Centre for Human Rights of the Republic of Moldova

REPORT

On the observance of human rights in the Republic of Moldova in 2009

Chisinau 2010

Pursuant to article 34 of the Law on ombudsmen the Centre for Human Rights presents, as part of its obligations, the Report on the observance of human rights in the Republic of Moldova in 2009.

This report does not intend to retake the findings and evaluations of the situation in previous periods, as those are available in previous reports, it is not a description or a summary of the work done by ombudsmen during a year of activity, but a review of the situation on the observance of human rights in some areas which have been mostly tackled in the references of petitioners.

The report presents conclusions based on observations and practices registered in 2009. The report is reserved for the analysis of the situation on the respect of human rights in the Republic of Moldova through the means of assessments and investigations initiated by ombudsmen, the materials presented by the central and local public authorities, information gathered from other sources, including selected from electronic and printed mass media, the reports and surveys made public by the civil society and international organisations.

In order to ensure confidentiality prescribed by article 26 of the Law on ombudsmen, the presented case studies do not present data of a personal nature which have been disclosed to the ombudsmen as part of their activity, as well as other details which may identify the person.

Anatolie Munteanu,

Ombudsman,
Director of the Centre for Human Rights

CHAPTER I

The Image of the Centre for Human rights on the international level

The Centre for Human Rights in Moldova (the national institution having the mandate to promote and protect Human Rights) presents its satisfaction and gratitude for the support offered by the Resident Coordinator of the UN Office in Moldova, with special thanks to Mr. Edwin Berry (presently the representative of the High Commissioner for Human Rights) and to Mr. Claude Cahn, counsellor for Human Rights, while supporting the process of accreditation of the Centre for Human Rights in Moldova by the International Coordination Committee of the National Institutions for human rights (ICC).

On the international level the Centre for Human Rights has as aim to strengthen partnerships with international institutions, ombudsmen, being affiliated to the International Institute of the Ombudsman, the European Institute of the Ombudsman, the Association of Francophone Ombudsmen and Mediators – institutions involved in the promotion of the ombudsmen on the international and regional level.

The UN High Commissioner for Human Rights recognised national institutions involved in human rights as strategic partners in the protection and promotion of human rights at the national and regional level. In order to maintain this recognition on the international level, the national institution involved in the promotion and protection of human rights must be credible, competent and efficient. This objective may be attained by ensuring that the ombudsmen institution corresponds to the Paris Principles, which are the main source of norms for the national institutions and a working guide for the latter.

The High Commissioner for Human Rights and the International Coordination Committee of the National Institutions for Human Rights (ICC) works closely to promote and consolidate the national institutions to ensure their conformity with the Paris Principles.

In this respect, within the second session of the Accreditation Subcommittee of the ICC (16-18 November, Geneva) the Centre for Human Rights from Moldova was accredited with the B level, a fact which confirms the capacity of the Ombudsmen Institution to perform its duties in the field of human rights protection, showing added value expressed by means of recognition of the institution on the international level.

In its recommendation, the Accreditation Subcommittee of the ICC expressed its appreciation for the work delivered by the Centre for Human Rights, accomplished in difficult circumstances, especially due to the inadequate allocation of resources, a fact which affects the capacity to efficiently deliver, and encouraged the institution to continue its constructive engagements of alignment to the international human rights system.

At the same time, the Subcommittee's findings were that "in spite of the significant efforts of the institution, the insufficient financing undermines the capacity of the Centre for Human Rights to employ personnel, use equipped working space and undertake actions; the institution should be equipped with adequate resources to ensure the gradual and progressive implementation of the improvement activities for the organisation and performance of its mandate; the budget of the Centre for Human Rights should also have a special budgetary line to finance the National Torture Preventive Mechanism".

The institution of ombudsmen was encouraged to cooperate with the Office of the High Commissioner for Human Rights and the regional coordination group of the National Institutions for the Protection of Human Rights (the European Group) in order to tackle the mentioned aspects.

Part of the perspective to promote the nomination of Republic of Moldova in the Council for Human Rights, the Centre for Human Rights could in the near future become a full fledged member with a voting right within the ICC (A status), pending the elimination of a series of deficiencies – lack of transparency in the process of selection and appointment of ombudsmen, lack of adequate financing which is a structural problem of the institution, inadequate equipment of the institution necessary to visibly increase the functional performance, lack of a specialised unit and of a distinct budgetary line for the functioning of the National Torture Prevention Mechanism.

The national institution responsible for the promotion and protection of human rights realises the importance for the Republic of Moldova of its recognition on the international level and is dedicated to continue the institutional reform with the support of the legislative and executive branches. The benefits of the status of voting member (A status) are: the right to participate in the activity of the UN Human Rights Council, to file in recommendations, to present its opinion and to file in declarations, to present its position on the national reports sent to the UN Conventions Bodies and to the Council for Human Rights, to present and support alternative reports; the possibility to play an active role in the decisional process and to develop ICC's policies.

The recognition of the role of the Centre for Human Rights within the international community, the encouragement of the Accreditation Subcommittee to participate in the activity of the UN Council for Human Rights and to establish cooperation relationships with international bodies allow the integration of the ombudsmen institution into the international community of ombudsmen and mediators, as well as promotion of the image of the Republic of Moldova on the international level.

CAPITOLUL II

RESPECTAREA DREPTURILOR OMULUI ÎN REPUBLICA MOLDOVA

§1. Prohibition of discrimination

The objective of the Centre for Human Rights is, on one hand, to identify the deficiencies between the existent standards and principles in the filed of human rights and, on the other, their application by means of management interventions.

From its beginning the United Nations advocated in favour of support and implementation of the principle of equality irrelevant of the race, gender, language, religion, principle which was enshrined in 1945 in its Charter.

By means of the Resolution of the UN General Assembly no. 217 A (III) from 10 December 1948 the Universal Human Rights Declaration was adopted, which "expressed the common position which the peoples of the entire world have with respect to the inalienable and inviolable inherent to all the members of the human family and constitutes and obligation for the members of the international community".

The Declaration was followed by the adoption of certain international instruments which had an important regional and universal impact. Among these are: the European Convention on the protection of Fundamental Human Rights and Freedoms (1950), The International Covenant on Civil and Political Rights (1966), which proclaim the principle of equality in fundamental rights – right to life, to freedom and security of the person, right to vote, participation in public and political life; and the International Covenant on Economic, Social and Cultural Rights (1966), the so called second generation rights – right to work, sufficient remuneration, health, social security, education, cultural life etc., which are necessary preconditions for the support additionally given to the rights of the third generation – right to development, peace, healthy environment, all recognised as an indivisible entity.

Even though the Universal Declaration on Human Rights contains clear specification that nobody shall be exposed to discrimination on any ground and the adopted international instruments have subsequently implicitly or explicitly recognised the principle of equality, the practice shows that these necessary provisions are not sufficient to produce a constant improvement of the situation.

Decisive in establishing equality of rights was the adoption by the UN General Assembly on 12 December 1965 of the International Convention on the elimination of all forms of racial discrimination and on 18 December 1979 – the Convention on the elimination of all forms of discrimination against women (CEDAW). While adhering to these international legal instruments, Republic of Moldova recognised their exceptional role and the need to intensify the efforts to develop and encourage the universal and effective observance of fundamental human rights and freedoms, irrespective of ethnic origin, language, gender or religion.

In this respect, by means of the Decision of the Parliament of the Republic of Moldova no. 707 from 10.09.1991 on adherence of the Republic of Moldova to the international legal instruments in the field of human rights the role of the Council of Europe and the Parliamentary Assembly related to granting and protecting fundamental human rights and freedoms was recognised.

The Constitution states in article 1 that "Republic of Moldova is a state based on the rule of law, democratic where human dignity, rights and freedoms, unrestricted development of the human personality, justice and political pluralism represent supreme values and are guaranteed".

Despite the fact that the Constitution and other normative acts define equality of citizens, until present some laws continue to differentiate in terms of rights. The mechanism of protection in case of discrimination or inequality in rights remains without legal coverage.

Presently there is no special legislative act in the Republic of Moldova which would regulate the exclusion of any form of discrimination, whilst the national legal framework contains provisions inserted in various legislative acts which prohibit discrimination based on different grounds, however in spite of their existence, there is no national law and the case-law in this field is nonexistent.

In the context of the aspirations of the Republic of Moldova of European integration the national legal framework needs to be adjusted to the existent international one. The ombudsmen consider that by speeding up the adoption of the draft Law on prevention and fight against discrimination (which has been repeatedly sent for coordination to relevant authorities by means of letter of the Ministry of Justice no.03/4144 from 25 June 2009 – hereinafter the

draft Law), Republic of Moldova shall reconfirm its particular profile aimed to combat any form of discrimination and intolerance.

The proposed draft covers those categories of people who may be exposed to discrimination based on race, nationality, ethnic origin, language, religion, belief, colour, gender, age, health condition, social origin, disability, opinion, political adherence, wealth, adherence to a category of underprivileged persons, as well as based on any other criterion (art.1)[1].

Even though the provisions of article 1 generally cover the most known forms of discrimination, the ombudsmen consider that this list can be supplemented with other criteria.

The notion of "direct discrimination" and "indirect discrimination", mentioned in article 2 ("General notions") of the draft Law must be adjusted to the provisions of article 2 from chapter I ("General notions/concept of discrimination") from the Council Directive 2000/43/CE from 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin[2].

Furthermore, article 2 letter g) should be supplemented with an express provision of the fact that such affirmative manifestations may not be considered discrimination (article 6 paragraph (2))[3].

From the ombudsmen's point of view an express statement of all forms of discrimination in article 6 paragraph (1)[4] mentioned in article 2 is desirable, a fact which would allow elimination of incorrect interpretation of the provisions of the draft law. The adjustment of the provisions of article 6 paragraph (3)[5] to European standards is desirable (for instance paragraph 18, chapter I – article 4 „Genuine and determining occupational requirements" from Council Directive 2000/43/ EC from 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin) to allow clear regulation of the justifications/exceptions for all forms of discrimination.

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[1] Draft Law on the prevention and fight against discrimination – www.justice.gov.md

[2] Council Directive 2000/43/EC from 29 June 2000 implementing the principle of implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;

[3] Article 6 paragraph (2) of the draft Law: „In the sense of the present law the affirmative actions taken in favour of a person, a group of persons or a community, aimed to ensure their natural development and effective accomplishment of the equality of their opportunities compared to other persons, group of persons or communities is not considered discrimination";

[4] Article 6 paragraph (1) of the draft Law: „Direct or indirect discrimination is prohibited. Promotion of policies or performance of actions which do not ensure the observance of the principle of non-discrimination must be eliminated by competent public authorities as prescribed by law."

[5] Article 6 paragraph (3) of the draft Law: „The situation where the restriction of a right is objectively justified by a legal aim is not considered discrimination while the methods to attain this aim are proportionate, adequate and necessary".

From the ombudsmen's perspective, chapter II („Special provisions") from the draft Law needs adjustment to the provisions of international legislation and European Union standards, with special emphasis on areas where discrimination is prohibited (here could be included for instance areas such as: social assistance, medical assistance, housing, justice – security of the person, political participation – right to vote and to be elected, etc.) and should contain clear provisions one the conditions/cases of prohibition of discrimination, avoiding the use of expressions "except cases provided for by the legislation in force" (article 11 paragraph (2))[6].

