

**Alternative Report  
of the People's Advocate (Ombudsman) of the Republic of  
Moldova  
to the UN Committee against Torture (CAT)  
on the implementation of the Convention against Torture  
in the Republic of Moldova**

## **PREFACE**

The People's Advocate (Ombudsman) assures and contributes to the protection of human rights and freedoms by public authorities at all levels. In its activity of preventing torture, the People's Advocate presents its recommendations to the authority or person responsible for improving the situation of persons deprived of their liberty, improving the conditions of detention and preventing torture.

In addition to the People's Advocate Office, the Council for the Prevention of Torture operates in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In order to ensure the protection of persons against torture and other cruel, inhuman or degrading treatment or punishment, the People's Advocate shall ensure that the members of the Council carry out preventive and monitoring visits to the places where persons deprived of their liberty are or may be placed by the provision of a state organ or its indication, or with its consent or tacit consent.

### **The situation in the detention institutions.**

The penitentiary system of the Republic of Moldova has the mission to execute punishments and deprivation measures in order to increase the safety of society and prevent relapse. The Ombudsman considers that all these activities are to be carried out in strict accordance with human dignity, combating inhuman and degrading treatment, facilitating the rehabilitation and reintegration into society of the individuals in custody. At the same time, one of the main tasks of the penitentiary system is to ensure the security of places of detention. Safe spaces, material conditions conforming to international standards, favorable working environment for system employees are essential conditions for the exercise of all fundamental rights of persons deprived of their liberty.

In the Republic of Moldova there are:

- 17 penitentiaries (including criminal insulator status)
- 39 police preventive detention facility
- three psychiatric hospitals
- 7 psycho-neurological hospitals
- a temporary placement center of foreigners
- a military garrison
- a preventive detention facility of the Anti-Corruption Center.

In the period 2008-2017, the People's Advocate carried out preventive and monitoring visits<sup>1</sup>:

- ✓ 238 visits to penitentiaries;
- ✓ 597 visits to police preventive detention facility;
- ✓ 7 visits to psychiatric hospitals;
- ✓ 22 visits to psycho-neurological hospitals;
- ✓ 4 to preventive detention facility of the Anti-Corruption Center;
- ✓ 1 to temporary placement center of foreigners.

---

<sup>1</sup> <http://map.ombudsman.md/>

In particular, the People's Advocate appreciates the efforts of the penitentiary system in the liquidation of the stated systemic consequences, but they are far from being solved.

For two decades we have consistently set out the same global issues, such as under-funding of detention facilities, overcrowding, lack of hygiene, precarious healthcare, staff shortages, hostile relationships and abuse, excessive self-use, lack of rehabilitation and social integration programs, excessive application of physical force and special means, etc.

We are thus witnessing a double sanction imposed on the convicted person. On the one hand deprivation of liberty, sufficient in some opinions for the punishment to achieve its purpose, and on the other hand to bear the insalubrious and inhumane conditions, far out of the norm that regulates them, and which creates frustration and rebellion among the people for which reason the punishment no longer achieves its purpose, it further induces a state of insecurity or, in some cases, endangers the lives of those who are in its custody.

We cannot talk about performance as long as there is no financial material for reforming the whole system. Minor investments are not felt. The People's Advocate considers that the executive authorities need to identify and supplement the budget of the institutions for the deprivation of liberty in order to ensure the human treatment of the beneficiaries. The lack of financial means cannot be justified for decades.

Also, system employees are to be continuously trained in the field of human rights, or those few hours are insufficient to assimilate perceptions and awareness of fundamental principles and values. Here too, the Ombudsman reiterates the need for investment in human resources through decent wages, optimum and reasonable working conditions, and professional benefits.

Starting from the importance of the constitutional regulations stated, the People's Advocate considers that the conditions of detention in prisons in Moldova have not improved considerably and reach the minimum level of severity necessary to constitute inhuman and degrading treatment. The Ombudsman mentions the systemic nature of overcrowding in prisons in the country<sup>2</sup>, hygiene conditions, and lack of adequate medical care. Another set of major problems faced by the penitentiary system are the reduced capacity to the preparation and serving of food, but also the lack of the possibility to carry out prosocial activities in full motivation to change the persons deprived of their liberty.

