

2022

REPORT ON TORTURE PREVENTION IN THE REPUBLIC OF MOLDOVA

THE SITUATION OF DETAINED PERSONS



TORTURE PREVENTION

Priority no. 8 of the Strategic Development Program of the People's Advocate Office for the period of 2023–2030: “The person’s right to liberty and safety is ensured; torture and ill-treatment are eradicated”

The UN Human Rights Council adopted the Universal Periodic Review outcomes of the Republic of Moldova on July 4, 2022.¹ The Report contains 20 general recommendations on prevention and prohibition of torture and ensuring decent detention conditions. All the recommendations were accepted by the Republic of Moldova.²

In 2022, ECHR delivered 7 relevant judgements against the Republic of Moldova: case of COSOVAN [unreasonable pre-trial detention and inadequate medical treatment in prisons]³, case of CRETU [ill treatment during arrest by police, 2009]⁴, case of MATASARU [ill treatment while in police custody]⁵, case of CANUDA [ill treatment by police officers on the day of arrest]⁶, case of POVESTCA [insufficient medical assistance while in detention]⁷, case of STRAISTEANU and AGACHI [ill treatment while in detention]⁸ and case of G.M and others [forced termination of pregnancies and birth-control measures applied in a neuropsychiatric residential asylum]⁹.

Between December 5 and 13, 2022, CPT carried out an ad hoc visit to the Republic of Moldova¹⁰. CPT visited 3 prison establishments (P4, P13 and P18) recommending 5 urgent measures to be implemented by the national authorities (compared to 3 urgent measures during the previous visit in 2020). The CPT report will be sent to Government in June-July 2023.

3.1. Summary of torture prevention activities

In 2022, **72 preventive visits** were carried out to places of deprivation of liberty¹¹, which resulted in **29 reports** with **570 recommendations**¹². In addition, the People's Advocate Office involved in **7 high-profile cases** ending with **7 special reports**¹³, prepared **3 thematic reports on**

¹ <https://www.ohchr.org/en/hr-bodies/upr/md-index?fbclid=IwAR3PJzvDwmhRrumwAMesCwbNvqiUcJZr32oSiKGyumNA-kw192ekpAff3GM>

² <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/341/45/PDF/G2134145.pdf?OpenElement>

³ <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-216352%22%7D>
<https://promolex.md/21978-ctedo-confirma-existenta-problemelor-sistemice-grave-din-justitia-penala/?fbclid=IwAR0oKyLJMK6FpPqIDRsL6gO1-l4vKP9mHI2VGAYeKmS2NQjH0x7tz7VTh1c&lang=ro>

⁴ <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-215337%22%7D>

⁵ <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-215342%22%7D>

⁶ <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-217253%22%7D>

⁷ <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-215339%22%7D>

⁸ <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-215341%22%7D>

⁹ <https://hudoc.echr.coe.int/eng#%7B%22tabview%22%3A%22document%22%7D%22itemid%22%3A%22001-220954%22%7D>

¹⁰ <https://www.coe.int/ro/web/cpt/-/council-of-europe-anti-torture-committee-cpt-carries-out-a-visit-to-moldova>

¹¹ 51 visits (36 monitoring visits; 6 follow-up visits; 5 fact-finding visits; 1 announced visit; first ever 3 forced return monitoring visits) undertaken by the Torture Prevention Department of the People's Advocate Office and 21 preventive and monitoring visits undertaken by the Council for the Prevention of Torture.

¹² The Council for the Prevention of Torture prepared and shared with authorities 20 visit reports with 400 recommendations, while the Torture Prevention Department prepared and shared with authorities 9 visit reports with 170 recommendations.

¹³ Special report “Ill-treatment based on discrimination in a military facility. The Pavlescu case”; Special report “Torture allegations at the Police Inspectorate Soroca. The Gutu and Covalciuc case”; Special report “Authorization of forced hospitalization contrary to the right to freedom and security of the person”; Special report “The right to professional life and the presumption of innocence upon arrest. The Voloc case”; Special report “Use of physical force and special means by police”; Special report “Suspicious death in the preventive detention facilities of the Police

pressing issues¹⁴ and **15 quarterly thematic reports** on safety in places of deprivation of liberty¹⁵. Overall, the implementation rate of the medium term recommendations is about 60%, while that of the long-term recommendations (*resources and policies*) – around 10-15%. Additionally, to promote the recommendations of the People’s Advocate and of the Council for the Prevention of Torture (CfPT), **6 meetings** were held with the representatives of the National Administration of Penitentiaries (NAP), National Anticorruption Center (NAC), Ministry of Defense (MD), Ministry of Internal Affairs (MIA) and the parliamentary commission on human rights and inter-ethnic relations. There was no interference in the monitoring process and no overlapping visits as part of the prevention mandate.

Between January and June 2022, the People’s Advocate Office conducted the first national campaign “**Observ Carabinierul**”¹⁶, and in the period of June 26 – 30, 2022, the fourth campaign “**EuNUaplic166/1-EuRespect Demnitatea UMANĂ**”¹⁷. The Torture Prevention Department (TPD) organized and participated in 3 national conferences as speakers¹⁸ and had several appearances in mass-media.

Additionally, TPD delivered training on torture prevention (**34** online and offline **training activities**) to **657 employees** of the NAP, General Inspectorate of Carabineers (GIC), General Inspectorate of Border Police (GIBP) and MIA.¹⁹

The prevention activities were supported by the donor organizations, including the Council of Europe in Moldova under the “Strengthening the human rights compliant criminal justice system in the Republic of Moldova” project, Soros Foundation Moldova under the institutional project „Carabineers for Human Rights”; the International Center for Migration Policy Development (ICMPD) under the institutional project „Capacity for a rights-based return system for Moldova”, and by the civil society organizations „Centrul de Drept al Avocaților”, „Promo-LEX”, „IDOM” and „Homecare”.

The access of the People’s Advocate Office to places of deprivation of liberty in the Transnistrian region of the Republic of Moldova remains limited. For the first time, the Varnita Office of the People’s Advocate carried out 2 fact-finding visits to 2 prisons in the region on two individual cases.²⁰

3.2. Prohibition of torture

Regulatory legal framework on combating and preventing torture

Department Chisinau” and Special report “Violent death at Balti Psychiatric Hospital” available at <http://ombudsman.md/rapoarte/speciale/>

¹⁴ Thematic report “Freedom of assembly during the events of May 8 and 9, 2022”; Thematic report “Access of foreigners through the border crossing point “Chisinau International Airport” and Thematic report “Fundamental safeguards upon apprehension by carabineers”.

¹⁵ <http://ombudsman.md/activitate/prevenirea-torturii/prevenirea-torturii/>

¹⁶ <http://ombudsman.md/news/final-de-campanie-observ-carabinierul/>

¹⁷ <https://www.facebook.com/hashtag/eunuaplic1661eurespectdemnitateauman%C4%83>

¹⁸ Conference of the Ombudsman “Carabineer institution – between present and future” <http://ombudsman.md/news/premiera-conferinta-stiintifico-practica-a-ombudsmanului-institutia-carabinierilor-intre-prezent-si-viitor/>; National conference “National security and protection of human rights in a democratic society”, organized by the National Institute of Intelligence and Security “Bogdan Întemeietorul”, the People’s Advocate Office and the Center for Security and Crisis Management Studies: <https://sis.md/ro/content/dialog-privind-protec%C8%9Bia-drepturilor-omului-prin-prisma-asigur%C4%83rii-securit%C4%83%C8%9Bii-na%C8%9Bionale> and the national conference “State, Security and Human Rights in a Digital Era”, State University of Moldova: <https://usm.md/?p=15846>

¹⁹ <http://ombudsman.md/activitate/prevenirea-torturii/prevenirea-torturii/>

²⁰ <http://ombudsman.md/news/in-premiera-angajatii-oficiului-avocatului-poporului-au-efectuat-o-vizita-in-penitenciarul-subordonat-entitatilor-de-la-tiraspol/>
<http://ombudsman.md/news/reprezentantul-oficiului-avocatului-poporului-a-vizitat-un-detinut-in-izolatorul-de-ancheta-din-penitenciarul-nr-3-%d1%83%d0%b8%d0%bd-3-din-mun-tiraspol/>

Art. 24 of the Constitution of the Republic of Moldova guarantees to every individual the right to life and physical and mental integrity and states that no one may be subjected to torture or any cruel, inhuman or degrading punishment or treatment²¹.

Torture is criminalized under art.166¹ paragraph (3) of the Criminal Code of the Republic of Moldova no. 985/2002²². The definition of torture was fully transposed from art. 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment²³. Article 166¹ paragraph (1) of the Criminal Code of the Republic of Moldova no. 985/2002 provides for the punishment for „any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person, which represents inhuman or degrading treatment”. The criminal legislation also contains anti-torture safeguards, such as:

a) criminal law is not intended to cause suffering or harm human dignity. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. [art. 4 par. (2)];

b) extradition of a person is prohibited if that person is in danger of being subjected to torture in the country of origin [art. 13 par. (2)];

c) the statute of limitation does not apply to cases of torture [art. 60 par. (8)];

d) no milder punishment [art. 79 par. (4)];

e) no partial suspension of sentence [art. 90¹ par. (4)];

f) no amnesty [art. 107, par. (3)];

g) prohibition of torture in wartime [art. 135¹ par. (1) item d), art. 137 par. (3) item b)].

