



THE CENTRE FOR HUMAN RIGHTS OF MOLDOVA

REPORT
ON HUMAN RIGHTS OBSERVANCE
IN THE REPUBLIC OF MOLDOVA IN 2004

CHISINAU, 2005

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PREAMBLE

„The Centre for Human Rights of Moldova submits to the Parliament a Report on Human Rights Observance in the Republic of Moldova for the previous year”.

(Article 34 of the Law on Parliamentary Advocates)

In order to undertake the obligations under Article 34 of the Law on Parliamentary Advocates, the Centre for Human Rights submits to the Parliament a Report on Human Rights Observance in the Republic of Moldova in 2004.

This Report has no intention to resume the findings and estimations of recent years, because these are available in previous reports; it is not a description or survey of the work done by the Parliamentary Advocate Institution during a year of activity, but it is rather a review of the situation of human rights observance in some areas, which were often mentioned in the petitions.

A considerable part of the Report describes real cases settled by Parliamentary Advocates, generalizing, at the same time, the remarks that in their opinion should be discussed.

The Report relies, first of all, on the synthesis of results of the examination of received petitions addressed to Parliamentary Advocates, on the consideration and analysis of information on the observance of human rights in Moldova, and that received during visits made by Parliamentary Advocates and personnel of the Centre for Human Rights of Moldova to penitentiary, medical, and social protection institutions and other state organizations.

The Report includes information submitted by the Branches of the Centre, statistic data, sociological polls, and information from mass-media.

The year 2004 was a special year with regard to the context of human rights. This year was also a jubilee year – 10 years from the adoption of the Constitution, which has a special importance. Ten years have proved the viability of the Supreme Law. All its provisions have an equal importance because ensure, in the limits of expressed options, the principles of development of Moldovan State, nation’s aspirations to integrate in the international community, to implement the standards of protection of human rights and fundamental freedoms in the everyday life.

Constitutional frame is large, and allows not only the protection of personal dignity and spirit of freedom, but ensures everyone prosperity.

During the difficult period of transition of the Republic of Moldova, the Constitution has played a very important role in laying down the basis of national legislation, especially if there were no experience to be taken over.

The potential of the Supreme Law is not used up. The fields of applying the constitutional norms consisting of most progressive international acts are very different. We have just to implement them in our life.

The Parliamentary Advocates, being entitled to inform the Constitutional Court of the verification of the constitutionality of the laws and Decisions, Decrees and Provisions of the President, Government, Parliament of the Republic of Moldova, of their correspondence to the generally accepted principles and international legal acts on human rights, contribute directly to the establishment of the rule of law, prevention of any abuses, and consolidation of impartiality in every citizen’s conscience.

We have enjoyed this right, some initiatives being considered well-grounded and accepted, other being rejected.

In 2004, the implementation of the National Human Rights Action Plan for 2004-2008 – a well-structured program has started. It tries to improve the achievement of civil, cultural, economic, political and social rights in the country, and stipulates a number of measures meant to contribute to the improvement of legislation, strengthening of democratic institutions, human rights education and training, information of population on existing possibilities and mechanisms to achieve and protect the human rights and freedoms.

Being an independent national institution and, at the same time, an important non-judicial mechanism for human rights protection and promotion, the Centre for Human Rights has a special role in the implementation of National Plan. We contribute through our daily activity to the observance, promotion and improving of human rights condition.

The Parliamentary Advocate Institution, being extremely concerned with the evolution of summer-fall 2004 events in Transnistrean region, has condemned firmly the actions undertaken by the separatism authorities of Tiraspol, which infringed violently the human rights and freedoms of a certain category of peoples of the Republic of Moldova – they closed the lyceums teaching in Moldovan language on the basis of Latin method of writing; disconnected some villages from the electric power from the left bank of River Nistru which are under the jurisdiction of Chisinau; branched of the railway transport under the management of State Enterprise “Railway of Moldova”.

Being aware of the fact that non-observance of commitments assumed by the separatist authorities towards European Institutions, the infringement of the elementary child’s rights could destabilize the situation in this region of the Republic of Moldova, the Parliamentary Advocates addressed to international institutions to intervene in order to stop these severe human rights infringements.

Of course, there are many unsolved problems, but the purpose and values aimed at are well defined and understood, and these would materialize as far as economic, social, and cultural transformations of the Republic of Moldova are achieved.

**Parliamentary Advocate,
Director of the Centre for Human Rights**

Raisa Apolschii

March 15, 2005

CHAPTER I

Civil Rights

(1) Every citizen has the right to obtain effective protection from competent courts of Jurisdiction against actions infringing his/her legitimate rights, freedoms and interests.

(2) No law may restrict the access to justice.

(Article 20 of the Constitution of the Republic of Moldova)

(1) The right of defense is guaranteed.

(2) Everybody has the right to respond independently by appropriate legitimate means to an infringement of his/her rights and freedoms.

(3) During the entire trial, the parties have the right to be assisted by a lawyer.

(Article 26 of the Constitution of the Republic of Moldova)

The Universal Declaration of Human Rights, the International Treaty on Civil and Political Rights, the European Convention on the Protection of Fundamental Human Rights and Freedoms, other international and regional instruments at which the Republic of Moldova is a party guarantee the person's access to justice, to an equitable nondiscriminatory judicial process. Many internal legal acts have the task to apply the mechanism of exercising the citizens' right of free access to justice and defense.

The implementation of Judicial and Legal Reform Concept determined the approval of a series of laws that served as a cornerstone for the process of reforms in the judicial system. At the same time, reforms were initiated in the judiciary procedure, the judicial system started to be vertically consolidated and the execution of court decisions has been re-considered. But the year 2004 still has not brought the expected improvement in the field of fundamental human rights and freedoms observance. The execution of the right of free access to justice still creates acute problems. Like in previous years, the same impediments have been registered:

- Tergiversation of penal and civil causes examination;
- Lack of financial means for purpose of civil proceedings' initiation or impossibility to assume court expenses for appeal lodging;
- Effective deprivation of protection of defendants by counsels ex officio;
- Access of the prisoners or detainees to the services of counsels ex officio;
- Right to an effective appeal;
- Right to an equitable process;
- Non-execution of court decisions.

Out of the total number of petitions received by the Centre for Human Rights, almost 26% petitions claim the issue of free access to justice. As in recent years, a large part of these relate to the tergiversated examination of causes in courts. The issue on criminal files examination "in reasonable time" still is very alarming. The National Ombudsman Institution has collected information on the time framework of being under the preventive detention up to the moment of Court's final decision. For instance, the Penitentiary Institution of Balti reported that it has registered cases when the files of defendants were submitted to Court in 2001, 2002, 2003, but until now they are not charged. This information was reported to the Superior Council of Magistracy (CSM) in order to verify it and, if necessary, to take the corresponding measures.

The Superior Council of Magistracy has drawn the attention of the chiefs of the Courts to the discovered drawbacks and requested them to take actions in order to ensure the trial of the arrested in a

reasonable time. Regretfully, the actions undertaken by the Superior Council of Magistracy had a formal character and did not influence essentially the improvement of the situation at this chapter.

A similar situation was also reported by a group of detainees of the Penitentiary No.2 of Balti. The Parliamentary Advocate requested the Superior Council of Magistracy to verify the facts described in petition and to adopt the necessary measures, mentioning at the same time, that the information received about the petitioners' references confirms many cases of their rights infringement. In this way, contrary to the provisions of Article 399 of the Code of Criminal Procedure (Art.292 of the old Code of Criminal Procedure), which stipulates that a copy of the sentence shall be sent to the arrested within 3 days from its delivery, the citizen S.P. sentenced on 27.02.2003, received the copy only on 15.03.2003; the citizen S.G. sentenced on 29.11.2002, did not receive any copy by 28.07.2003; the citizen S.C. sentenced on 23.12.2002, did not receive any copy by 27.01.2004; the citizen I.N., sentenced on 16.06.2003, did not receive any copy by 27.01.2004, etc.

Analyzing the data of the Parliamentary Advocate and the data submitted by the Superior Council of Magistracy on this issue, we concluded that the information about the activity of the Court of Bender wasn't objectively verified.

At the urgent request of the Parliamentary Advocate, the CSM undertook an on-site inspection and discovered infringements in the activity of the mentioned court. It stated that on 04.06.2004, 54 criminal cases sentenced in 2003 were not sent to the Chancellery; 72 criminal cases were suspended, including 56 penal criminal cases were not examined during 3 months. Afterwards, the Parliamentary Advocate was ensured that measures would be taken in order to remove the discovered drawbacks, and the activity of the Court of Bender should be discussed during an additional meeting of the Supreme Court of Magistracy. Until today, we have no information on undertaken measures.

The Parliamentary Advocates consider certain radical measures as being convenient. These would allow the removal of tergiversation phenomena of causes examination, of exceeding the terms of drawing up reports, of submission the sentenced cases to the Chancellery of the Court, of long submission, in cases stipulated by law, to hierarchically higher institution due to the fact that in many cases after a long arrest the accused are very often amnestied. According to data provided by the Ministry of Justice: 338 acquittals were passed in 2004. Another eloquent example: the citizen A.B. charged with murder addressed to the Centre for Human Rights invoking the tergiversation of penal cause examination in Court. The Court delivered its judgment of amnesty, further approved by the Appeal Court. After acquittal, the citizen A.B. claimed the act on making up for the prejudice caused through illegal actions of the prosecution. The Court decided on the amount of MDL 110 000 from the state budget in the favor of the citizen.

Another problem claimed usually by the petitioners is the problem of non-execution of court decisions. Unfortunately, many complaints submitted to the Parliamentary Advocates could be avoided, if the authorized institutions had honored their obligations in time and completely. We affirm this because a great part of these decisions are really executed only after the intervention of the Parliamentary Advocates. In some cases, the Parliamentary Advocates are forced to take more drastic actions in order to reinstate the citizens in their rights. The citizen A. addressed to the Centre for Human Rights because the citizen B. did not want to execute the court decision. The Parliamentary Advocates addressed to the Department for the Execution of Court Decisions of the Ministry of Justice, but received a negative answer. Collecting the necessary materials, following Article 28 of the Law on Parliamentary Advocates, the ombudsman applied to the General-Procuracy to start the legal proceedings against the debtor on the basis of Article 320 of the Criminal Code (2002 version), which was approved. Regretfully, in most cases the Procuracy does not act promptly; usually it has a formal attitude.

The Department for the Execution of Court Decisions (DECD) offer solutions to the issues on real execution of decisions.

According to the DECD, the biggest difficulties appear at collecting the adjudged sums from the public institutions as well as collecting the debts from physical and legal persons, the alimonies. The causes are the following: lack of goods or income of debtors, which could be subject to forced pursuit according to the legislation in force; population's migration to work abroad; high unemployment rate and, consequently the impossibility to follow the income of the debtors; the possibility to create sham businesses, which in case of any arrears cannot be called to account; cash payments between legal

persons; neglecting of certain contract clauses, which could ensure the eventual forced execution; the lack of an efficient cooperation between the Department and institutions which have information on the patrimony of debtors; the desuetude and imperfection of Law that regulates the execution procedure; etc.

The precarious situation with respect to execution of court decisions could be settled by employing personnel in sub-divisions of the DECD, creating an electronic network of executory documents, adopting the Code of Execution the Decisions, and the Code of Ethics of Officer of the Court.

Like in previous years, in claims received by the Centre applicants refer to the restriction of the right of access to justice because of lacking financial means by individuals.

The problem of ensuring the citizens, especially prisoners, with qualified legal assistance is still stringent. Citizens are more and more disappointed with the entire mechanism of enforcing the right to defense. The number of complaints addressed to and registered at the Centre for Human Rights could serve as a good example. The petitioners claim both legal consultancy and defending their rights in Court.

As a result of negotiations with the Bar Association of the Republic of Moldova and in order to find an optimal solution to this problem and to avoid a conflict of competence it was decided to re-address the claims on legal assistance to the Bar. Regretfully, the lack of qualified legal assistance generates automatically the impossibility to exercise the constitutional right to defense and free access to justice and the right to an effective appeal, especially for the prisoners lacking financial means to hire a lawyer in order to be represented in Court (for example, to make an appeal or a re-appeal to the Supreme Court of Justice, according to the requirements set by the Code of Criminal Procedure (edition of 2002)).

Moreover, as no answer is obtained from the Bar Association, the petitioners address again to the Centre for Human Rights claiming that although they had asked for legal assistance repeatedly (in some cases during an entire year), they have not receive any answer. This is an obvious example of a “vicious circle” that generates impediments in exercising the citizens’ rights to defense, of free access to justice, rights that are ensured by the Supreme Law of the State – the Constitution of the Republic of Moldova.

Along the same line, it should be mentioned that the Civil Procedure also stipulates that people can benefit from qualified legal assistance only by concluding a contract with a lawyer, services which are of cause, not free of charge. And if the citizen lacks financial means necessary to pay for received legal assistance, the lack of gratis assistance from the behalf of the State transforms the right of free access to justice into a simple declaration, because a great part of the population could not exercise this right due to lack of financial means.

It should be specified that the Code of Administrative Contraventions of the Republic of Moldova does not guarantee to the offender the right to council ex officio either during the detention or during his/her trial. Therefore, this situation contravenes to Article 6, paragraph 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 21 of the Constitution of the Republic of Moldova (“Presumption of Innocence”), which stipulate all the guarantees necessary to protect a person charged with a criminal offense.

x x x

Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. All guarantees necessary to his defense shall be granted during a public trial.

(Article 21 of the Constitution of the Republic Moldova)

By adhering to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Republic of Moldova has assumed the commitment to guarantee to everyone the right to a fair trial, however, the presumption of innocence is still not observed. Regretfully, it is becoming a usual phenomenon.

We back up this affirmation taking into account the mass media reports on the cases of criminal offenses, investigation, especially the cases of flagrant delict with the appearance of concrete persons on the monitor, by specifying their names, personal data, by classifying the actions according to Articles of the Criminal Code, by offering opinion on possible measures of restraint, etc.

Informing the population on criminal offenses by offering details on offender could be justified if the verdict is reached. Otherwise, spreading detailed incriminating information on a person without a

judicial appreciation of all circumstances of the cause and the possibility of the accused to defend shall be considered an infringement of the presumption of innocence.

It is known how difficult and hard is the consolidation of a law state and a democratic society where the person can enjoy an environment necessary to development, where all proclaimed rights and freedoms are guaranteed. Countries, which today have a high level of democracy, have been moving to this value for a long time, but we don't have this privilege reserved. Everyone in part and all together should offer a real support and considerable efforts to bring our country as quickly as possible at the level of countries with transparent democratic relations.

Electronic mass media has an important and incontestable role in this process, which alongside with the huge possibilities to form the really democratic civic vision of the society has a strong and honorable possibility to be an example of an impeccable deontological behavior.

Along the same line, the Parliamentary Advocates appealed to the Directors of TV channels from the Republic requesting them not to allow the dissemination of information in the form which would influence the constitutional rights observance, in this case – the presumption of innocence, guaranteed by the Supreme Law of the State and human rights international acts at which the Republic of Moldova has accessed. But the undertaken measures have not changed the situation.

The issue of non-observing the presumption of innocence by the mass republican information sources will be watched by the Parliamentary Advocates.

Another side of the issue of non-observing the presumption of innocence will persist as long as the legislation currently in force is not modified.

Therefore, the provisions of Article 76, paragraph (1), let.g) of the Labor Code No.154 of 28.03.2003 stipulate that the individual labor contract shall be suspended due to circumstances that do not depend on the will of the parties: sending the criminal file on criminal offence committed by an employee and which is incompatible with his work to Court, until the final decision is reached by a Judge.

On the basis of Article 24, par. (1) let. a) of the Law No.544 of 20.07.95 on Judge's Statute, the Judge can be dismissed through a Decision of the Superior Council of Magistracy, if a criminal case is started, until the final verdict is reached.

The provisions of Article 29 par.(1) let. a) of the Law No.118 of 14.03.2003 on Procuracy stipulate that the Procurator can be suspended through a Decision of the General Procurator, if he/she is put on trial – until the final decision is reached.

According to Article 16, paragraph (4) of the Law No.317 of 13.12.94 on the Constitutional Court, the Judge of the Constitutional Court shall be suspended from the date of preliminary consent of the Constitutional Court to initiate legal proceedings.

Article 21 of the Constitution of the Republic of Moldova stipulates that everyone charged with a criminal offense shall be presumed innocent until proved guilty according to law. All guarantees necessary to his defense shall be granted during a public trial.

The cited constitutional norm reflected in a more general form in the Supreme Law is described in the ratified Articles 8, 10 of the Code of Criminal Procedure, according to which human rights freedoms and dignity shall be observed. Conclusions on person's guilt cannot be made on suppositions. Temporary restrictions of human rights and freedoms and application of measures of restraint towards this person shall be made only by the competent entities in the cases and manner strictly stipulated in the legislation on criminal procedure. These provisions, in the opinion of Parliamentary Advocates, shall secure a high degree of protection of fundamental rights and freedoms of person under criminal investigation and of guarantees against inadequate treatment.

The measures of restraint (including temporary suspension) are applied to ensure a discipline during a trial. However, they do not have a compulsory and constant character in the Criminal Law, but are applied only if necessary and their grounds are confirmed in Court, according to a strictly defined procedure, an integrated part of the trial.

Namely by exercising the judicial control on the grounds of some temporary measures of restraints towards a civil servant shall guarantee his/her constitutional rights.

On the contrary, the provisions stipulated in the above mentioned legal acts are ambiguous. They allow a certain category of persons (who in comparison with civil servants have only administrative

position) to take arbitrarily, prematurely or maybe ungrounded actions that influence the enforcement of rights guaranteed by the Constitution of the Republic of Moldova. The rights of the civil servant and employees is the right to work and the right of the presumption of innocence, and those of the members of their family – the right to a decent standard of living.

The Laws that would repeal or restrict the right of presumption of innocence (Article 54 of the Constitution of the Republic of Moldova) can not be adopted in the Republic of Moldova. It is the foremost duty of the State to respect and protect the human person (Article 16, the Constitution).

We consider that these constitutional norms should reflect and confirm the State's duty to establish such rule of law that a priori would exclude the situations of repealing or restricting the human rights and fundamental freedoms and would disapprove the adoption of norms that would admit restrictions of the guaranteed right, even if the possibility of its further contesting would be ensured.

The approached issue aims at adopting and interpreting the laws, as well as at guaranteeing the homogeneity of legal regulations in the entire country, fields that are covered by Parliamentary competence.

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(1) The State guarantees to everybody the right to life, and to physical and mental integrity.

(2) No one shall be subject to torture or to cruel, inhuman or degrading punishment or treatment.

(Article 24 of the Constitution of the Republic of Moldova)

The policy of protection and observing the right to life and physical and mental integrity implies considerable efforts. However, a clear vision on the observance of these rights imposes also an analysis of the penitentiary system, especially as referred to the manner how are observed the rights of a person in detention. That is why it is necessary to create a penitentiary system based on rules of law, impartiality and human respect.

A series of declarations have been adopted. The Republic ratified international treaties and conventions meant to guarantee the prevention of transgressions and observance of human rights and fundamental freedoms in general, and the right to life and physical and mental integrity, in particular.

The Supreme Law – the Constitution of the Republic of Moldova – stipulates in Article 24 that the State shall guarantee everybody the right to life and physical and mental integrity as well as the fact that no one shall be subject to torture or to cruel, inhuman or degrading punishment or treatment.