With reference to article 12, where the subjects with prevention and fight against discrimination competences are mentioned, the ombudsmen consider that it would be appropriate to include as subjects the "courts of law", their role being regulated by other articles.

In accordance with the provisions of the mentioned draft law, with reference to the institutions framework to prevent discrimination, the ombudsmen shall be entities with competences in the field of prevention of discrimination. The ascertainment of existence or nonexistence of discrimination shall be initiated by ombudsmen ex officio or based on a petition coming from a person who claims to have been discriminated.

In the context of the situation where by means of the Government conclusion no.2503-103 from 18 May 2009 the draft law was returned to the Ministry of Justice for supplementary drafting, the ombudsmen reiterate the contents of the *Concluding Observations of the Human Rights Committee adopted during the session 2582 from 29 October 2009 on the second periodic report presented by the Republic of Moldova on the adopted measures by the state party to implement the International Covenant on civil and political rights.*

Accordingly, the Committee expressed its concern with regard to the absence of a significant progress in the implementation of a large number of previously issued recommendations, especially those which relate to the exercise of the freedom of assembly, freedom of belief (religion), discrimination, freedom of opinion and expression.

The Human Rights Committee concernedly noted that Republic of Moldova has not yet adopted comprehensive antidiscrimination legislation to prevent and combat discrimination in all areas and has reiterated that Republic of Moldova must adopt comprehensive non-discriminatory legislation which should specifically state all grounds of discrimination provided for in the Covenant, as well as provisions on sanctions and adequate compensation.

Similarly, the Committee on the Elimination of Racial Discrimination worriedly ascertained that *Republic of Moldova did not adopt necessary legislation to prevent and combat*

[6] Article 11 paragraph (2) of the draft Law: "educational institutions may not establish matriculation requirements based on certain restrictions, with the exception of cases provided by the legislation in force".

discrimination in all areas, and that many existent provisions on non-discrimination ensure equal treatment by the law and equal exercise of human rights only to citizens.

Thus, the Committee recommended Republic of Moldova to consider the need to adopt comprehensive non-discrimination legislation, which would protect both citizens and foreigners, subject to certain reasonable exceptions, and which would include the de definition of direct and indirect discrimination, as well as provisions on appropriate sanctions and adequate compensation.

Based on the *Concluding Observations of the Committee on the Elimination of Racial Discrimination, adopted within the session from 16 May 2008, on the combined periodic reports no. 5-7, presented by the Republic of Moldova, on the adopted measures by the state party in accordance with article 9 of the International Convention on the elimination of all forms of racial discrimination,* the Committee ascertained that the ombudsmen have examined only a few complaints related to racial discrimination.

The Committee recommended the state party to promote and consolidate the role of the ombudsmen's activities as a reaction to the complaints on racial discrimination and consider the status of the Centre for Human Rights as of a national Institution in the field of human rights, as prescribed by the Paris Principles (Resolution of the General Assembly no. 48/134, annex, from 20 December 1993).

It is worthwhile mentioning that the reduced demand for audiences and the small number of registered petitions related to prevention and fight against discrimination does not demonstrate a high level of observance of human rights in these fields. Other causes are not excluded, such as impossibility to appraise the Centre for Human Rights due to various subjective reasons; citizens' tolerance towards the breach of their rights, when these suffer minor constraints. Moreover, discrimination as a form of marginalisation of any kind and in any situation is a phenomenon still present in the democratic society and because it is so common, it is considered normal by a very large group of citizens.

The ombudsmen have proposed themselves in the Action Plan of the Centre for Human Rights to achieve a series of objectives which relate to the prevention and fight against discrimination, among which are the following:

- *Evaluation of practices of examination of discrimination cases and development of proposals to amend legislation;*
- *Evaluation of guarantees and rights offered to foreign citizens and stateless persons in relation to public authorities (improvement policies in granting citizenship, residence*

permit, elimination of bureaucracy and behaviour from officials, which generates the sentiment of inferiority);

- *Analysis of the legislation and practice in its application to the freedom of conscience and contribution to the attainment of the spirit of tolerance between all religious beliefs in the Republic of Moldova;*
- *Evaluation of the level of social inclusion of the people with disabilities;*
- *Establishment of cooperation relations between national and international level NGOs with the aim to monitor the state of affairs in the field of human rights observance in the transnestrian region, etc.*

As a result, taking into account the primary obligation of the Republic of Moldova as a democratic state, where the rule of law is supreme, to ensure the progressive attainment of all rights, as well as availability of rights, recognised by international instruments to which the state is a party to, without any discrimination, *the adoption in shortest possible terms of legislative, administrative, judiciary, political, economic, social and educational measures is necessary to adjust to the existent European standards.*

Taking into account that the provisions of the Constitution of the Republic of Moldova are materialised by means of implementation of reforms in all sectors, development of democratic institutions and creation of a national legal framework compatible with the international standards, the European Convention for the Protection of Human Rights and Fundamental Freedoms serves as a model for the formation and activity of the human rights protection mechanisms.

While ratifying the Convention, Republic of Moldova undertook the obligation to guarantee the rights and freedoms proclaimed in this document for all persons under its jurisdiction (article 1 ECHR). Even though article 1 benefits from a degree of autonomy, it is one of the fundamental articles of the Convention, as it is specifically it which determines the framework in which the states parties must offer persons under their jurisdictions the guaranteed rights and freedoms.

The way the text is drafted also has direct consequences on its breadth. While in the majority of international texts the states *"undertake to recognise"* rights and freedoms, in the text of the Convention the states *"recognise"* rights and freedoms. This difference, at first glance not important and formal, has an important legal consequence: it gives a direct effect to the rights mentioned in the Convention. The Court has underlined this characteristics of the text in one of its earliest decisions and has concluded from it the consequences: „Substituting in the contents of article 1 the words "undertakes to recognise" with "recognises", the drafters had the

intention to show (....) that the rights and freedoms guaranteed in Chapter I shall be directly recognised to any person who is under the jurisdiction of the signatory states" (*case Ireland vs. United Kingdom*)[7].

The Convention dedicates to prohibition of discrimination article 14 Chapter I – "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The principle stated in article 14, which prohibits discriminatory treatment while exercising rights and freedoms, reminds of the fundamental principle of equal treatment by the law. This has been included in Protocol no. 12, article 1 of the Convention:

„1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1".

Pursuant to the ECtHR, an applicant must show proof that he/she is exposed to a difference of treatment compared to other persons who are in a comparable situation with regard to their capacity to enjoy one of the rights guaranteed by the Convention, a difference which can be objectively and rationally justified, taking into account an applicable margin of appreciation.

Discrimination: Minorities (Roma)

The most commonly invoked articles before the European Court of Human Rights: article 8 (right to respect for private and family life); article 14 (discrimination); article 1 from Protocol no.1 (protection of property), article 2 from Protocol no. 1 (right to education).

Core case-law: case Bryan vs. United Kingdom, ECtHR Decision from 22 November 2995 and case Buckley vs. United Kingdom, ECtHR Decision from 25 September 1996.

Also, for Republic of Moldova the following cases are relevant: case D.H. and others vs. Czech Republic, ECtHR Decision from 13 November 2007; case Munoz Diaz vs. Spain, ECtHR Decision from 8 December 2009; case Stoica vs. Romania, ECtHR Decision from 4 March 2008; case Sampanis and others vs. Greece, ECtHR Decision from 5 June 2008.

[7] The European Human Rights Convention Code, 2008 - Jean-Loup Charrier, Andrei Chiriac, page 19;

Cases coming mainly from the United Kingdom have made reference to the Roma stationing in tents in various areas. The difficulties the Roma are facing have been mentioned, whose possibilities to live a nomad's life have been seriously compromised, inter alia, by the legal provisions which state that any unauthorised stationing of caravans on freeways or any other land is a criminal offence; lack of legal placements in the entire country and difficulties to obtain a construction authorisation from the local authorities to organise personal locations.

Thus, even there where the existence of difference in treatment is acknowledged, the problem put forward is if it has a rational and objective motivation.

In the case of Republic of Moldova it has been acknowledged that a considerable part of Roma are in a difficult social and cultural situation, a fact which in turn negatively influences the observance of their economic, social and cultural rights.

Pursuant to the Report on the Observance of the Human Rights of Roma in Moldova for 2009, developed by the National Roma Centre, Roma continue to be one of the most vulnerable groups, who confront a higher marginalisation risk from the state authorities and private entities. This is due to their absence in the decisional process, low social conditions, high level of illiteracy, high unemployment, existence of social stigmatism and, first of all, due to negative prejudices[8].

The Report is based on the results of the human rights monitoring and investigations of cases of breach of human rights committed by the law enforcement bodies, public servants and local authorities, as well as on cases of racial intolerance present in mass-media. The monitoring has revealed two categories of problems (political violence/legal framework and community treatment/integration), underlying the gaps and opportunities in accessing the law, which sometimes fails to ensure adequate remedies to victims. The Report contains information collected during the period June 2008 – February 2009 and was produced within the framework of the "Antidiscrimination policies for Roma community in Moldova" Project.

Pursuant to the OSCE Report on the situation in 2002 "all Roma face problems, including large scale and systemic discrimination in education, housing, employment, as well as access to public infrastructure. Legal protection against racial discrimination is inadequate and does not offer an efficient remedy. Roma suffer from discrimination in the judiciary system, including as victims who apply for justice for the breach committed against them (their complaints are not adequately investigated, including from the criminal point of view)".

The social and economic conditions of the Roma community may be summarised as social degradation. They need special support and implementation of efficient policies to

[8] Report of the National Roma Centre on the Observance of Human Rights for Roma in Moldova (2009);

trigger the process of resolution of a series of problems which affects them. Otherwise, discrimination and economic and social life leads to marginalisation.

The same report reiterates that "the main reason for lack of implementation of the rights of Roma is the lack of governmental policies. Even if recently certain initiatives have been initiated in the Republic of Moldova, they are not sufficiently supported. Republic of Moldova has vaguely drafted a few programmes, but there are not financial allocations for them, these are slowly developed and insufficiently implemented".

The provisions of the second report from 2002 and the third report from 2007 of the European Commission against Racism and Intolerance (ECRI) state that as regards the observance of human rights and Roma conditions, Moldova has registered some progress in a list of fields: *in 2003 new legislation was introduced which prohibits extremist activities such as racism and intolerance; the Labour Code, adopted in 2003, contains antidiscrimination provisions; similarly, at the level of policies the National Human Rights Action Plan for years 2004-2008 and the National Support to Roma Action Plan for years 2007-2010 have been adopted, which confirms the intentions Republic of Moldova has in ensuring and implementing the integration of Roma in the active socio-cultural life of the Republic of Moldova.*

Meanwhile, the Report of the National Roma Centre reveals the problem of abusive behaviour of the law enforcement bodies, especially of the police, which manifests a discriminatory and hostile attitude, an abusive behaviour and even violence against the Roma and show no understanding for these people, most of whom live in extremely difficult conditions (for instance: swindle of money from a Roma family in the Floresti region; abusive behaviour from the police directed to Roma in Straseni; case of a Roma family in Anenii Noi harassed by the local policeman, etc.)[9].

Approximately 70% of the cases collected by the National Roma Centre are related to social problems. The Government of the Republic of Moldova lacks clear management tools to implement the social policy towards Roma, the latter being highly dependent on it. There are flagrant deficiencies in the way the Roma a treated, their access to social services.