Additionally, art.5, par. (3) of the Contraventional Code of the Republic of Moldova no.218/2008 prohibits torture, while art. 439⁵ prohibits extradition if the person is in danger of being subjected to real treatment in the country of origin.²⁴

The Criminal Procedure Code of the Republic of Moldova no.122/2003 also contains some regulations in this area. In Art.10, par. (3) and (3¹) provide for the burden of proof and prohibition of torture during criminal proceedings; art.11 states that forced confinement of a person in a medical institution is allowed only on the basis of a reasoned court decision; art.58, art.60 par. (4) and (5¹) stipulate the rights of the victim of torture and the injured party; art.143 par. (3¹) requires that forensic expertise is conducted, art. 262 stipulates the obligation to notify immediately the prosecutor about torture; art. 270 par. (5) – the competence of prosecutor to investigate torture and art. 546 par.(6) item c) – the refusal of extradition²⁵.

The Criminal Enforcement Code of the Republic of Moldova no.443/2004 prohibits in art. 167¹ any acts of torture, cruel, inhuman or degrading treatment or other ill treatment; in art. 169 the convicted person is guaranteed the right not to be subjected to torture and art.232, par. (7) requires that relatives be notified about the fact that the convicted person has been subjected to torture.²⁶

The special legislation on police, carabinieri and the prison systems prohibits to the personnel in these systems to apply and tolerate torture. However, such regulations are missing for other law-enforcement entities (Security and Intelligence Service (SIS), Customs Service (CS), Border Police (BP), State Protection and Guard Service (SPGS) etc.).

The grounds, conditions and limits for the use of physical force, special means and firearms by special subjects are regulated by Law no. 218/2012 on the use of physical force, special means and firearms.²⁷ The professional intervention mechanism is provided in the Professional Intervention Guidelines²⁸, while the procedure of identification, registration and reporting of allegations of torture, inhuman or degrading treatment is provided in the Joint Decision no.

²¹ Article 24 of the Constitution of the Republic of Moldova

²² https://www.legis.md/cautare/getResults?doc_id=133090&lang=ro#

²³ <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>

²⁴ https://www.legis.md/cautare/getResults?doc_id=125094&lang=ro

²⁵ https://www.legis.md/cautare/getResults?doc_id=133060&lang=ro#

²⁶ https://www.legis.md/cautare/getResults?doc_id=132859&lang=ro#

²⁷ https://www.legis.md/cautare/getResults?doc_id=132062&lang=ro#

²⁸ https://politia.md/sites/default/files/ghid_privind_interventia_profesionala_in_exercitiul_funcției.pdf

77/2013 of the Prosecutor's General Office²⁹, in art. 4 of the Law no. 218/2012 on the use of physical force, special means and firearms, in art. 232 of the Criminal Enforcement Code no. 443/2004 and par. 515 of the Sentence Enforcement Statute for convicted persons³⁰.

The responsibility for **combating torture** lies with the Prosecution. Only prosecutors have the competence to prosecute acts of torture in accordance with art.270, par. (5) of the Criminal Procedure Code of the Republic of Moldova no.122/2003. If the notification or the fact-finding document gives rise to any suspicion that an offence stipulated in art. 166¹ of the Criminal Code of the Republic of Moldova no. 985/2002 has been committed, the prosecutor must deliver a decision within 15 days under art.274 par. (3¹) of the Code. There are 1-3 prosecutors in every prosecution office assigned for this. The overall process is coordinated at central level by the Anti-Torture Section of the Prosecutor's Office for Combating Organized Crime and Special Cases³¹.

Deficiencies in the national legislation on prevention and combating torture

Art. 166¹ par. (1) of the Criminal Code provides for the punishment of "*any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person, which represents inhuman or degrading treatment*". However, the law-maker (i) does not define "inhuman treatment" and "degrading treatment" and (ii) condemns such acts only if intentionally committed. On the other hand, any form of inhuman or degrading behavior, whether intentional or unintentional (premeditated or not), is prohibited. The international standards guide us to focus on "the person as such" and less on the subjective side of the crime. The state has an obligation to ensure the integrity of the person taken into custody. Hence the need for the lawmaker to define both terms in order to leave no room for interpretations to the detriment of the victim of torture. Some practitioners, however, believe that there is no need for the lawmaker to define both terms, since prosecutors and courts, which can apply the case law of the European Court, have a leading role in the criminal proceedings.

The criminal procedure legislation requires that a psychological assessment of the victim of torture is conducted, which, however is carried out after a long period of time after the act of torture and, therefore, does not give effects. In the absence of such instruments, the victims of torture in places of detention cannot receive any effective protection against ill-treatment. Similarly, they cannot benefit from rehabilitation, because it has not been institutionalized yet.

Even if the special legislation on the law enforcement authorities has some regulations that prohibit the use of torture, it still protects torturers from criminal liability. Overall, the legislation, which is outdated in some parts, must be revised and aligned to the international standards in order to provide better protection against abuse and clarity on liability for such acts.

Article 11 of the Criminal Procedure Code stipulates that forced confinement of a person in a medical institution is allowed only based on a reasoned court decision. According to art.490 of the Criminal Procedure Code, forced confinement in a psychiatric institution can be used for suspects or accused, when illness is ascertained, and based on prosecutor's request to the investigating judge, who issues a decision in this regard. The court reviews regularly, at least every six months, the need to continue the use of coercive medical measures. The Government, however, has not taken any action with regard to the adoption of safeguards against torture, forced confinement and treatment in psychiatric institutions. Neither the Law no. 1402/1997 on mental health³² or the Criminal Procedure Code have been amended in terms of ensuring the rights against forced confinement.

With the amendment of the Law no.3/2016 on prosecution, the prosecutors' anti-torture powers have been substantially reduced (the legality verification was excluded). Similarly, after the Anti-Torture Unit was included in the Prosecutor's Office for Combating Organized Crime and Special Cases, its efficiency in terms of identification and fight against torture has been also

²⁹ https://www.legis.md/cautare/getResults?doc_id=44302&lang=ro

³⁰ https://www.legis.md/cautare/getResults?doc_id=110142&lang=ro#

³¹ https://www.legis.md/cautare/getResults?doc_id=133648&lang=ro

³² https://www.legis.md/cautare/getResults?doc_id=131976&lang=ro#

reduced³³. The law maker/Prosecutor General's Office should institutionalize the Anti-Torture Section in a prosecution office specialized in combating torture. The rate of criminal cases on allegations of torture, inhuman and degrading treatment is quite low compared to the number of complaints³⁴. Although the anti-torture prosecutors must deal strictly with the provisions of Article 166/1 of the Criminal Code, they are involved in prosecution of other criminal cases. The effects of these institutional changes are visible³⁵. Impunity is on the rise.

The Law no.218/2012 on the use of physical force, special means and firearms cannot be applied in closed places of detention and does not provide solutions in this sense. This law is useful only in open spaces and can mostly be applied only by the police. This law should be revised by adding other permissive criteria for the use of physical force and special means, as well as by revising the list of the special means. Thus, specific provisions should be included for: the prison system (use of special means in closed spaces), carabinieri institution, national army, customs service, information and security service, border police etc. The lawmaker should also consider including in the scope of the law the personnel of the psychiatric and residential institutions, which also use restraint measures without any legal instruments.

Other criteria that need to be included in the Law no.218/2012 are: improvement of the mechanism for registration, reporting and notification about the use of force and special means; strengthening the role of medical personnel in the places of deprivation of liberty and civil personnel in the process of reporting and registration of injuries or other allegations; introduction of clear criteria for use of firearms by law enforcement officers; description of human rights principles that must be followed when physical force and special means are used. This is needed because lack of clarity in the legal framework gives rise to concerns related to human rights.

No amendments were made to the legal framework in 2022 to address the issues above.

Impunity for acts of torture

A study conducted by LRCM (Legal Resources Center of Moldova), based on 71 irrevocable judgments of the Supreme Court of Justice (SCJ) issued between July 2013 and February 2022 and related to offences committed between 2006 and 2018, suggests that 75% of the judgements refer to allegations against police officers; 8% against education employees and 6% against representatives of private security services.

Out of 102 persons charged in those cases, 73 were convicted. Other 17 persons were acquitted and in case of other 12 persons the criminal proceedings were ceased on procedural grounds (such as expiry of the statute of limitations or violations in the process of resuming criminal investigation). Though 71 persons were sentenced to imprisonment, only 20 of them ended up in prison.