By adhering to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), to the UNO Convention against Torture and other Punishment or Cruel, Inhuman or Degrading Treatment, to the International Pact on Civil and Political Rights, and at the same time, assuming the requirements of the Universal Declaration of Human Rights (UDHR), the Republic of Moldova assumed its commitment to guarantee the rights and freedoms proclaimed by these international instruments to all persons under its jurisdiction.

The Republic of Moldova has also accepted the minimum Standards on Detainees Treatment adopted at the First Congress of the United Nations on Crime Prevention and the Treatment of Offenders (Geneva, 1995), accessed to the Principles for the Protection of Persons Under any Form of Detention of Prison, adopted through the Resolution of the UNO General Meeting No. 43/173 of 09.12.1988.

However, the Republic of Moldova is not able to guarantee today the full observance of the right to life and physical and mental integrity of the person. The number of petitions addressed to the Centre for Human Rights can serve as an example.

Thus, according to statistics, the Parliamentary Advocates received 295 petitions with respect to person's security and dignity in January-December 2004. As for the statistics by categories for the same period, they accounts for 558 petitions from the prisoners.

The prisoners claimed usually the following problems:

- inadequate conditions of holding under guard in the detention places (overcrowding, unsatisfactory sanitary and hygiene conditions, malnutrition, unsatisfactory health care);
- inadequate behavior of the guardians and the administration of these institutions – torture (40% of petitions);

- disagreement with Court's decision (lack of financial means for qualified legal assistance of the lawyer);
- limited access to information.

Starting from the idea that Article 3 of ECHR ("Prohibition of Torture") does not refer exclusively to physical pain, but it defines the inhuman or degrading treatment as other physical suffer that creates an anxiety, panic and stress state, the Centre for Human Rights of Moldova reached to the following conclusions:

Detention conditions addressed in over 50% of received petitions with respect to the right to life, physical and mental integrity can be considered as a treatment that infringes the provisions of Article 3 of the ECHR. Minimum standards of detention should be the same irrespective of the level of development of the State. These foresee the minimum of space, air and light for every prisoner in part, adequate sanitary facilities, a separate bed and food for a healthy living.

It should be mentioned that the decision of the Court is a very important factor. Term of the sentence depends on it. Therefore, the penitentiary system should lessen as much as possible the destructive effects, sometimes the pathologic effects of being in an enclosed space, to take care of detainee's physical and moral health, which would allow him the return to a free life, without any difficulties.

The protection of detainees' rights becomes very important for achieving a normal environment: guarantee the right to personal security; the right to observe the personal dignity; the right to work; the right to elect; the right to information; etc.

The restriction of the right to information - a right guaranteed by Article 34 of the Constitution of the Republic of Moldova, by Article 2 and Article 19 of the Universal Declaration of Human Rights, by Article 19, par.2 of the International Pact on Civil and Political Rights – was confirmed in the Pruncul Republican General Hospital and in the Penitentiary Institution No.3 of Municipality Chisinau. The Centre for Human Rights receives petitions from the prisoners in the mentioned institutions, where they describe the refusal of the administration to issue copies from personal file, extracts from medical card, as well as other necessary documents.

The petition of the convict C. in the Pruncul Republican General Hospital is a vivid example that the administration of this institution refuses to issue the requested documents: copies of the necessary document from personal file and the copy of the decision on his incarceration in the temporary detention isolator.

After the address of Parliamentary Advocate to the General Director of the Department of Penitentiary Institutions (DPI), the complaint of the detainee was approved.

As for the restriction of the right to information of the detainees, the Parliamentary Advocates addressed notifications on the basis of Article 27 of the Law of the Republic of Moldova on Parliamentary Advocates on reinstatement in the infringed right.

We should not forget that the restricted possibility of detainees to exercise certain rights, like: free movement, participation in social and economic life, the right to family, property right (the administration of own goods), etc. affect first of all the relatives.

Along the same line, we would like to mention that many petitions are received from the relatives of the detainees. For example, the petition of a 67 year old woman permanently residing in Cahul town, mother of a detainee in the Penitentiary Institution No.9 of Leova, then transferred to Penitentiary Institution No.6 of Soroca. After the transfer, the petitioner could not visit her son due to lack of financial means. At the address of the Parliamentary Advocate to the Department of Penitentiary Institutions, the woman's request to transfer her son to the Penitentiary Institution no.5 of Cahul (to be easier to visit him) was accepted.

Regretfully, the complaints received by the Centre for Human Rights from persons under different stages of their trial, i.e. the suspects, the accused, under preventive arrest, as well as the convicts, their relatives, and the results of the control of investigation room, provisory detention and penitentiary, the examination of data and collected materials confirm the following: during the 2004, the detainees of the Republic of Moldova faced severe infringements of their rights. There are no guarantees of a real enforcement of human rights in the mentioned institutions.

At present, many international standards of the executory criminal system are frequently violated. The non-observance of requested standards in the penitentiary system of the Republic is a violation of the rights of detainees being conditioned by a unanimously recognized factor - insufficient financing of this system. According to data of the Department of Penitentiary Institutions, State's allocation for financing the penitentiary system covers only 45% from the real needs of the penitentiaries.

Worse and inadequate living conditions of detainees in penitentiary and correctional institutions are very often mentioned in the petitions addressed to the Centre for Human Rights. These were verified by the personal of the Centre.

As a result of partial/total confirmation of these affirmations, the Parliamentary Advocates asked the Department of Penitentiary Institutions to offer information on the general condition of correctional institutions. According to these data, during the last 10-12 years, the penitentiary system has faced big financial difficulties, which accounted for about 45% of real needs in 2004. 27% of financial means were allocated for "overhaul and redecoration" in 2004. Due to insufficient financing, only the key objects (medical units, warehouses, canteens) were repaired. Only MDL 13.5 thousand were allocated for the reparation of correctional institutions in 2004.

The financial means planned for 2005 will cover only 30% of the needs with respect to overhaul and redecoration of buildings from the penitentiary system, and a part of money shall be allocated to jails.

The communal and living conditions in the correctional institutions are the same. There are windows that are substituted with "film" in the isolators of Penitentiary Institutions No.6 of Soroca; Correctional Colony No.9 of Pruncul; Pruncul Republican General Hospital, Penitentiary Institution No.15 of Cricova; Penitentiary Institution No.18 of Branesti. The isolators of Penitentiary Institution No.14 of Basarabeasca lack technical and sanitary installations and those from Penitentiary Institution No.8 of Bender are disconnected from water supply.

Unsatisfactory hygiene and sanitary conditions and medical assistance create large spreading of tuberculosis among the detainees.

The Parliamentary Advocate addressed a petition to the authorized institutions requesting necessary medicaments supply to the medical units of penitentiary system. As a result, the DPI submitted the information on the Tuberculosis Control National Plan for 2001-2005. The seminar "Ante-tuberculosis treatment by DOTS+" for physiologist doctors was held in December 2004. The implementation of the multi-drug-resistance treatment is planned for 1st trimester of 2005.

Another serious problem is that of detainees infected with HIV/AIDS. In their complaints addressed to the Centre for Human Rights of Moldova, they describe the administration of an inadequate treatment and the conditions within the penitentiary institutions, which are a factor that favor the spreading of this disease among the detainees.

The Minister of Health and the Department of Penitentiary Institutions were asked by the Parliamentary Advocate to offer assistance in collecting the information necessary to examine the mentioned petitions (the infected detainees, provided treatment, the volume of medicaments granted to penitentiary institutions, perspectives for 2005, etc.).

According to information submitted by the DPI, since June 2004 the antiretroviral treatment of detainees infected with HIV/AIDS has been initiated in the penitentiary system. The Global Fund for Fighting against Tuberculosis, HIV/AIDS and Malaria financed the treatment of 30 detainees. The detainees infected with HIV/AIDS are selected in the Pruncul Republican General Hospital (PRGH). 19 persons are undertaking the antiretroviral treatment. Periodically, on the basis of medical recommendations, these persons are hospitalized in PRGH in order to evaluate the results of the administrated treatment.

According to the same information, in 2004, the penitentiary system benefited from humanitarian assistance in the amount of MDL 447 thousand, including food products in the amount of MDL 117 thousand, which was offered first of all to consumptives, invalids and persons with HIV/AIDS.

According to statistic data offered by the same source, the year 2004 registered a decreased rate of mortality among the detainees, from 79 cases in 2003 - to 57 cases. Tuberculosis, HIV/AIDS, diseases of digestive apparatus, traumatic injures and poisoning still remain the main reasons of mortality.

Unlike the penitentiaries, a very alarming situation is registered in the investigative and provisory detention isolators. According to Conventions and International instruments at which the Republic of

Moldova is a party, persons under preventive arrest shall be presumed innocent until proved guilty. They shall be treated in a legal and corresponding manner. But in the Republic of Moldova, the detainees under preventive arrest are treated more badly than those that serve their sentence.

Inhuman and degrading treatment, torture, physical and mental violence are very frequent in the investigative isolators, a fact described in the addresses to the Parliamentary Advocates.

In 2004, the Centre for Human Rights investigated so far as the rights to physical and mental integrity, individual liberty and security are observed and enforced in the Temporary Detention Isolators (TDI) of the Ministry of Internal Affairs.

Some authorized institutions, including the Ministry of Internal Affairs, the Ministry of Health, the Procuracy General, rayonal police offices were requested to take part in the elucidation of problems from the country's TDI. The petitions addressed to the Parliamentary Advocates and the results of on field investigations were analyzed.

After generalizing the collected data, a thematic report (annexed to this report) on the observance of rights of detainees in the temporary detention isolators was made which was submitted to the Parliament of the Republic of Moldova.

Very often the information on maltreated persons are hard to confirm because they do not receive necessary medical care or the medical investigation of the detainees is not undertaken. (The check usually consists in hearing of the investigator who will never declare against himself), consequently the persons that commit abuses cannot be called to account.

In the answers received with respect to torture from the authorized institutions, the argument "the situation described by the petitioner with respect to his maltreatment by the collaborator X. was not true, was not confirmed, was not registered, etc." is given very often.

Another alarming ascertained fact is that persons in temporary detention isolators are not subjected to an independent medical check-up at the moment of their imprisonment, which impedes the persons who were tortured to prove the fact of torture.

But Article 11, par.3 of the Law No.1226 on the Preventive Arrest as of 27.06.97 stipulates expressly that "holding the persons in the preventive arrest isolators shall be made on the basis of the Constitution of the Republic of Moldova, the requirements of the Universal Declaration of Human Rights, other legal norms and international standards on the treatment of detainees and shall not be cumulated with premeditated actions that cause physical or moral pain or injure the human dignity".

We have a vivid example of this. The lawyer C. addresses to the Parliamentary Advocates complaining about the fact that he couldn't see his defendant in the temporary detention isolators of the General Direction of Fighting against Organized Crime and Corruption, the access being refused from different reasons. The constitutional right to defense and the right of free access to justice of the arrested were thus infringed.

Moreover, the lawyer had the possibility to see his client only in trial where he noted that the citizen had a number of evident physical injures, these being a vivid example of torture applied by the policemen from the Department of Tactical Operations.

This is an illustrative case of the infringement of the elementary constitutional rights. Unfortunately, the number of such cases is very big and the measures taken to decrease this phenomenon are few.

A factor that "contributes" to the spreading of the torture phenomenon in the penitentiary system is the relations between the detainee and administration based on authoritativeness and constraint. This problem results from the absence of multilevel education that would allow even the movement to other sectors – a fact with positive impacts on the public image of the penitentiary institution. Another factor that measures the professional level of the collaborators and their attitude towards the job is the factor of material and social conditions.

Item 26 of the CPT Norms, in the Chapter "Personnel" stipulates that "the genuine professionalism of the penitentiary personnel is when this is capable to treat the detainees in a decent and human manner, while guards over the order and security. To this respect, the administration of the penitentiary should encourage the personnel to show a certain confidence starting from the idea that the detainees are eager to behave decently. Development of constructive and positive relations between the personnel and the detainees will reduce not only the risk of maltreatment, but will also intensify the control and behavior.

The guarantee of positive relations between the personnel and the detainees will depend on a sufficient number of staff in the detention institutions and activity places attended by the detainees”.

Therefore, the detainees should benefit from a human treatment, a classification by categories, salubrious detention institution, an adequate supervision, medical care, legal discipline, etc.

And the personnel of the penitentiary system should observe the following principles: interdiction against torture, non-application of inhuman, degrading treatment, legal techniques of investigation, punishment of persons that apply torture, etc.

X X X

(1) The right to freedom of movement in the country is guaranteed.

(2) Every citizen of the Republic of Moldova has the right to residence within the borders of the country, to leave his country, to emigrate and to return to his country.

(Article 27 the Constitution of the Republic of Moldova)

One of the fundamental human rights is the right to freedom of movement stipulated in Article 27 of the Constitution of the Republic of Moldova. The rights and freedoms guaranteed by the Constitution of any State foresee full freedom in decisions and actions of a person, if these do not contravene the settled legal provisions.

The Parliamentary Advocates established the violation of the right to freedom of movement of a group of children who study in Romania and who were stopped at the border of the country and forced to return home. This situation was made known by a group of parents who called at “Hot Line” and were in audiences.

The minors were forbidden to leave the country on the basis of violating the rules of leaving the territory of the Republic of Moldova operational on 09.07.2004 in the Law No.269 of 09.11.2004 on Leaving and Entering the Country that stipulates that the “minors have the right to leave and enter in the Republic of Moldova only accompanied by one of their legal representatives or by a companion appointed through a declaration of their legal representative whose signature shall be legalized by a notary. The declaration shall indicate the purpose of the trip, its duration and country of destination”.

We are aware of the State’s efforts to prevent and counteract the traffic with children, including by modifying the legislation. However, the Parliamentary Advocates considered that the forbiddance of minors to leave the country without a representative - pupils and students who are studying abroad – creates serious impediments in enforcing the right to education and the right to freedom of movement guaranteed by the Constitution of the Republic of Moldova.

In order to exercise the mentioned rights, taking into account the modifications operational on 09.07.2004 in the Law on Leaving and Entering the Republic of Moldova, we considered necessary to foresee a simplified procedure of leaving the country with respect to this category of persons.

Along the same line, the Parliamentary Advocates submitted to the Parliament the proposal to fill in the Law of the Republic of Moldova No.269-XIII as of 09.07.1994 on Leaving and Entering the Country of Minors – pupils and students who are studying abroad. It stipulated that for this category of minors it is enough to show the Enrollment Statement of the respective education institution and a declaration issued by one of the legal representatives legalized by a notary indicating the country of destination, purpose of the trip, period of being in the respective country and the validity of declaration.

The fact of simplifying the leaving procedure of minors - pupils and students who are studying abroad – would avoid the appearance of similar situations, decreasing of transport costs when the legal representatives have to accompany the children abroad, as well as the legal representatives would not be forced to appoint another person to accompany their child abroad. As well, the pupils and students will be able to start the syllabus in time.

Regretfully, until now this problem is not settled, although many authorized institutions have welcomed the initiative of the Parliamentary Advocates.

CHAPTER II

Social and Economic Rights

- (1) *The right to health care is guaranteed.***
(2) *Minimum health care offered by the State is guaranteed.*
(Article 36 of the Constitution of the Republic of Moldova)

Article 36 of the Constitution of the Republic of Moldova guarantees the right to health care, which guarantees to all persons under its jurisdiction the minimum of free of charge medical care.

In accordance with the legislation in force, the minimum medical care guaranteed by the State includes:

- anti-epidemic preventive measures and medical services within the national programs foreseen by the state budget;
- medical care at the pre-hospital stage, in case of medical and surgical emergencies that jeopardize person's life;
- primary medical care provided by a family doctor, which includes: a subjective and objective checkup, by recommending the medical tests and treatment;
- medical care foreseen in the Compulsory Medical Insurance Program for the insured, including those unemployed for whom the State pays the compulsory medical insurance premiums.

Taking into account that since 01.01.2004, the compulsory medical insurance system has been implemented in the Republic of Moldova, the Centre for Human Rights of Moldova set its objective for 2004 to monitor the observance of the right to health care.

For this purpose, during 2004, the Parliamentary Advocates have drawn the attention of the Government of the Republic of Moldova, the Ministry of Health and National Medical Insurance Company on certain issues related to the violation of the right to health care resulted from the petitions and mass media publications.

Analyzing the collected materials and information, the Centre for Human Rights of Moldova reached to the following conclusions:

In order to guarantee the observance of the constitutional right to health care, the Ministry of Health, the only state authorized institution has undertaken a series of actions in the legal field and for the purpose of de facto enforcement of the right.

In spite of all efforts made by the State through the Ministry of Health and all the achievements registered in the field of re-organization and consolidation of medical services, there are still unsatisfactory indexes with respect to the health of population of the Republic of Moldova.

The violation of the right to health is usually referred to within the daily audiences at the Centre for Human Rights of Moldova, in the complaints addressed to the Parliamentary Advocates and through the informational telephone service "Hot Line" opened at the CHRM within the UNDP Project in supporting the National Human Rights Action Plan for 2004-2008.

According to statistic data of the Centre for Human Rights and to some sociologic polls, among which the sociologic study "Support in Implementing the National Human Rights Action Plan for 2004-2008", the right to health care was one of the most frequent violated constitutional rights in 2004.

The implementation of the new medical assistance system stirred up the dissatisfaction of a great number of peoples, who considered that it has not improved the process of enforcing the right to health.

Medical institutions – hospitals, aid posts – are those institutions that are responsible for the significant violation of personal rights and the personnel from the health sphere are among the personnel that violate regularly the human rights.

The most frequent issues in the health field are: low quantum of free of charge medical services, expensive medical services, poor medical services, uselessness of the insurance policy, the right of a limited number of persons to benefit from the insurance policy, collection of compulsory medical

insurance premiums from all forms of income, small number of days for hospital treatment, non-determination of degree of invalidity for pensioners, lack of information about medical services included in the Program, size exposure of the Program and respectively, the incommodity to verify the observance of the volume of medical services foreseen in the program, limited access to sanatorium treatment, etc.

Officially registered unemployed persons – the category not included in the list of those ensured by the State - addressed a petition to the Parliamentary Advocates. Thus, according to Compulsory Medical Insurance Law of the Republic of Moldova, the Government is the insurer of the officially registered unemployed persons. The respective provisions had a narrower application in some cases and respectively, only the unemployed persons that enjoy unemployment compensation or allowance of professional integration/reintegration benefit from insurance policy.

Since March 2004 the Parliamentary Advocates have informed the Government about the non-observance of provisions of Article 14 of the mentioned Law, appreciating the created situation as a transgression of health care legislation currently in force.

In the same period, the citizens of the Republic of Moldova who work abroad were not included in the compulsory medical insurance system, because since March 2004 the insurance policies (integral payment of annual quantum of insurance premiums) have not been sold. The reason is that Article 23 of Law of the Republic of Moldova on Setting Compulsory Medical Insurance Premiums stipulates that payment of premiums shall be made by the date of 10 of first month of the current year.

The unemployed citizens who take care of an invalid are also not included in the list of persons insured by the Government. Along the same line, the Parliamentary Advocates addressed to the Parliament the proposal to include this category of persons in the respective list.

The above mentioned point at the fact of infringing the right to health care and lead to the non-achieving the purpose of the compulsory medical insurance system: equal possibilities to all citizens in receiving precocious and qualitative medical assistance.