Additionally, the access of Roma to education, housing, healthcare has been tackled by the above mentioned Report. Thus, "the problems related to hosing for Roma in Moldova are not yet well documented. It is obvious that a certain part of the community lives in excluded/marginalised villages, with an underdeveloped infrastructure. Generally, the problems related to housing are more related to poverty than the legal aspect. There are cases which show vulnerability and instability and are associated with other rights, such as healthcare, private life,

[9] Report of the National Roma Centre on the Observance of Human Rights for Roma in Moldova (2009)- chapter VII „Abusive behaviour of the law enforcement agents"

right to property, whilst in others, even the right to life. Usually, the poor living conditions are imposed by the fact that Roma families are numerous and live in small houses, do not have access to utilities or are even disconnected from the former. Also, housing is linked with the problems of registration of the place of residence.

The largest part of Roma who do not have a registered place of residence have difficulties in accessing/invoking the right to housing. Discrimination on the renting or real estate purchase markets have been registered, as well as forced eviction from residence, issues which need to be further researched"[10].

The National Roma Centre has monitored the mass media in respect to declarations which may affect or defame the Roma community or which have as object discriminatory statements, usually made by public persons or mass media institutions, as well as written press. In some mass media articles it has been identified the tendency to support prejudices and racist stereotypes against Roma, even though there are some articles in mass media which in a positive fashion try to call upon the public's attention on the Roma's problems. It is worth mentioning that the problem of declarations made public by certain public persons constituted the subject of discussions in the Report of the Centre for Human Rights on the observance of human rights in the Republic of Moldova in 2008[11].

Pursuant to the *Periodic Report of the Republic of Moldova on the application of the International Convention on the Elimination of all Forms of Racial Discrimination for years 2008-2009,* "one of the problems of the national minorities is their linguistic integration which limits their representatives to participate in full in the civil service, despite undertaken actions to improve quality and access to study the state language to the adult population in the system of secondary education".

The Report also acknowledges that "the composition of the central public administration bodies (ministries and other central public administration bodies) does not represent national minorities in the percentage present in the population of Moldova, including representation of Roma minority and other small minorities. The mechanism provided for in article 24 of the "Law no. 382 from 19.07.2001 on the rights of persons representing national minorities and the status of their organisations" is not created, which among others states that the persons

[10] Report of the National Roma Centre on the Observance of Human Rights for Roma in Moldova (2009)
[11] Report of the Centre for Human Rights of Moldova on the observance of human in the Republic of Moldova in 2008 - chapter I (1.6) „Prevention and eradication of discrimination"- The case on the declarations made by the administrator of a joint-stock company relative to persons of Roma origin.

representing national minorities have the right to proportionate representation in executive and judiciary structures of all levels".[12]

Discrimination: Sexual orientation

The most frequently invoked articles before the European Court of Human Rights: article 8 (respect for private and family life), article 12 (right to marry), article 11 (freedom of assembly and association), article 14 (prohibition of discrimination).

Core case-law: case Dudgeon vs. United Kingdom, ECtHR Decision from 22 October 1991, case Norris vs. Ireland, ECtHR Decision from 26 October 1988, case Modinos vs. Cyprus, ECtHR Decision from 22 April 1993, case Laskey Jaggard and Brown vs. United Kingdom, ECtHR Decision from 19 February 1997, case Rees vs. United Kingdom, ECtHR Decision from 17 October 1986, case Cossey vs. United Kingdom, ECtHR Decision from 27 September 1990, case B vs. France, ECtHR Decision from 25 March 1992, case X,Y and Z vs. United Kingdom, ECtHR Decision from 22 April 1997.

Additionally, the following are to be considered relevant: case E.B. vs. France, ECtHR Decision from 22 January 2008; Decision from 30 March 2009 of the European Civil Rights Committee on the case of the International Centre for the Legal Protection of Human Rights (INTERIGHTS) vs. Croatia.

The problems the transsexuals confront in obtaining recognition of their change of gender and the consequences on the framework of rights guaranteed by the Convention are subject to tense divergences.

The European Court of Human Rights gives the name and surname social function of identification. The status of the name and surname is therefore part of the right to respect to private and family life. Likewise, the gender may be included in this protection each time a person presents, as a result of a chirurgical intervention, a physical aspect incompatible with the one normally suggested by his/her geological gender. However, there is a difference between the biological gender and the apparent gender which is subject to consequences for the private life of the transsexual.

This depends on the fact, already known, that in some circumstances private life may have a public aspect. Not having from the outset the aspect given by the civil appearance, transsexuals often are refused by the public authorities to modify their civil status, which are the official documents of daily use; this leads to the situation to physically present a

[12] Periodic Report of the Republic of Moldova on the level of implementation of the International Convention on the Elimination of all Forms of Racial Discrimination for years 2008-2009

determinant element of their personality – sexual identity, morphology, psychology – which do not correspond to their legal civil existence. The European Court develops its case-law in favour of the transsexual persons by making references to the "customs of the 21st century" (*I. vs. United Kingdom, ECtHR Decision from 11 July 2001*)[13]. In this case the Court acknowledged that the transsexuals became today a phenomenon recognised in the entire world and it cannot be supported that in the 21st century it represents a serious risk for the society. The Court also established that the denial of acknowledgement of change of gender leads to disparities in the social area, especially in matters such as pension or determination of retirement age.

In case *B. vs. France*, the Court concluded that breach of article 8 is also the case when the claimant was not able to obtain an amendment to the registry of civil status, which resulted in her name remaining registered in all official identity documents as before, being often mentioned that she is of a masculine gender. Among these are the documents frequently used (such as cheques, national insurance number, driver's licence, etc.). This state of affairs placed the claimant in a daily situation incompatible with the respect to private life.

The Resolution of the Parliamentary Assembly of the Council of Europe no. 1465 from 16 September 2005 on the functioning of the democratic institutions in the Republic of Moldova recommends full observance of the fundamental rights of sexual minorities.

Despite the fact that Moldova registered democratic transformations with regard to the observance of the rights of sexual minorities, the reality dictates that with regard to this issue the behaviour of the authorities and of the society does not correspond to international standards.

For the most of its part the problem is not linked only to the national legal framework or the international conventions on human rights, to which the Republic of Moldova is a party to, but more to the stereotypes and prejudices of the members of our society.

The ombudsmen have been apprised by a group of transgender persons who have invoked breach of their constitutional rights by the competent national authorities by imposing impossibility to change identity documents (*Chapter „Right to respect of private and family life).*

In this context, the Centre for Human Rights has initiated development of a study on the application of discrimination and evaluation of review practices of these cases with the development of proposals to amend legislation and, at the same time, to develop a study on the

[13] The European Human Rights Convention Code, 2008 - Jean-Loup Charrier, Andrei Chiriac, p.322 (Gender and given name);

opportunity of ratification of by the Republic of Moldova of the Protocol no. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

Sexual minorities confront the impossibility to enjoy the freedom of assembly and association, granted by article 40 of the Constitution of the Republic of Moldova and article 11 of the Convention. This issue has been tackled by the previous annual reports of the Centre for Human Rights[14].

The reason for cancelling in 2009 the public action to support the draft Law on the prevention and fight against discrimination presented by the LGBT from Moldova, was the lack of guarantees from the authorities with related to the security of the event.

The inactions of authorities, as seen by the ombudsmen, to observe the fundamental rights of citizens may constitute an charge in potential trials initiated against the Republic of Moldova in front of the European Court for Human Rights, the violation of article 8 – respect for private life, article 11 – freedom of assembly and association, article 14 – non-discrimination of the European Convention, and do not exclude international conviction of the state.

In this respect, Recommendation no. 1474 (2000), adopted by the Council of Ministers of the Council of Europe is relevant, by means of which the Member States are invited to include sexual orientation among grounds of discrimination prohibited by their national legislation, adopt disciplinary measures against those who would discriminate homosexuals, undertake positive actions, materialised through initial and continuous training, to combat homophobia, especially in schools, medical institutions, the army, police.

Prevention of cases of discrimination of sexual minorities, including by means of their privation of fundamental rights, has generated in 2007 the adoption of the Yogyakarta Principles. The importance of these principles was mentioned by the European Commissioner for Human Rights, Thomas Hammarberg, in his speech at the Council of Europe Conference from 16 May 2008 dedicated to the International Day against Homophobia.

Consequently, discrimination of a category of citizens damages the image of the Republic of Moldova in the context of evolution of democratic reforms and attainment of assumed commitments.

Recommendations of the ombudsmen:

1. *Amendment of article 16 of the Constitution of the Republic of Moldova and adjustment of its contents to the provisions of the European Convention for the Protection of*

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Human Rights and Fundamental Freedoms and other international documents to ensure its contents with other discrimination criteria;

2. *Ratification by the Republic of Moldova of the Protocol no. 12 to the European Convention for the protection of Human Rights and Fundamental Freedoms;*
3. *Adoption in tightest possible terms the draft Law on the prevention and fight against discrimination;*
4. *Implementation of projects directed to improve the performance of the public servants (delivery of trainings, round tables etc.) while preventing and fighting against the discrimination phenomenon;*
5. *Increase the level of public awareness on the existence of the discrimination phenomenon in society.*

§ 2. Free access to justice

Proclaimed in article 20 of the Constitution of the Republic of Moldova, the rights to free access to justice is a right of considerable importance, is a fundamental right, "the ideal of true justice, available along with the observance of human rights". This rights is at the same time a guarantee of exercise of the other rights provided for by the Constitution and the observance of this rights is in line with the very spirit of the Convention for the protection of human rights and fundamental freedoms (article 6 of ECHR).

The right to a fair trial enjoys both general and special guarantees in the body of the Convention. These are: the right to be judged by an independent and impartial tribunal, right to be judged in a reasonable time, the public character of the procedure and the respect for the presumption of innocence, right to a defendant.

The right to an equitable hearing is an implicit guarantee of the right to a fair trial. The requirement of fairness is presented in the first words of article 6 and its importance is considerable. Fairness means a "correct" appreciation of the case. In order to respect this requirement there is a need for a series of implicit guarantees of outmost importance, such as the obligation to offer grounds for court decisions, the principle of equality of arms, the right

not to self-incriminate, the presence of the person during hearings and the contradictory nature of the procedure.

The European judges have established the principle of implicit guarantees of the right to a fair trial, in other words of those guarantees which are not expressly mentioned in article 6 of the Convention, but without which the notion of "fair trial" would not have been complete.

In previous reports on the observance of human rights in the Republic of Moldova the ombudsmen have mentioned on numerous occasions the most stringent problems related to the insurance of the right to free access to justice, among which being abnormally long court litigations, limited access to the services of a qualified lawyer, non-implementation of court decisions, breach by courts of the procedural norms which ensure the right to a fair trial, the activity of certain magistrates.

The analysis of the petitions from 2009 directed to the ombudsmen show the persistence of the mentioned problems, at the same time other aspects of the right to a fair trial being identified.

Article 6 from the Convention for the protection of human rights and fundamental freedoms states that any person must have the right to have his/her case examined in a reasonable timeframe. The European Court for Human Rights declared that the object of this guarantee is to protect all subjects of court litigations against excessively long court proceedings. Such a provision *"underlines the importance attributed to the fact that justice should not be offered with delay, which may compromise its efficiency and credibility"*. The mentioned condition guarantees that in a reasonable period and by means of a court decision the lack of certainty in which a person is in a civil law matter or criminal accusation against it is excluded: such a measure ensures both the interest of the person and the principle of legal certainty.

Despite the fact that national legislation does not specifically state the period during which the cases must be examined in courts, citizens often invoke the breach of the reasonable timeframe for criminal and civil cases.