The acquittal rate in these cases is five times higher than the average acquittal rate in the court system (about 3%). In courts, the acquittal rate is 38%, which is 13 times higher than the average acquittal rate in the country. In other 12% of cases, trials were discontinued. Only 50% of the defendants were convicted by first instance judges. The first instance convictions were overturned in the Court of Appeal in 59% of cases.

Available data suggest that prosecutors have more chances of success in the court of appeal, where the acquittal rate drops threefold to 13%, while the trial termination rate falls to 5%. The statistics on convictions at Superior Court of Justice are similar to those in the Court of Appeal³⁶. Judicial practice is not uniform. Every second first instance judgement is overturned by the Court of Appeal and further by the Superior Court of Justice. The average duration of trials on cases of torture and ill treatment is 6 years (the shortest – 1 year and the longest – 11 years).

³³ <http://ombudsman.md/wp-content/uploads/2021/10/raportUPR2021.pdf>

³⁴ <http://procuratura.md/md/d2004/>

³⁵ <https://promolex.md/23000-raport-evaluarea-mecanismului-de-prevenire-si-combatere-a-relelor-tratamente-in-sistemul-penitenciar-din-republica-moldova/?lang=ru>

³⁶ <https://crjm.org/en/trial-and-punishment-of-torture-and-ill-treatment-case-law-analysis/>

In 2022, the Prosecutor General's Office received and examined 485 allegations of ill treatment. Criminal prosecution was started only in 69 cases, 8 of which involve allegations of ill-treatment against minors. Criminal prosecution of the other 404 cases was refused. In over 83% of the allegations of torture/ill treatment, prosecutors considered that the facts did not constitute a crime and, therefore, the alleged offenders remained unpunished.

Similarly, the Prosecutor General's Office started and investigated 156 criminal cases on ill treatment, 87 of which have been pending since 2021. Prosecution was completed only in 43 cases (which is less than 28%) and only 15 of them were sent to court. In 24 cases the criminal investigation was discontinued or dropped.

Data suggests that in the cases involving torture/ill treatment the rate of prosecution of the persons who tolerate or commit such acts is low. Compared to the number of allegations received in 2022, the 15 criminal cases sent to court would account for 3,09%, which suggests impunity, especially considering the high rate of acquittal of torturers by courts³⁷.

3.3 The situation of the persons detained in prisons

General findings

The list of findings and issues mentioned in the annual, visit and thematic reports of the People's Advocate and the Council for Prevention of Torture remains valid³⁸. All the issues that have not been addressed over time have dramatically surfaced in the prison system. Some of the issues reflected in the comments of the international³⁹ and national institutions do not refer only to the prison system. They require prompt, clear, transparent and responsible political will.

The influence of the criminal subculture, lack of security for inmates and personnel, overcrowding, poor conditions of detention, lack of effective medical care and job opportunities are among the most commonly reported issues in the prison system. The detainees from vulnerable groups continue to be subjected to ill-treatment, harassment and intimidation, particularly by other detainees; there is a pressing shortage of professional, educational and specialized staff in the places of deprivation of liberty; the rate of inter-detainee violence, bodily harm and hunger strikes is on the rise^{40 41}, while the available remedies are either ineffective or are used disproportionately and excessively.

The compensatory and amnesty mechanisms seem to fail to achieve the intended purpose and seem to not apply to the prisoners with life sentences⁴². The non-custodial measures are still rarely applied. The goals related to the renovation of prison infrastructure have entered a period of stagnation (in particular, the construction of a new prison and completion of the construction of the arrest processing facility etc.)⁴³. Therefore, Moldova risks further criticism for inaction at international forums.

According to the Government's Action Plan for the years 2021-2022, in relation to "Improvement of detention conditions" action the Government committed only to approve a decision on the implementation unit for the construction of a new prison⁴⁴. On February 9, 2022,

³⁷ <https://procuratura.md/sites/default/files/2023-03/RAPORT%20DE%20ACTIVITATE%202022.pdf>

³⁸ <http://ombudsman.md/rapoarte/anuale/>
<http://ombudsman.md/rapoarte/prevenirea-torturii/anuale/>
<http://ombudsman.md/consiliul-pentru-prevenirea-torturii/rapoarte/>

³⁹ <https://www.ohchr.org/en/countries/moldova>

⁴⁰ <http://ombudsman.md/rapoarte/prevenirea-torturii/anuale/>

⁴¹ <http://ombudsman.md/rapoarte/prevenirea-torturii/anuale/>

⁴² https://www.legis.md/cautare/getResults?doc_id=134481&lang=ro

⁴³ <https://gov.md/ro/advanced-page-type/government-activity-program>

⁴⁴ https://gov.md/sites/default/files/document/attachments/hg_nr.235_13.10.2021-engl.pdf

the Ministry of Justice approved by Order no. 36 the Regulation on filling vacancies in the Implementation Unit of the Chisinau penitentiary construction project⁴⁵.

The other priorities of the Ministry of Justice related to the prison system include: (1) introduction of a progressive and individualized system of sentence enforcement [a concept paper has been approved]; (2) facilitation of employment of prisoners; (3) improvement of the internal control mechanisms [reorganized unit in NAP]; (4) reorganization of medical care in prison facilities by strengthening the independence of medical personnel; (5) capacity building for personnel and (6) improvement of contacts with civil society.

Statistics on the persons deprived of liberty

According to NAP data, the total number of detained in prisons was **6084** as at January 1, 2023 (in 2021 – 6396 persons), including **1037 in pre-trial detention** (in 2021 – 1694), **326 women** (in 2021 – 370), **34 minors** (in 2021 – 58), **1 minor girl, no mother with children** (in 2021 – 6 mothers with 6 children under 3), **72 former civil servants** (in 2021 – 117) and **128 persons sentenced to life imprisonment** (in 2021 – 127)⁴⁶.

Despite the international and national recommendations to substantially reduce the prison population and overcrowding, **on June 10, 2022 the Ministry of Justice increased de jure, through its Order no.150, the detention capacity of some of the prison facilities. Moreover, these adjustments are contrary to the international standards and national regulations**⁴⁷. Most prison establishments cannot cover physically the detention threshold. During its visits, CfTP found overcrowding in P3, P4 and P18 (far beyond the capacity provided for in the Order of the Ministry of Justice no.150)

P1	P2	P3	P4	P5	P6	P7	P8	P9	P10	P11	P12	P13	P15	P17	P18
Detention capacity approved by MJ in 2021															
Total number: 6273															
336	286	307	713	170	693	231	279	467	64	258	261	570	470	516	652
Overcrowding (de facto)															
357	289	360	695	157	679	287	105	453	36	315	146	948	483	274	622
+21	+3	+53				+56				+57		+378	+13		
Detention capacity approved by MJ in 2022															
Total number: 6612															
355	363	366	728	180	753	280	279	448	164	258	169	816	464	337	652
Overcrowding found during the preventive visits															
		382	783									815		277	669

The Order of the Ministry of Justice no.150 also provides for opening pre-trial facilities in all prison establishments (except for P16), probably with the aim to depopulate the existing ones. The People's Advocate is concerned that not all prison facilities have spaces suitable for the detention of those on remand, who risk being placed in disciplinary sectors in inhumane conditions.

RECOMMENDATION (repeated): *The Ministry of Justice, the General Prosecutor's Office, Superior Council of Magistracy should strengthen the national mechanisms that would lead to the depopulation or reduced number of persons in places of detention, including through the effective application of non-custodial measures and/or other types of punishment.*

⁴⁵ https://www.legis.md/cautare/getResults?doc_id=129951&lang=ro

⁴⁶ <http://anp.gov.md/rapoarte-de-bilant-semestriale-anuale>

⁴⁷ <https://promolex.md/wp-content/uploads/2022/11/Report-Evaluation-of-the-mechanism-for-preventing-and-combating-ill-treatment-in-the-penitentiary-system-of-the-Republic-of-Moldova-.pdf>

RECOMMENDATION: *The Ministry of Justice should revise and align the detention threshold for prison facilities established through its Order no.150 to the international standards.*

Safety of the persons detained in the prison system

The data available from the operational reports of the prison system⁴⁸ analyzed by the People's Advocate Office reveal **23 deaths** (18 cases less than in 2021)⁴⁹, **20 suicide attempts** (13 cases less than in 2021), **383 serious cases of violence** between prisoners (24 cases less than in 2021), **202 cases of self-harm** (45 cases less than in 2021), **13 cases of assault** on staff (15 cases less than in 2021); **29 cases of use of tear gas** (16 cases more than in 2021); **8 cases of use of physical force on female detainees** (2 cases less than in 2021). Special means or physical force was used on prison inmates every day. The number of **incidents involving minors** in detention reached **91** (3 cases less than in 2021).