The State, as a subject of international law, does not fulfill the commitments assumed as a result of ratification of international acts on human rights, among which the revised European Social Chart. Its Article 13 stipulates expressly that “the parties shall assume the commitment to watch that everyone who lacks financial means and cannot buy the policies by own means or cannot receive them from another source, especially from social security regime, shall benefit from a corresponding assistance and in case of illness from a corresponding medical care”.

Another important problem frequently invoked by the petitioners is payment of compulsory medical insurance premiums from all forms of income, with some exceptions stipulated in Annex 4 of the Law of the Republic of Moldova on Setting Compulsory Medical Insurance Premiums.

According to the mentioned Law, the insurance premiums payment shall be calculated from the wage, other forms of retribution and from honorariums.

The Compulsory Medical Insurance Law of the Republic of Moldova stipulates that the compulsory medical insurance system is guaranteed by the State in order to protect the health care status of the population by creating premiums funds for covering the treatment of insured events (disease or injury) and has the purpose to offer equal possibilities to all citizens of the Republic of Moldova in receiving opportune and qualitative medical care.

Taking into account that the wages in the Republic of Moldova are low and insufficient to insure a minimum necessary for the existence of employee and his family, many capable of working persons besides their permanent workplace have other jobs – contracts, occasional services, etc. Thus, the working person enjoying one medical insurance policy and the unique volume of medical services according to the Compulsory Medical Insurance Program is obliged to pay the periodical contributions from all forms of income obtained from work activity, non-observing, thus, the principle of equity and equality.

This principle of collecting the financial means would be welcomed if the compulsory medical insurance payments are individualized and based on the principle of collecting system. In this case the insured person would benefit from medical services according to the quantum of made payments.

Another problem examined by the Parliamentary Advocates is that of transportation of patients with nephrysm to the Chisinau Centre of Dialysis.

Examining the both sides of this problem, it was settled that these patients are not included in the list of patients for which the medical transport is foreseen, Annex No.1 of the Compulsory Medical Insurance Program for 2004.

Transportation of patients with nephrysm to the Chisinau Centre of Dialysis shall be provided according to a common letter of the Minister of Health and the Ministry of Finance Nos.03/20-116; 04-18/58 of 04.05.2004 "On Supporting the Public Medical and Sanitary Institutions by Investors", which authorize the Rayonal Councils, as founders of the Direction of Rayonal Health Care, to provide material help to patients with nephrysm for their transportation 2-3 times a week to the Dialysis Centres, for the preparation of insulin, oncological and phychotropic medicine, procurement of medical equipment, and providing financial means for building reconstruction and overhaul. Financial means are provided through the Decision of Rayonal Council as a representative and deliberate authority.

The allocations are provided only from the available financial means of the rayonal budgets.

Usually rayonal councils refuse to provide the financial means due to the lack of available sources or other subjective reasons, including due to the reason that since 01.01.2004, at the same time with the introduction of compulsory medical insurance, the medical care is provided from the accumulated medical insurance funds.

We would like to mention that the common letter of the Ministry of Health and the Ministry of Finance is an internal document and has a recommendable character, thus, it cannot force the rayon councils to provide financial means for the above mentioned purposes.

Therefore, the problem referring to the transportation of persons with nephrysm to the Dialysis Centers will find its solution, if the expenses for this are included in the Program.

The insured persons addressed in their claims another problem: period of hospital treatment. The Compulsory Medical Insurance Program stipulates an 8-day period, which is considered very short for an efficient treatment. The Program stipulates that if necessary, at the recommendations of specialists, the hospital treatment could be extended. But in fact it happens very rarely: the patients being forced to extend the treatment for money or to end it.

Taking into account the medical recommendations, according to which an average treatment of diseases lasts at least 14 days, it is not understandable the fact why 8 days were approved in the Compulsory Medical Insurance Program.

Due to lack of financial means, many patients do not extend the treatment, and as we mentioned above, request the emergency service which provides them with the necessary help or after a period of time require the repeated hospital treatment.

There are cases when the hospital treatment is refused by ignoring the note issued by the family doctor. These cases were related to the Centre for Human Rights of Moldova, which requested the immediate reinstatement of patients in their constitutional right to health care. These incidents were settled.

We have an example of such case. The complaint was written in Russian language and we present its translation:

Petition

On 20.X.2004, I suffered a road accident. I was transported to the hospital with fractures of both legs and the fracture of thighbone. I was hospitalized up to 9.XI.2004, but I did not receive assistance due to lack of money. I was simply "droved away" from the hospital. My son, who is also ill, was forced to take me home. Now I am "rotting" in bed.

I made a home call, but the family doctor only took the extract. Up-today the Ministry of Health has not decided anything with respect to may petition. I have no longer the insurance policy, it remained somewhere at the doctors. Due to schizophrenic diagnosis, I should been transferred from the category pensioner to invalidity degree. But I wasn't."

As for the prophylaxis and disease prevention, among which cardio-vascular diseases, we would like to mention also the complaints of insured persons that the blood pressure is taken only on the basis of insurance policy and only in a territorial primary medical institution.

Treatment of patients with tuberculosis

According to information submitted by the Institution of Physiopneumology, at the pre-hospital phase, 50% of patients with tuberculosis do not have insurance policy, because many of them are not employed (between 2003-2004 – 76.8%), therefore, have no financial means for their procurement. We would like to mention that these patients are not included in the list of persons insured by the Government.

The patients who work abroad and who do not have insurance policy have also a difficult situation. Their procurement was impossible in 2004 given the fact that the procurement was ceased on 15.03.2004, the patients are not able to pay the expenses for the hospital treatment, which is MDL 130/day and the period of hospitalization is from 60 to 90 days. The total cost for the hospital treatment is MDL 7800/60 days and MDL 11.700 per 90 days (calculation made by the National Program of Tuberculosis Control). The cost of a treated tuberculosis case registered by the National Company of Medical Insurance (CNAM) in 2004 was MDL 3300, while according to the National Program of Tuberculosis between MDL 7800 and 11.700.

The National Company of Medical Insurance registered 6700 cases in 2004, which is not a real figure, because 4016 patients were registered in 2003, out of which 422 in penitentiaries. Hence, the number of registered cases was grown by cutting down the cost of a treated case.

The Company pays only the costs for hospital treatment. Hospital, at their turn, if do not have patients cannot meet the concluded contracts.

The budget for 2004 was planned to be MDL 3.300.00, while the National Program of Tuberculosis Control, through Government Decision No.559 of 28.06.2001, stipulates for 2004 - USD 3.302.802.

5048 persons were registered on 01.01.2004 (the eastern rayons of the Republic are not included).

Treatment of patients with cancer

According to data submitted by the Oncological Institution, the amount allocated by the CNAM for the treatment of patients with cancer is MDL 34812.8 million, out of which: 28% - MDL 9799.5 for the procurement of medicine. These financial means are not enough to treat this category of patients. For a cancer case the costs are as follows:

- an adult – MDL 2772;
- a child – MDL 1973;
- hematology for adults – MDL 2400;
- radiography – MDL 5000.

In the first months of 2004, 17.517 patients were treated in comparison with 9.590 registered by the CNAM. This is the reason why the expenses for a cancer case have been reduced.

The oncological units in 32 rayons lack personnel. Oncological specialists work only in 19 rayons, while other territories are completed with doctors on contracts.

Medical care in the penitentiary institutions is worse. The Ministry of Health and the Department of Penitentiary Institutions confirm the depressed state of this sector.

On the basis of petitions received from the detainees and who refer to the bad quality of medical services, the Ministry of Health and the Department of Penitentiary Institutions informed the Parliamentary Advocates that the medical care of person in detention and under criminal investigation is provided in accordance with the resources allocated from the state budget, and the volume of medical care in the penitentiary system from the budgetary resources cover only 9.2% of the necessary.

In the penitentiary institutions the rate of mortality due to tuberculosis exceeds the rate of the country. All patients in the penitentiaries and investigative isolators who are not treated in time are potential bearers of different social diseases, because in time they return into the society.

Today, one of the main sources of maintaining the health system is the revenue accumulated from the compulsory medical insurance premiums paid by physical and legal persons.

Another essential source of income for medical institution is paid services which are not covered by the Compulsory Medical Insurance Program, and which are very expensive.

The problem of implementation the compulsory medical insurance is not the only problem that impedes the observance of the right to health in the Republic of Moldova. The blood donation, which is a stringent one, in our opinion, is another problem neglected by the State. The process of blood donation

is stipulated in the Organic Law No.1458-XII of 25.05.1993 on Blood Donation and in Article 29 of the Law on Health Protection, which stipulates that the blood donation is a voluntary process and by no means, an obligation of the patient and his family to complete the blood stock.

The Law on Blood Donation stipulates a series of facilities for donors, and for the Honorific donors – persons who have more than 50 blood donations – special facilities. Unfortunately, many facilities granted by the law are not ensured. During the examination of this problem, the Parliamentary Advocates informed the Government of the Republic of Moldova that according to the Ministry of Health, the facilities are not provided due to lack of budgetary funds.

The affirmation that the blood donation is a problem neglected by the State is also based on the fact that there is no evidence of donors. Many donors do not even know that are Honorific donors, they do not know their rights, the process of their stimulation is not monitoring. The Ministry of Health declared that the problem of blood donors is an objective of the “Red Cross” Society, i.e. a non-government organization that has the purpose to support the State’s efforts to promote the blood donation, but by no means, it replaces the State’s contribution. It should be mentioned that the blood donors were not even included in the list of persons insured by the Government.

Generalizing the collected materials with respect to the observance of the right to health, including as a result of the implementation of compulsory medical insurance system, the Parliamentary Advocates submitted to the Government of the Republic of Moldova some proposals for improving the situation.

The compulsory medical insurance system is welcome in the Republic of Moldova, but has many defects that should be eliminated. It needs to be adjusted to the international standards, taking into account the country’s specific – low developed economy, poor population, big number of unemployed persons, low salaries for most employees, lack of available financial means of uninsured persons to buy the compulsory medical insurance policy, unofficial and illegal payments in the health care system, population’s education regarding the unhealthy way of living, etc.

According to the last evaluations of the implementation of compulsory medical insurance system undertaken by the experts of World Health Organization in December 2004, the process of implementation was appreciated satisfactory, with some reserves. Important recommendations were made in order to improve the implementation process.

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(1) The State shall protect the motherhood, children and young men by stimulating the development of necessary institutions.

(Article 49 the Constitution of the Republic of Moldova)

(2) Children and young men enjoy a special form of assistance in the enforcement of their rights.

(3) The State shall provide necessary financial resources for children and assistance for sick or disabled children. Other forms of social assistance for children and young men shall be settled in the Law.

(Article 50 of the Constitution of the Republic of Moldova)

The children are the State’s wealth because are its future. The concern for the future generation is one of the priorities of the State expressed through different forms of protection.

Especially after the adoption of the Convention on the Rights of the Child on November 20, 1989 by the UNO, the problem approach on children’s right has changed. Initially, the child was treated as a property of parents, but now a child is treated as a person and is only under the protection of parents and the State.

In the recent years, the problems on child’s protection have been defined and settled. The risks to which the children are subjected were made public.

Within the Convention, the States “shall ensure to the maximum extent possible the survival and development of the child”.

The Republic of Moldova assumes this obligation since the first months of child's development – through a prenatal medical leaving provided to mother, as well as after the child's birth – maternity leaving.

An important step in the observance of child's rights is the settlement of his/her legal statute, which means the right to a name and citizenship, registration of birth certificate and national identity cards.

In the Republic of Moldova the orphans receive free of charge identity cards. The child is named by his/her parents. At the same time, the children have the right to change their name when attain the majority.

The State protects the child's inviolability, protecting him/her from any form of exploitation, discrimination, and violence. For this purpose, the national legislation stipulates the punishment of persons, including parents, who commit violence towards children. Abandoned children are placed in other families or in state institutions, at the same time the State is obliged to take care of the integrity of parents' property, whose successors are institutionalized children.

The Centre for Human Rights of Moldova receives complaints on the lack of attention of tutelary agency on property integrity.

Another priority problem of the State is juvenile criminality. According to data of Procuracy General, the juvenile offences increased by 7% (about 2500 criminal offenses) in 2004.

The Republic of Moldova lacks juvenile courts or Judges specialized in juvenile justice.

At present, there is a working group on the elaboration of juvenile legislation and mechanisms of implementing the concept which works under the patronage of the UNICEF and state institutions and non-government organizations.

The alternative punishment for juvenile offenders is also discussing.

Of no less importance is the problem of social reintegration of minors. According to the legislation in force, the children are protected against sexual exploitation, use of drugs, as well as alcoholic consumption.

The advertisement of alcoholic beverage broadcasted in mass media and placed in public places near the education institution having an indecent form and context can have a negative impact on the moral education of children. The Parliamentary Advocate addressed to mass media entities requesting careful consideration of the problem on indecent advertisement in contradiction with the Law on Advertisement.

Society's development implies also value modification. Today, children aim at developing their personality, claim a respectful attitude towards their dignity and honor. They claim the observance of the right to freedom of expression, thought, and conscience. The State guarantees to child able to formulate his/her opinions the right to freely express the opinions on any problems. The opinion of a ten-year old child shall be taken into account while deciding on his/her interests.

To know the human rights and fundamental freedoms is a very important factor in the development of an active citizen, thus, we consider usefully to introduce a new object "Human Rights and Fundamental Freedoms" in the curriculum. Thus, we will conform to the recommendations of the Council of Europe to undertake adequate measures to develop and promote the human rights education. Studying the human rights and fundamental freedoms in educational institutions will contribute to the education of a democratic citizenship, which is a major component part of the main mission of the Council of Europe – to promote a free, tolerant, and fair society. At the same time it aims at making the young people sensitive to their responsibilities to consolidate the democratic society. The active participation of everyone in political, civic, social, and cultural life is very important for its development.

Another objective proposed by the State is the accession to Bologna Process. To achieve this purpose is necessary to make the education reform.

Article 35 of the Constitution of the Republic of Moldova and Article 10 of the Law on the Rights of the Child guarantee the free of charge education in the official or in other language in secondary schools. The right to education is an essential right for child's development being directly connected to the right to work and other fundamental rights. The right to education covers the compulsoriness of secondary education, free education and everyone's access to vocational and high education. The State

is also obliged to ensure a modern and efficient educational process. All children have equal chances to be subjects of this process at any stage of it.

In the conditions of the Republic of Moldova, where the functioning of education system depends on the financial contribution of parents, it is difficult to appreciate the level of free education. The parents participate in the formation and support of technical-material basis of educational institutions, buy or borrow the manuals included in the curriculum, even if the provisions of Article 35 of the Supreme Law stipulates that the state education shall be free of charge.

The right to education includes also the freedom of parents to choose for their children the language of their education and educational institution.

Regretfully, the year 2004 registered a series of sad events provoked by the administration of the Self-Proclaimed Transnistrian Republic, which suspended the educational process of Moldovan schools teaching the Latin method of writing. After 1992, the educational process in the respective territory has been carried out in Cyrillic method of writing, even in the schools teaching in the official language.

According to statistic data of "MNR", there are 183 secondary schools with a total number of children of 92.000 pupils, out of which 82% are teaching in Russian language, 13.5% - in Moldovan language on the basis of Cyrillic method of writing, 3.8% - in Moldovan language, and 0.7% - in Ukrainian language. Because the enforcement of the right to education was restricted, the children, professors, and parents were forced to defend their rights in street. The situation of schools teaching in Latin method of writing was in the attention of the Government of the Republic of Moldova, civil society and international community.

The Parliamentary Advocates took actions with respect to the future of these children requesting the international bodies to intervene in these events of Transnistria and with respect to the violation of the rights of the citizens in this territory.

It is the foremost duty of the State to include the children in the educational process. This is an acute problem given the fact that some children from different reasons leave the school. During the first two months of the academic year 2004-2005, 383 children as young as compulsory educational age were left outside the educational process, the number being further reduced by two. At the same time, the number of illiterate children has decreased as compared to last years. For example, in the same period of 2003, the number of illiterate children was 1263. One of the main causes of illiteracy is poor financial situation of families, poor progress and refusal of parents to permit the child to go to school from different reasons, including religious reason. Many children don't go to school because their parents work abroad, and the persons responsible for them do not cope with the difficulties of their behavior. According to data of the Ministry of Education, about 20.000 children of compulsory schooling age were abandoned by their parents because the last went to work abroad.

The State recognizes to each child the right to social security granted to guarantee a decent standard of living, adequate for physical, mental, moral and social development. The parents and the State have equal responsibility to guarantee a decent standard of living to children. In this context, the parents are obliged to ensure a decent standard of life and the State is obliged to make sure that parents' possibility is reasonable and achievable.

Even if the States took a series of measures to achieve this purpose, a great number of persons – parents in audience at the Centre for Human Rights of Moldova – claim the impossibility of ensuring a decent standard of living to their children. This is due to low income of the family. Social aid in indemnities is provided only to low income families, which monthly income is not more than MDL 54 per person and is paid in the amount of MDL 50-100.

During the Round Table held by the Centre for Human Rights of Moldova on June 01, 2004 attended by government and non-government organizations there were discussed problems claimed by the participants. Real proposals were submitted to the Parliament to be taken into account at the elaboration of social security legislation.

One of the proposal discussed during the Round Table was to calculate the monthly indemnity with respect to country's average salary, given the fact that the State does not have enough financial means, one of the reason why the indemnity are paid in fixed quantum.

Many problems on insurance and social protection of disabled children and their families have been also discussed. For example: low allocations for disabled child, the difficulty of integration in the society, lack of social infrastructure for disabled persons – family centers, payment of indemnity only to

the mother of disabled child, keeping the seniority for persons who take care of disabled child, leveling the period of care of one parent with the work of a social worker, the right to pension in advantageous conditions at the age of 50 years for persons who raised disabled children up to 8 years, including the deceased, annual indexation of social allocations, etc.

The Ministry of Labor and Social Protection examined the proposals submitted by the Parliamentary Advocates and declared that some of them were included in the National Human Rights Action Plan for 2004-2008, the Economy Growth and Poverty Reduction Strategy Paper, in the legislative modification projects, etc.

Thus, the social allocations shall be indexed monthly. The Frame – Regulation on Personal Assistant Activity was elaborated. It stipulates the consolidation of personal social assistant position in the field of home service provision within the social assistance territorial units. The Economy Growth and Poverty Reduction Strategy foresee a mechanism of employing the disabled persons as social assistants and of including this position in the Classifying List of Professions.

Abandoned children in state institutions need an increased attention of the State.

Another problem is children placed in Family Centers. The problems relate to the big number of children placed in the respective centers, the income of only one parent – educator, low salaries and indemnities, lack of concern for those that left these Centers. The legislation currently in force stipulates the creation of such Family Centers for 5-10 children, when many families from the Republic of Moldova educate only 2-3 children. Families with four and more children are considered families with many children. We think that the big number of children diminish the quality of education in the Family Centers. The amount of MDL 180-200 allocated per child in the Family Center is relatively small to ensure the children with a decent standard of living.

The right to health and physical integrity is stipulated in Article 24 of the Convention on the Rights of the Child. According to this “States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health”, and shall take appropriate measures to diminish infant and child mortality, to ensure the provision of necessary medical assistance, to combat disease and malnutrition, to ensure appropriate pre-natal and post-natal health care for mothers.

In 2004, the problem of infant nutrition was discussed at republican level. The Ministry of Health noticed an increase number of children breastfed as compared to previous years. It is recommended breastfeeding up to 6 months, which will improve the health state of new-born children and will decrease their morbidity. The Government of the Republic of Moldova has drawn the attention on the need to re-open the kitchens for baby food preparation and to stimulate the economic agents that produce baby food.