For Moldova specifically the respect of the reasonable timeframe remains to be a serious problem for judiciary. The monitoring of the courts proceedings organised within the OSCE court proceedings monitoring in the Republic of Moldova Programme showed that the delays and adjournments of court proceedings are more a rule than an exception, the reasons for adjournment being related not only to the absence of a party, but also due to the unsatisfactory organisation of the proceedings by the judge(s) who examine them, the management of the judiciary system and by the attitude of the involved subjects.

The ombudsmen have been repeatedly asked to act on the breaches committed by the courts of law in applying procedural norms which guarantee the right to a fair trial – breach of timeframe reserved to draft the reasoned part of the court decision and prolonged periods for its dissemination, breach of the obligation to file in the copy of the court sentence, prolonged translation and/or dissemination of the supporting documents from courts in a language some participants of the litigation are familiar with.

Following the intervention of the ombudsman to the Superior Council of Magistrates, the body responsible for judicial administration has underlined, in its Decision no. 440/20 from 04.12.2008, cases relevant to the above mentioned breaches (insufficiently well organised activities of the chairmen of certain courts, the high amounts of work and insufficient retribution of the employees) and has indicated the chairmen of Courts to undertake necessary actions to ensure translation of court papers in accordance with the legislation in force. Despite these efforts the number of complaints filed in to the Centre for Human Rights pertinent to this particular subject has not decreased.

The position of the ombudsmen is that amendment of the provisions of the Civil Procedure Code to establish a time limit to communicate the reasoned decision shall contribute to the observance of the reasonable timeframe for the resolution of the case.

A separate aspect of the problem is the non-attendance by the witnesses, even though it is an exaggeration when it is invoked that the abnormally long examination periods have as main cause the non-attendance of the former. There are also procedural issues, which provide for the obligation of the parties to present proof. Despite the fact that this obligation is upon the parties, the court calls the witnesses, and in case of their non-attendance, may sanction them with a judicial fine or may order their forced delivery to court.

The implementation of the forced delivery to court of the persons who avoid participating in trials is the obligation of the court police, created in 2006 as a result of the amendments and supplements to the Law on the judiciary organisation no. 514 from 06.07.1995.

Pursuant to article 50 of the above mentioned law, the court police is offered by the Ministry of Justice at the disposal of the courts of law. The period of transferral of the court police from the subordination of the Ministry of Interior to the Ministry of Justice has been prolonged until 1 January 2012. Meanwhile, to ensure its functional independence from other bodied of the Ministry of Interior, the court police service is a separate subunit subordinated to the former.

Presently, the quality of delivery from the court police is jeopardised by inefficient technical support, insufficient number of personnel and limited resources allocated from the state budget for appropriate endowment.

The ombudsmen consider that an efficient observance of the functions of the court police and its transfer from the Ministry of Interior to the Ministry of Justice no later than 1 January 2012 shall be possible only if the Government shall undertake actions to strengthen the capacities of this structure by means of considerable financial support.

The European Court for Human Rights has considered on many occasions the behaviour of the judicial authorities of the Republic of Moldova a breach of the right to have the case examined in a reasonable period of time. In order to avoid the breach of this right, the legislator included as a main principle in the civil procedural and criminal procedural codes the obligation to examine the case in a reasonable timeframe, the evaluation of the reasonableness of the timeframe being established using the following three factors: the complexity of the case, the behaviour of the claimant, the behaviour of the judiciary and administrative authorities. However, for the ECtHR the importance of the trial for the claimant is also important, a criterion not included in the national legislation.

In this respect, the ombudsmen recommend amendment of article 20 of the Criminal Procedural Code and article 192 of the Civil Procedural Code to include the fourth criterion of determination of the reasonableness of the timeframe – the importance of the proceedings for the claimant.

During the last year the ombudsmen have registered a continuing raise of petitions from detainees who have invoked abnormally long periods of examination of cases in annulment recourses, initiated due to the amendments and completions to the Criminal Code, which diminish the penalty or improve their situation in any other way. The petitioners have asked the intervention of the ombudsmen to speed up the examination of their claims and ensure the observance of their constitutional right of free access to justice, as well as recognition of the rights and freedoms prescribed by the European Convention for the protection of Human Rights and Fundamental Freedoms, commitment undertaken by the Republic of Moldova when it ratified the former.

One of the causes which generated the discussed issues is the considerable period of examination of annulment recourse due to the large volume of work of the judges of the Supreme Court of Justice. Thus, only during the first semester of 2009 the Supreme Court of Justice received 2661 annulment recourses, among which 1066 were of the competence of the Plenum of the Supreme Court of Justice.

The European Court of Human Rights accepted in its case-law that when the domestic law of a state provides for a possibility to recourse, this procedure must ensure the observance of the guarantees provided for in article 6 of the Convention. Moreover, the Court establishes a positive obligation on the states to ensure swiftness of the judiciary, the latter being obliged to undertake all necessary measures so that Justice is offered in a reasonable timeframe; the states are responsible for the overload of the judiciary when it is not a temporary phenomenon. *„The States Parties are obliged to organise the legislative framework is such a way that their courts make good on the exigencies of article 6(1), including the obligation to examine cases in a reasonable timeframe. A state shall not invoke overload of tribunals with cases to justify long proceedings if this was an expected problem and this state does not manage to undertake efficient measures to remedy the situation"* (case Zimmerman and Steiner vs. Switzerland; case Guincho vs. Portugal).

Taking into account the protected values of the Convention, the persistence of certain conviction risks of the Republic of Moldova from the European Court of Human Rights and the increased interest of the high Strasbourg forum for the situation in the Republic of Moldova, the ombudsmen, localising the problem of the observance of the reasonable timeframe from the procedural guarantee to the compartment of the observance of human rights, have underlined the risk of certain perspective convictions at ECtHR. This initiative was subsequently taken over by the Ministry of Justice and the Supreme Court of Justice, which developed the draft Law on the amendment and completion of the certain provisions of the Criminal Procedural Code, the Criminal Code and the Law no. 277 from 18.12.2008 on the amendment and completion of the Criminal Code of the Republic of Moldova.

Other aspects which influence the reasonable timeframe for examination of cases relate to the good organisation of the activities of the courts of law and cooperation with the institutions which ensure the application of criminal sanctions.

Consequently, during the examination of petitions which have invoked the breach of a reasonable timeframe while examining the cases and research of the personal files of the convicted persons escorted to and from the no. 13 Penitentiary, located in the Chisinau municipality, to ensure their participation in recourses filed in to the Supreme Court of Justice, it has been determined that a lack of cooperation exists between this judicial authority and the Department of Penitentiary Institutions in the part which relates to the summoning of the convicted.

In order to ensure the transfer of detainees from one institution to another, by means of Decision of the Director of Department of Penitentiary Institutions no. 55 from 14 March 2008,

the schedule of departure of rail and motor guards planned on the established escort itineraries has been approved, in accordance with which the transfer of detainees takes place three times a month on strictly established dates.

Because of the fact that when the recourse is scheduled for examination the agenda of the judge is not coordinated with the schedule of the departures of rail and motor guards the court sessions are often repeatedly adjourned. Thus, the examination of the recourse of detainee D was adjourned 9 times; the recourse of detainee M. – 5 times; the recourse of detainee C. – 4 times etc. The majority of these cases have had their recourse adjourned for a couple of days, a period of time insufficient to ensure the participation of the detainee at the court session, taking into account the schedule of departures of the rail and motor guards.

In order to ensure the correct management of the entire process and to avoid repeated adjournments of court sessions due to the impossibility to ensure the participation of detainees while their recourses are examined, the ombudsmen recommend the Supreme Court of Justice creation of an efficient mechanism of cooperation with the Department of Penitentiary Institutions.

While examining certain petitions it has been determined that article 398 of the Criminal Procedural Code has been viciously applied (Freeing the arrested defendant) on the convicted freed on parole, on convicted whose part of the remaining sentence has been changed with a softer penalty, on persons suffering from a severe state of health exempted from executing the sentence.

Pursuant to the above mentioned legal provision, if the defendant has been liberated from the execution of the sentence, the court immediately frees the defendant right from the court's chambers. In the majority of cases the defendants continue to remain in custody from 1 to 42 days from the day the decision is issued, the administration of the penitentiaries invoking the late receipt of the court decisions. In this respect the courts of Soroca, Hincesti, Rezina, Orhei, sectors Riscani and Buiucani of the Chisinau municipality can be mentioned. Contrary to this vicious practice, the courts of Cahul and Balti liberate the defendants right from the court's chambers.

In another context, after the court decision to free the defendant on parole is made public, the administration of the penitentiary institutions does not have any legal grounds to apply detention, as stated by paragraph 6 of the Status of Execution of Sentences by the Convicted. Therefore, based on the consequences which may arise in relation to elimination of amendment of the legal background provided for by law, the actions of certain penitentiary institutions may not be tolerated, which are directed to the further detention of the "freed defendants", while the

administration of the penitentiary institutions must be seriously preoccupied by the created situation and the way the illegal detention of persons is being admitted.

With reference to the provisions of article 15 of the Law on prosecutors and article 174 of the Code of Execution of the Republic of Moldova, which are provided for to ensure the observance of the legislation by the penitentiary institutions, including the control over the legality of stay of persons in the institutions which ensure detention, the ombudsmen insist on the consolidated efforts of all authorities to register progress in the observance of the right to individual liberty of the person, guaranteed by article 25 of the Constitution of the Republic of Moldova and article 5 of the Convention for the protection of human rights and fundamental freedoms, which in paragraph 1 of article 5 defines the presumption of liberty, a right which nobody can be deprived of, except for exceptional circumstances. This presumption of liberty is strengthened by two exigencies: not to prolong the liberty privation more than the maximum admissible amount and to free as soon as possible the person whose arrest is no longer justified.

The requirement for a legal ground for each deprivation of liberty is valid for the entire duration of detention. Thus, the European Court of Human Rights, recognising that a certain delay in implementing a decision to free a person is a normal fact, has mentioned that a period of delay of eleven hours *(Quinn vs. France)* or delay in freeing of over ten hours due to the absence of the employee in the records office *(Labita vs. Italy)* have been too long to correspond to the requirements of article 5 of the Convention and considered as illegal detention.

From the point of view of the ombudsmen, the mentioned situation requires action from the Supreme Council of Magistrates and from the Judicial Inspection in the part which relates to the monitoring of the organisational activity of the courts of law while ensuring justice.

Meanwhile, taking into account the different criteria set forth for the subject of the crime provided for in article 65 (the accused, the defendant) of the Criminal Procedural Code and the distinct procedure provided for in articles 469-471 of the Criminal Procedure Code, making reference to the provisions of article 398 (liberation of the arrested defendant) of the Criminal Procedure Code, *the ombudsmen propose strengthening the legislative framework by means of clear regulation of the procedure of liberation of persons freed on parole, of persons whose remaining part of the sentence has been changed with a softer penalty, of persons freed from executing their sentence due to their severe state of health.*

When ratifying a series of international conventions the Republic of Moldova undertook certain commitments, including development of initial and periodic reports on their implementation. Pursuant to article 40 of the International Covenant on Civil and Political

Rights Republic of Moldova present the Second periodic report on the measures undertaken to implement the rights recognised by this document, as well as on the progress registered in applying these rights. The report was examined within the sessions of the Committee for Human Rights from 13 and 14 October 2009.