The most common injuries reported in the prison facilities are the **accidental injuries** (from falling off the bed, slipping in the bathroom or on the floor, while playing football, accidental self-injury in the cell, while opening cans, etc.), followed by **intentional injury** (minor self-injury, including as protest); **injuries caused by brawls** (blows or minor violence between prisoners); **injuries resulting from acts of violence** (serious or exceptionally serious ill-treatment among prisoners); **injuries received upon admission to detention facility** (persons brought in by the police with injuries received during or before apprehension); **injuries received at work** (at work or in household units); **injuries received as a result of the use of physical force or special means** (bruises from twisted limbs or handcuffs, etc.); **injuries caused by personnel** (only 3 cases of use of force reported by detainees). The lack of effective involvement by the Prosecutor General's Office to check the legality of the information reported by NAP leads to a juridical – practical gap, which affects the safety of detainees and victims. PAO, on the other hand, does not have the legal instruments to step in on issues that go beyond the anti-torture prerogatives. Yet, many cases of “accidental injuries or fractures” raise reasonable suspicion of possible abuse or ill treatment. Their proper investigation could deter the criminal or informal phenomenon.

A fundamental safeguard against ill-treatment and impunity is the medical examination of detainees immediately after the violent incident or use of force has taken place. Medical services in most cases do not visit convicts regularly, and injuries are documented only at the request of the convict or if the medical worker has been notified by prison personnel⁵⁰. We assume that not all injuries, alleged acts of torture or ill-treatment are recorded and documented. At the same time, it is regrettable that the complaints of psychological torture from convicts/those in pre-trial detention are not registered and investigated.⁵¹

An effective way of dealing with incidents that threaten prison order is to make sure that all officers receive training on the use of recognized control and restraint equipment and the proportionate use of force and special means.

The influence of criminal subculture, the safety of inmates and staff, poor prison conditions and lack of medical care continue to be some of the most reported problems in prison establishments. Regrettably, prisoners from vulnerable groups continue to be subjected to ill-treatment, harassment and intimidation on various grounds.

The large number of incidents of violence with serious consequences between prisoners raises questions about protection and security in prisons. The violent and oppressive authoritarian

⁴⁸ These data do not necessarily reflect the data published by NAP. They have been processed based on a separate methodology of PAO and refers only to the serious and exceptionally serious cases.

⁴⁹ The age of the deceased ranged from 20 to 72 years. The most common preliminary causes of death include: HIV / TB infection (1 case); cancer (4 cases); diseases of the cardiovascular system (5 cases); diseases of the digestive system (7 cases); traumatic injuries, poisoning (2 cases) and suicide (4 cases).

⁵⁰ <http://ombudsman.md/wp-content/uploads/2023/01/12-9-72-2451-2452-ANP-raport-monitorizare-P-4-Cricova-din-14-15.09.22.pdf>

⁵¹ <http://ombudsman.md/wp-content/uploads/2023/01/12-9-72-2451-2452-ANP-raport-monitorizare-P-4-Cricova-din-14-15.09.22.pdf>

structure of the inmate hierarchy, which involves humiliation, extortion and assault on vulnerable inmates or those who do not obey the "informal rules", is perhaps the most worrying part of prison life. In these circumstances, the fight against criminal subculture and its influence must be a priority. This should be a priority not just for the prison system, but also for politicians, who must demonstrate a firm, unconditional and prompt will in this regard. On the other hand, the failure to carry out effective internal investigations and the refusal to prosecute cases involving serious violence in prisons raises doubts about the commitments related to protection of human rights in the places of deprivation of liberty, respect for law and other social and human values.

On the other hand, there have also been some positive achievements that have to be mentioned. For example, in P3 all the inmates in sectors I and II (regardless of their category) are allowed to use the common areas, such as the football ground, tennis table, library (even those who are detained under Article 206 of the Enforcement Code) in order to exclude any form of discriminatory treatment. The 2021-2022 data show that the cases of hunger strikes, self-harm, suicide attempts, use of physical force and special means, assault on staff went down in P3, suggesting improved communication between prison personnel and inmates, as concluded in the CPT visit report⁵².

RECOMMENDATION: *The Ministry of Justice should strengthen the mechanism for supervising the persons deprived of their liberty against any form of violence.*

Human resources in prisons, safety of prison personnel

The total number of positions in the prison system was 2940 as at December 31, 2022 (*in 2021: 2951 positions, including 1108 officers, 1615 prison agents and 228 contract staff*) and only 2505 positions were filled. The number of personnel is falling. The ratio of inmates to prison personnel remains **critical**: 1 staff member to 4/6 inmates during the day or 1 staff member to 10/30 inmates or 4 staff members to 600 inmates during the night. Despite previous wage increase for agents, such measures seem to be insufficient to motivate staff. In addition to the challenges related to staffing, the prison system faces lack of education, social, medical and occupational specialists, whose services are necessary to respond to the detainees' real needs, including in the context of the progressive sentence enforcement mechanism.

This not only hinders security and prison regime activities, but also makes it almost impossible to prevent incidents of violence or other forms of ill-treatment in prison facilities or other major risks.

RECOMMENDATION (repeated): *The Government should provide support to ensure adequate staffing in prisons with qualified, professional and motivated staff.*

A positive development worth mentioning is the drop in the number of assaults on staff from 22 cases in 2021 to 14 in 2022.

Cases of assault on staff, including *headbutting, dragging, knocking to the ground with blows to the head, punching in the face, attacks with improvised weapons, spraying with paint, stabbing and other forms of ill treatment*, were reported in prisons no. 2, 3, 6, 7, 11, 16, 17 and 18.

Criminal proceedings were started on all these cases. These data do not include the cases of verbal abuse, intimidation and insults by prisoners/informal leaders.

The reports of constant abuses towards staff received by the People's Advocate suggest that apparently the criminal punishment for disobeying legitimate demands is not severe enough to deter this phenomenon. The lack of a mechanism to protect personnel against psychological abuse and physical assaults is a major problem for prison personnel. Given the growing influence of the criminal sub-culture and poor staffing, we call on the authorities to revisit this issue and

⁵² <http://ombudsman.md/wp-content/uploads/2022/11/Raport-privind-vizita-de-monitorizare-la-Penitenciarul-nr.-3-Leova.pdf>

address the potential major risks that might arise. The use of physical force under art. 233 of the Enforcement Code is also not the most appropriate and reasonable solution.

Therefore, to protect prison personnel, the authorities should revise the legal mechanism for punishing prisoners for acts of violence against prison personnel, state representatives.

Material conditions of detention

In 2022 the PAO team carried out 2 monitoring visits - one to P7 (thematic visit) and one to P18 (follow-up visit), while CfPT visited five other prisons (P16, P17, P3, P4 and P13).

Finding of the visits: the material conditions of detention continue to be **inhuman**.

PAO's report on the follow-up visit to P18 (18/05/2022). There have been certain improvements in the material conditions of detention, in particular: closing and reconstruction of premises where the persons on hunger strike used to be placed; launch of renovation of roofs of accommodation premises; refurbishment of prison library; organization of spaces for religious worship, accreditation of the medical unit, organization of the medical isolation wards. Despite these positive developments, certain vulnerabilities identified during the previous visits have not been addressed yet, in particular the material condition of Sector 10, Block B: the large capacity dormitory accommodates 51 inmates and does not meet the minimum detention standards; overcrowding; worn out furniture, lack of movement space inside cells; noise pollution, lack of an adequate lighting and ventilation system etc. All of this constitutes degrading treatment and is inconsistent with the human dignity principle. The prison management committed to identify solutions to reorganize the barrack-type cells. Also, we preliminarily note that the level of implementation of the previous recommendations is 50%.⁵³

CfPT's visit report on P16 (prison hospital): The prison does not meet the national standards of a medical institution, does not have a sanitary authorization and accreditation for provision of medical services. Prisoners' right to health is violated due to treatment in inadequate conditions, shortage of medical staff and failure to comply with the national treatment protocols and standards.⁵⁴

CfPT's visit report on P17: CfPT notes the unequal treatment of inmates in terms of material conditions of detention and access to common areas, which supports discrimination and criminal subculture in the prison, tacitly supported by prison personnel. CfPT also calls for actions to improve the quality of food by engaging qualified staff. Additionally, CfPT found deficiencies in relation to the minimum living conditions, many of the cells requiring renovating.⁵⁵

CfPT's visit report on P3: CfPT notes the overcrowding in three living settings, the superficial approach to separation of detainees, detention of prisoners in quarantine longer than legally allowed; overall poor detention conditions except for Block 4; some cells require disinfection (bedbugs, insects, cockroaches); lack of available cells.⁵⁶

CfPT's visit report on P4: The detention conditions in P4 are poor and inadequate, with overcrowding in common areas, while there are also modernized apartment-like cells with 1-2 bed places. The solitary confinement cells are used, despite the signs restricting their use. The common sanitary facilities are not operational and are in a terrible conditions. Hygiene products are missing etc.⁵⁷

CfPT's visit report on P13: The detention conditions in P13 are poor and inadequate. P13 continues to be overcrowded. There is shortage or even lack of personnel and guards, buttons to call for help. There are no sanitation/laundry services. The walking areas are also used to dry clothes. Violence between inmates and

⁵³ <http://ombudsman.md/wp-content/uploads/2022/07/Raport-privind-vizita-de-follow-up-Penitenciarul-Nr.-18-Br%C4%83ne%C8%99ti.pdf>