X X X

(1) The right to possess private property and the debts incurred by the State are guaranteed.

(2) No one may be expropriated except for reasons dictated by public necessity, as established by the Law and against just and appropriate compensation made in advance.

(Article 46 of the Constitution of the Republic of Moldova)

15% of total number of claims received by the Centre for Human Rights of Moldova refers to the violation of the right to private property.

Like in previous years, the petitioners referred to the problems on:

- the restitution of value shares, of other goods from collective agricultural farms;
- the restitution of confiscated and nationalized estate;
- indexation of money deposits in *Banca de Economii* [Savings Bank of Moldova];
- privatization of living space, etc.

A great number of petitions refer to the indexation of money deposits in the *Banca de Economii*. Old persons refer to the procedure of application the provisions of the Law No.1530-XV of 12.12.2002 on the Indexation of Money Deposits of Citizens of *Banca de Economii*; the Government Decision No.179 as of 20.02.2003 on the Indexation and Payment of Indexed Money for Deposits of Citizens of

Banca de Economii; Government Decision No.250 of 12.03.2004 on the Approval of Age Category of Deponents of *Banca de Economii* for Paying the Indexed Amount in 2004.

Many old persons, deponents of *Banca de Economii* who suffered from the devaluation due to inflation consider that the Law on the Indexation of Money Deposits of Citizens of *Banca de Economii* violates the right to private property guaranteed by the Supreme Law of the State, because they will not be able to use the money deposited once in *Banca de Economii*, which is going to be indexed in the second phase.

It should be mentioned that this situation is common for all old persons, who became deponents of *Banca de Economii* up to 1992.

On the basis of the Law No.1530-XV that stipulates the State's duties towards the citizens of the Republic of Moldova deponents of *Banca de Economii* of April 2, 1992 and settles the main principles on indexation, quantum, payment of indexed sums, the petitioners benefited from the payment of indexed sums for 1 thousand of ruble (Phase 1).

According to provisions of Article 5 of the same Law, the indexation and payment of indexed sums shall be made step-by-step, at the request of deponents, for the first thousand of ruble, then for the balance that exceeds 1 000 ruble depending on deponent's birth year. The Government Decision No.179 of 20.02.2003 on Indexation and the Payment of Indexed Sums for Money Deposits of Citizens of *Banca de Economii* stipulates in item 2 that the payment of indexed sums shall be carried out by steps: step 1 – 1000 ruble = 1000 lei, depending on deponents' birth year; step 2 – 2.5 ruble*1 leu, depending on deponents' birth year.

Age categories of deponents are settled annually by the Government; after it receives from *Banca de Economii* the information on the registration of beneficiaries for indexation and whereupon adopts the Budget Law for the next year.

The step 2 will start only when all the indexed sums are paid to all beneficiaries of the Republic of Moldova.

Taking into account that the life expectancy in Republic of Moldova is on average 64.4 years for men and 71.7 years for women, it is obvious that many old deponents will not be able to benefit from the money indexed in the step 2, from the only reason that they will be dead.

The right to private property and its protection are guaranteed by the Constitution of the Republic of Moldova, and the old persons enjoy all human rights equally as other members of the society, but form a category of vulnerable citizens as it is stipulated in Article 47 of the Constitution. The Parliamentary Advocates considered convenient to operate the modifications on the right of elders as a priority. It is unanimously recognized that the prestige and social position of elders depends directly on their economic and financial situation which is known by everyone, and increasing the quality of social protection is a complex and long process. If the State can not guarantee a decent standard of life to elders, one of the ways to improve the situation would be the integrated payment of indexed sums for elders.

Along the same line, the Parliamentary Advocates addressed to the Parliament the proposal to modify the Regulation on Indexation and Payment of Indexed Sums for Money Deposits of Citizens of *Banca de Economii*, approved through Government Decision No.179 of 20.02.2003, according to which old persons could benefit from integrated indexation of money deposits.

The violation of property right was claimed by the citizens born and raised in repression, but who, according to legal frame in force, are not considered persons who suffered from political repressions and respectively, cannot benefit from the return of confiscated, nationalized or illegally taken in other manner estate, as well as from other facilities stipulated in the Law No.1225 of 08.12.1992 on the Rehabilitation of Victims of Political Repressions.

Analyzing the legal frame, the Parliamentary Advocates submitted to the Parliament of the Republic of Moldova the proposal to revise Article 1 of the Law on Interpreting some Provisions of the Law No.296-XIII of 23.11.1994 on the Rehabilitation of Victims of Political Repressions in order to exclude the paragraph 2 of this Article, saying that on the basis of Article 2, paragraph 1, sub-paragraph 3 of the Law No.1225-XII of 30.12.1992 on the Rehabilitation of Victims of Political Repressions victims of political repressions shall be considered "family members of repressed persons, including children born in repression or on the way to repressive place, persons that were forced to follow their

parents, relatives, tutors in exile or in the special detention place or who remained without their support, as well as children of persons executed as a result of political repressions”.

At the same time, Article 1 of the Law No.296-XIII of 23.11.1994 stipulates: "According to Article 2, paragraph 1, sub-paragraph 3 of the mentioned law, family members of repressed persons shall be considered spouses, children, parents, other relatives and tutors who were forced to follow the repressed person in exile or in the special detention place.

Children of repressed persons born in the repressive places or on the way to these, shall be considered children born in a family created until the repression”.

In the opinion of Parliamentary Advocates the provisions of mentioned Article through the regulations on family creation is a deviation from the Law on the Rehabilitation of Victims of Political Repressions, because restricts the category of persons who suffered due to political repressions.

Transition to market economy, besides the many benefits that cannot be neglected - land reform, has generated a series of problem that have been transformed in a new type of disputes regarding the protection of owners' rights. The complaints addressed by the owners are examined in courts, administrative bodies at all levels and in the Centre for Human Rights of Moldova.

Despite the fact that the Law No.198-XV on Agricultural Leasing and the Government Decision No.72 on the implementation of the Law No. 198-XV are currently in force, the owners of land parcels continue to complain on problems on tenement and restitution of value shares from collective agricultural farms. The most frequent were:

- the impossibility to obtain the value share or restitution of value share from the collective property;
- consequences of not concluding the leasing contracts.

According to data of villages' Mayoralties, as of January 1, 2005, over 390 thousands of people (59% of the total amount of people who received land parcels) formed and registered over 292 thousand farms. About 266 thousand of citizens who received separately land parcels (41%) did not register their farm but individually tilled the land or leased it to other land owners (householders or auxiliary agricultural enterprises). These persons possess over 324 thousand ha of agricultural land. About 98 thousand from the above mentioned (37%) leased the land to other legal and physical persons. Due to low financial means and lack of machines for tilling, many owners lease the land parcels without concluding leasing contracts. This generates long suits. Moreover, the majority of owners do not know the way and consequences of concluding a leasing contract.

The complaints regarding this subject are sent to the Centre for Human Rights of Moldova. As a result, during 2004, Cahul Branch carried out field visits in the villages, and found out a low degree of information and a series of violations of the provisions of the Law No.198-XV.

Not-allotted land and ungrounded refusal of APL to set land borders – are just few examples of the problems that appear due to population' disinformation and errors in allotting the land, approved by the municipalities of villages. The complaints received at the Centre for Human Rights of Moldova confirmed that in some localities the land owners did not receive the title of land and respectively, the land.

Collaborators of Cahul Branch, together with the Permanent Arbitrage in Agriculture within the AO “Assistance, Support and Training in Agriculture”, Cahul rayon, examined the petitions and as far as it was possible contributed to the reinstatement of land owner, farmers and other people from the rural area in their rights.

A big number of petitioners express their disagreement on the way of allotting the land parcels for building houses with many apartments that are not blocks of apartments.

The petitioners claim the impossibility to privatize the land around the house, because the neighbors do not enforce this right.

According to Land Code, the local public administrative authorities transfer (within the limits of urbanism, and if it is not possible, taking into account the real surface of land around the buildings) the

affluent land of tenement houses that are not blocks of apartments to the common property of apartment owners, proportional the surface privatized by each of them.

According to the Regulation on Allotting the Land to Private Property approved through Government Decision No.984, allotting the land into private property shall be carried out at the same time with the primary massive registration or upon the request of building owners submitted to local municipality. Normative acts in force do not stipulate expressly that the application shall be examined only in case of submitting the agreement of all neighbors.

However, the local public administrative authorities examine the applications of interested persons only after the agreement of neighbors, thus restricting the right of the citizen to property, guaranteed by the Constitution of the Republic of Moldova.

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(1) The State is obliged to take action aimed at ensuring that every person has a decent standard of living, whereby good health and welfare based on available food, clothing, shelter, medical care, and social services are secured for that person and his/her family”.

(2) The citizens have the right to insurance in case of unemployment, disease, invalidity, old age or other cases of losing the means of subsistence as a result of independent circumstances.

(Article 47 the Constitution of the Republic of Moldova)

One of the main duties of the State is social protection of its citizens.

In order to observe de facto the right to social assistance and protection guaranteed in Article 47 of the Constitution, the State is obliged to take action both legally and in order to implement the adopted legislation.

The welfare of the population of a state is directly connected to its economic capacity.

We can state stability with respect to social labor conscriptions due to positive indexes in country's economy development, growth of GDP as well as some successes in implementing the social policies registered during 2004.

The implementation of new social insurance system has started to show positive results. Annual indexation of pensions, increasing the indemnity quantum addressed to families with many children, etc. were possible from the means accumulated in social insurance budgets.

The approval of the Economic Growth and Poverty Reduction Strategy was an important step to guarantee the observance of the right of social assistance and protection.

Regrettably, the undertaken measures are not enough to ensure a decent standard of living. This is also confirmed in the complaints addressed to the Parliamentary Advocates, including through the informational service “Hot Line” – a project implemented by the Centre for Human Rights of Moldova within the National Human Rights Action Plan of the Republic of Moldova.

According to statistic data of the Centre for Human Rights of Moldova, the complaints on the non-observance of the right to social assistance and protection constitute about 17%.

The problems invoked by the petitioners can be divided into several categories. One of this is the annulment of compensation paid to spouses of participants of the Second World War within Romanian Army. This problem has been examined since 2003. According to the List of persons compared to participants of the Second World War of Annex No.1 of the Regulation on the Nominative Compensations for Certain Categories of Population, approved through Government Decision No.761 of 31.07.2000, participants of the Second World War may be participants of the Second World War within Romanian Army.

On the basis of the same Regulation, nominative compensations were granted to participants of the Second World War and their spouses as well as persons compared to participants of the Second World War.

The Law No.933-XIV of 14.04.2000 on Special Social Protection of Certain Categories of Persons stipulates that the beneficiaries of nominative compensations are the participants of the Second World War and their spouses, depending on the case, as well as persons compared to participants of the Second World War.

The Law of the Republic of Moldova No.1358–XII of 18.03.1993 on the Rehabilitation and Reinstatement of Citizens Participants of the Second World War in their Rights, stipulates in its Preamble that it is adopted in order to observe the human rights and equal legal and social protection of all citizens of the Republic of Moldova participants of the Second World War, aiming at achieving a real civic conciliation.

Thus, all citizens of the Republic of Moldova who participated in the Second World War declared innocent towards the society, rehabilitated and reinstated in their rights, shall benefit equally from the social facilities stipulated in the legislation in force.

From the above mentioned provisions results that the wives of participants of the Second World War within Romanian Army shall benefit equally from the nominative compensations as the wives of other participants of the Second World War. But this did not take place, because item 2 of Annex No.1 of the Regulation mentioned above stipulates the persons compared to participants, but the Law No.933-XIV exclude their comparison.

The Parliamentary Advocates considered if the named Law grant nominative compensations to participants of the Second World War and their spouses, this Regulations should cover the persons compared to participants of the Second World War and their spouses, and submitted to the Government the proposal to exclude item 2 from the List of persons compared to participants of the Second World War of Annex No.1. The arguments of Parliamentary Advocates were considered grounded and the spouses of participants of the Second World War within Romanian Army were reinstated in their right to social assistance and protection through the Government Decision No.1053 of 27.09.2004.

The victims of political repressions addressed repeatedly to the Parliamentary Advocates. These can benefit from nominative compensations only if are included in the 3rd degree of disability, considering that the state authorities committed injustice with respect of this category of persons.

With the view to re-establishing social equity, the Parliamentary Advocates proposed in 2003 the Parliament to review this list of beneficiaries of nominative compensations, including this category of persons, no matter of disability status and to modify the Article 3 of the Law No.933-XIV of 14.04.2000 on Social Protection of Certain categories of Population.

The proposal was accepted. It was elaborated the project on modification the given Article by introducing a new paragraph “12” which would stipulate the right of victims of political repressions during 1917-1990 to benefit from nominative compensations, at the same time excluding the letter d).

At the same time, the Parliamentary Advocates were informed that the respective proposal could be achieved only in trimester I of 2004. The reason was the lack of financial means foreseen in 2003 State Budget and in the Medium-Term Expenses Frame for 2004-2006 approved to achieve the provisions of item 3 of the Poverty Reduction Strategy approved through Government Decision No.524 of 24.04.2002 „On the Approval of Preliminary Poverty Reduction Strategy”. Regretfully, this problem wasn't solved in 2004 and is still considered by the Parliamentary Advocates.

Other complaints referred to calculation of pension on the basis of the Law No.156-XIV of 14.10.1998 on State Social Insurance Pensions, especially, the application of individual coefficient of the pensioner.

The pension of persons not working in the public service after January 1, 1999 is calculated by determining the average insured income from the average monthly salary for the last 60 consecutive months by multiplying to the individual coefficient settled for this period in the manner stipulated in Annex No.4 of this Law, to the value of average monthly salary for all period after January 1, 1999 up to the year of calculation. The individual coefficient should not exceed 1.5.

The Ministry of Labor and Social Protection was asked to comment these calculations. The quantum of 1.5 of individual coefficient is used to calculate the pension of public servants who did not work in public service after January 1, 1999. The procedure to calculate the pension of a public servant differs from the general one, which guarantees a 3-4 times bigger pension than the age limit pension. It was necessary to set this coefficient in order to equal the rights of pensioners from the public service, who worked in the field up to January 1, 1999 and those that worked after this period.

The same Ministry presented arguments that do not correspond to the principle of equity of all citizens before the Law. The servants who did not work in public service after January 1, 1999 enjoy diminishing legal criteria of calculating the pension or if it is to mention the equality, this is expressed in

the purpose to equal all pensioners after the criteria of equality towards the volume of insurance, but not towards their contribution which refers to their status within the work relations.

The procedure of calculating the age limit pension was modified through the Law No.358-XV of July 31, 2003 on Modification and Completion of Certain Legal Acts. The insured average income for each calculated year cannot exceed three average monthly salaries for the respective year. The Parliamentary Advocates considered that this modification is also a deviation from the principle set after January 1, 1999, according to which the pension system is based on insurance that results from individual contribution of everyone, the pension should be calculated in report with this contribution.

Examining these problems in the context of legislation in force, the Parliamentary Advocates addressed to the Parliament the proposal to exclude from the Article 45 paragraph (2) of the Law No.156-XIV of 14.10.1998 on State Social Insurance Pensions the statement: "The individual coefficient can not exceed 1.5", and from the Annex No.2 the index S_a - to exclude the syntagm "for each calculated year cannot exceed three average monthly salaries for the respective year".

The Parliament modified only the Law No.156-XV regarding the statement "The individual coefficient can not exceed 1.5" through the Law No.273-XV of 16.07.2004.

Citizens that were subjected to forced labor of the fascist regime during the Second World War addressed to the Centre for Human Rights of Moldova requesting the intervention of Parliamentary Advocate in enforcing the right to social insurance. Having identity cards of facilities stipulated for minor ex-detainees of concentration camp, ghettos, and other places of forced detention created by fascist Germany and its allies during the Second World War, yet due to some legal gaps, they cannot benefit from monthly state allocations.

The Law No.933-XIV of 14.04.2000 on Special Social Protection for Certain Categories of population stipulates the beneficiaries of nominative compensations: persons with 3rd degree disability and ex-detainees of concentration camps and ghettos. The Law No.121-XV of 03.05.2001 on Additional Social Protection to Participants of the Second World War and their Families stipulates monthly allocations for ex-detainees of concentration camps and ghettos. The Law No.190-XV of 08.05.2003 on Veterans stipulates the definition of "war veterans" – participants of the Second World War as well as persons compared to participants of the Second World War shall be considered war veteran. According to the same Law, war veterans have the right to monthly allocations and nominative compensations according to the legislation in force.

Government Decision No.393 of 04.06.2001 on Payment of Compensations to Victims of Nazism was adopted to protect socially the citizens of the Republic of Moldova who are ex-detainees in concentration and forced labor camps during the Second World War.

After analyzing the mentioned acts, it was found out discordance between the definitions of "concentration camp", "ghettos" and "other places of forced detention". The Parliamentary Advocates considered that the normative frame in force that settles the social protection for certain categories of citizens, especially the participants of the Second World War and persons compared to participants of the Second World War, is elaborated with deviation from the provisions of the Law No.780-XV of 27.12.2001 on Legal Acts. Together with other principles, these do not correspond to the provisions of international treaties at which the Republic of Moldova is a party, as well as constitutional dispositions that stipulate the equality of all citizens before the Law (Article 16, the Constitution), because the persons subjected to forced labor in other places of forced detention created by fascist Germany and its allies during the Second World War were deprived of facilities granted to certain categories of persons who also suffered in the same period. These facilities are stipulated in Article 47 of the Supreme Law.

To settle this dispute, the Parliamentary Advocates addressed the proposal to re-examine the legal frame in force in order to conform it to the constitutional provisions on social protection and equality of all citizens before the Law, thus, implementing this legal frame in real social life. The Ministry of Labor and Social Protection supported the proposal. It recommended a draft law on normative compensations and monthly state allocations to all ex-detainees in the places of forced detention created by fascist Germany and its allies during the Second World War.

A number of persons compared to war veterans invoked in their complaints the problem of nominative compensations for public utilities, procurement of coal and logs.

According to the provisions of Law No.190-XV of 05.05.2003, the war veterans shall be considered: militaries in active service, reserve troops, volunteers and collaborators of internal affairs

entities of military service and special troops, as well as militaries, collaborators of internal affairs entities and civil persons working in these services for ensuring the efficiency of war actions for the protection of territorial integrity of the Republic of Moldova or who participated in armed actions, as well as persons who attended military service or worked in battle-front during the Second World War and were decorated with orders or medals of ex-USSR for perfect service and self-sacrificed work during the Second World War.

According to the same law, one of the social protection measures of war veterans is nominative compensations for utility services, procurement of coal and logs. The same compensations, but in the amount of 25%, shall be granted to persons compared to war veterans.

The Parliamentary Advocates considered that the adopted norm diminished the payment of certain nominative compensations for a category of war veterans, although the definition of war veteran is the same for all categories of persons falling under the incidence of the Law, having three fundamental principles: 1. – participation of persons in different battles, 2. – insurance of these actions, 3. – refers to military and civil persons with special merits during the Second World War.

Considering that the mentioned law is restricting the constitutional right to social assistance and protection, although according to Article 54 of the Constitution, the laws that repeal or restrict the human rights and fundamental freedoms cannot be adopted in the Republic of Moldova, the Parliamentary Advocates submitted the proposal to re-examine the Law No.190-XV of 08.05.2003, in order to reinstate a big category of citizens in their rights. Through the Letter No.1104-653 of March 31, 2004, the Government informed the Parliamentary Advocates on the elaboration of a draft law on modification the Article 14 of the Law No.190-XV of 08.05.2003 on Veterans.