The Committee adopted a series of concluding observations, expressing concern for the lack of guarantees to ensure a fair trial, non-implementation of court decisions, inefficiency and limited professionalism in managing the courts of law, lack of adequate chambers for courts sessions, insufficient translators, high level of corruption, existence of a legal framework incapable of ensuring the immovability of the judges.

At the same time, while mentioning the important role of an independent judicial power, including the fact that granting immovability is a major component of this independence, the Committee expressed concern as to the fact that the judges are initially appointed for a period of 5 years and only after that their appointment obtains a permanent character.

According to the *Concluding Observations of the Committee for Human Rights,* Republic of Moldova "must implement the already existing legislation to solve the deficiencies in justice management, allocate adequate resources to support the judiciary system and ensure that the employees of the courts of law receive appropriate training and education, to revise the legislation with the purpose to ensure that the immovability of judges is sufficiently long to ensure independence, as provided for by article 14 of the Covenant on civil and political rights".

These observations as well as other derogations from the set norms on the delivery of the judges while examining cases have been underlined by the ombudsmen in the Reports on the observance of human rights for years 2008, 2007 and 2006.

In this respect, the ombudsmen reiterate the need for certain significant improvements, especially with regard to the practical observance of the procedural guarantees provided for by law.

The need to redress due to the negative image of the today's Moldovan justice is mandatory. The recovery of the authority in this area is needed so that citizens are certain that they can benefit from the fair and equal application of the law, without corruption, prejudices and favours.

At the same time, the overload of judges and insufficient financing of the system would be among the biggest problems which affect the quality of justice in the Republic of Moldova, the prolonged periods of proceedings represent one of the constant deficiencies of the judicial system. The insufficient managerial activity of the chairmen of certain courts of law, the large

volume of work reserved for a translator as well as the insufficient retribution is alarming. The practice of using the offices of the judges as court chambers affects the behaviour and the delivery of the judges and other participants of trials.

Presuming that the independent justice is the key factor of the rule of law and of a democratic governance and is the tool which must ensure the necessary support for other reforms, *the Government is urged to promote the structural and procedural reforms in the judiciary sector, capable to increase the level of integrity and professionalism of the judges; to ensure the creation of an independent, impartial, functional and transparent judiciary system, present in a state with European aspirations; to ensure a stable and efficient system of financially supporting the judiciary; to initiate the review of the legislation to ensure the immovability and independence of the judges.*

Also, taking into account that the State party must present in one year's time concluding information on the current situation with respect to the implementation of the recommendations presented by the UN Convention Bodies as a result of the study of the periodic reports, *the ombudsmen consider appropriate the creation of a Working Group (National Committee) which would monitor and evaluate their implementation.*

The recommendations of the ombudsmen:

1. *Amendments to the Civil Procedure Code to establish a deadline for delivery of the justified part of the decision, a fact which would contribute to the observance of the reasonable timeframe of trials;*
2. *Financial implication of the Government to strengthen the capacities of the judiciary police;*
3. *Completion of article 20 of the Criminal Procedure Code and article 192 of the Civil Procedure Code with the fourth criterion for determining the reasonable timeframe – the importance of the trial for the claimant;*
4. *Creation of an efficient mechanism of cooperation between the Supreme Court of Justice and the Department of Penitentiary Institutions, which shall allow elimination delays of examining recourses filed in by the detainees;*
5. *Strengthening the legislative framework by means of clear regulation of the process of liberation of persons on parole, of persons whose remaining part of the sentence has been changed with a softer penalty, of persons freed from sentence due to their severe state of health;*
6. *The promotion of structural and procedural reforms in justice, capable to improve the level of integrity and professionalism of the judges; ensure the creation of an independent, impartial, functional and transparent judiciary system, present in a state with European aspirations; ensure a stable and efficient system of financially supporting the judiciary; initiate review of legislation to ensure the immovability of and independence of the judges;*
7. *Creation of a Working Group (National Committee) which shall monitor and evaluate the level of implementation of the recommendations offered by the UN Convention Bodies.*

§ 3. Intimate, family and private life

Right to private life is part of the fundamental human rights and freedoms, regulated by the Supreme Law of the State, by the International Covenant on Civil and Political Rights and by the Convention for the protection of human rights and fundamental freedoms.

Private life is a vast concept which does not have an exhaustive definition and with reference to the concept of the right to intimacy it is specifically larger and it relates to an area where any individual may freely develop his/her personality and release his/her self. The right to private life is often in conflict with other rights and legitimate interests, a moment when the issue of putting limits to this right stands. Clearly there are no clear limits after which a breach should be considered permissible.

The right to respect of private and family life is one of most evasive rights guaranteed by the Convention for the protection of human rights and fundamental freedoms. The starting point is the principles in accordance with which a person has the right to live freely from the restrictions imposed by the state; that private life is superior to the public one. When the public welfare imposes restrictions on the right to the respect for private life of a person those must be clearly defined, justified from the logical point of view and represent a necessary minimum to accomplish a legitimate collective objective. If the state interferes in the private and family life of a person, intervenes in domicile of correspondence, it must justify this action with reference to one of the grounds established in article 8 of the Convention.

In the Republic of Moldova the average citizen does not give importance to the observance of the right to private life as it is done in the countries with a developed democracy, and does not perceive it as a right inherent to a human being, which imposes on the state not only the obligation not to interfere, but also positive obligations which specifically require from the state to take reasonable and adequate actions to protect the rights of the individual. This conclusion comes not only from the reduced number of petitions recorded at the Centre for Human Rights which make reference to the breach of this right, but also from the lack of tackling the issues through the glass of the right to private life.

Presently, the definition of private life includes both "traditional" aspects, such as the right for respect to image, civil status of the person, identity, state of health, religious adherence, physical and moral integrity, sentimental life, and "modern" aspects, linked with new perceptions in social life related to abortion, homosexuality, trans-sexuality. Recently, as a result of the development of communication technologies, the issue related to phone tapping or electronic communication interceptions using personal databases information have arisen and their relation to the right to private life.

The case-law of the European Court of Human Rights suggests that the definition of private life, being a large one, contains the physical and moral integrity of the person; physical and social identity of the individual, including his/her sexual identity; the right to development or personal prosperity; the right to maintain and/or develop relations with other human beings and the exterior world.

year	examined	admitted	rejected
2005	2609	2578	31
2006	1931	1891	40
2007	2372	2354	18
2008	2366	2355	11
2009	3848	3803	45

Some aspects which touch upon the respect for private life have been and remain in the close attention of the ombudsmen until their final resolution.

Thus, based on the data offered by the Ministry of Justice, in 2009 the investigation judges have allowed 3803 cases of phone tapping, their number increasing greatly in comparison to the previous years. It is unquestionable that phone tapping and audio or video recordings represent important means to fight and prevent delinquency, taking into account the advanced level of presently used technologies. The existence of legislative provisions which offer secret correspondence monitoring, including mail and other means of communication in certain exceptional situation is necessary in a democratic society to ensure national security, protection of public order and prevention of crimes. But this conclusion certainly does not constitute an absolute legitimacy of phone tapping in a democratic society. Despite the fact that the state enjoys a discretional competence with regard to the means of the functioning of this surveillance system, the powers in this field must not be unlimited, adequate and sufficient guarantees being needed to eliminate abuse.

The legislation in force does not offer a mechanism of control over the procedure of phone tapping and does not contain sufficient guarantees against an eventual abuse from the

part of the authorities as prescribed by article 8 of the Convention for the protection of human rights and fundamental freedoms.

The deficiencies of the legal framework influence the present functionality of the under cover surveillance system existent in the Republic of Moldova and must constitute a subject of intervention from the authorities in the part which relates to the insurance of adequate protection against the state abuse in phone tapping.

The ombudsmen have supported the amendments proposed by the Ministry of Justice to certain legislative acts (Law on the operative investigation activity no. 45 from 12.04.1994, Law on electronic communication no. 241 from 15.11.2007, Criminal Procedure Code), with reference to the clear provisions on the categories of persons who can be subject to phone tapping, provisions on the causes and facts which impose the need to apply these investigation measures, reduction of the applicability of phone tapping, provisions on clear conditions which would provide guarantees of confidentiality of obtained data from the application of the respective investigation measure, establishment of the normative framework of storage of confidential data obtained as a result of application of investigation measures and criminal prosecution actions etc.

In this respect, aiming at the insurance of a legal framework viable and capable to ensure the functioning of the under cover surveillance system, limiting at maximum the interference in the exercise of the right to private life, the ombudsmen have proposed application of certain amendments to the Law on the prosecutor's office no. 294 from 25.12.2008 and in the Criminal Procedure Code, which shall allow identification of an entity among the procedural entities involved in a criminal procedure with clear empowerments and responsibilities pertinent to the observance of this right. When this report was developed the respective draft law was sent to the Government for consultations.

Taking into account the need to protect and respect the fundamental right to an intimate and private life, protection of personal data constitute an extremely important area, as this concept represents the right of the physical entity to have those characteristics protected, which lead to his/her identification and the corresponding obligation of the state to adopt adequate measures to ensure efficient protection. Personal data is considered that data which can be linked directly or indirectly with an indentified or identifiable physical person, such as for instance the surname, name, personal identification number, address, phone number, photo etc.

The correlation of information to an individual without his/her consent affects his/her private life and this fact is confirmed by the provisions of article 8 of the Convention for the

protection of human rights and fundamental freedoms. With the purpose to protect the rights and freedoms of the person while processing personal data, including protection of rights to inviolability of private life, to personal and family secret, the Parliament of the Republic of Moldova adopted the Law no the protection of personal data no. 17 from 15.02.2007.

Among the regulated activities is the scanning of digital fingerprints.

Thus, the Centre for Human Rights received a collective petition from the employees of the A.S. enterprise, who have contested the fact of automatic processing of fingerprint data which allows their identification and ensures control over the entry and exit to/from the territory of the enterprise, without their prior consent and agreement.

Because the activities of collection, registration, management, storage and usage of fingerprint data of the employees of this enterprise represent actions of processing personal data, which fall under the provisions of the Law on the protection of personal data no. 17 from 15.02.2007, the ombudsmen have requested the implication of the National Centre for the Protection of Personal Data in reviewing the circumstances mentioned in the petition. At the beginning of September 2009 the public authority mentioned above overtook the claimed case of breach of the rights and freedoms of the A.S. enterprise with the aim to review the legality of biometric data processing. When this report was finalised the review was not finalised.

In this respect the ombudsmen recommend development of a resolution procedure for petitions directed to the Centre for Personal Data Protection, which would in turn contribute to an adequate exercise of duties by the institution.

From another perspective, the Law on personal data protection no. 17 from 15.02.2007 empowers the National Centre for Personal Data Protection with the competence to undertake the necessary measures to suspend or discontinue processing of personal data which breach the provisions of the present law; to issue minutes on the breach of the law. Pursuant to the provisions of the Law on the approval of the Regulations of the National Centre for Personal Data Protection no. 182 from 10.07.2008 the body conducts preliminary reviews and investigations, applies sanctions if pertinent and monitors the process of implementation by the personal data holders of the legal measures provided for by the Centre.

Thus, the legislator empowered the monitoring body in the field of personal data processing with specific competences, asked to ensure and protect the right to private life of the physical persons during the processing and trans-border exchange of personal data, without offering regulations and mechanisms necessary to ensure the exercise of the duties by the institution in the part that relates to the suspension or discontinuation of the data processing, the

procedure of issuing minutes, application of sanctions and monitoring the process of implementation by the personal data holders of the legal measures prescribed by the Centre.