⁵⁴ http://ombudsman.md/wp-content/uploads/2022/04/Raport-CpPT_P16_22.02.2022-FINAL_FINAL_pe-site_expediat-autoritator.pdf

⁵⁵ <http://ombudsman.md/wp-content/uploads/2022/07/Raport-privind-vizita-preventiv%C4%83-%C8%99i-de-monitorizare-efectuat%C4%83-la-Penitenciarul-nr.-17-Rezina-din-cadrul-Administra%C8%9Biei-Na%C8%9Bionale-a-Penitenciarelor-la-date-de-08-aprilie-2022.pdf>

⁵⁶ <http://ombudsman.md/wp-content/uploads/2022/11/Raport-privind-vizita-de-monitorizare-la-Penitenciarul-nr.-3-Leova.pdf>

⁵⁷ <http://ombudsman.md/wp-content/uploads/2023/01/12-9-72-2451-2452-ANP-raport-monitorizare-P-4-Cricova-din-14-15.09.22.pdf>

acts of self-harm persist, ending up in disciplinary sanctions. CfPT notes the difficult access to the medical facility for the elderly people or those with disabilities.⁵⁸

During the monitoring visits, the Ombudsman received complaints from detainees with allegations of inhuman and degrading treatment, including: *inappropriate detention conditions, overcrowding, poor and insufficient food, poor health care (lack of medication, doctors and medical equipment), untreated toothache, poor hygienic conditions (parasitic insects, rodents, dirt, lack of beds, lack of proper ventilation, lack of daylight, bad condition of toilets, dirt in bathrooms; lack of privacy in toilets and bathrooms), relations between inmates; discriminatory treatment, intimidation and harassment by the administration, disagreement with searches and other actions of personnel, spaces that are not adjusted to take into account the needs of women, sick persons and persons with special needs, etc.*

The Ombudsman supports the government's commitment to ensure proper conditions in closed spaces and urges the government to consider conducting a comprehensive assessment of the situation. The annual allocations in this sense do not seem to be helpful because they are fragmented and insufficient. The concept of enforcement of custodial measures would probably require revising, given the limited annual public budget.

Application of release mechanisms

According to the NAP data, 1864 convicts were released in 2022 (1729 in 2021), representing a 7.81% increase compared to 2021; 651 persons were released at the end of the sentence (693 in 2021), representing a 6.06% decrease; 228 persons had the unexecuted part of imprisonment substituted with a milder form of punishment (252 in 2021), representing a 9.52% decrease; early conditional release – 204 persons (269 in 2021), representing a 24.16% decrease; 224 persons were released following amnesty (10 in 2021) - the increase was due to the implementation of the Law no.243/2021; 4 persons were pardoned (3 in 2021), 7 persons were released due to illness (8 in 2021), 49 persons were released for other reasons (48 in 2021), 493 persons were released according to the compensatory mechanism (435 in 2021), representing a 13.33% increase, and 1183 persons were released from pre-trial detention (1013 in 2021).

About 3239 prisoners were eligible for amnesty in 2022. However, only 234 were granted amnesty. According to the prison management and detainees, the amnesty applications are examined in alphabetical order, not against specific criteria in a proportional manner. The positive obligation of the special commissions, however, requires that examination of applications must be transparent and should take place in the presence of the detainee. Yet, during the fact-finding visits, detainees complained that courts were reluctant to conduct hearings online. The State offers equal opportunities to all prisoners to be granted amnesty and thus facilitates the depopulation of prisons. However, Order No. 44 of 18 February 2022 on the approval of the Framework Regulation on special amnesty commissions does not regulate the sequence of examination of applications, some convicted persons having to wait three to six months for the special commission's decision. Although some of the shortcomings of the amnesty procedure were addressed in 2022, in general the process remains to be cumbersome. Prisoners dubbed this form of release „eternal amnesty”.

The „compensatory mechanism” seems to become less and less effective and requires revising. The low rate of positive solutions or the high rate of rejections of actions in court indicate some sort of skepticism of the public authorities and courts towards the bad situation in detention. Moreover, no form of release applies to those sentenced to life imprisonment.

According to Promo-LEX, the Government does not have a policy paper with a clear vision for the depopulation of prisons. The current release instruments are not fully used.⁵⁹

⁵⁸ <http://ombudsman.md/wp-content/uploads/2023/01/Raport-privind-vizit-de-monitorizare-la-Penitenciarul-nr.-13-Chi%C5%9Fin%C4%83u-din-30-noiembrie-2022.pdf>

⁵⁹ <https://promolex.md/wp-content/uploads/2022/07/Not%C4%83-analitic%C4%83-Implementarea-politicilor-de-depopulare-a-penitenciarelor-din-Republica-Moldova-%C3%AEEn-contextul-pandemiei-de-COVID-19-2.pdf>

RECOMMENDATION: *The Parliament and the Government should address the deficiencies related to the application of the compensatory remedy and the Law on amnesty from 2021, as well as consider applying it to certain categories of detainees (e.g. life-sentenced prisoners).*

Use of force and special means against detainees

Physical force was used in prisons for disobedience in **279** cases, i.e. 169 fewer cases than in 2021 (475 cases in 2021) and special means in **253** cases, i.e. 136 cases fewer than in 2021 (389 cases in 2021). All these cases were properly documented. These figures do not include the cases of verbal abuse, which happen every day. The firearm was never used in the reported period.

The "tear gas" was used as a special means in 29 cases (P3, P4, P15, P17, P12, P1), including *disobedience, aggressive behavior, for restoring prison order and security, resistance, property damage, ignoring the demands from personnel, instigation of disobedience and mass riots*⁶⁰.

RECOMMENDATION (repeated): *The Ministry of Justice should develop clear instructions for the use of physical force and special means in closed spaces.*

Self-harm among prisoners

The number of reported cases of self-harm in 2022 reached **729**, i.e. 110 cases fewer than in 2021, including 202 cases of serious self-mutilation among detainees.

The reasons for resorting to serious self-injury include disagreement with court decisions, the actions of the prison management, poor prison conditions and medical care or treatment. Some prisoners refused to say the reason. To cause self-harm, *prisoners stitched their mouths or eyes; ingested foreign bodies, substances; had their lower and hind limbs amputated; and inflicted life-threatening injuries on themselves*. According to the information received by PAO, inmates received timely medical care.

The cases reported in the operational reports suggest that inmates quite often resort to self-harm to draw the attention of the prison management, either to challenge inaction or action from the latter or to protest against the court judgements. Apparently, there are serious communication issues between the prison management and detainees. Either prison personnel refuses/ignores the complaints from detainees or the detainees attempt to abuse their rights. As a result, the prison personnel that is not targeted in the complaints from detainees use special or physical means to „calm them down” and the complaints from detainees remain unaddressed, but rather delayed until the detainees inflict self-injuries on themselves again. On the other hand, the situations described above require active involvement of qualified staff (educators, psychologists, doctors etc.). It should be noted that courts do not take any action in response to detainees’ decision to announce a form of protest.

RECOMMENDATION (repeated): *In order to discourage self-harm, the Ministry of Justice should work more on prevention, counselling, reeducation, resocialization etc. instead of „punishing the person again” by adding to the detention period, or affecting the person before „conditional release” or other form of release.*

RECOMMENDATION: *The Ministry of Justice should develop and implement a comprehensive strategy for mental health care in the prison system.*

⁶⁰ http://ombudsman.md/wp-content/uploads/2022/01/Raport_periodic_sigurantaANP2021.pdf

RECOMMENDATION: *The Ministry of Justice should develop a training program for prison personnel to build their skills to assess the risk of prisoners developing self-injurious behavior.*

Organization of work in prison establishments

There are about 5,200 prisoners in the Moldovan prisons who are fit for work - **1116** of them participate in the paid work programs (895 in 2021). Currently **448** prisoners are involved in paid work in prisons (220 in 2021) and other **668** prisoners are involved in household work, which means that only 13% of the total number of convicts work.

Only 6 prisons (out of 17) have detainees involved in paid work, with female inmates outnumbering male inmates.

According to NAP, not all prisons can arrange sufficient workplaces for all detainees. Another challenge for NAP is the lack of security and surveillance staff, as well as lack of proper prison infrastructure, while the private sector is not very willing to employ prisoners.

Use of physical force against female inmates

PAO received reports of 8 cases of use of physical force and special means against female inmates in prison no.7 Rusca (10 in 2021). In 6 cases force was used against the same woman. The reasons mentioned by personnel for using the exceptional measure include *refusal to go in the cell, aggressive behavior, self-harm and attempted assault and assault on prison personnel, intention to cause self-harm, property damage and threats.*

Following the analysis of the information received from prison no. 7 Rusca, we regretfully conclude that the reasons for using force against women originated from the inability of prison personnel to manage conflicts, and that the exceptional measure could be avoided.