The Parliamentary Advocates considered also the problem on the impossibility of pensioners of length of service to benefit from the nominative compensations and other facilities stipulated in normative frame in force.

The Law No.933-XIV of 14.04.2000 on Special Social Protection for Certain Categories of Population stipulates the definition of “sole pensioner” which means “one or more pensioners for age limit (spouses, brothers, sisters) who live in the same dwelling and have no children or have minor children in the category of person that benefit from nominative compensations according to this law”.

According to the same Law, the sole pensioners benefit from nominative compensations. These provisions say that all pensioners, irrespective of the category, shall benefit from nominative compensations. This fact is also stipulated in Article 16 of the Constitution which guarantees the equality before the law and public authorities. The Article 47 obliges the State to take measures to ensure social insurance for age limit, by guaranteeing the right to pension as a form of insurance against social risks appeared as loss of working capacity (due to age limit, disability) or the loss of the breadwinner. The pensioners for length of service have the same situation as other categories of pensioners.

Article 283 paragraph (1), let.i) of the Fiscal Code No.1163 of 24.04.1997 stipulates that “persons of age limit” shall be exempted from real estates taxes. This syntagm is explained by the fiscal authority in the exclusive favor of pensioners for age limit (the Law No.156-XIV).

Considering that these provisions violate the right to social protection and assistance of pensioner of age limit, the Parliamentary Advocates submitted the proposal to revise the Article 1 of the Law No. 933-XIV of 14.04.2000, in order to exclude the definition of “sole pensioner”, “of age limit” and in Article 283 par.(1) let. i) of Fiscal Code No.1163 of 24.04.1997 to replace “persons of pensioning age” with “pensioners”.

The problem of observing the right to social assistance and protection of persons that used to work in the institutions and organizations from the left bank of River Nistru and did not pay social assistance contributions to the Social Insurance Fund of the Republic of Moldova is still opened. The introduction of new system of social insurance through social contributions has significantly changed the pension calculation method, which is now based on the individual’s insured income in relation to length of service. The persons who did not pay the contributions to the Fund benefit from minimum pension according to their status.

Examining the complaints of these persons, it was discovered that the National Social Insurance Company, made a legal error in calculating the pension of these persons. It was guided by the provisions of inter-governmental agreement between CIS states and attributed the status of “Foreign Citizen” to this category of persons.

The notification submitted to the National Social Insurance Company on the basis of Article 27 of the Law on Parliamentary Advocates was unsatisfactory, which obliged the Parliamentary Advocates to address to the Prime Minister of the Republic of Moldova.

The Ministry of Labor and Social Protection, the main state institution in elaborating the social policy, upon Government Decree, proposed an exception from the Law: to include the length of service of persons worked in the left side of the Republic in pension calculation, irrespective of the fact that they did not pay social insurance contributions to the Social Insurance Budget of the Republic of Moldova.

Taking into account that the currency of Self-Proclaimed Nistean Republic differs from the national currency of the Republic of Moldova, it was proposed a calculation through analogy. The calculation of real income of the pensioners from the left side shall be equal to the average salary of an employee from the same activity branch, the same length of service and qualification of the Republic of Moldova.

The National Social Insurance Company refused to follow the instructions of the Ministry of Labor and Social Protection. The Parliamentary Advocates initiated legal proceeding and appreciated this fact as a violation of constitutional right to social assistance and protection, taking into account that the situation appeared as a result of independent circumstances.

In 2004, the Centre for Human Rights of Moldova was in trial with the Ministry of Labor and Social Protection and the National Social Insurance Company. Regretfully, the decisions of the Court were not in the favor of the Centre for Human Rights of Moldova and respectively, of the interests of persons from the left bank of the River Nistru. Thus, this category of persons benefits form smaller social assistance and protection than the citizens of the Republic of Moldova who paid the social assistance contributions.

The investigation of certain petitions traced out the violation of the right to social assistance and protection in case of persons who participated in armed conflict for the protection of territorial integrity of the Republic of Moldova. One of the main problems was the living space.

Another one was the impossibility to benefit from the nominative compensations because these are paid by *B.C.A. “Banca de Economii”* only at the moment of receiving the payments for utility services. But the bill cannot be presented due to the lack of living space. This category covers also the participants that occupied abusively the tenement in *I “b”, Corobceanu str., Chisinau Municipality*, tenants of private living spaces and persons living on the left bank of River Nistru.

The present mechanism of granting compensations restrict the right of beneficiaries of nominative compensations to benefit form settled facilities. The lack of living space is a real impediment in enforcing this right to all citizens of the Republic of Moldova – beneficiaries of nominative compensations fall under the incidence of the Law No.933 on Special Social Protection to Certain Categories of Persons who have no living space. The number of these persons is growing in the Republic of Moldova.

A better mechanism of granting nominative compensations would be welcome to settle this dispute. These reasons are valid not only for participants in armed conflict form the left bank of River Nistru and persons forced to leave their living space, but for the majority of persons that do not have living space but fall under the incidence of the Law No.933.

The status of internal traveler is not stipulated in the national legislation.

The Republican Commission for elaborating measures and control of clearing-up consequences, material damages in the military armed area issued identity cards confirming the fact that the persons were forced to leave their living space in the eastern territory of the Republic of Moldova. It terminated its activity on 29.01.2001 through Government Decision No.74.

Therefore, no one forced to leave his/her living space in the eastern territory of the Republic of Moldova does not have the statute of internal traveler.

Government Decision No.520 of 05.08.1992 “On Foremost Measures of Social Protection of Participants in Military Conflicts for the Protection of Territorial Integrity and the Independence of the Republic of Moldova and Persons Affected by Military Conflict”, Government Decision No.172 of 17.03.1992 “On Urgent Aid Measures for Refugees forced to leave their living space in the left bank of River Nistru”, and Government Decision No. 197 of 26.03.1992 “On the Creation of Republican Commission for Coordinating the Material Assistance to Refugees and for Approving the Regulation on the Procedure of Offering Assistance to Refugees Forced to Leave Their Living Space in the Eastern Territory of the Republic of Moldova”, as well as other relevant national normative acts do not stipulate the definition of “internal traveler”.

The statute of “refugee” attributed to a person who suffered as a result of military conflict in the left bank of River Nistru is illegal, given the fact that the statute of refugee shall be granted only to foreign persons, stateless persons who require the protection of the Republic of Moldova, as a result of the necessity to leave the country due to war or fundamental grounds that can become a victim of persecution with respect to race, religion, nationality, social affiliation or due to its political opinions. The refugee status shall be conferred on the basis of the Law of the Republic of Moldova No.1286-XV of 25.07.2002 on the Refugee Status adopted by the Republic of Moldova after it had ratified the UNO Convention of the Refugee Status of July 28, 1951.

We admit that this situation has resulted because at the moment of adoption the mentioned acts, the Republic of Moldova has not ratified the UNO Convention on Refugee Status, and after its ratification it did not make the respective modifications in the national normative acts. The Parliamentary Advocates addressed the proposal to introduce the definition of “internal traveler” in the legislation of the Republic of Moldova, conforming thus, to the principles adopted by the UNO in 1998 during the 54th session. This definition should be taken in consideration while granting the rights and guarantees of persons forced to leave permanent living places traveling in the country.

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(1) Disabled persons shall enjoy a special form of protection from the whole of society. The State shall ensure that normal conditions exist for medical treatment and rehabilitation, education, training and social integration of disabled persons.

(Article 51 of the Constitution of the Republic of Moldova)

The problems of disable persons are discussed today in the High International Forums. This is a subject of world discussion and initiatives. Consequently, many international legal acts on the rights of disabled persons were adopted. The United Nations Organization (UNO) has a leading role in this process. First of all, it was settled that the disability is a human rights issue and not of rehabilitation or social assistance. This statement determined decisively the pillars of approaching the problems of this social category. Secondly, the equal rights of all people are stipulated without ambiguity in the Universal Declaration of Human Rights, the International Pact on Economic, Social, and Cultural Rights, the International Pact on Civil and Political Rights.

In December 1993, the General Assembly of the UNO proclaimed the day of 3 December the International Day of Disable Person. On 20 December 1993, the 48th session of the General Assembly of the UNO adopted the standard rules on equal chances for disabled persons. These rules cover all life aspects of disabled persons and show to the national governments the measures necessary to integrate the disabled persons in the society.

The Republic of Moldova adopted a series of normative acts on legal means of protection, guaranteed and ensured rights and freedoms of disabled persons. The most important are: the Law No.821-XII of 24.12.1991 on Social Protection of Disabled Persons, the Law No.156-XII of 14.10.1998 on State Social Insurance Pensions, the Law No. 499-XIV of 14.07.1999 on State Social Allocations for Certain Categories of Persons, the Law No.933-XIV of 14.04.2000 on Special Social Protection of Certain Categories of Persons, the Law No.837-XIII of 17.05.1996 on Non-Government Organizations, the Labor Code, the Fiscal Code, etc.

Generally, the disabled persons enjoy special protection. The State makes efforts to achieve a national policy on equal chances, treatment and effective participation of disabled persons in social life by observing rights and duties of parents and tutors.

The National Plan of protection, rehabilitation and social integration of disabled persons for 2000-2005, the Pilot-Program “Children with disabilities”, the Action Plan on Employment of Disabled Persons for 2004-2006 foreseen real measures. Regretfully, not all were achieved because of the long economic crisis. Or, without financial means many good intentions remain on the paper.

52 petitions and 113 persons claimed this right in 2004. Therefore, a lot of laws and normative acts aiming at health care, special social protection, economic and legal protection, employment, education, rehabilitation and social integration were adopted; there is no improvement of attitude and practice in this field.

The Parliamentary Advocates examined the complaints addressed by disabled persons and depending on the case, made notifications and proposals. Thus, the most stringent is the degree of disability. The persons are claiming that they are not granted the corresponding degree of disability or are given an inferior degree, which lead to the restriction of rights stipulated in the Law on Social Protection of Disabled Persons.

Analyzing the problems and suggests of petitioners, the Parliamentary Advocates submitted proposals on completing and modifying the legislation.

For example, they addressed to the Government requesting repeatedly the examination of legal frame in force, in order to complete it with an effective mechanism of implementing the rights of disabled persons, especially on setting a central body for promoting the state policy with respect to disabled persons, setting the mechanism of achieving the access to the social infrastructure, using the definitions of the World Health Organization, etc.

This proposal is also the State’s obligation expressed in Government Decision No.406 as of 03.04.2003 on the Approval of the Action Plan on the Revision and Modification of the Legislation in force in order to harmonies it with the provisions of the ratified European Social Chart, which specifies an action: “To revise the Law No. 821-XII of December 24, 1991 on Social Protection of Disabled Persons in order to ensure a more efficient social integration”.

The Parliamentary Advocates examined the present normative frame, participated in different meetings on problems of disabled persons, worked with different organizations for the protection of the rights and freedoms of disabled persons, and reached the conclusion that the Law on Social Protection of Disabled Persons consists of general norms which reflect the social protection but not allow the effective enforcement of the rights. The rights of a person are fully enforced, if the Law stipulates effective norms helping the person to impose its will to settle own problems. The rights of many disabled persons are violated, and only the willing, as in case of other members of the society is not enough. If the rights of these persons are just declared, the legal persons observe only formally the respective rights without applying the mechanism of achieving the stipulated provisions and there is no state body responsible for their control, the Law seems to be only declarative. That is why it was decided to stipulate expressly the mechanism of protection of disabled persons, to adapt their rights to the social realities. The guarantee of protecting these persons should be stable and complete, in order to achieve the foremost duties of their social integration.

It was also examined the problem of disabled persons under full state protection. In their addresses to the Centre for Human Rights of Moldova, these persons mention that do not benefit from a minimum financial sources for procuring the main personal objects. Although these persons are under full state protection, the Parliamentary Advocates consider that they should receive certain financial sources for procuring personal objects. The manner of settling this dispute stipulated in the Law on State Social Allocations for Certain Categories of Persons constitutes a deviation from the fundamental principle stipulated in Article 1 of the Supreme Law with respect to dignified treatment of persons, and Article 28 according to which the State shall observe and protect the personal, family, and private life, and Article 51 which stipulates a special protection from the whole society.

The problem is still unexamined and this category of persons is still addressing to the Centre for Human Rights of Moldova.

Thus, on 17.12.2004 the Parliamentary Advocates addressed to the Parliament of the Republic of Moldova the proposal to re-examining the Law No.499-XIV of 14.07.1999 on State Social Allocations

for Certain Categories of Persons in order to complete it with provisions that would ensure the state social allocations to disabled persons under full state protection.

The modern society aims at full social integration of disabled persons and against any forms of discrimination in social, professional, political, cultural, family and sexual life; aims at a world without barriers and discrimination, where the disabled persons could live independently enjoying the same rights and obligations as other citizens. Every citizen of Moldova deserves to be fully integrated in the social life, to have access to social infrastructure, to enjoy the same chances of success at all levels of social life.

Only special dispositions would provide the equality and observance of the human rights and freedoms of people with this special condition. Along the same line, in order to observe the constitutional obligation of achieving a special protection of disabled persons, to ensure normal conditions of treatment, rehabilitation, education, training and social integration, the normative frame should be revised with respect to the:

- harmonization of definitions in accordance with the International Classification of Disability and Health adopted and approved during the 25th General Assembly of the UNO on May 22, 2001;
- modification of legislation by setting allocations to disabled persons under full state protection;
- creation a central body for promoting the state policy on disabled persons;
- elaboration of normative acts on the procedures of creating conditions to disabled persons for the access to the objectives of social infrastructure and legal punishment in case of its non-accomplishment.

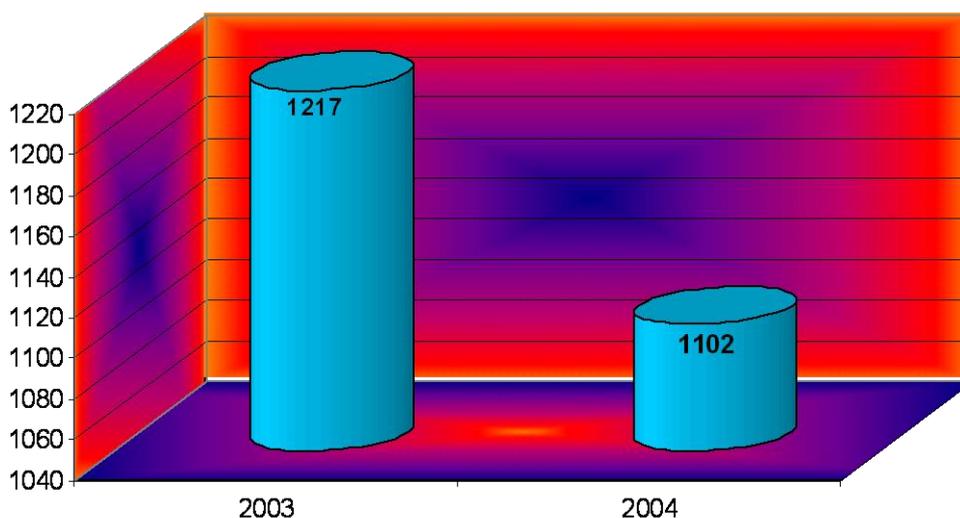
CHAPTER III

Activity of the Centre for Human Rights of Moldova

According to the provisions of Article 15 of Law No.1349-XIII of 17.10.1997 on Parliamentary Advocates, the Parliamentary Advocates shall consider complaints about the decisions or actions (or lack thereof) of central and local public administration, institutions, organizations and enterprises irrespective of their type of ownership, public associations and officials at all levels that in opinion of the complainant have violated his/her constitutional rights and freedoms.

In 2004 the Centre for Human Rights of Moldova received 1102 petitions from 1517 signatories. 298 of complaints were considered during audience.

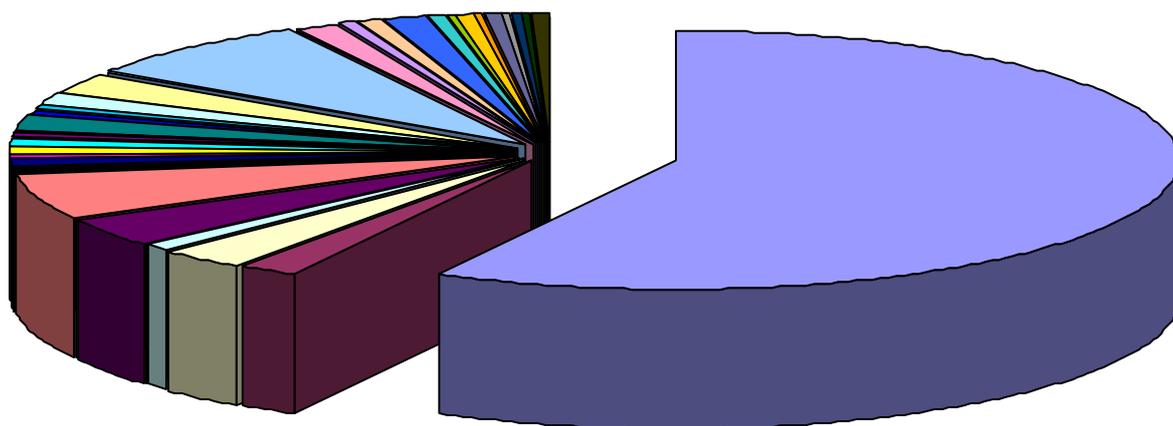
Received petitions



Like in previous years, the largest majority of petitions received by the Centre for Human Rights of Moldova come from the citizens of Chisinau Municipality (637), followed by Rezina (85), Soroca (62), Cahul (42), Balti (32). The rayons that submitted by 3 petitions each are Drochia, Nisporeni, Causeni, Glodeni, Anenii Noi, Telenesti, Soldanesti. Stefan Voda, Basarabasca, and Donduseni don't address any petition.

8 petitions were received from Ukraine, the Russian Federation, and Kyrgyzstan.

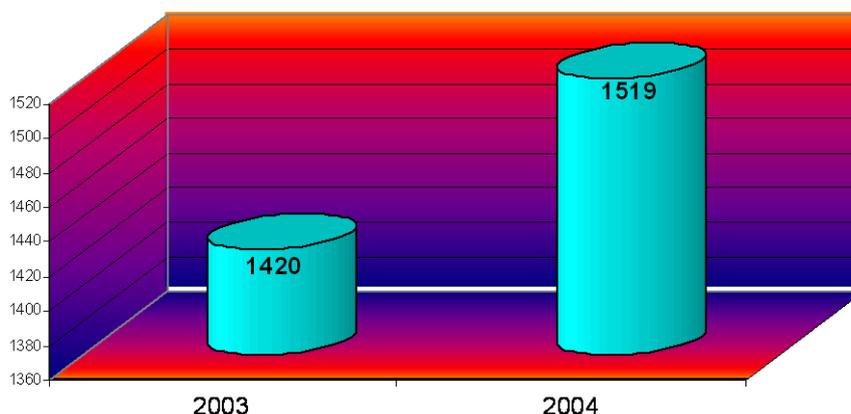
Petitions



Chisinau	Orhei	Balti	External	Cahul	Soroca	Soldanesti
Ialoveni	Singerei	Taracalia	Ocnita	Floresti	Riscani	Telenesti
Briceni	Hincesti	Falesti	Leova	Ungheni	Bender	Rezina
Edinet	Straseni	Dubasari	ATUG	East Terit.	Glodeni	Stefan Voda
Anenii Noi	Cimisia	Criuleni	Drochia	Causeni	Basarabasca	Nisporeni
Calarasi	Cantemir					

1519 have been auditioned in 2004. These referred to the violation of physical integrity.