From the ombudsmen's point of view, the Government of the Republic of Moldova must acknowledge the existence of the provisions of article 18 paragraph 2 of the Law on personal data protection no. 17 from 15.02.2007 and present the Parliament initiatives on the adjustment of the legislation in force with the above mentioned laws.

The observance of the confidential character of the information related to health constitutes an essential principle of the legal frameworks of all the States parties to the Convention for the protection of human rights and fundamental freedoms. Confidentiality is essential not only for the protection of the private life of patients, but also for the maintenance of trust in the medical personnel and the health services at large. In the absence of such a protection, the persons who need medical care may be discouraged to offer personal and intimate data needed to prescribe an adequate treatment and even to receive a consultation from a doctor. A similar reaction may endanger not only the health of patients affected by transmissible diseases, but of the entire collective. The legal framework in force sets the obligation for doctors, other medical personnel and pharmacists to keep the secrecy of information related to the malady, intimate and family life of the patient which became available in the course of the exercise of the profession, with certain exceptions provided for by law.

In this respect, the ombudsmen have received a petition on the breach of the right to private life, guaranteed by article 28 of the Constitution, following the application of certain provisions of the Governmental Decision no. 864 from 17.08.2005 on the approval of the Regulations on the conscription of citizens into periodic or short term military service.

The petitioner X was exposed to medical examination to establish his military capacity during which it was established that he suffers from the human immunodeficiency virus (HIV/AIDS). The medical Committee has recognised him as incapable for military service and excluded him from military record, issuing the respective confirmation, the template of which was adopted by means of Governmental Decision no. 864 from 17.08.2005 (Annex no. 8). This paper substitutes the military book or the recruit script if citizens need to present the mentioned papers when performing the identity documents or in other cases.

From the point of view of the ombudsmen the template of the script in the part which deals with the specific provisions on the medical schedule reported to the maladies and physical impairments which lead to elimination from military record is a breach of the right to private

life. Moreover, the provisions of article 1 paragraph 2 of the Law on the rights and responsibilities of the patient no. 263 from 27.10.2005, the information about the malady of which the petitioner is suffering from fall under the ambit of medical secret. Meanwhile, the provisions of the same law establish the obligation of the state to ensure the right of the patient to confidentiality of information which constitute medical secret and prohibits any interference in private and family life of the patient without his/her prior consent.

By means of provisions of article 14 of the Law on prophylaxis of the HIV/AIDS malady, the medical personnel and other persons which, by virtue of their professional duties, hold information on the results of the medical examination related to the HIV infection (the AIDS malady) are obliged to keep the secrecy of this information. If disclosed the latter are subject to penalties as provided by the legislation in force. Pursuant to the provisions of article 14 of the Law on healthcare no. 411 from 28.03.1995, doctors, other medical personnel and pharmacists are obliged to keep the secrecy of the information related to disease, intimate and family life of the patient, which became available in the course of the exercise of their duties, with the exception of cases of danger of dissemination of transmissible diseases, with a prior and justified request of the criminal investigation bodies or courts of law.

The ombudsmen have evaluated the circumstances in which the information on the state of health of the petitioner was disclosed as a violation of the right protected by article 8 of the Convention for the protection of human rights and fundamental freedoms. In other words, the situation at stake where the disclosure of information is imposed is not provided by law, does not have legitimate aim and is not necessary in a democratic society.

Based on the above mentioned arguments, the Government received an initiative to amend Annex no. 8 of the Regulations on the medical and military examination in the Armed Forces of the Republic of Moldova, adopted by means of Governmental Decision no. 897 from 23.07.2003, which entails the exclusion of the requirement to indicate the paragraph with the medical schedule which serves as basis to exclude from military record.

In accordance with the case-law of the European Court of Human Rights the person in detention does not loose the protection of fundamental rights. He/she continues to benefit from those, only with a certain limitation, due to the exigencies of the situation and security requirements. Almost all, if not all the aspects of the lives of the convicted are exposed to provisions imposed by authorities. The potential for immixture and restriction of their fundamental rights and freedoms is considerable and is reflected in a large number of issues raised by the detainees.

The Centre for Human Rights received a considerable number of petitions from convicted persons, who have invoked the refusal of the administration of the penitentiary institutions to allow meetings with other persons, other than the spouse or relates.

Article 232 of the Code on execution establishes the right of the convicted person to short and long meetings with the spouse and relatives, and in exceptional cases, subject to the consent of the administration of the penitentiary, with another person specified by the convicted person. At the same time paragraph 284 of the Statute of execution of the conviction, adopted by means of Governmental Decision no. 583 from 26.05.2006 expressly establishes the exceptional cases when meetings with other persons are allowed: absence of spouse or of other relatives; to communicate the decease of the spouse or of a close relative; existence of an imminent and real danger which may violate the rights and legitimate interests of the convicted person; to participate in the procedure of conclusion of a marriage; with notaries to conclude civil acts which may not be concluded by the administration of the penitentiary.

Contrary to the same above mentioned legal provision, pursuant to paragraph 280 of the Statute of execution of the conviction meetings offered as stimulation are possible only with the spouse and relatives and are not available with other people.

From the point of view of the ombudsmen, the mentioned norms from the Governmental act adopted to implement the legal provisions are in conflict with the latter because they complement with new provisions the relations dealing with the limits, the procedure and conditions of meetings whish overstep the requirements of the law. In this respect the Code of execution does not establish restrictions for meetings with other persons and the express statement in the Governmental act of the cases when meetings are offered with other people than the spouse and relatives distorts the essence of exceptional case. Moreover, the existence or lack of relatives may not be considered as a decisive factor to limit the availability of relations with other persons from outside the penitentiary.

After the investigation of the cases mentioned by the petitioners it has been determined that there is no uniform application of legislation in this field, the meetings being frequently offered at the discretion of the administration; the administration of certain penitentiaries categorically do not offer meetings with other persons other than close relatives, even in exceptional cases; the reason of refusal to allow meetings is not mentioned, contrary to the provisions of article 286 of the Status of execution of penalties.

The convicted often invoke the fact that the administration refuses to allow meetings with persons with whom the former have concubine relations. The reason of refusal is that there is a lack of a document issued by the public local authority which would confirm these relations.

A continuous contract between the detainee, family and friends has a supplementary importance in the context of article 8 of the Convention for the protection of human rights and fundamental freedoms, as the means for continuous maintenance of links with the former have been replaced. The European penitentiary rules underline the need to encourage these links. Subject to the observance of the necessary security measures, the detainees should be allowed to meet not only with their relative, but also with other persons who which to visit them.

The European Court of Human Rights reiterates that "*their contact with the outside world should be maintained as much as possible to facilitate their reintegration in society after liberation and this is done, for instance, by means of ensuring conditions for visits of the friends of the detainee and by means of allowing to correspond with them and other persons*" *(Ciorap vs. Moldova)* is an essential element of both private life and the rehabilitation of detainees.

Consequently, article 8 requires the state that the detainee creates and continues personal links from outside the prison as much as possible to facilitate his social rehabilitation.

The ombudsmen reiterate that the Governmental Decisions are inferior to the laws adopted by the Parliament and cannot contain primary legal norms. The Government, as a supreme executive body, while exercising its constitutional competences and of those available in the Law on Government, manages the implementation of laws, with which purpose issues decisions to clarify laws, make it as clear as possible and apply it as correctly as possible.

In this respect, certain amendments to the Status of execution of penalties by convicted persons and development of a Regulation or an internal document which would regulate a single procedure for all penitentiary institutions while offering short and long term meetings shall contribute to the observance of human rights in the penitentiary institutions and correctly apply the Code of execution.

Pursuant to the *Concluding Observations of the Human Rights Committee, adopted on 29 October 2009 after studying the second periodic Report of the Republic of Moldova on the implementation of the International Covenant on Civil and Political Rights,* concerns have been raised as to the reports that discrimination based on sexual orientation is largely spread in all levels of the society.

Sexual life represents an important part of the private life of a person. The private sexual behaviour, which is a vital element of personal area, may not be forbidden just because of the mere fact that it risks to shock or to offend everyone around. In an area that intimate as private life interference may not be justified even on very serious grounds. In this respect the European

Court of Human Rights resorted to the theory of positive obligations to protect persons who practice homosexuality or trans-sexuality, underling on may occasions two of the essential characteristics of the democratic society: tolerance and the spirit of tolerance. Under these conditions, taking into account the evolution of science and of the international practices, the requirement of coherence of legal systems, the increase of disadvantages for the mentioned persons as a result of their legal lack of recognition, the Strasbourg Court established that the States must respect the right to sexual self-determination, being obliged to act in this sense, having a margin of discretion only with regard to the means of recognition *(I. and Christin Goodwin vs. United Kingdom).*

The ombudsmen have been appraised by a nongovernmental organisation involved in the protection of the rights of sexual minorities, including of transgender persons who may not benefit from necessary medical assistance and do not have the possibility to change identity document. Those around 30 transgender persons who are at the stage of hormonal sex correction therapy (having the appearance of the social role of the desired gender) and leave the country to have their gender correction surgeries, need to change their identity document, including of the letter which indicates the gender. The legal framework in force does not allow the possibility to legally recognise the new gender identity of a transsexual exposed to surgeries, a state of affairs which creates numerous obstacles.

The desire of the transsexuals to have their gender change recognised and to enjoy other rights raises legal, social, medical and ethical questions. Once the gender conversion surgeries are made, special issues have arisen with regard to the legal status of these people, them having the civil status legally instituted, opposed to the obtained one after the gender conversion surgery. There is therefore an inconsistency between the morphologic, psychological and sexual identity of the person and his/her legal identity in the area of civil law if the states do not recognise the new identity of the transsexual persons exposed to surgeries.

Despite that the sexual identity is a part of the personal identity and in the cases of transsexual persons it qualifies within the right to respect for private life of any person and constitutes a component of this vast notion, which includes, among others, the relations with other persons, the right to honour and reputation of the individual, the right to domicile and correspondence, the right to physical and mental integrity, the freedom to manage his/her own body and freedom of sexual life, right to employment and free movement.

Despite the fact that the text of the Convention for the protection of human rights and fundamental freedoms does no contain a clear definition of the notion of private life, the case-law of the Court establishes that it covers not only the physical and moral integrity of a person,

but also includes aspects which deal with the sexual identity and orientation of the person. Consequently, the text of the Convention also protects the physical and moral integrity of the transsexual persons, with all the pertinent consequences residing from it, including from the perspective of the obligations inherent to the state parties.

The justification of the negative attitude towards transsexuals is dictated by the moral and ethical concepts deeply rooted into the conscience of the nations. Despite these, there is however a tendency for change within the European societies, a high level of understanding of the importance of personal identification of each individual being registered, as well as a need to accept differences between human beings. In spite of a consensus at the European level in matters of legal recognition of gender switch, the Court acknowledges that "a just balance which must be ensured between the general interest and the interests of the person" imposes the establishment on the state of the obligation to proceed to the legal recognition of gender switch, the state not having any margin of discretion except the means needed to be put in place to make good on this obligation.

In this respect, the authorities of the Republic of Moldova are called to tackle the issues with which this category of citizens is facing, aiming at the observance of human rights and fundamental freedoms guaranteed by the Supreme Law of the State. In this respect of high priority is the development by the Ministry of Health of a gender correction mechanism and review of the existent legal framework to ensure the issuance of appropriate identity documents which corresponds to the obtained exterior as a result of the hormonal therapy.