RECOMMENDATION: *The Ministry of Justice should develop the skills of the prison personnel to use force and special means in a proper, legal, proportional manner and only as a last resort, in particular against female inmates.*

3.4 Situation of persons apprehended and held in police custody

General findings

PAO's findings in relation to the fundamental safeguards in police custody give rise to compelling concerns. The commitments to eradicate torture involve, among other things, use of non-offensive techniques during detention, providing all safeguards against abuse, professional attitude to police work, respect for human dignity, creation of a professional environment for police officers, appropriate protective equipment, clear operational processes, regular training.

According to the data collected by PAO, police officers often misuse their legal prerogatives in relation to the persons held in police custody. The cases of bodily harm resulting from the use of force against a person in police custody continues to be on the rise. The case of torture in Soroca prison⁶¹ is an example of how the police failed to put an end to ill treatment. If this case had not been given publicity, the dry reports on the use of force prepared by the police would not have been properly examined. **The People's Advocate is concerned about the use of torture in some particular cases that happened in 2022, even such cases do not have a systemic nature.**

There is some confusion in relation to the registration, reporting on and horizontal reporting of cases of abuse during police detention. At the same time, the cases when investigating judges issued interlocutory orders on the allegations by defense or the suspect concerning torture or other

⁶¹ <http://ombudsman.md/news/alegatii-de-tortura-la-inspectoratul-de-politie-soroca-raport-special/>

acts of ill treatment in police custody are few. Similarly, there is an extremely big gap between the number of complaints submitted to the prosecution authorities and the number of criminal cases. It is worth reiterating that an effective investigation must meet five criteria – adequacy of competence, thoroughness, impartiality and independence, promptness and public scrutiny, which does not happen in the current practice.

The recent death of a young man detained in the Chisinau police temporary detention facility⁶² is evidence that the police authorities have not learned all the lessons from the death of Andrei Braguta while in police custody in September 2017⁶³, as well as from the case when special intervention brigade Fulger used special means and force against the patients of the Chisinau Psychiatric Hospital.⁶⁴

Apprehension and temporary police detention

The number of persons apprehended and detained in the temporary detention facilities of the territorial police units in 2022 reached around 4779 persons (174 persons more than the previous year), including 4375 men, 262 women, 48 minors and 94 contraventional offenders (90 men and 4 women), with 3682 persons detained for up to 72 hours and 1097 persons detained for more than 72 hours. The number of times when the persons were transferred/escorted to some other place reached 19748: 4436 to prisons, 11331 to courts, and 3982 to other institutions.⁶⁵

RECOMMENDATION (repeated): *The Ministry of Internal Affairs should develop internal mechanisms for the police system to make sure that temporary detention does not last more than 72 hours as required by the law, as this is one of the fundamental safeguards related to apprehension and preventive detention.*

Allegations of abuse and ill treatment from the police

In 2022, 456 incidents of insulting police officers were reported (452 while on duty), involving 790 officers, which represents a decrease of 24.6% compared to 2021. For insults, property destruction or damage, disobedience, obstruction of legitimate activity, threat or violence against police officers, 578 contraventional reports were issued and 3 criminal cases were initiated. As regards the ill treatment of police officers, the number of incidents increased by 8.58% compared to 2021, i.e. 139 incidents involving 114 police officers, including 132 incidents during the working hours.

On the other hand, 128 criminal cases were opened in 2022 against 161 police officers (compared to 156 cases in 2021). Of the total number, 33 cases were sent to court, and 13 cases were closed⁶⁶. Because the data provided by the police does not indicate the actual number of cases of torture or other ill treatment during detention, it is difficult to carry out an exhaustive analysis.

PAO received information⁶⁷ about 245 cases of detention of people with injuries received before detention (*14 cases more than in 2021*); 38 cases of injuries caused by police officers in Chisinau, Hincesti, Cahul, Balti, Causeni, Strasenii, Riscani, Edinet, Cantemir and Orhei police departments to the persons in police custody (*15 cases more than in 2021*); 2 cases of self-harm in temporary detention facilities of Edinet police inspectorate and Chisinau police department (*3 cases less than in 2021*), 1 case of **self-injury in the car** of Anenii Noi police inspectorate (*2 cases*

⁶²<http://ombudsman.md/news/constatarile-avocatului-poporului-privind-decesul-dubios-in-izolatorul-politiei-din-chisinau/>

⁶³http://ombudsman.md/wp-content/uploads/2019/03/BRAGUTA_Raport_pdf_FINAL-1.pdf

⁶⁴<http://ombudsman.md/news/comisia-speciala-din-cadrul-oficiului-avocatului-poporului-a-efectuat-o-vizita-de-documentare-la-spitalul-clinic-de-psihiatrie-din-orasul-codru-privind-incidentul-produs-in-ziua-de-27-octombrie-2022/>

⁶⁵https://politia.md/sites/default/files/raport_activitate_12_luni_2022_.pdf

⁶⁶https://politia.md/sites/default/files/raport_activitate_12_luni_2022_.pdf

⁶⁷ These data were collected by PAO following the examination of the operational reports from the penitentiary system and refer only to the persons placed/detained in the temporary police detention facilities of the police inspectorates and does not cover the persons to whom non-custodial preventive measure was applied.

less than in 2021) and 3 cases of ill treatment of detained persons by police officers in Buiucani, Centru and Orhei police inspectorates⁶⁸.

RECOMMENDATION: *The Ministry of Internal Affairs should request that the legal instructions are followed so as to make sure the registration and reporting of all cases of injuries/violence/ill treatment upon apprehension and during the detention of persons are in line with the CPT requirements and the provisions of the Joint Order of PG 77/2013⁶⁹.*

RECOMMENDATION *The Ministry of Internal Affairs should instruct the subordinated institutions to properly implement the CPT recommendations on the medical examinations, in particular in relation to the allegations of ill treatment in detention or upon admission.*

RECOMMENDATION: *The Ministry of Internal Affairs should step up efforts related to the prevention and combating of torture in the police system, because the General Police Inspectorate (GPI) has failed in this regard.*

Excerpt from the special report „Allegations of torture at Soroca police inspectorate (PI)”

On the night of January 31, 2022, two civilians were severely ill-treated by police officers from Soroca police inspectorate, for no particular reason, but with the intention and purpose of showing superiority and punishing the victims because they had dared to ask for police help. The victims were in police custody for over 3 hours, without any criminal or misdemeanor procedural status. The police officers cruelly maltreated them upon apprehension, during transportation, in front of and inside the police inspectorate. Other police officers also participated in the abusive actions and were complicit in the alleged acts of torture. The Ombudsman found that neither the applicable criminal procedural or contravention legislation, nor the institutional rules expressly require that police bodies (or any detention institution) ensure the fundamental safeguards against abuse towards the persons "stopped, transported for further hearings; called to the police with/without summons; without any procedural status upon admission to inspectorate; forcibly brought by the police on the pretext of documentation; suspended from driving; who ask for police help in the street; who call the police and then change their minds about asking for their help; who in the opinion of the police officer behave suspiciously etc.". Therefore, the persons who come into first contact with police officers without having any procedural status remain extremely vulnerable to potential acts of ill-treatment⁷⁰.

The case above shows that GPI has a long way to go in terms of prevention and combating abuse. Respecting the human dignity of the person in detention must become a priority.

Material conditions in temporary detention facilities, safety of detainees

Only 14 out of the 47 territorial and specialized units of GPI have renovated temporary detention facilities (TDF) with a capacity of 102 cells for the preventive detention of 247 inmates simultaneously.

The only operational old-type temporary detention facility is that of Calarasi PI. ⁷¹

The concerns regarding the situation of those detained in TDF (besides the material conditions) are related to the procedural issues, such as (a) not all the persons in police custody are subject to medical examination; (b) medical examination is not always carried out upon entry into/exit from TDF; (c) taking the detained persons for hearings out of the TDF; (d) confidentiality of medical data is not ensured; (e) lack of medical staff at night; (f) poor medication management; (g) inappropriate location of medical facilities; (h) lack of conditions for the detention of persons with disabilities; (i) lack of adequate food for the detained persons with chronic illnesses; (j) internal registers and medical files are not properly filed etc.⁷²

⁶⁸ <http://ombudsman.md/news/siguranta-la-retinerea-persoanelor-de-politie-in-anul-2022/>

⁶⁹ https://www.legis.md/cautare/getResults?doc_id=44302&lang=ro

⁷⁰ <http://ombudsman.md/news/alegatii-de-tortura-la-inspectoratul-de-politie-soroca-raport-special/>

⁷¹ http://ombudsman.md/wp-content/uploads/2022/03/AP_raport_2021.pdf, pg.182

⁷² <http://ombudsman.md/consiliul-pentru-prevenirea-torturii/rapoarte/>

A common problem for all PIs is the lack of waiting and temporary detention rooms. None of the PIs that do not have temporary detention facilities has rooms for temporary detention. While waiting for the decision on the procedural status, or to be visited by a lawyer or the Detention and Escort Service, the arrested persons wait near the security post, in the corridor, on chairs, in the courtyard of the PI, etc. The process can last from 10 min to 2 hours.