Audience of citizens



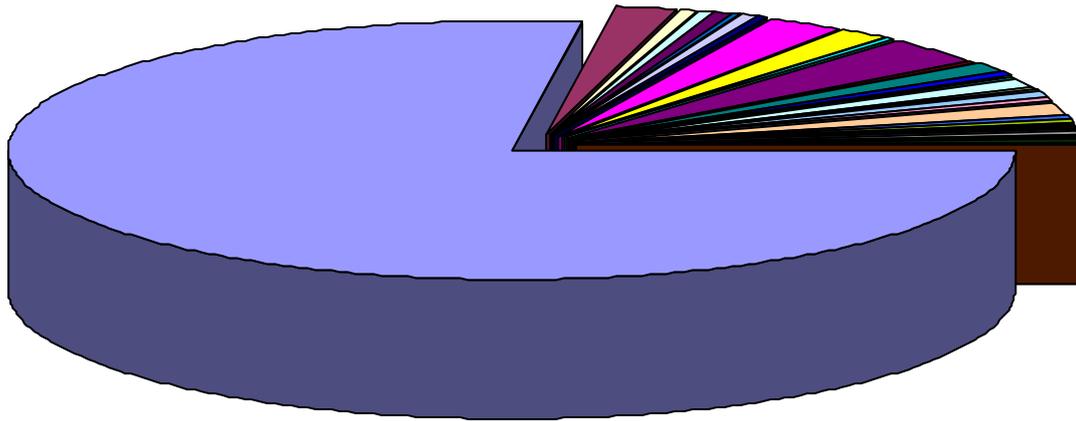
All in all, the Centre for Human Rights of Moldova examined 3036 petitions.

The inhabitants of Chisinau Municipality were those who requested more audiences – 1171, followed by the inhabitants of Straseni (49), Criuleni (35), Orhei (30), Ialoveni (25), Balti (24).

The reduced number of audiences or petitions in some localities in no way attest the high level of observing the citizens' rights and freedoms, but the fact that persons infringed in their rights have no financial or other types of means to address to the Centre for Human Rights of Moldova.

Permanent efforts are undertaken to increase the efficiency of Centre's Branches: Balti, Cahul and Comrat.

Audience

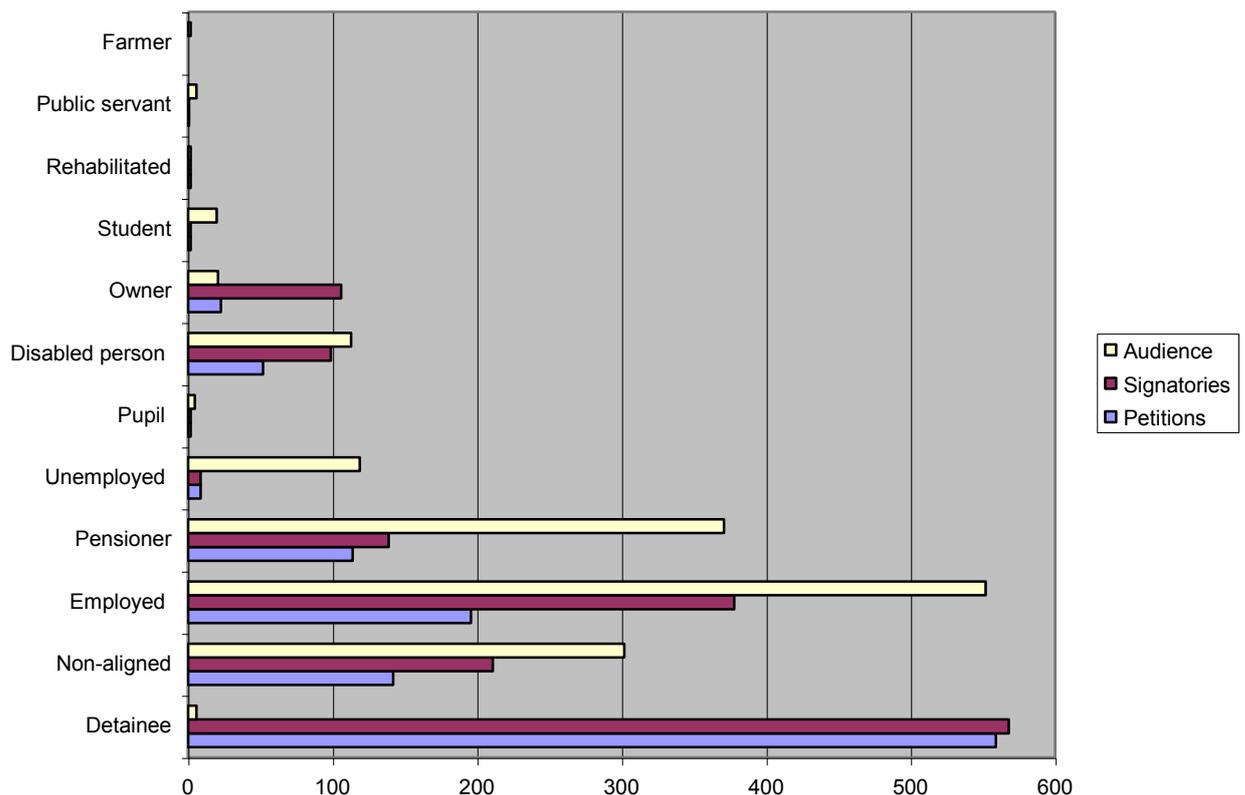


Chisinau	Orhei	Ungheni	Stefan Vod	Calarasi	St Voda	Soroca
Ocnita	Floresti	Criuleni	Ialoveni	Dubasari	Straseni	Bender
Cimislia	Anenii Noi	Briceni	Causeni	Basarabasca	Donduseni	East terit.
Hincesti	Nisporeni	Balti	Edinet	Glodeni	Rezina	Leova
Riscani	Falesti	Telenesti	Soldanesti	ATUG	Songerei	Cahul
Taraclia	Drochia					

30.6% of the total number of complainants are employed, 18.9% – detainees, 16.8% - pensioners, 6.9% - disabled persons. The rest are – unemployed persons, students, civil servants, pupils, etc.

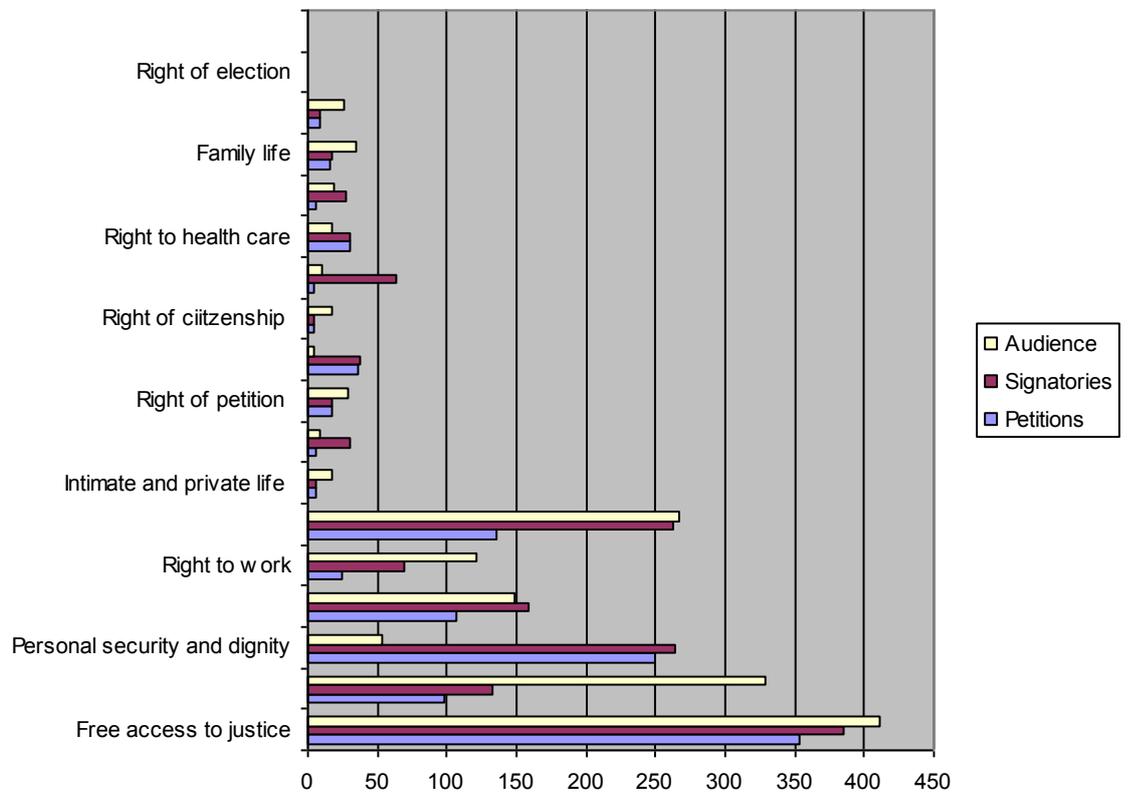
Categories	Petitions	%	Signatories	%	Audience	%	Total	%
Detainee	559	50.73	568	37.44	6	0.40	574	18.91
Unemployed worker	142	12.89	211	13.91	302	19.88	513	16.90
Employee	196	17.79	378	24.92	552	36.34	930	30.63
Pensioner	114	10.34	139	9.16	371	24.42	510	16.80
Non-aligned	9	0.82	9	0.59	119	7.83	128	4.22
Pupil	2	0.18	2	0.13	5	0.33	7	0.23
Disabled person	52	4.72	99	6.53	113	7.44	212	6.98
Owner	23	2.09	106	6.99	21	1.38	127	4.18
Student	2	0.18	2	0.13	20	1.32	22	0.72
Rehabilitated person	2	0.18	2	0.13	2	0.13	4	0.13
Public servant	1	0.09	1	0.07	6	0.40	7	0.23
Farmer	0	0.00	0	0.00	2	0.13	2	0.07
Total	1102	100.00	1517	100.00	1519	100.00	3036	100.00

Statistics by categories of citizens



The breakdown of petitions by rights violation is as follows: the violation of the right of free access to justice (about 26%), the right to social assistance and protection (about 17.5%), the right to private property and its protection (about 15.2%), personal security and dignity (about 10.4%), free access to information (about 10%), the right to work (about 6.3%).

Claims	Petitions	%	Signatories	%	Audience	%	Total	%
Free access to justice	353	32.03	385	25.38	411	27.06	796	26.22
Private property	98	8.89	132	8.70	329	21.66	461	15.18
Personal security and dignity	249	22.60	264	17.40	54	3.55	318	10.47
Free access to information	107	9.71	159	10.48	148	9.74	307	10.11
Right to work	25	2.27	69	4.55	121	7.97	190	6.26
Right to social assistance and protection	135	12.25	263	17.34	267	17.58	530	17.46
Private and intimate life	6	0.54	6	0.40	18	1.18	24	0.79
Right to healthy environment	6	0.54	31	2.04	9	0.59	40	1.32
Right of petition	17	1.54	18	1.19	29	1.91	47	1.55
Right to defense	36	3.27	37	2.44	5	0.33	42	1.38
Right of citizenship	5	0.45	5	0.33	17	1.12	22	0.72
Personal freedoms	4	0.36	63	4.15	10	0.66	73	2.40
Right to health care	30	2.72	31	2.04	18	1.18	49	1.61
Right to training	6	0.54	27	1.78	19	1.25	46	1.52
Family life	16	1.45	18	1.19	35	2.30	53	1.75
Freedom of movement	8	0.73	8	0.53	26	1.71	34	1.12
Right of elections	0	0.00	0	0.00	2	0.13	2	0.07
Right of administration	1	0.09	1	0.07	1	0.07	2	0.07
Total	1102	100.00	1517	100.00	1519	100.00	3036	100.00



These figures show that in 2004, the situation in the human rights field has not changed essentially. These confirm the fact that the society does not enjoy a tolerant and respectful atmosphere towards citizens' rights and freedoms. The principle of coexistence based on mutual esteem and respect is not a component of legal culture in our community.

Like in previous years, a large part of petitions are not directly related to authorities vested to Parliamentary Advocates. These claims are delivered further on to other entities, institutions and organizations or are sent back to petitioners. Out of 582 petitions, 237 cases have been positively classified.

The examination and investigation procedures conducted by Parliamentary Advocates imply all attributions and authorities vested by the legislation. Advocates made interpellation, delivered notes, writs of summon, recommendations and proposals on reinstatement of citizens in their legitimate rights and interests and on modification and completion of legislative acts.

In 2004 the Parliamentary Advocates addressed to the Constitutional Court with the view to exercising control over the constitutionality of certain legislative acts. The Parliament and the Government have been directly addressed 14 proposals with regard to the modification and completion of certain legislative and normative acts with the view to reinstating a number of categories of citizens in their legitimate rights, to removing drawbacks overlooked in the approval of relevant normative acts or acts running counter to constitutional dispositions and international instruments ratified by the Republic of Moldova.

Feedback	Total
Notes	24
Initiating legal proceedings	2
Proposals to Government	5
Notifications	4
Proposals to Parliament	9
Application -> criminal trial	1
Notification to Constitutional Court	4
Thematic report	2
<ul style="list-style-type: none"> • on guaranteeing and observance of human rights to physical and mental integrity, to freedom and security in TDI in the Republic of Moldova; • on the observance of the right of health care in the Republic of Moldova 	

The Parliamentary Advocates submitted to the Parliament a Report on observance and enforcement of the human right to physical and mental integrity, to freedom and security in temporary detention isolators of the Ministry of Internal Affairs of the Republic of Moldova.

Article 33 of the Law on Parliamentary Advocates states that the propagation of knowledge within the field of defense of human constitutional rights and freedoms is one of the prerogatives of the national ombudsman institution.

The education with respect to human rights is a vital component of considerable efforts necessary to transform these into a reality for all of us, by offering to new generations a better understanding of inalienable rights and the means of their enforcing and protection.

The education with respect to human rights is more than a lesson taught in schools or a one day discussion topic. It is a process meant to offer the instruments necessary to people to live in security and dignity. Along the same line, one of the objectives of the Centre for Human Rights of Moldova is the legal information and training of citizens to develop the human rights culture.

The process of training and promotion the concept of human rights is a determining factor for the development of human resources and a decisive factor for society development.

By understanding the (international, regional, and national) instruments and mechanisms of human rights protection and observance, the forms and methods of informing and training in the field,

especially the information of citizens about the existing possibilities and methods of enforcing their human rights and freedoms shall contribute to the creation of the legal culture.

The Institute of Parliamentary Advocate succeeded to undertake some informing and training actions on, in the spirit of and for human rights.

During the Decade of Human Rights Education (1995-2004), proclaimed through the resolution of Generally Assembly of the UNO, the Centre for Human Rights of Moldova was a devoted partner of the National Women's Studies and Information Center, which with the support of the American Bar Association/Central Eastern Europe Legal Initiative (ABA/CEELI) and financial support of the United States Agency for International Development (USAID) have implemented the project *Respecting and Protecting Women's Rights to consolidate their Status in the Society*. The project aimed at legal training of women and their informing on the universally accepted standards in the field of human rights, as well as on their value in relation with each citizen and the whole society, and the achievement of a sufficient level of knowledge of the legislation with the purpose to ensure effective protection of women's economic, social and cultural rights. There were printed 10 numbers of the *Informative Juridical Bulletin* addressed to legal issues faced by Moldovan women – aspects related to labor legislation of the Republic of Moldova, land and dwelling laws, economical rights, consumer and family's rights.

On 31 May, a day before the International Child's Day, the Centre for Human Rights of Moldova organized the Round Table "Child's rights: Today and Tomorrow".

Participants in this meeting, representatives of public and non-government organizations mentioned that by accessing to the International Convention on the Rights of the Child ratified by the Republic of Moldova, since February 25, 1993, our State has assumed the obligations: to enforce the child with the right to life and development, to survival, health, recovery; to protect the child's interests and rights; to undertake all appropriate legal, organizational, educational, cultural measures; to elaborate mechanisms of preventing the social risks with respect to children to ensure the conformity of the national legislation with the Convention's provisions.

As a result of these discussions, the Parliamentary Advocates submitted to the Parliament the proposal to adopt the Child and Family Protection Action Plan and to adapt some legal provisions to the international normative acts.

On July 27, 2004 – 10 years since the adoption of the Constitution – the Centre for Human Rights of Moldova organized the seminar "The Constitution and Human Rights".

On 5-6 October, the Centre for Human Rights of Moldova with the support of the Council of Europe and the Information Bureau of the Council of Europe in Moldova held the Conference "The promotion of human rights and democratic stability within the European Convention for the Protection of Human Rights and Fundamental Freedoms". The Conference aimed at informing and understanding the importance of human rights observance at the level of decisional factors. The topics were the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, national legislation and its impact of civil society, education and civic culture. The main objective of the development is the progress achieved by the government and non-government representatives with respect to the application and implementation of the Convention in question, the prevention of violation of human rights and information of the community about the key international and national legal provisions through the mass media and civil society. The Conference was attended by experts of the Council of Europe, Mr. Pierre-Yves Monette, the Ombudsman of Belgium and Mrs. Natalie Fricero, Law Professor in the Nice University, who spoke about the organization and activity of Ombudsman Institution, the Belgium example, about the role of the European Court of Human Rights in protecting the human rights, as well as about the consequences of non-observing the commitments assumed by member countries of the Council of Europe (political and conventional commitments).

During 1-10 December, the Centre for Human Rights of Moldova organized the Decade of Human Rights. The purpose of this Decade was the information and appealing to public opinion with respect to

the observance and protection of constitutional rights and freedoms of the citizens of the Republic of Moldova. The mass media was also involved in this action.

The Centre and the Assistance and Communitarian Interventions Centre organized the seminar *Human Rights and Fundamental Freedoms* held on 26 March in Vasieni village, rayon Telenesti. It was a training course with respect to the importance of rising the young generation in the spirit of human rights observance.

The Round Tables *Encouraging Communitarian Discussions with Vulnerable Category of Beneficiaries*, organized periodically by the Organization of War and Labor Veterans of Ialoveni under the project of the USA Embassy "Informational and Consultancy Service" were attained by jurists of the Centre for Human Rights of Moldova. The collaborators of the Centre had the possibility to find out additional information about the human rights observance of old persons.

The activity of informing the citizens about the Parliamentary Advocate Institution, especially through specialized mass media had been carried out in 2004.

The Centre for Human Rights of Moldova informed the population about their fundamental rights and freedoms by describing typical cases of human rights violation. It pointed out at the importance of a Supreme Law in a democratic state.

The Centre for Human Rights of Moldova published the booklet *the Centre for Human Rights of Moldova – the National Ombudsman Institution* in order to facilitate the access of citizens to this institution. The booklet gives information about Centre's and its Branches addresses, the audience schedule, "Hot Line", and the possibilities of Parliamentary Advocates to protect the citizens' rights.

How to write a petition, Illegal Labor Migration – Source of Trafficking in Human Beings, The Rights of the Child, The Constitution of the Republic of Moldova and Human Rights are other booklets published with own financial means by the Centre for Human Rights of Moldova. These were distributed free of charge to central and local public administration.