The most frequent problems in terms of detention conditions are cells in very cold semi-basements, insufficient light, humidity, hygienic conditions, sewage system and non-

---

<sup>2</sup> Approximately 8,000 persons are in custody of the penitentiary system, compared to the current accommodation capacity of the penitentiary system of approximately 5500 places, it means we have an overpopulation of the detention facilities of over 40%. In order to achieve the positive obligations of the state, resulting from the ECHR decision, *Șișanov vs. Moldova*, the draft Law on the amendment of some legislative acts (Criminal Code and Criminal Procedure Code) regarding the degree of humanization of the criminal policy, which aims to bring criminal law into line with Council of Europe standards, and thereby reduce the prison population. This draft law proposes the establishment of a preventive and compensatory mechanism in line with the standards of the European Convention on Human Rights.

functional ventilation system, insufficient insurance with bed linen, blankets and essential items, inefficient disinfecting measures<sup>3</sup>.

Respect for patients' rights in penitentiary institutions in the Republic remains defective, people in detention complain about the violation of patient's right to be informed, to qualitative medical assistance, to accessibility, to express their dissatisfaction.

In some cases, effective measures are not taken to ensure the effective exercise of the right to independent healthcare, including the diagnosis of detainees in public health care facilities and prescribing the necessary treatment. The administration of the penitentiary invokes the impossibility of transporting detainees to provide independent medical assistance due to staff shortages, as escorting requires the involvement of additional services and specialized means of transport to ensure guarding while traveling. At the same time, it was found that there are no instructions to standardize the actions of the penitentiary staff in the case of requests for private / independent medical assistance to detainees.

The issue regarding the smoking in cells and the possession of non-smokers with people who smoke in cells is also very actual.

The obsolete infrastructure that is not adapted to the cell system and does not allow separation of convicts in small sectors, combined with the lack of custodial staff, leads to the perpetuation of violence and subcultures in the penitentiary environment.

Intimidation and maltreatment of certain categories of detainees is a severe phenomenon criticized for years by the European Committee for the Prevention of Torture (CPT).

At the same time, although legislation lays down standards of detention and criminalizes inhuman or degrading treatment intentionally, there is no effective mechanism allowing the authorities to examine the complaints about detention conditions and adequate and sufficient compensation.

The material conditions of detention in police preventive detention facility, the provision of healthcare, the reporting of ill-treatment, deficiencies in the preparation of internal registers remain worrying. Although the General Police Inspectorate initiated a massive reform of the establishment of 15 regional preventive detention facility, it is due to be carried out in 2020. Therefore, material conditions in preventive detention facility may not be improved. The project of arrest houses appears to be excluded from the authorities' agenda.

As a result of the reform of the Prosecutor's Office, supervision of places of detention was excluded from prosecutors' duties, even if the Prosecutor's Office has a specialized subdivision on combating torture.

During the reform of the Prosecutor's Office, the People's Advocate Office became the main collector of data on the situation in the detention system. Although not a reactive mechanism, the People's Advocate has limited itself to investigation of a limitative number of complaints,

---

<sup>3</sup> Only 3 out of the 17 penitentiary institutions have been renovated and comply with the minimum standards of detention (Prison No. 7 - Rusca, Penitentiary No. 10 - Goian and Penitentiary No. 1 - Taraclia).

which has diminished its reputation as a preventive mechanism. However, the People's Advocate considers that the reactive mechanism of prosecutors in combating ill-treatment is extremely important, and a change of the legal framework is imperative. At the same time, the People's Advocate will further ensure his activity regarding prevention of torture or inhuman or degrading treatment.

The case of Andrei Braguța's death in state custody brought back to attention the problem of the unsupervised detention system.

Case R.C (2017). - an aggrieved patient in the Psychiatric Hospital of Chisinau shows that there are a number of problems in the psychiatric system regarding the safety, security, life and integrity of patients.

The issues mentioned above were reflected in international reports, European Court for Human Rights decisions against Moldova<sup>4</sup>, ombudsman's activity regarding complaints handling<sup>5</sup>, reports on preventive and monitoring visits, and reports regarding the observance of human rights in Moldova, the media and the associative sector.