RECOMMENDATION (repeated): *The Ministry of Internal Affairs should continue the reforms aimed at improving the material conditions in the temporary detention facilities, take actions to identify and refurbish temporary detention rooms in the police inspectorates without temporary detention facilities; ensure medical examination of the detained persons for injuries/other allegations; continue to register and report ill treatment during apprehension, detention in the premises of the police inspectorates and during their transfer to other places etc.*

3.5 The situation of the persons detained at the border

In 2022, the border crossing points (BCP) were intensively monitored with particular focus on the situation of foreigners arriving from Ukraine. In the context of torture prevention actions, follow-up visits were carried out to 2 BCP and to the Border Police Sector (BPS) of the General Border Police Inspectorate (GBPI)⁷³. The implementation rate of the previous recommendations was high, which is commendable.

Between October 26 and December 7, 2022 PAO representatives carried out three preventive monitoring visits (unannounced) to the International Chisinau Airport BCP of GBPI. The purpose of the visits was to monitor observance of the rights of the foreign citizens, refugees, asylum seekers and/or the persons detained for illegal crossing of the state border, placed in the sterile zone, and to formulate recommendations for improvements.

The major findings of the monitoring are: (a) there is an information board with leaflets on the rights of asylum seekers in three languages as well as the contact details of relevant organizations in the entrance area of the airport provided by the NGO "Centrul de Drept al Avocaților" (Lawyers' Law Center) in partnership with GBPI, PAO and Migration and Asylum Bureau (MAB) with the financial support of UNCHR; (b) only one of the two rooms intended for asylum seekers is in use and the accommodation there is satisfactory; (c) no records are kept of the date, time, number, duration of placement of asylum seekers; (d) 10 asylum claims were submitted at the airport BCP between January 1 and December 7, 2022; (e) information on entry to the country is available only in the state language, despite the fact that the official webpage of GBPI mentions Russian and English. The lack of information in foreign languages, especially languages for international communication, both limits the right of foreigners to receive truthful information about the legal provisions and entry conditions, etc., and misleads foreigners, who thus have to rely on indirect sources, other than official ones; (f) there is no information in the ICA BCP about the conditions of entry into the Republic of Moldova. Foreigners find out that they have been denied access only when they reach the desk of border police officers, who abuse their power to make individual decisions on admission, even if the persons have all their papers in order; (g) 681 persons were denied entry to the country between October 25 and December 7, 2022; (h) the reason for denial was "does not justify the purpose of the trip"; (i) starting October 2022 the general rule on the

⁷³ http://ombudsman.md/wp-content/uploads/2022/08/Raport_vizita_Criva-Mamaliga-2.pdf/
http://ombudsman.md/wp-content/uploads/2022/11/Raport_vizita_PTF_Ocnita_Otaci_SPF_Ocnita_28.10.2022_pe-site-1.pdf

entry of foreigners for tourism purposes for a period of 90 days is either not applied, or has been applied selectively based on the individual and subjective decisions of the border police employees; (j) the foreigners whose entry has been denied cannot use the right of access to justice because they are voluntarily or forcibly returned before they can use it de facto and de jure; (k) there is no complaint mechanism about abuses by border police; (l) the persons placed in the sterile zone have their passports collected, which leads to conflicts with border guards; (m) the facilities in the sterile zone are not suitable to support the stay of persons for 24 hours and more; lack of facilities cause suffering to them; (n) the mechanism of assessing the non-refoulement principle by the border police officers in cases of forcible return of the persons in the country of origin or transit is not clear etc.

3.6 The situation of persons in psychiatric hospitals

There are three psychiatric institutions in Moldova: the Clinical Psychiatric Hospital in Chisinau, which can accommodate 740 persons (*CPH Chisinau*), the Psychiatric Hospital in Orhei, which can accommodate 145 persons (*PH Orhei*) and the Psychiatric Hospital in Balti, which can accommodate 530 persons (*PH Balti*). They provide comprehensive specialized, curative and rehabilitative health services to patients with mental illness or behavior disorders.

In the reporting period, PAO received reports of **56 deaths** (97 in 2021), **80 cases of injuries received in institutions** (66 in 2021), **71 hetero-aggressive incidents** among patients (59 in 2021), **136 cases of use of restraints** on patients (159 in 2021), and **313 patients** admitted to the institution with visible signs of accidents or injury, and **4 cases of assault** on staff (13 in 2021).⁷⁴

The incidence of physical restraint is still high (136 cases). CPH Chisinau⁷⁵ claims that restraints are used as a last resort after all other alternative methods of handling incidents have been tried and that the most common reasons for using restraints are *hostility upon admission; irritability, failure to cope with the excited patient; refusal to take medication; assaultive behavior; suicide attempts by swallowing broken glass, unpredictable behavior, alertness; threats to medical staff; property damage; hyper-aggressiveness towards medical staff and other patients; delusion*. According to CPH, patients were immobilized „with the help of wide leather straps with soft padding, which can be tied to the bed, and adjustable cuffs”, in a room intended for immobilization and no other patients were there; restraint had been coordinated with specialists; the persons under restraint were under supervision; no injuries were reported after the use of restraint devices; physical restraint lasts between 15 – 60 minutes. Additionally, CPH claims that it has not used chemical restraint since the first half of 2022.

The assaults between patients (84 cases) and on the personnel of the psychiatric facility (4 cases) reveal deficient management of aggressive patients, lack of a therapeutic alliance between patients and the medical professionals and lack of a dynamic patient monitoring strategy.

Excerpt from the special report „Violent death in the Psychiatric Hospital in Balti”⁷⁶

On September 10, 2022, in the ward nr. 6 in the women's section of the Balti Psychiatric Hospital, a patient was allegedly murdered by strangulation. Following the ex-officio examination of the case, the People's Advocate found (a) failure of the State to safeguard the patient's right to life; (b) lack of effective and/or sufficient supervision mechanisms; (c) lack of effective and/or sufficient crisis management mechanisms; (d) failure to establish and ensure isolation procedures for patients with communicable diseases; (e) failure of the Psychiatric

⁷⁴ <http://ombudsman.md/news/siguranta-in-sistemul-psihiatric-si-rezidential-in-anul-2022/>

⁷⁵ The only institution reporting such incidents.

⁷⁶ <http://ombudsman.md/news/raport-special-privind-constatarile-avocatului-poporului-privind-decesul-violent-la-spitalul-de-psihiatrie-balti/>

Hospital to improve the condition of its beneficiaries; (f) incomplete internal investigation; (g) failure to manage aggressive patients; and (h) lack of patient engagement activities.

During the monitoring visits, the CpPT members found that the infrastructure of the psychiatric institutions does not respond to the needs of the persons with physical disabilities. Moreover, the poor material conditions for treatment contribute to accidents resulting in injuries; the sanitary facilities are often flooded with water and become slippery; there are no elevators, tiles on the floor; because of the weathered steps the persons get injuries. Moreover, the walking areas are not safe and accessible; ventilation is not possible, the heating system is worn-out, there is neither natural, nor artificial light, the sanitary and hygienic standards are not observed.⁷⁷

It should also be noted that patients are not engaged in occupational activities, and spend most of their time in their unfriendly wards under the influence of strong psychotropic medication.

On October 28, 2022, the People's Advocate started an investigation into allegations of ill-treatment of patients as a result of the acts of vandalism they committed as a form of protest against coercive treatment and intervention of the special intervention police brigade Fulger.⁷⁸

The People's Advocate encourages the administrations of the psychiatric institutions to develop crisis management strategies, provide human rights training and develop good human rights practices, classify patients according to their illness and likelihood of assault, individualize treatment and reduce agitated behavior by engaging patients in occupational activities etc.

3.7 The situation of persons in temporary placement centers for persons with disabilities

The National Social Assistance Agency (NSAA) of the Ministry of Health, Labor and Social Protection manages the following placement centers for persons with disabilities in Moldova: the placement center for persons with disabilities in Chisinau (*accommodation capacity – 210 persons, at the beginning of 2022 the center accommodated 139 persons*); the placement center for older persons and persons with disabilities in Cocieri (*accommodation capacity – 355 persons, at the beginning of 2022 the center accommodated 329 persons*); the placement center for persons with disabilities in Balti (*accommodation capacity – 550 persons, at the beginning of 2022 the center accommodated 415 persons*); the placement center for persons with disabilities in Badiceni (*accommodation capacity – 450 persons, at the beginning of 2022 the center accommodated 334 persons*); the placement center for persons with disabilities in Brinzeni (*accommodation capacity – 300 persons, at the beginning of 2022 the center accommodated 257 persons*); the placement center for persons with disabilities in Cocieri (*accommodation capacity – 250 persons, at the beginning of 2022 the center accommodated 95 persons*); the placement center for children with disabilities in Orhei (*accommodation capacity – 350 persons, at the beginning of 2022 the center accommodated 185 persons*); the placement center for children with disabilities in Hincesti (*accommodation capacity – 315 persons, at the beginning of 2022 the center accommodated 247 persons*).⁷⁹