Our collaboration with mass media has been developed. The Centre for Human Rights of Moldova published information materials reflecting certain activity domains of the Centre in *Независимая Молдова, Dreptul, Vocea poporului, Moldova Suverana, Jurnal de Chisinau* newspapers. The mass media is not just a source of information, but is also a partner in educating and consolidating the legal culture of citizens. During the year the staff of the CHRM participated at broadcasting and TV (*Antena C, National Radio, Europa Libera, National TV, Euro TV, Rif TV*).

Another efficient and operative way of information on the most important events of the CHRM is through press-releases. In 2004 the Centre broadcasted 18 press-releases through the Agencies *Basa-press, Infotag, Interlic*.

In the same year, the CHRM has been involved in the implementation of National Human Rights Action Plan for 2004-2008. On its basis, the Centre elaborated and submitted to the Government of the Republic of Moldova, the UNDP, the OSCE, the International Program on Eliminating Child's Labor (IPEC), and the Council of Europe proposals on financing the information and training human rights activities.

In 2004 it was accepted the proposal on the Conference "The promotion of human rights and democratic stability within the European Convention for the Protection of Human Rights and Fundamental Freedoms" financially supported by the Council of Europe; as for 2005 – technical proposal submitted to the OSCE on financial support in publishing the trimestrial Newsletter *Parliamentary Advocate* and the re-edition of the Booklet *How to Write a Petition*. As well, on the basis of Draft Government on the adoption of Action Plan for accomplishing the Common Support of Democratic Reforms Plan for 2004-2006 of the European Commission and the Council of Europe, the Council of Europe accepted 2 seminars for the representatives of non-government organizations on information about the CEHR issues and the role of civil society in human rights protection (March – June 2005 and December 2005 – March 2006) – actions of the objective 4.4. (Human Rights Capacity Building of NGOs).

The CHRM proposed the creation of two Councils: the Expert Council and the Advisory Council of Non-Government Organizations. The objectives of these Councils will be the promotion, observance, protection and efficient enforcement of constitutional rights of the citizens of the Republic of Moldova.

The task of these Councils is to settle and develop an efficient partnership between the Ombudsman Institution and the civil society on the exchange of practices and experience within the

following fields: identification of and solutions for existing problems in the human rights field; systematic information interchange; opinions and consultancy; contribution to the reinstatement of the citizens in their legal rights; common planning and implementation of activities with respect to human rights information, promotion, and training.

The “Hot Line” service is one of the achievements of 2004. It is an Informational Service under the Project Support to the Implementation of National Human Rights Action Plan in the Republic of Moldova.

The object of this Project is the provision of free of charge legal consultancy and information on the human rights issues.

The beneficiaries of this Project are all persons residing in the Republic of Moldova and considering that the institutions or organizations of the Republic of Moldova have violated their fundamental rights, freedoms, and interests.

The “Hot Line” works on the basis of a call registration system, which permits to analyze the calls and to classify them.

The number of calls is significant. 408 calls were registered at the reporting date. The calls refer to the violation of the rights or request of useful information. According to statistics, most calls were made by the employed persons who claimed the violation of the right of free access to justice, to an equitable trial, the right to work.

Out of the total number of calls made through the “Hot Line”, the Centre for Human Rights of Moldova accepted to examine four petitions because the object of the complaints relates to the authorities vested to Parliamentary Advocates.

Due to lack of financial resources for certain activities, the Parliamentary Advocates and the staff of the CHRM work mostly on the petitions. This activity is useful for the society but limits to the examination of concrete cases that related mostly to one person.

In Parliamentary Advocates’ opinion, the approach of more strategic problems for a wider circle of persons – categories of citizens, social strata of population, would have a greater importance for the society. The Parliamentary Advocate should have the possibility to undertake polls on common problems, to imply experts in the field, to have on-filed contacts with the population and similar foreign institutions.

Along the same line, certain planned objectives, including activities of the National Human Rights Action Plan for 2004-2008 vested to the Centre for Human Rights of Moldova were not achieved.

The Centre’s library has not been updated, the web page was not created, and we missed the occasion to participate in international and CIS forums on ombudsmen.

At the same time, we were pleased with the results of the sociologic poll on the human rights observance in the Republic of Moldova carried out by the staff of the Sociologic, Political Investigation and Analysis Centre “CIVIS” under the UNDP Project “Support to the Implementation of National Human Rights Action Plan in the Republic of Moldova”. According to this, in 2004 among other state institutions, the CHRM was appreciated as an entity with a high trustworthy in the society – about 50%.

In 2004 many public authorities and institutions cooperated with Parliamentary Advocates. Many petitions were settled positively as a result of a constructive collaboration between the Parliamentary Advocates and public authorities.

However, there were cases when the authorities delayed the answers, gave formal answers or did not take any notice on the requirements of the Parliamentary Advocates. We can name the Bar Association of Moldova, the Department of Migration, the Department of Privatization, a number of Mayoralities, Prefectures, tenant administrations, etc.

The ignorance showed by certain institutions towards the activity of the Centre for Human Rights of Moldova, unwillingness to cooperate, to participate in dispute settlement, prove that our society is not ready to understand the role of ombudsman of human rights protection and enforcement at the level of state authorities.

The Parliamentary Advocate Institution does not substitute other executive bodies and is not overlapping them. The Parliamentary Advocate exercises its attribution in the office or upon the request of persons that consider that their rights and freedoms have been violated. It is obvious that the organic law stipulates the institution’s duties and its working activity with other State’s authorities. But the

obligation of all public authorities to offer all necessary support to the Parliamentary Advocate is not completely met due to certain objective and subjective factors.

Along the same line, the State and the society should undertake necessary measures to ensure more efficient rights equality, to operate with those instruments that guarantee the human rights. Real, equitable, and lasting enforcement of human rights and fundamental freedoms lay the basis of a lasting constitutional system.

REPORT
on Observance and Ensuring the Rights
to physical and mental integrity, to freedom and security
in Temporary Detention Isolators of the Ministry of Internal Affairs of the Republic of Moldova
(submitted to the Parliament of the Republic of Moldova on the basis of Article 30, paragraph 1 of the Law on Parliamentary Advocates)

Art.1 of the Constitution of the Republic of Moldova stipulates that human rights, dignity, and freedoms, justice, free development of human personality are State's supreme values.

It is impossible to achieve these desiderata nationally without creating a domestic legal frame, by using international acts as a legal source in the field of human rights. This process is permanently developing. But the mentioned international treaties and conventions which reflect the common interests of humanity should be implemented integrally.

It is necessary to mention that the correlation between international and national legislation of the Republic of Moldova, being in the past more a theoretic issue, is synthesizing today especially through the accession of our country to a great number of international treaties that guarantee fundamental human rights and freedoms and the co-operation with other states, on their basis, as well as through the development of legal relations between the State and its citizens, foreign citizens and stateless persons being under its jurisdiction. Or, the Republic of Moldova, as many other countries, in the art.8 of the Constitution states its obligation to observe UNO Chart and treaties at which is a party, being conducted by the principle *pacta sunt servanda*.

In 2004 the Centre for Human Rights examined, as far as possible, the observance and guarantee of rights to physical and mental integrity, to freedom and security in Temporary Detention Isolators (TDI) within the Ministry of Internal Affairs, which are declared and guaranteed by international conventions on fundamental human rights and freedoms, as well as by articles 24, 25, 26 of the Constitution of the Republic of Moldova.

In order to emphasize the problems of TDI in the country, many authorized institutions, including the Ministry of Internal Affairs, the Ministry of Health, General Office of Public Prosecutor, rayonal police commissariats have been involved. The complaints addressed to Parliamentary Advocates and results of on-site controls, etc. have been examined.

Torture and inhuman treatment were disapproved in all historical periods.

In contemporary age any form of torture is appreciated internationally as one of the most flagrant infringement of human rights, freedoms and dignity.

Thus, Articles 3, 5 of the Universal Declaration of Human Rights stipulate the right of everyone to life, his/her freedom and security, as well as not being subject to torture or any cruel, inhuman or degrading treatment or punishment.

These provisions are also stipulated in Articles 8-11 of the International Pact on Civil and Political Rights, Articles 3, 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Article 24 of the Constitution of the Republic of Moldova guarantees to everyone the right to physical and mental integrity. Article 21 stipulates that no one shall be subject to torture or any cruel, inhuman or degrading punishment or treatment. The right to defense is stipulated in Article 26 of the Constitution.

By accessing to the UNO Convention against Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment of 10.12.1984, the Republic of Moldova assumed the obligation to undertake legal, administrative, judicial, and other efficient measures to impede the commitment of torture, to exercise the systematic supervision of the provisions on the protection and treatment of persons under any form of arrest, detention or imprisonment in the territory under its jurisdiction.

Regretfully, we are forced to state that there are frequent cases of torture and inhuman or degrading treatment of persons under criminal investigation in the Republic of Moldova. Situation in this field is reflected in details in the complaints addressed to the Centre for Human Rights of Moldova, which number is growing. Thus, in 1999 CHRM received 15.13% of total number of complaints from detainees, in 2001 – 19.18%, and in 2003 – 42.73%. In 2004, 548 complaints have been registered by the Centre, which is about 50% of the total number of complaints.

The petitioners refer to infringement of rights guaranteed by international and national conventions, grouped conditionally in two main categories determined by:

1. The human factor (actions or inactions of institution's personnel), which influences the exercise of:

(a) the right to defense;

(b) the right to dignified treatment, including:

- the insurance of necessary health care and personal hygiene;

- possibility to receive parcels with food;

- agreement to wear personal in season cloths and shoes;

- agreement to use personal bed clothes as well as other personal things allowed by legislation and domestic normative acts;

(c) cases of physical or mental maltreating.

2. Economical and financial situation of the State:

(a) low nutrition that does not correspond to norms stipulated by the legislation, lack of access to drinking water;

(b) lack of natural illumination and poor candlelight in cells;

(c) insanitation, lack of the possibility to bath and wash (lack of bathrooms and drying rooms);

(d) lack of heating and air-condition in cells or their out of order state;

(e) impossibility to have daily walks due to the lack of walking yards, etc.

The citizen T. addressed to the Parliamentary Advocate: *"I was punished with incarceration (disciplinary isolation) for 10 days because I refused to transfer for the third time in a month in other cell. These ungrounded transfers influence my mental integrity and impede me to prepare my defense in trial. Disciplinary isolation is an inhuman treatment having dangerous consequences for physical and mental integrity: humidity, lack of oxygen, leakage on the floor. I don't know more convenient place to infect with tuberculosis that later is spreading among the detainees. Moreover, I was incarcerated in the clothes I was wearing at that moment, and the first need things were not allowed to be taken. In the evening I slept on the floor, I was fed only in the morning. I was forced to start a hunger strike; as a result I was assaulted. In such situations other detainees try to suicide by cutting their veins, swallowing different objects – as a protest against violent and inhuman treatment. But unfortunately, no one hears us in the basements of the prisons"*.

The lawyer C. complained *"Although according to Article 68, paragraph 2 of the Code of Criminal Procedure, the defender has the right to meet with the suspect, accused, defendant as often as he/she wants, this right was refused to me. The decision of the Court stipulated the detention of my client in the criminal investigative isolator, but for more than two weeks he is illegally kept in the temporary detention isolator, and I can not see him because of different reasons. At the same time, the investigators*

in my absence interrogate my client and influence him. My complaints to competent entities have no result”.

The lawyer B. also writes: *“In spite of the decision of the court on immediate transfer of my client into investigative isolator, the collaborators of criminal investigation kept him illegally more than a week in the temporary detention isolator where he was subjected to physical and mental influence. After 8 days, they executed the Judge’s decision, but already after 2 days, my client was transferred again into TDI where he has been kept for already 2 weeks. The policemen hadn’t the decency to wait at least several weeks and applied maltreatments, illegal criminal investigation, refused to admit the lawyers, thus, infringing flagrantly his rights. My petitions were not examined, I am not admitted to my client, and nobody can explain why”.*

At the request of the Parliamentary Advocate, the Procuracy examined the invoked circumstances and informed: *“During the undertaken investigation, the arguments of the detainee were partially confirmed, according to which the Prosecutor made a notification referring to decision making and removing the causes and conditions that lead to infringement of detainees’ rights to defense. It was requested to transfer the detainee to an investigation isolator, according to Judge’s decision. But later he was transferred again to TDI for criminal investigation”.*

Comments are not necessary. It is difficult to talk in such cases to detainees about constitutional guarantees, about the fact that Criminal Law does not stipulate physical abuse or injure of human dignity. It is hard to find an answer to detainees’ questions put to Parliamentary Advocates:

- why some police workers use abusive, sometimes even criminal actions against us? Are these measures considered a fight against criminality?

- why state authorized bodies do not ensure the observance of law on the part of law bodies, admitting tacitly the tactics of double standards?

According to the UNO Conventions against Torture adopted in 1984, states are compelled to stipulate in legislation a punishment for applying torture in their territory.

The legislation of the Republic of Moldova does not stipulate the definition of torture. The Criminal Code of the Republic of Moldova, in the amended Law No.985-XV of 18.04.2002, stipulates criminal responsibility on the basis of art.137 (Inhuman Treatment), art.309 (Constraint to Make Declarations), art.328 (Excess of Power or of Service Duties) etc. But the modification of these articles does not reflect the signs of torture, which definition is stipulated in the UNO Convention of 1984.

In order to make a connection between national criminal legislation and the UNO Convention of 1984, the Parliamentary Advocate suggested a modification of Criminal Law by including a new article – “Torture” – with a semantic content similar to that stipulated in Article 1 of the Convention. The project, along with the actions defined as torture in the UNO Convention, suggests also the settlement of criminal responsibility for “torture provoked by an official or other person in his/her service duties” as well as for some distinctive signs.

Unfortunately, the process of adopting the modifications in criminal law is very long. We realize that the modification of criminal law shall not exclude the phenomenon. This is just one of the many legal, administrative, financial and economic measures that need to be examined and settled.

Criminal and procedural law adopted recently consists of positive provisions in regard to this issue. For instance, the number of measures of restraint as an alternative to arrest has grew (art. 175 CPL RM stipulates new preventive measures (p.p.2,8,9,10) – release on bail, house arrest etc.). The Law stipulates expressly the prohibition to apply torture or inhuman treatment, prohibition of night cross-examinations, interdiction to use evidences obtained under torture, threat or other constraints. A legal control of actions of criminal investigation bodies, etc. has been set up.

But regretfully, this chapter does not register any significant improvement.

At present, according to the information of the MIA, there are 39 Temporary Detention Isolators in the country. During 2003-2004, 32 isolators were redecorated, the isolators from Drochia and Edinets rayons were subjected to major repairs, the isolator from Riscani rayon was reconstructed, and a new

isolator was built in Ungheni rayon, which corresponds to the requirements of the UNO Committee on Torture and Cruel, Inhuman or Degrading Treatment.

But the analysis shows that the undertaken actions are not enough. Conditions of detention of many persons in TDI are not in line with the national law (Law on Preventive Arrest) and especially with the adopted international standards. These conditions can be considered inhuman treatment, because are not in line with the minimum compulsory insured standards of detention, which stipulate:

- necessary minimum of space for every detainee, air and light;
- adequate sanitary conditions;
- adequate cloths;
- separate bed and food with a nutritive value necessary to maintain the physiological equilibrium of human body, etc.

According to Article 22 of the Law No.1226 on Preventive Arrest of the Republic of Moldova of 27.06.1997, prisoners shall benefit from living conditions that correspond to sanitary and hygiene norms. Living space in cells shall not be smaller than 2 square meters per prisoner. The cell shall have a window that will give daylight and will ventilate it, the prisoners shall have an individual bed, the possibility to bath at least once in 10 days, and to use public convenience in conditions when his/her human dignity is not affected, etc.

The information on the norms of cells' space of the temporary detention isolators is presented in Annex No.1.

Rights of detainees in Temporary Detention Isolators are also infringed due to lack of other necessary conditions. Thus, according to on-site information:

- consulting and medical rooms in isolators of Anenii Noi, Briceni, Cahul, Cantemir, Cimislia, Donduseni, Floresti rayons are not equipped, (are planned to be) in Stefan Voda, Taraclia, Telenesti, Vulcanesti, Balti etc. Such room is being under construction in Soroaca;
- isolators from Anenii Noi, Cantemir, Criuleni, Donduseni, Floresti, Stefan Voda, Straseni, Vulcanesti, Chisinau etc. lack walking yards. Basarabasca isolator has such but it is not used (needs to be reconstructed);
- there are bathrooms only in isolators of Briceni, Causeni, Drochia, Edinet, Falesti, Glodeni, Orhei, Riscani, Soroaca;
- there are drying rooms only in eight isolators - Basarabasca, Causeni, Drochia, Edinet, Falesti, Ocnita, Rezina, Singerei;
- the cells are not equipped with or lack washstands in most isolators of the country, the water is brought outside the building. WCs are in a devastating situation;
- air system is missing in Cantemir, Ocnita, Riscani, Telenesti etc., in Anenii Noi it does not correspond to requirements.

The European Committee for Torture and Inhuman or Degrading Punishment or Treatment Prevention (CTP) recommends the following: *“Police custody is (or should be) relatively short. However, the detention conditions in the police cells should correspond to certain elementary conditions.*

All police cells should be clean and should have a reasonable space taking into account the number of persons that can be detained and should have an adequate illumination (i.e. enough to read a book). Preferably, the cells should have daylight. Moreover, the cells should be arranged to allow the rest (for example, a chair or a fixed bench), and the persons forced to spend the night in the cell shall have a mattress and coverlet. Persons in the police custody should have access to clean WCs in decent conditions and to have possibility to wash or bath. They should have access to drinking water and should be fed; including should have a complete meal at least one time per day (i.e. something more substantial than a sandwich). Persons kept for 24 hours or more in the police custody should as far as possible to walk. The transgression of these norms prejudices very hard the persons brought further to trial”.

This kind of approach is considered often a privileged approach of detainees' situation. Although, it is a simple condition to guarantee the reintegration of a healthy person in the society. Otherwise, negative consequences crop up both for mentioned person and his/her family, implying considerable financial efforts for the State, too.

Unfortunately, conditions of detention are too much inferior to CTP. In over 20 territorial TDI, there are no walking yards or if are, they are not used properly. Arrested citizens spend much time in very tiny cells, sometimes overcrowded, without air. The Order No.5 of 05.01.2004 of the MIA "on organizing and carrying out guarding, escorting and detention activities of detainees and arrested persons in temporary detention isolators of police offices" stipulates that up to 8 (eight) persons shall be detained in a cell (with an average area of 8 sq.m.). Prisoners live in such conditions for a long period of time, even for months (Annex No.2).

There are also persons in TDI who are already under legal proceedings or even sentenced, setting forth the reason that the investigation isolators are overcrowded. Or, according to information requested from the administration of isolators, the Isolator No.3 of Chisinau has a capacity of 1480 persons, but for instance, 1517 persons were detained in 2004. The Isolator No.1 of Balti has a real capacity of 550 persons; the average number is 504 detainees. The isolator No.5 of Cahul has a capacity of 510 detainees, while 346 were detained.

The problem of low nutrition of detainees is not of less importance. 19 police offices informed that the temporary detention isolators they administrate benefit by resources for detainees' alimentation only from local budgets. Given the fact that the legislation in force does not stipulate the financing of these expenses in the local budget, this is considered a concession made by local public administration rather than an obligation, with all unfavorable consequences for prisoners. The "menu" is different in isolators, because different sums of money are allocated (Annex No.3).