As a result of the preventive and monitoring visits, hundreds of recommendations were drawn up, including on the closure of the Prison No. 13 in Chisinau. Multiple recommendations have not been implemented, including due to underfunding of the detention system, as well as due to subjective factors.

We welcome the approval of the Strategy for the Development of the Penitentiary System for the years 2016-2020, which aims at defining a simple and functional strategic framework for the development of the penitentiary system in the Republic of Moldova, including intervening in solving the causes of the current problems of the penitentiary system and diminishing their effects on prisoners, as well as reaffirming its role in the general system of justice.

The central issue addressed by this Strategy is: the low efficiency of the penitentiary system in achieving the purpose of punishment - the social reintegration of the convicted person and the prevention of the commission of new crimes. According to the international indicator, Moldova has a score of 0.28 of the maximum 1 for the sub-Indicator. Correctional services are effective in reducing criminal behavior<sup>6</sup>.

Also, the Strategy refers to the existence of problems at the level of functioning of the penitentiary system, which hinders the effective accomplishment of its mission.

The People's Advocate considers that many problems arise from the non-financing of the prison system. In this context, we intend to carry out a broad analysis of the way the penitentiary system is financed to come up with some recommendations in this regard.

---

<sup>4</sup> In 2016, the European Court found violation of Article 3 of the Convention by the Republic of Moldova in several cases: Morgoci v. Moldova, Cazanbaev v. Moldova, Mescereacov v. Moldova, Mescereacov v. Moldova, Caracet v. Moldova, Ciorap Moldova, Okolisan v. Moldova, Cristioglo v. Moldova, Băstovoi v. Moldova, Galaida and Coposciu v. Moldova. The main problems identified by the Court are the lack of an effective investigation and inhuman conditions in detention.

<sup>5</sup> In 2014 the Ombudsman Office received 190 complaints from detainees, in 2015-195 complaints, and in 2016-203 complaints.

<sup>6</sup> <https://worldjusticeproject.org/our-work/publications/rule-law-index-reports/wjp-rule-law-index-2015-report>

## **The National Preventive Mechanism**

In 2014 the mandate of the Parliamentary Advocates ceased in connection with its expiration. Thus, on April 3, 2014 has been adopted the Law no. 52 on the People's Advocate (Ombudsman).

Immediately after the reorganization of the Center for Human Rights in the People's Advocate Office, in accordance with article 30, para. (1) of the Law no. 52 on People's Advocate (Ombudsman), the People's Advocate started the process of creating the Torture Prevention Council as a National Mechanism for the Prevention of Torture, in accordance with the Optional Protocol to the Convention against Torture and other cruel, inhuman or degrading treatment.

On June 30, 2016, the Organization and Functioning Regulations of the Council for the Prevention of Torture was endorsed by the Parliament's Human Rights and Interethnic Relations Commission, and on 4th July it was approved by the People's Advocate.

On July 11, 2016, the People's Advocate announced the contest to select members of the Torture Prevention Council. Due to the lack of sufficient candidates, the deadline for was extended. Only on 24 October 2016 the Council for the Prevention of Torture was established as a National Torture Prevention Mechanism under the Law on the People's Advocate (Ombudsman) no. 52 from 03.04.2014.

The Council consists of five representatives of civil society, the People's Advocate and the People's Advocate for the protection of children's rights as ex officio members. Decisions are taken by mutual agreement, either by vote. Thus, through the amendments made to the Law 52, the representatives of the associative sector were empowered with the exclusive duties of the People's Advocate, which is responsible to provide assistance and secretariat to the Council.

The Ombudsman considers that the authorities have failed to establish a National Torture Prevention Mechanism in accordance with the provisions of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in order to ensure the effectiveness of torture prevention under the Protocol, and at the same time to ensure the independence of the People's Advocate in the decision-making process.