PAO received reports of **36 deaths** caused by *acute renal failure, acute heart failure, endogenous intoxication, cardiopulmonary insufficiency, acute multiple organ system failure, diabetic coma, bronchopneumonia, road accident, mechanical asphyxia/ food asphyxiation, SARS-CoV-2 complications*. The investigation into these cases based on the available files and

⁷⁷ <http://ombudsman.md/consiliul-pentru-prevenirea-torturii/rapoarte/>

⁷⁸ <http://ombudsman.md/news/comisia-speciala-din-cadrul-oficiului-avocatului-poporului-a-efectuat-o-vizita-de-documentare-la-spitalul-clinic-de-psihiatrie-din-orasul-codru-privind-incidentul-produs-in-ziua-de-27-octombrie-2022/>

⁷⁹ www.anas.md

records received from the placement centers suggests that some of the factors causing death could be: failure to treat common diseases, despite the fact that the persons notified about their needs and sufferings; inadequate medical kit, suitable only for first aid; failure to reduce the suffering of people with severe illnesses; failure to refer the person to district or specialized hospitals; shortage or lack of qualified medical personnel to respond to the needs of beneficiaries; lack of control programs for communicable diseases, infections and intra-hospital complications; careless treatment of complaints, which are often seen as inconsistent, leading to delayed measures to stop the disease or establish an early diagnosis for effective treatment; the treatment prescribed often in the terminal phase is not individualized and does not take into account the somatic symptoms of the person or the side effects that the person may develop, etc.

In 2022, fewer **incidents of aggression between residents** were reported (only 13 compared to 34 in 2021). It is important to note that residents consciously plan and commit assaults, including because they are aware that no punishment will follow. Some assaults are repetitive, sometimes against the same victims. The People's Advocate is convinced that engaging residents in occupational, education, leisure activities can prevent such anti-social behavior.

None of the placement facilities has an **organizational chart** that would respond to the complexity of their activity and workload and fundamental adjustments are required to achieve an appropriate staff-to-beneficiary ratio. Moreover, the rate of residents with severe and acute disabilities is still high in the temporary placement centers, requiring greater control and assistance efforts; the organizational chart of some of the placement facilities does not include the position of psychologist.

In this respect, we agree that the services of a psychologist are necessary for remodeling the beneficiaries' behavior, improving their emotional condition, for the assessment, reassessment and deinstitutionalization of the persons. Creation of a rehabilitation climate; provision of adequate care to problematic beneficiaries; assistance to residents with musculoskeletal disorders; dynamic observation of the behavior of beneficiaries and intervention in case of behavioral disorders; organization of occupational therapy activities, etc. require a complete and efficient professional team.

In terms of the material condition of the temporary placement centers for persons with disabilities, the monitoring visits revealed overcrowding; lack of access to daylight and artificial light; lack of a ventilation system; lack of proper conditions for the mobility of the persons with disabilities; lack of personal facilities for storage of personal belongings; the worn-out furniture in bedrooms; elements which could lead to self-injury incidents; damp and uncomfortable sanitary facilities; the food does not meet the quality and sanitary standards (inadequate to maintain good health and well-being). The total amount allocated per day for the three main meals and a snack (yoghurt, fruits) between meals is 58.50 MDL (around 3 EUR); the occupational activities are missing, and the beneficiaries of the placement centers are left to think of ways how to spend their time, usually leading to acts of aggression, provocations and depression; the mobile devices for information and entertainment are not accessible to everyone, indicating discrimination between beneficiaries; the access to the placement facilities and the courtyard is still a challenge for the persons with disabilities; the lack of a strategy and qualified personnel to work on the development of human autonomy undermines rehabilitation. Therefore, inaction turns the placement center into an institution where beneficiaries are isolated for an indefinite period of time; the careless attitude towards the will and complaints of beneficiaries prevents the anticipation of adverse consequences, which otherwise could be prevented by establishing a constructive therapeutic alliance between the beneficiary and personnel.⁸⁰

RECOMMENDATION: *The Ministry of Labor and Social Protection should adapt the placement facilities to the physical and intellectual needs of beneficiaries, and make them accessible.*

⁸⁰ <http://ombudsman.md/consiliul-pentru-prevenirea-torturii/rapoarte/>
<http://ombudsman.md/rapoarte/prevenirea-torturii/>

RECOMMENDATION: *The Ministry of Labor and Social Protection should develop and implement a strategy for conflict resolution among residents.*

RECOMMENDATION: *The Ministry of Labor and Social Protection should increase the number of employees, including by hiring or contracting alternative occupation, education and socialization services for beneficiaries, and providing medical, therapeutic, occupational therapy support to them.*

3.8 The situation of refouled persons

For the first time in its practice, PAO carried out the monitoring of three operations of forcible return of foreigners from our country (one on aircraft and two ground operations). The purpose of the monitoring was to observe the forcible return of foreigners by the Migration and Asylum Bureau (MAB) and to formulate recommendations, where appropriate.

The preliminary findings of the monitoring missions are: (a) the return missions were successful and without incidents; (b) MAB officers demonstrated diligence, professionalism and dedication towards the returned persons; (c) the returned persons were not subjected to any form of abuse or indecent behavior; (d) both the returned persons and passengers felt safe and did not realize that a return mission was taking place due to the professionalism of the escort; (e) PAO monitor had free access to all the processes, documents and was free of any influence during the monitoring process.⁸¹

RECOMMENDATION: *The Ministry of Internal Affairs should increase the budget allocations for the forcible return operations.*

RECOMMENDATION: *The Ministry of Internal Affairs should acquire special non-offensive safety and protection equipment to be used in forcible return operations.*

RECOMMENDATION: *The General Migration Inspectorate staff should receive training on techniques of communication and use of force in forcible return operations.*

The situation of persons in military units

On November 10 and 11, 2023 mass-media reported on allegations of abuse and harassment on grounds of sexual orientation against the conscript Marin Pavlescu (*the name is public*) serving in the Motorized Infantry Brigade no.2 “Stefan cel Mare”.⁸²

On April 21, 2022 the People’s Advocate finalized the investigation and delivered the special report containing the following findings and recommendations for the military system: (a) the enlistment process is not compliant with the provisions of the Enlistment Regulation; (b) examination of personal files and the induction process are often obsolete; (c) enlistment takes place as if „on a conveyor belt” and, therefore, the likelihood of enlistment of young men who are

⁸¹ http://ombudsman.md/wp-content/uploads/2023/02/RAPORT_monitorizare_Returnare.pdf

⁸² <https://newsmaker.md/ro/video-un-tanar-din-moldova-a-anuntat-public-ca-este-gay-si-ca-refuza-sa-se-intoarca-in-unitatea-militara/>

not physically and mentally ready for the difficult military service is high; (d) the military units discriminate young men with low adaptation potential during military service, subjecting them to various forms of degrading treatment; (e) the management and education of conscripts is not based on a human-rights approach; (f) the management of the military units supports the discriminatory behavior by avoiding to effectively punish it; (g) the civilian personnel in military units engaged in providing counselling to conscripts fail to comply with the requirement related to the confidentiality of the discussions with the conscripts; (h) the general approach is that there is no need or reason to intervene in military life; (i) failure to educate a spirit of non-discrimination in military units; (j) lack of alternatives to enlistment; (k) ineffective protection mechanisms for conscripts etc.

Additionally, during the monitoring visits to the military units⁸³, the team of the TPD (Torture Prevention Department) found that: (a) the recreational areas do not meet the requirements; (b) the recreational areas are poorly equipped; the beds are orthopedically unsuitable, which can lead to health issues; (c) the obsolete medical devices used in the medical facilities of the military units are not suitable to meet the health requirements, for the examination and treatment of the person; (d) lack of qualified personnel undermines maintenance of controllable health indicators; (e) availability of only one nurse who cannot cope with the large number of conscripts; (f) the allocations for equipment and military uniform are limited; (g) nutrition is not suitable for frequent and energy consuming exercises; (h) the mental health condition of conscripts is not kept confidential, leading to suicidal behavior, fights and anxiety among conscripts; (i) the military environment is hostile and offensive towards the conscripts with non-traditional sexual orientation.

RECOMMENDATION: *The Ministry of Defense must ensure that conscripts are treated with dignity and non-discrimination and that they are safe and secure.*

RECOMMENDATION: *The Ministry of Defense must ensure that any injury or other serious incident happening during the military service for reasons of retaliation, abuse, violence or other forms of violence and punishment are recorded, promptly and effectively investigated and that the perpetrators are punished.*

RECOMMENDATION: *The Ministry of Defense must ensure that the mechanisms of protection of the conscripts reporting abuse are effective, reliable and operational. The military personnel (career soldiers), on the other hand, should have sufficient leverage for control and supervision.*

⁸³ http://ombudsman.md/wp-content/uploads/2022/03/Raport_unitatea-militara_FINAL_pe-site-1.pdf / http://ombudsman.md/wp-content/uploads/2022/10/Raport_unitatea-militara_Brigada1_B%C4%83l%C8%9Bi.pdf