Annex No.3 of Government Decision No.246 of 13.05.93 stipulates daily food ration, quantity of necessary products for a detainee, including in temporary detention isolators. The cash value of a daily food ration per detainee in TDI in the amount of MDL 4.5 was settled via the Letter of the Ministry of Finance No.02/1-17 of April 18, 2001. Thus, according to data submitted by the administration of the isolators, a detainee has: soup – 500 g., porridge - 250g., bread - 350g., tea - 150g. Or, the quantity of products stipulated in the above mentioned Government Decision is not ensured. Meat, fish, butter, vegetable oils and alimentary fats, etc. are absent.

According to data of the Ministry of Health, the alimentation of detainees costs only MDL 1.85/per day.

These are the main reasons that cause high incidence of tuberculosis among prisoners. Malnutrition, especially of consumptives, leads to general debility and dystrophy. The morbidity and mortality due to TBC among detainees is much above the average of the Republic.

In order to ensure normal conditions of detention in temporary detention isolators, the Government adopted the Decision No.1474 of 27.12.2001, which states some measures (which are not put in execution) for improving this situation.

At present, the conditions of detention in isolators are unsatisfactory and do not contribute positively to detainees' re-education.

As well as the provisions of Government Decision on necessary medical personnel and medicaments in isolators were implemented only in part. There are only 24 medical assistants in the TDI (Basarabasca, Briceni, Cantemir, Calarasi, Causeni, Criuleni, Drochia, Edinet, Falesti, Floresti, Glodeni, Hincesti, Nisporeni, Ocnita, Orhei, Riscani, Singerei, Soroca, Stefan Voda, Straseni, Taraclia, Ungheni, Chisinau mun., DGCCO). There are no medical assistants in Anenii Noi, Cahul, Telenesti, Donduseni, Vulcanesti, Balti mun. etc.

This problem is settled by the European Committee for the Prevention of Torture as follows: *„Persons in police custody should enjoy the right of access to doctor. Thus, a doctor should be called if a person asks for a medical examination. The policemen should not impede these requirements. Moreover, the right of access to doctor should include the right to benefit, if the detainee wishes, from the examination of a doctor picked by the detainee (together with any examination made by the doctor called by the policemen).*

All medical examinations of the persons in police custody should not be made in the presence of guards, except for the case when the doctor asks for their presence.

Also, it is important that the persons in police custody set free and who were not in trial to have the right to ask directly for an examination/certificate of a legit doctor with the right to sign”.

The absence of a doctor in the TDI makes impossible to observe the mentioned requirements causing many petitions from the detainees in temporary detention isolators.

At present, about 414 policemen work in temporary detention isolators of the country. Most of co-workers of this system have been worked for a long time, but in some rayons (Anenii Noi, Nisporeni) there is an increased fluctuations of personnel first of all due to low salaries. In our opinion, their frequent unconsidered requests to be at the same social insurance level with the co-workers of the penitentiary system have grounds.

At the same time, the measures for carrying out the recommendations No.R(87) 3 adopted by the Committee of Ministers of the Council of Europe on February 12, 1987 on the necessity to pay a special attention to the issue on permanent improvement of professional level and moral capacities of the personnel of respective institutions, to guarantee its maintenance on the basis of good manners, efficiency, adequate educational abilities, which would emphasize the humanity and the skills for such specific type of work, are also convenient.

In his address to the Centre for Human Rights of Moldova, the detainee C. mentioned: *“While I was in the temporary detention isolator, neither me nor other detainees walked in the yard, we used the bathroom one time per day for 2-3 minutes. The clothes of detainees were kept in an unsupervised room, from which these were stolen. Every time we signed the confirmation of receiving the food and other things from relatives without verifying their presence. Later we were noticing the absence of one of them. We were not allowed to use objects of hygiene, not to mention paper, pens, etc. Very often, especially in week-ends, drunken policemen came into the isolators and were maltreating physically and mentally the detainees without any grounds. Before the arrival of the Procurator we were threaten not to speak. Being in the isolator I understood that it is very dangerous to by in police custody”.*

The lawyer M. stated: *“I was not allowed to meet with my client for many days. When I was called for criminal investigation in the police station, my client told me that the police workers beaten him into the head and tortured him with electricity for several days, especially in week-ends, forcing him to sign the confession. The injuries were confirmed in the medical-legal act. During the criminal investigation I concluded that his health state was unsatisfactory, he had headaches.*

The detainee P.: *“My relatives handed over three parcels with cigarettes, but I was not allowed to receive them. The guardians informed me that I was going to receive them when I would leave the isolator. On the day of leaving I received just one parcel of cigarettes without filter, and the other two parcels with „L&M” cigarettes were lost. They lose not only cigarettes, but food, objects of hygiene...”.*

In our opinion, some norms of national legislation do not apply the prisoners’ treatment at international level, but even consist of at least unfair stipulations.

It should be mentioned that Article 11 par. 3) of the Law No.1226-XIII of 27.06.97 on Preventive Arrest (hereinafter the Law No.1226) stipulates that the detention of people in the preventive detention isolators shall be made on the basis of the principle of observance of Constitution of Moldova, requirements of Universal Declaration of Human Rights (UDHR), other legal norms and international standards on treatment of detainees, and shall not involve deliberative actions that cause physical or moral pain or prejudice to the human dignity.

According to Article 7 of the UDHR and Article 16 of the Constitution, all are equal before the law and it is the foremost duty of the State to respect and protect the human person, Article 11 of the UDHR and Article 21 of the Constitution guarantee the presumption of person’s innocence until his/her guilty shall be proved legally during a public legal trial.

Prisoners in preventive detention isolators, according to Article 11, par. 1) of the Law No.1226, have obligations and benefit from rights and freedoms settled by the legislation for citizens of the Republic of Moldova, with the restrictions foreseen by legislation, facts corresponding to provisions of Articles 15, 54 of the Supreme Law of the country. Or, Article 54 of the Constitution of the Republic of

Moldova admitting such restriction in strict conditions of citizen's right or freedom, stipulates, however, that this restriction shall be proportional to the situation which has caused it.

According to Articles 1-2 of the Law No.1226, preventive arrest is a preventive measure to prevent a person from eventual avoidance of criminal investigation and trial; his/her attempts to preclude the criminal investigation or to commit criminal actions, etc.

Taking into account the above mentioned provisions, we can conclude that the person under criminal investigation, in spite of preventive measure – arrest, enjoys the presumption of innocence stipulated by the Constitution and Criminal Legislation and until the verdict is reached, has equally all the rights of other persons, with the restrictions stipulated by the law, which have the task to achieve the foreseen purpose. Otherwise, the limitation of right should be proportional to the situation which has caused it.

In the opinion of the Parliamentary Advocates, the Law No.1226, as a matter of fact with an impact on persons presumed innocent, consists of some government measures of constraint, usually as strict as in cases of convicted persons, causing unfounded privations and restrictions (to information, alimentation, family relations, etc.), which have nothing in common with the aimed at task. That is why a modification of the law, directed to reasonable minimization of restrictions, will be taken as a next step for ensuring the treatment conditions of detainees under criminal investigation on the basis of the provisions of the Constitution of the Republic of Moldova, the Universal Declaration of Human Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment, other international conventions at which our country is a party.

Although the conditions of detention in isolators are appreciated as inappropriate to adopted standards, including by the international organizations, a great number of persons are detained here for a long period of time, sometimes even years, afterwards being released (according to some data, 483 sentences of absolution were adopted in 2003). Out of 9000 detainees, 1.8% (or 162 persons) was acquitted or released due to file's closing. 178 persons were acquitted in 6 months of 2004.

Article 25 of the Constitution stipulates a 12 month arrest limit without specifying its reference in the criminal investigation phase. However, Article 186 of the CC of the RM stipulates that the detention limit of the accused under preventive arrest in criminal investigation phase shall be 4, 6 and 12 months (depending on the category of detainees). As a result, the accused are under the above mentioned conditions during the entire trial, which should be carried out, according to law, in "reasonable terms". This definition is often interpreted subjectively by Judges (according to some sociological polls which included about 30% of total number of persons under preventive arrest, 15.7% out of these are detained from 90 days to half a year; 15.2% - from 6 months to one year, 14.2% - from 1 year to 2 years, and 15.2% are under preventive arrest more than 2 years).

In many cases, the instances do not cite the prisoners for months. Sometimes, the accused are detained for months or even years in isolators, because the Court does not send in time the copy of sentence, without which the accused can not be transferred to penitentiary institution to serve the sentence.

Thus, according to data form Balti penitentiary, defendants have been detained since 2003, 2002, 2001 etc., long-standing examination of causes being justified by different reasons. The accused from Bender isolator have been waiting the copy of sentence for months, even years. The activity of Superior Council of Magistracy is not effective in this field. The addresses of Parliamentary Advocates did not catch the proper attention.

Regretfully, it is not taken into account that detained person is still a member of our society, who is expected to return healthy both physically and mentally, and useful for the community.

Improvement of situation at the chapter of torture and inhuman treatment of detainees under criminal investigation in the context of requirements stipulated by the Convention against Torture and Cruel, Inhuman and Degrading Treatment should be not only the problem of one or another Ministry (for instance, the Ministry of Internal Affairs, Ministry of Justice, etc.) but of the State, of the entire society.

Particularly, the authorized bodies should orient their activity to understand a truth – effective method to fight against torture and inhuman treatment would be the application, first of all, of preventive measures or non-deprivation of liberty punishment (p.1 of Recommendations No.(80) 11 of the Ministerial Committee of Council of Europe of 27.06.1980 and Article 39 of the General Principles), following the saying that freedom is a rule, and the repressing measure is an exception.

Simultaneously, we should insistently seek for and find solutions at national level, in order to improve the situation in isolators (taking also into account the recommendations of European Committee for Torture or Inhuman or Degrading Treatment or Punishment Prevention (CTP) on the results of undertaken periodical investigations), following the axiom that the detainees are citizens of the respective state.

Along the same line, we consider that in order to implement this desideratum, it would be welcome the creation of an inter-department Commission which would consist of deputies of the Parliament of the Republic of Moldova, representatives of the Ministry of Internal Affairs, the Ministry of Justice (including of the Department of Penitentiary Institutions), the Ministry of Finance, the Ministry of Labor and Social Protection, the Ministry of Education, the Ministry of Defense, General Prosecutor's Office, Parliamentary Advocate, representatives of NGOs in the field.

The activity of this Commission should be directed to analyze the problems that influence the detainees' rights and to suggest necessary legislative and organizational and administrative measures in the context of international legislation in the field, including the General Principles for protecting all persons subjected to any form of detention adopted during the 67th plenary session of the UNO General Assembly of December 9, 1988 (hereinafter General Principles).

Therefore, we believe that a diminution of phenomena of torture and inhuman or degrading treatment of detainees can be carried out by solving many problems, including by:

1. Carrying out a detailed inventory of technical and sanitary conditions of all temporary detention isolators of the country, by setting a budget of expenses for creating necessary conditions, including a medical centre, a library, a room for discussing with advocate and relatives, etc.

2. Drafting a concrete program of transferring the temporary detention isolators from the administration of the MIA under the administration of the Ministry of Justice.

3. Examining the possibility to modify p.57 of the State Program on Fighting Corruption and Criminality for 2003-2005, approved by Government Decision No.1693 of 27.12.2002 that assigns to the Ministry of Internal Affairs and Ministry of Finance the responsibility to build in Chisinau municipality a temporary detention isolator with a capacity of 150 places. The line "the Ministry of Internal Affairs" should be replaced with "the Ministry of Justice".

4. Stipulating in legislation the time limit of being under police custody. The necessity to stipulate in legislation specific measures of influence on criminal investigation bodies for not meeting the obligation to inform about the arresting reasons, to refuse the assistance of an advocate, to refuse to permit the detainee to inform the relatives about detention place, to refuse the requested medical assistance, etc. (to examine the possibility to grant the responsibility to Prosecutor to guarantee free access of the advocate to his/her client).

5. Drafting modifications in legislation in order to set up an effective mechanism of contesting the decisions of disciplinary punishment applied to detainees by the administration of detention isolator.

6. Setting in legislation the compulsory medical examination of detainees both when arrested and released.

7. Examining the possibility to make modifications in legislation (the Law on Preventive Arrest), which would stipulate the establishment of public associations in rayons and municipalities consisting of representatives of civil society, non-government organizations able to monitor the situation and to interfere suddenly in cases of torture or inhuman treatment, and/or to organize a daily legal aid office in isolators according to a program adopted by the Bar Association, which would provide necessary legal aid to detainees, including those under administrative arrest.

8. Examining the possibility of legislative regulation of the right to material and moral prejudice compensation of victim subjected to torture or inhuman treatment (Article 14 of the Convention).

9. Modifying the Law on Local Public Administration and the Law on Local Public Finance by assigning to relevant local public administrative bodies the settlement of real problems on normal activity of isolators, foreseeing a small per cent of financing, including for daily legal aid office, according to a settled program, which will provide legal assistance both to detainees under criminal investigation and administrative investigation.

10. Modifying present amendment of Article 93 (Evidence) of the Criminal Code. The amendment in force where the enumeration of evidence starts with the depositions of participants at trial, but not with, for instance, offences or expert's reports, documents, technical and scientific assessment, etc., in our opinion, turns many civil servants of criminal investigation bodies to appreciate the depositions of a person under criminal investigation as being of greater importance than other evidence or, at least, it is the first among the same, forcing some of them to use torture to obtain the necessary depositions. This is confirmed in frequent criminal cases, when the procedure of putting under criminal investigation starts with the suspect and not with evidence.

11. Modifying the Law on Police, especially revising the provisions that give the right to policeman to enter at any moment in the houses and other dwellings of citizens by harmonizing them with constitutional provisions on inviolability of the domicile.

12. Modifying the Code on Administrative Contraventions in order to exclude the administrative arrest as an alternative sanction to the Articles 174, 174/5, 174/6, 174/7, as well as to stipulate compulsory presence of the council ex officio while examining the materials on these criminal offences.

13. Modifying the Law on Penitentiary System, in order to exclude the authorization of penitentiaries' administration to carry out criminal investigation and to take part along with the police in detecting the offences (these activities contravene the main tasks and goals of penitentiary system and moreover, create a favorable environment for inhuman treatment or even torture).

14. Drafting and adopting the Code of Guardian's Ethics stipulating an assessing system of his/her activity in order to prevent the abuses and violence against detainees.

15. Modifying the legislation in order to level the social insurance of co-workers of temporary detention isolators with that of co-workers of penitentiary system. Simultaneously, it is necessary to pay a special attention to continuous development of professional and moral skills of the personnel of respective institute.

16. Stipulating the living wage of a detainee in the legislation.

17. Examining immediately the possibility to ratify by the Republic of Moldova the optional Protocol I of the International Pact on Civil and Political Rights recognizing thus, the competence of the UNO Committee for Human Rights to examine the complaints of persons whose rights guaranteed by the Pact have been infringed, including victims of torture.

18. Examining the possibility to ratify by the Republic of Moldova the optional Protocol II of the International Pact on Civil and Political Rights concerning death penalty cancellation, harmonizing also the modification of Article 24 par.(3) of the Constitution which stipulates the possibility of applying the death penalty in specific cases, within the law (actually the Criminal Law of our country does not even stipulate such punishment).

19. Examining immediately the possibility to ratify by the Republic of Moldova the Additional Protocol of the UNO Convention against Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment of 10.12.1984 that stipulates the settlement of national mechanism for fighting against torture involving representatives of civil society and independent doctors.

20. In accordance with the provisions of Articles 20, 22 of the Convention of 1984, to recognize the ability of Committee against Torture to examine the individual complaints of persons considering themselves victims of torture.

The inter-departmental commission shall draft an action program, which will lay down concrete actions and will name persons responsible for their implementation, and shall submit it to the Parliament

for examination and adoption. If this document is considered a legal base for organizing the financing of these actions from the State budget, negotiations directed to attract donations and foreign grants shall start.

Annex No.1

Isolator of	The year of building	Approximate area of cells sq.m. / no. of limited places	Number of cells	Annual average number of detainees		Placement
				2003	2004	
Anenii Noi	1983	106	11		30	II floor
Basarabasca	1989	119	7	238	272	I floor
Briceni	1993	165 / 55	11	876	529	I floor
Criuleni	1975	92,5 / 37	7	637		I floor
Cahul	1983	180	12		370-380	I floor
Calarasi	1974	180	12	40 (monthly average)		basement
Cantemir	1998	98,1	7	465		basement
Causeni	1980	67,1	8	800		basement
Cimislia	1982	92	8	300		basement
Donduseni		80	7	493	121(I-V)	I floor
Drochia	1975	165	11	865		basement
Edinet	1980	84	10	622	184 (I-IV)	I floor
Falesti	1976	83,6	9	964		basement
Floresti	1985	105,6	8	735		basement
Glodeni	1996	98,92	7	890	310	basement
Hincesti	1981	159,5	11	1267		I floor
Nisporeni	1978	84	6	684	310	basement
Ocnita	1977	144	8			I floor
Orhei	1981	174	12	1200		I floor
Rezina		81,4 /40	8	605		basement
Riscani	1963	135	9	400	133	I floor
Singerei	1979	142	9	977		basement
Soldanesti	1986	194,3	12	454		I floor
Soroca	1996	180	12	747	182	basement
Stefan Voda	1968	64	5	758		I floor
Straseni	1972	210 / 50	14	496	177 (I-IV)	basement
Taraclia	1985	92,4	7	195		basement
Telenesti	1975	96	7	788	227 (I-IV)	I floor
Ungheni	2003	151,4	5	1000		basement
Vulcanesti	1979	105	7	Per day 7-10		I floor
Chisinau mun.	1990	308	27	4820(daily 110-140)		I floor
Balti mun.	1998	120	7	2251	893	basement
Comrat mun.	1971	110,4	10	2330	1126	basement
DGCCO	2002	185	9	550 (annual average)		basement
CCCEC	2003	837	6	52		basement

Up to 15 days		Up to 30 days	More than 30 days
Anenii Noi	Hincesti	<i>Calarasi</i>	Donduseni
Basarabeasca	Nisporeni	Cantemir	<i>Ungheni</i>
Briceni	Orhei	Singerei	CCCEC
Criuleni	Soldanesti	Comrat	Chisinau
Cahul	Soroca		Causeni
Cimislia	Stefan Voda		Edinet
Drochia	Telenesti		Ocnita
Falesti	Balti		Rezina
Floresti	DGCCO		Soldanesti
Glodeni			Straseni etc.

Annex No.3

Isolator	Total amount	Daily ratio	Isolator	Total amount	Daily ratio
Anenii Noi	4, 50	1	Drochia	6, 00	1
Basarabeasca	5, 50	3	Edinet	7, 80	2
Briceni	3 ,55		Falesti	2, 45	3
Criuleni	6, 30	3	Floresti	7, 50	1
Cahul	4, 50	3	Glodeni		3
Calarasi	4, 50	1	Hincesti	4, 50	3
Cantemir	4, 50	1	Nisporeni		2
Causeni	4, 80		Ocnita	3, 55	3
Cimislia	6, 20	3	Orhei	4, 55	3
Donduseni	4, 50	3	Rezina		3
Riscani		3	Telenesti		2
Singerei		3			1
Soldanesti	4, 50	1			3
Soroca	6, 50	3			
Stefan Voda	10 - 15	3	Ungheni		3
Straseni			Vulcanesti	7 - 8,20	
Taraclia		1	Chisinau		3
			CCCEC	9, 14	3