Recommendations of the ombudsmen:

1. *Insurance of a legal framework viable and capable to ensure the functioning of the secret surveillance system, limiting at maximum the interference in the enjoyment of the right to private life;*
2. *Development of a procedure to resolve petitions directed to the Centre for Personal Data Protection, which shall contribute to the adequate performance of functions by the institution in this area;*
3. *Adjustment of the legislation in force in accordance with the provisions of the Law on personal data protection no. 17 from 15.02.2007 and the provisions of the Law on the approval of the Regulations of the Centre no. 182 from 10.07.2008;*
4. *Amendment of Annex no. 8 of the Regulations on the medical and military examination in Armed Forces of the Republic of Moldova, approved by means of Governmental Decision no. 897 from 23.07.2003 in order to exclude the requirement to indicate the paragraph with the medical schedule which serves as basis for exclusion from military record;*
5. *Amendment of the Status of execution of penalties by convicted persons and development of a Regulation or of an internal act which would regulate a unified procedure for all penitentiary institutions on offering short and long term meetings,*

which would contribute to the observance of the human rights in penitentiary institutions and correct application of the Code on execution;

6. *Development by the Ministry of Health of a gender correction mechanism and review of the existent legal framework to ensure the issuance of appropriate identification documents to transgender persons.*

§ 4. Right to vote and to be elected

Elections are one of the most important instruments with the help of which citizens can influence the public decisional process. The vote is a formal expression of the preferences of a citizen with regard to one candidate or a normative proposal. Elections usually take place at a large scale – national or regional, but of similar importance for individuals and the governing parties are the local elections, organized at the level of small communities.

The Universal Declaration of Human Rights recognises the role of open and transparent elections while ensuring the fundamental human right to participate at governance.

In accordance with article 21 of the Universal Declaration of Human Rights everyone has the right to take part in the government of his country, directly or through the freely chosen representatives; everyone has the right to equal access to public service in his country; the will of the people shall be the basis of the authority of the government; this will this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Even though the right to vote is largely recognised as a fundamental human right, there are still people who do not enjoy it. There is a series of marginalised groups of citizens such as the youngsters, minorities, people with disabilities, people without a shelter, the detainees, who are constantly marginalised due to various reasons: poverty, illiteracy, intimidation, vicious electoral process and others.

In accordance with international standards the state must ensure the right of every citizen to participate in the public decision making process. In this respect, there are a series of actions and conditions which must be undertaken or fulfilled: right to vote in elections and referendum must be provided by law; the Constitution and other laws must prescribe efficient instruments by means of which individuals enjoy their right to participate in public life; any restriction of the right to vote must take place only on the basis of justified and objective criteria; persons enjoying the right to vote must have the full freedom of choice of candidates; enjoyment of the

freedom of speech and right to assembly as two necessary conditions to ensure the right to public participation; commitment of positive actions which would help marginalised groups to overcome the problem of limitation of access to voting and help them enjoy this right; the conditions related to the day of the ballot, eventual taxes, should be set in a reasonable and non-discriminatory manner; the elections must be periodically organised, on the basis of a legal framework which would guarantee effective enjoyment of the right to vote.

The regular Parliamentary elections from 5 April 2009 have generated a political crisis which triggered as its major effect an institutional lock. The snap elections from 29 June 2009 which followed after the institutional lock had as aim, according to the constitutional provisions, to offer the Moldovan voters the mission to solve the problems generated by the political representatives. This last exercise brought changes on the political arena and shall continue to have in the future a major impact on the new power configuration in the Republic of Moldova.

The snap elections have confirmed that the Moldovan society remains divided based on various criteria. The overlap of the political crisis on the economic one may jeopardise in the long term the political and social stability.

The Central Electoral Commission, following the review of petitions from electoral opponents, international observers and the civil society has identified a list of breaches of the electoral legislation in force that took place during the electoral campaigns in 2009 which determined the character of the political processes in the Republic of Moldova, as follows: electoral campaign in the day previous to the ballot day; printing and dissemination of electoral material with breaches of the conditions and means of financial support of the electoral campaigns; breach of the principle of equal treatment of electoral opponents during the electoral campaign; breach of the right of electoral opponents to appoint members in electoral bureaus of voting sections with voting rights; the voting of Moldovan citizens abroad; electoral rights of multiple citizenship holders; electoral rights of national minorities; enjoyment of the right to vote by the citizens of the Republic of Moldova resident in the transnestrian region; differentiated treatment of electoral opponents by some mass media institutions; acceptance of derogations by some TV stations from legal provisions related to the broadcast of electoral advertising.

The right to vote and to be elected is guaranteed by article 38 of the Constitution of the Republic of Moldova. Pursuant to this article, citizens enjoy the right to vote and to be elected from the age of 18 years, subject to conditions provided for by law.

Despite the fact that the Electoral Code expressly specifies in article 13 the categories of persons who do not hold the right to vote, it has been revealed that certain groups of people who are not covered by the interdiction provided for by law, do not enjoy the right to vote which is guaranteed by article 38 of the Constitution. Among these groups are persons with physical disabilities, eyesight impairments, persons constrained in psycho-neurologic institutions who have not been recognised as incapable by means of a final court decision.

The right to vote for persons with disabilities is limited by their practical incapacity to move to the place of voting, by their incapacity to understand the importance of the act, or to read and apply the voting material. In this respect, the Electoral Code provides for the possibility to use the mobile ballot boxes. Pursuant to paragraph 71 of the Regulations on the activity of the electoral bureaus of the voting sections, approved by means of Central Electoral Commission's Decision no. 396 from 14.12.2006, the voter who due to health or other justified reasons may not participate at the ballot is visited by at least two members of the electoral bureau with the mobile ballot box and the voting material at the place of stay of the voter for him/her to vote, the members being nominated by the electoral bureau of the voting section as a response to a verbal or written application of the voter. Despite these, the mobile ballot boxes are accessible only through a written application which burdens the voting process for people with disabilities and does not correspond to the requirements of article 29 letters a) and i) of the UN Convention on the rights of people with disabilities, the latter's ratification by the Republic of Moldova having become an important subject.

Persons who suffer from a physical disability and use the wheelchair are exposed to the condition of having an assistant to permanently accompany them. Because of the lack of assistant many of them quit. Another problem which leads directly to the impossibility of enjoying the right to vote is the inadequate infrastructure for persons with physical impairments.

Thus, in order to offer persons with disabilities an independent life and fully participate in all aspect of life, the state must take measure to ensure their access on an equal basis with other citizens to the external environment, transportation and other utilities which are accessible to the public at large.

A more specific category of voters are the people with eyesight impairments, who are also citizens of the Republic of Moldova and hold the constitutional right to vote, but do not benefit from an optimal voting procedure. According to the information provided by the Society of People with Eyesight Impairments, there are around 9000 persons with eyesight disabilities of which around 3500 are blind.

Pursuant to the provisions of the Electoral Code the voters who are not capable of independently completing the ballot paper have the right to invite in the voting cabin another person. At the same time, both the Supreme Law of the State and international treaties to which Republic of Moldova is a party to guarantee the free expression of the will of the citizen by means of the secret vote.

In order to exclude any inequality between persons with eyesight disabilities and other citizens, printing of ballot papers in Braille is needed. This would allow persons with eyesight impairments to vote without assistants, thus their constitutional to vote being fully ensured.

It is worthwhile for authorities to pay attention to the situation of the persons with hearing impairments, who are not ensured adequate conditions with regard to their participation at electoral debates. *Lack of interpretation into the signs language of talk-shows dedicated for electoral debates obstructs these voters from free formation of opinion for one particular candidate.*

As Republic of Moldova already showed its intentions to ratify the UN Convention on the rights of people with disabilities the state must undertake adequate measures to ensure people with disabilities their political rights and to benefit from these rights under equal conditions with all other citizens, including the right to vote and to be elected, by means of ensuring the voting process, the necessary spaces and materials, accessible, ease to understand and use; by means of protecting the right of the people with disabilities to a secret vote in public ballots and referenda, without intimidation and to participate in ballots, to be elected and hold public functions at all levels of governance; by means of guaranteeing freedom of expression of will of people with disabilities as voters, permitting assistance during the voting process from a person chose by them when that is necessary.

The ombudsmen consider necessary to highlight to the electoral bodies, electoral opponents, public authorities and mass media institutions on the need to unconditionally respect all norms and standards in electoral matters to ensure a free, correct and accessible electoral process for all citizens with voting rights.

The recommendations of the ombudsmen:

1. *Ensuring the access of people with disabilities under equal conditions with other citizens to the external environment, transportation and other utilities accessible to the public at large;*
2. *Printing of ballot papers in Braille;*
3. *Ensuring translation into the signs language of talk-shows organised for electoral debates;*
4. *Unconditional observance of all norms and standards in the electoral area, to ensure a free, correct and accessible electoral process for all citizens with voting rights.*

§ 5. Freedom of assembly

Main article invoked in front of the European Court of Human Rights: Article 11 (Fre  edom of assembly and association).

Core case-law: Case Platform „Arzte fur das leben" vs. Austria, ECtHR Decision from 21 June 1988; case Ezelin vs. France, ECtHR Decision from 26 April 1991.

Between 1 November 1998 and 31 December 2009 the European Court of Human Rights issued 6 decisions against Republic of Moldova in which the breach of article 11 of the Convention was acknowledged:

- *PPDC vs. Moldova - (no. of application 28793/02 from 14.12.2006, costs and expenses on the basis of article 41 of the Convention – 4000 EUR);*
- *Rosca, Secareanu and others vs. Moldova - (no. of applications 25203/02, 25230/02, 25234/02, 25235/02, 27642/02 from 27.03.08, material damage - 52 EUR, moral damage- 6000 EUR, costs and expenses – 2000 EUR);*
- *Hyde Park and others vs. Moldova - (no. of application 33482/06 from 31.03.09, material damage – not claimed, moral damage - 3000 EUR, costs and expenses - 1000 EUR);*
- *Hyde Park and others vs. Moldova (no.2) - (no. of application 45094/06 from 31.03.09, material damage – not claimed, moral damage - 3000 EUR, costs and expenses - 1000 EUR) ;*
- *Hyde Park and others vs. Moldova (no.3) - (no. of application 45095/06 from 31.03.09, material damage – not claimed, moral damage - 3000 EUR, costs and expenses - 1000 EUR);*
- *Hyde Park and others vs. Moldova (no.4) - (no. of application 18491/07 from 07.04.09, material damage – not claimed, moral damage - 25000 EUR, costs and expenses - 3000 EUR).*

Between 1 January 2009 and 31 December 2009 the Government of the Republic of Moldova has been notified by the Registry of the European Court of Human Rights of 168 new

applications, among which 5 on the violation of the freedom of assembly (Hmeleivschi and Moscaliov, Brega, the Matasaru group).

The freedom of assembly is considered by article 11 of the Convention for the protection of human rights and fundamental freedoms as an essential element of the public life necessary for any democracy's health. This provision generally protects all forms of assembly, public or private, irrespective of their aim, subject to the condition that the former be compatible with the objectives of the Convention.