In this context, the People's Advocate requested the Council of Europe's Directorate-General for Human Rights and the Rule of Law (Human Rights Directorate) to carry out a detailed analysis of Chapter V of the Law no. 52 regarding the organization of torture prevention activity.<sup>7</sup>

According to the Opinion of the Directorate-General for Human Rights and the Rule of Law of 28 November 2015, "problems arising in connection with current legal provisions are

---

<sup>7</sup> At the moment, the Office of the People's Advocate works on the elaboration of provisions to improve and adjust the legal framework regarding the functionality of the national mechanism for the prevention of torture.

linked to fundamental aspects of their content and structure rather than general compliance with international standards. Thus, some provisions of the law refer to the Torture Prevention Council as a separate legal entity that exercises the mandate of a NPM. However, other provisions refer to the People's Advocate as NPM. The key issue - who is the national mechanism for preventing torture in the Republic of Moldova - is not a matter of formality, but an essential issue of legal clarity, responsibility and obligation that has not been solved. According to the mentioned Opinion, it is essential that NPM and civil society, especially NGOs, work closely together, which implies an atmosphere of mutual respect and the willingness of both sides to cooperate. On the other hand, there are strong arguments against the assumption by civil society representatives (NGOs) of the responsibility for the exercise of public functions. In principle, this can be considered to be in contradiction with the specifics of NGOs and creates ambiguous situations in the relationship between the People's Advocate as a state institution and NGOs as important representatives of civil society. It also raises very complicated practical problems with the NPM decision-making process."

The resources needed to carry out the tasks of the Council shall be included in a separate budget line, an integral part of the Office of the People's Advocate. Members of the Council, except of Ombudspersons, shall be entitled to a 10% remuneration in the average monthly salary for each day on which they have carried out preventive visits to places of detention or have attended Council meetings. At the same time, the Office of the People's Advocate contributes to the training of the members of the Council in the respective activity.

The Council decides on the number of visits, the spaces to be visited, the periodicity of the visits, etc. In this context, the People's Advocate Office carries out additional monitoring visits in some places of detention concerning information about alleged human rights violations.

The Council began its work in February 2017 in its new formula. Between 2014 and 2017, torture prevention activity was provided by officials of the People's Advocate Office.<sup>8</sup>

In the deprivation of liberty in the Transnistrian region (territory not controlled by the constitutional authorities) no monitoring visits were carried out during the reporting period. Prison 8 and 12 in the security zone of Bender are monitored by employees of the Ombudsman's Office.

---

<sup>8</sup> Between 2014 and 2017, employees of the People's Advocate Office (who exercised the NPM Prevention Mandate) made 29 visits to preventive detention facilities and 16 visits to penitentiary institutions. Other tens of visits were made in private places in the process of investigating allegations of allegations of torture and ill-treatment.

## **Recommendations to the Government of the Republic of Moldova**

1. Revision of the Law No. 52 on the People's Advocate (Ombudsman), in order to ensure the functioning of the National Mechanism for the Prevention of Torture.
2. Ensure adequate funding of the detention system to improve prison conditions in preventive detention facilities and penitentiaries;
3. Elaborate internal regulations for the standardization of penitentiary administration actions to ensure the right to independent healthcare;
4. Assign the function of supervising the places of detention to the prosecutors by making the necessary amendments to the Law on Prosecutor's Office;
5. Ensure adequate conditions for the transportation of imprisoned persons;
6. Ensuring respect for patients' rights in detention to be informed about treatment, quality and timely medical assistance, access to medical assistance. Ensuring the repair of medical facilities in preventive detention facilities and penitentiaries. To carry out a broad evaluation of the needs and real access to specialized medical services of the detainees in the public medical and sanitary institutions and in the penitentiary system with the elaboration of the minimum package of necessary services, based on gender issues;
7. Ensure detainees, especially minors, with educational programs and daily occupational activities, create conditions for the work of convicts, including diversification of socio-educational programs;
8. Revitalizing occupational therapy programs for patients in psychiatric and psycho-neurological institutions;
9. Ensuring equal salary satisfaction for staff in the penitentiary system, police, health, etc;
10. Improvement of the knowledge of the medical staff / employees of the institutions of detention, including in the field of respect for human rights;
11. Ensuring personnel training in appropriate documentation of body injury findings;
12. Improve documentation of trauma and self-use cases;