisticilor comparative, numărul de cazuri poate fi minim, reyuminându-se la câteva cazuri. Principalul domeniu de generare a cauzurilor poate fi totuși returnarea persoanelor în anumite jurisdicții (spre exemplu Transnistria) unde aceștia nu vor avea garanții necesare în baza CAT.

Concluziile. Experiența altor țări și analiza detaliată a situației din Moldova sugerează preferința pentru recunoașterea competenței art.22 CAT și art.21 CAT. Aceasta va crea o valoare socială adăugată pentru societate, va maximaliza beneficiul cetățenilor pentru respectarea drepturilor suplimentare. Ratificarea poate maximaliza beneficiul pentru autoritățile publice în vederea consolidării politicilor publice relevante și beneficii conducerii politice. Consolidarea politicilor publice în raport cu obligațiunile suplimentare asumate vor avea un efect profund educativ și treptat vor contribui la pregătirea Moldovei pentru standardele Consiliului Europei și Uniunii Europene.

In viziunea autorului se recomandă declarația de recunoaștere a competenței pe articole art.22, art.21 CAT.

Acțiunile de realizare a obligațiunilor asumate necesită o implicare profundă în consolidarea capacităților instituționale ale autorităților publice, în acest context îmbunătățirea legislației, măsurile educative în domeniile nominalizate sunt recomandate. În acest context asistența tehnică din partea UNDP și altor agenții de dezvoltare sunt indispensabile.

#### Recomandările 6.2.1 Declarația (tentativa)

"Article 21: Republic of Moldova hereby declares, in accordance with article 21, paragraph 1, of the Convention, that it recognizes the competence of the Committee against torture to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention;

"Article 22: Republic of Moldova hereby declares, in accordance with article 22, paragraph 1, of the Convention, that it recognizes the competence of the Committee against torture to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of violations by a State Party of the provisions of the Convention."

#### *A. Rationae tempore (nu este necesară)*

a) cu rezerva care expres indică acceptarea competenței ComCAT din momentul recunoașterii competenței art. 21, și art.22.

Spre exemplu:

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Rusia (1991)

to receive and consider communications in respect of situations or events occurring after the adoption of the present declaration

Ucraina (2003)

Ukraine declares that the provisions of Articles 20, 21 and 22 of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment shall extend to cases which may arise as from the date of receipt by the UN Secretary General of the notification concerning the withdrawal of reservations and relevant declarations of Ukraine."

B. *Ratione locie*

- a face decalarția cu rezerva care expres indică imposibilitatea garantării respectării (anumitor) obligațiunilor CAT pe teritoriul necontrolat efectiv de autoritățile constituționale;

Spre exemplu:

"Prevederile Convenției se aplică doar pe teritoriul controlat efectiv de autoritățile Republicii Moldova. Prevederile Convenției nu se aplică teritoriului (trebuie de specificat cu referire la o decizie Guvernamentală care delimitarea teritoriul necontrolat, poate fi făcută o interpretare sau o nota ce înseamnă acest teritoriu) care nu este controlat efectiv de către autoritățile Republicii Moldova. Comitetul împotriva trăturii creat în baza art. 17 al Convenției va avea competența și va examina doar comunicările pentru acțiunile, omisiunile, evenimentele controlate efectiv de autoritățile Republicii Moldova. Încetarea sau modificarea rezervei date și modificarea obligațiunilor pentru realizarea respectării prevederilor Convenției se va efectua prin notificarea Secretarului general al Organizației Națiunilor Unite (propoziția este necesară pentru a defini în timp rezerva).";

„Republica Moldova consideră că, Comitetul împotriva Torturii nu va avea competența de a examina cererile individuale care au fost depuse spre examinare sau examinează în fond de către un alt organ internațional specializat”;

C. *Ratione materia*

Nu este necesar

D. Realizarea instituțională

Analiza comparativă ne demonstrează că cea mai bună soluție din alternativele examineate și în baza criteriilor propuse este crearea funcției date în cadrul DAG-MJ (Direcției Agent Guvernamental al Ministerului Justiției) a unei secții care va lucra cu cazurile respective și va reprezenta Guvernul la ComDO, ComCAT.

Argumentele cheie fiind

- existența experienței, profesionalismului pentru funcțiile similare,
- existența funcțiilor similare,
- poziția MJ ca actor important în promovarea politicilor, în special în domeniul drepturilor omului,

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- practica europeană de a găzdui ambele procese de reprezentare î fața CEDO și în fața ComDO, ComCAT.

#### E. Capacitățile Instituționale

Următoarele acțiuni sunt necesare la compartimentul dat:

1. Crearea secției specializate în cadrul Ministerului Justiției care va lucra cu plângerile individuale, poate fi oferită asistență tehnică în vederea funcționării ComDO, ComCAT;
2. CpDO va fi implicat în procesul de implementare a prevederilor suplimentare și în procesul de prevenire a cazurilor date;
3. De constituie, pe lingă CpDO, cu participarea Ministerului Justiției, Curții Supreme de Justiție, Curții Constituționale, organizațiilor specializate etc., o diviziune investită cu obligațiunea desfășurării sistematice de analiză a situațiilor problematice în domeniul drepturilor omului în vederea formulării recomandărilor de îmbunătățire a politicilor publice;
4. Desfășurarea instruirii funcționarilor publici, judecătorilor, etc. privitor la obligațiunile suplimentare CAT.

#### E. Aspectele financiare

In urma declarației de recunoaștere a art.22, art.21, Guvernul ar putea suporta costuri suplimentare care vor fi determinate în principal de:

1. Costurile legate de procesare a răspunsurilor Guvernului (depind de situație);
2. Costurile legate de realizarea măsurilor prevăzute în art. 2 (măsurile, legislative, administrative, judiciare), art.10 (educația și instruirea funcționarii publici)

După cum s-a discutat ratificarea și implementarea prevederilor CAT va necesita activitatea de compatibilizare a legislației identificate ca problematică, dezvoltarea capacităților funcționarilor publici, etc. Aceste costuri pot fi estimate în linii mari, ele fiind reprezentate de lucrul experților internaționali și naționali. Însă aceste costuri pot fi generate prin programul PNUD și cooperarea, asistența bilaterală de aceea, probabil, nu vor constitui o povară suplimentară pentru bugetul țării.

Costurile suplimentare pot fi *operational* și *investitional*:

##### Operational:

- Costul pentru funcțiile a 1 jurit-consultanți suplimentar, aproximativ 60 000 lei anual (bugetul de stat),
- costurile legate de procesarea procesarea cazurilor (dotarea tehnică, cehluielile de birou, comunicare, etc), aproximativ 1 500 lei anual (bugetul de stat).

##### Investitional:

- costurile de instruire și perfecționare periodică a personalului, apr. 15 000 lei (organizațiile donatoare, PNUD, etc),
- costurile de aducere în compatibilitate a legislației naționale cu prevederile PDCP, apr. 15 000 lei (organizațiile donatoare, PNUD, etc),
- dotare echipament, tehnologii de facilitare a activității, apr 15 000 lei (organizațiile donatoare, PNUD, etc).

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<sup>i</sup> Rezoluția Adunării Parlamentare a Consiliului Europei, 1615 (2003)

<https://wcd.coe.int/ViewDoc.jsp?id=753909&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864>,

<sup>ii</sup> Principiile de la Paris cu privire la funcționarea instituțiilor specializate de drepturile omului,  
<http://www.unhchr.ch/html/menu6/2/fs19.htm>

<sup>iii</sup>Rezoluția Adunării Parlamentare a Consiliului Europei, 1615 (2003)

<https://wcd.coe.int/ViewDoc.jsp?id=753909&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864>, și

<https://wcd.coe.int/ViewDoc.jsp?id=458513&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>

<sup>iv</sup> Rezoluția Adunării Parlamentare a Consiliului Europei, 1615 (2003)

<https://wcd.coe.int/ViewDoc.jsp?id=753909&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864>,