For it to be protected, an assembly must be also "peaceful". The term must be understood both positively and negatively in the sense that the assembly must not have as objective public disorders and vice versa, its development should not provoke violent reactions from the part of third parties.[15]

Nothing in the Convention prohibits the possibility for the national law to impose a preliminary administrative authorisation of assemblies, so that authorities confirm their peaceful character, for instance, by taking measures capable to prevent the jeopardy of the assembly from opponents. In case Platform „Arzte fur das leben" vs. Austria the Court decided that the right to a reactive manifestation may not limit the right to manifest. In this respect article 11 of the Convention imposes all states the positive obligation to protect and ensure security, especially if this includes the right of protection against actions of opponents during a reunion. The freedom of assembly or manifestation may not be restrained merely because of the fear of the brutalities committed by persons with opposed ideas and the fact that the internal law provides for a remedy against those who jeopardise a reunion or a manifestation is not sufficient.

It is sufficient there to exist a serious and objective risk for a public authority to have pursuant to the Convention the possibility to prohibit an assembly or to limit the method of manifestation: from the moment the "peaceful" nature of the assembly risks to be jeopardised, it is the duty of the state to intervene irrespective of the author of the incidents[16].

The former European Commission for Human Rights accepted that, nothing impedes the authorities to prohibit a manifestation and rather bring the argument of objective risk of public disorders than that of the intentions of the organisers. But the principles remains the following: *„even if there is a real risk for a demonstration to lead to incidents as a result of events which felt out of control of the organisers, this demonstration does not fall out, on this sole argument,*

[15] The European Human Rights Convention Code, 2008 - Jean-Loup Charrier, Andrei Chiriac, p.418;

[16] The European Human Rights Convention Code, 2008 - Jean-Loup Charrier, Andrei Chiriac, p.419 (Justification of a restriction);

from the ambit of article 11" (Case Christians against Racism and Fascism vs. United Kingdom).

On the same case, the Commission stated that the prohibition of a meeting constitutes a breach of the freedom of assembly and that cannot be justified, except if it corresponds to the provisions of article 11 paragraph 2 of the Convention: „No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State".

The freedom of peaceful assembly includes demonstrations and the authorities which allowed the demonstration to take place must ensure the security of the participants against any possible opponents.

The enjoyment of the freedom of assembly is frequently linked with another freedom guaranteed by the Convention – freedom of expression. Both are considered by the Commission to be the foundation of the democratic process. But when both rights are invoked, the Strasburg bodies consider that article 10 should be seen as *lex specialis* so that there is no need to analyse the freedom of expression in a separate context. The enjoyment of the freedom of assembly is often closely linked to the freedom of thought, conscience and religion (article 9 of the Convention). Thus, it does not include public meetings only, but also private meetings (*Case against Switzerland no.8191/78, Decision from 10 October 1979*), static meetings, as well as public processions. It can be used both by persons and organisers of the meetings, as for instance associations are.

The special importance of the freedom of assembly of citizens is underlined by the Constitution of the Republic of Moldova, as it has been included in the list of fundamental rights in article 40, which states that „meetings, demonstrations, manifestations, processions or any other type of assemblies are free and can be organised and take place in a peaceful manner only, without any arms".

At the same time, the freedom of conscience and expression also find their reflection in article 32 of the Constitution of the Republic of Moldova, which states that any citizen enjoys the freedom of thought, as well as the freedom of expression in public by means of word, image or any other possible form.

The Republic of Moldova made a significant step when it adopted the Law on assembly no. 26 from 22.02.2008. Although at the level of regulations the above mentioned law is a very progressive one, as it has been harmonised with the best practices in ensuring the freedom of assembly, the ombudsmen have identified risible clashes at the stage of application of the law from the responsible authorities. Thus, cases of termination of meetings/ unjustified interventions as well as inactions from the law enforcement bodies, with further lack of investigation of neither of these cases nor any persons who are guilty of such actions exposed to administrative/criminal sanctions have been recorded.

Year 2009 was also marked by a series of events which took place in April, after the parliamentary ballot and which had a devastating impact on the image of the Republic of Moldova. The ombudsmen have viciously condemned the violent and vandalism actions admitted during the manifestations from 7 April 2009, considering them intolerable for a democratic state, based on the rule of law, where human dignity, his rights and freedoms, the free development of the human personality, justice and political pluralism represent supreme values and are guaranteed.

The events which took place gave sufficient reasons for the ombudsmen to conclude on the poor observance of the freedom of assembly guaranteed by article 11 of the Convention for the protection of human rights and fundamental freedoms and article 40 of the Constitution of the Republic of Moldova, as well as the existence of serious clashes in ensuring the right to life and physical integrity guaranteed by article 3 of the Convention and article 24 of the Constitution of the Republic of Moldova.

On 7 April 2009 the ombudsmen have launched a message to citizens, authorities and leaders of political parties where they have supported a constructive dialogue between the parties involved in the protest and proposed the termination of protests and violence.

The ombudsmen remain on the position that the freedom of assembly is an essential element of the public life, necessary for the stability of any democracy. In this respect, the protection of opinions and freedom of expression constitute one of the objectives of the freedom of assembly, as it is stated in article 11 of the European Convention for the protection of human rights and fundamental freedoms. Only democracy is a fundamental characteristic of the European public order and the Convention was created to promote and maintain the ideals and values of a democratic society.

It is certain that following the protests which took place on 7 April 2009 many people both among protesters and law enforcement bodies had suffered. Republic of Moldova accumulated a negative experience with regard to the respect of values protected by articles 3, 5

and 11 of the Convention for the protection of human rights and fundamental freedoms. These facts impose an obligation on the authorities to act within the limit of their competence to reveal the existent clashes in the activity of the persons responsible for the peaceful nature of the protest, which in turn have conditioned the breach of the limits provided by law.

From the point of view of the ombudsmen, the main problem is the quality of interaction between the actors involved in the ensuring the freedom of assembly, which according to articles 19-22 of the Law of the Republic of Moldova on assembly must cooperate in order to ensure the peaceful nature of the meetings.[17]

According to the "Human Rights and democratic institutions after the elections in Moldova/ 6 April – 1 July 2009" study, developed by the „PROMO-LEX" and CREDO associations, "the events of 6 and 7 April 2009 have degenerated into violence first because nobody took the burden to organise the protesters and second, because there was absolute lack of communication between the protesters and the police. Bringing the fireman car in front of the Presidency's building, the offensive and the retreat of the police inside and behind the Presidency and the Parliament, have provoked an adverse reaction, as a result of which aggressive people have consolidated and have taken control over the entire meetings both physically and psychologically".

[17] **Article 18 paragraph (1) letter b)** –*Obligations of the organiser*: "The organiser of the meeting has the obligation to nominate a coordinator of the meeting and communicate in due course his/her name to the local public administration".

Article 19 letter c)- *Obligations of the participants:* „the participants at the meeting have the obligation to leave the meeting at the request of the organiser and/or the representative of the local public administration or the police, as provided by articles 21 and 22";

Article 20 paragraph (1) letter b)- *the Right and obligations of the local public administration authority:* „The local public administration authority is obliged to nominate a person responsible for the organisation of the meeting and communicate the organiser and the police body his/her name and the contact details";

Article 21 paragraphs (1), (2)- *Ensuring public order. Discontinuation of the meeting: „*If durgyin the meeting certain participants breach the public order or the provisions of article 8, the organiser, if needed, along with the police, shall discard them (2) If during the meeting actions take place which severely breach the provisions of article 8, the representative of the local public administration authority shall ask the organiser to immediately discontinue the meeting. This is an exceptional measure which may be used if other measures are not sufficient to ensure legal nature of the meeting";

Article 22 paragraphs (2),(3)- *Forced dispersal of the meeting: „*If after the request of the representative of the local public administration authority the participants at the meeting do not leave the place of the meeting, the police shall warn the participants on the possibility to use special means and forcibly disperse the meeting, giving a reasonable time to comply with this request, after which shall repeat the request of dispersal of participants. (3) In case if after the repeated request the participants at the meeting do not leave the place of the meeting, based on the request of the representative of the local public administration authority the police shall take the legal measures to disperse the meeting".

The authors of the report consider that substantial aggressiveness could be avoided by means of communication between the government and the opposition with the protesters (by means of audio equipment and other means); through constructive communication and negotiation of the law enforcement agencies with the protesters; by means of prudent and professional actions to exclude provocations; by means of discrete isolation of provokers and, if necessary, use of specialised equipment to decrease tensions and controlled dispersal of the violent groups.

Pursuant to the legal qualification of the events from 7 April 2009 it is to be mentioned that article 8 letter c) of the Law on assemblies, starting with 12:20 the meeting in front of the Parliament and the Presidency became partially illegal, breaching the provisions of article 16 paragraph (3) of the Law no. 26 because the public order has been manifestly breached by means of provocation of serious mass disorders. The police reacted in this respect and dispersed the protesters who gathered in front of the Presidency. The meeting in front of the Presidency has degraded even more, especially after 13:30 as a result of violent actions of around 200 persons and the passivity of the law enforcement bodies, which exceeded the aggressive protesters[18].

As a result, the defective application of the provisions of the Law no. 26 from 22.02.2008 on assemblies combined with a series of objective circumstances generated by the de facto situation and the level of professional training of the persons involved, has generated, from the point of view of the ombudsmen, on the 8 April 2009 breach of a series of constitutional rights normally available in a democratic society, such as the right not be exposed to torture, inhuman or degrading punishment or treatment.

The ombudsmen have pleaded for the clarification for every citizen of the disastrous impact generated to the social relations protected by article 74^1 of the Code on administrative misdemeanours – edition of 1985 („Breach of legislation on organisation and management of assemblies"), article 184 of the Criminal Code – edition 2002 („Violation of the freedom of assembly"), article 285 of the Criminal Code – edition 2002 („Mass disorders"), art.309^1 of the Criminal Code – edition 2002 („Torture"), article 328 of the Criminal Code – edition 2002 („Abuse of power or excess of duty"), so that those who have violated the norms protected by the Constitution of the Republic of Moldova and are guilty of the admitting the breach of constitutional rights of citizens bear the appropriate responsibility.

[18] The study "human rights and democratic institutions in the post-electoral period in Moldova / 6 April-1 July 2009", developed by the "Promo-Lex" and CREDO associations, Chisinau, 2009 http://www.promolex.md/upload/publications/ro/doc_1258617509.pdf

With reference to the enjoyment of the freedom of assembly the Human Rights Committee, after the examination of the second periodic report presented by the Republic of Moldova, which presents information on the adopted measures by the state party to implement the Covenant on civil and political rights (CCPR/C/MDA/2) during sessions 2559 and 2560 from 13 and 14 October 2009 and adopting concluding observations during session 2582 from 29 October 2009, expressed its concern with regard to the credible reports on breach of human rights committed against protesters within the demonstrations after elections, organised in April 2009. In this respect the Committee took a note of the declaration of the delegation of the Republic of Moldova that law enforcement agents "have acted in breach of their rights". Thus, the Committee stated that Republic of Moldova must ensure the observance of the freedom of association pursuant to article 21 of the Covenant, including by means of application and implementation of the Law on assemblies from 2008 and implement certain safeguard provisions, such as appropriate training to eliminate any repetitions of such cases when human rights are breached by people enforced with powers by law; detailed investigation of all charges brought forward of abuse from law enforcement agents during the demonstrations from April 2009 by an impartial and independent body, the conclusions of which shall be made public; taking measures to ensure that the law enforcement agents found responsible for torturing and ill-treatment of protesters, including those who have management duties and can order subordinates are brought to justice by means of application of adequate disciplinary measures, and during the investigation involved agents suspended from held positions; ensure that the victims of torture and other forms of ill-treatment during the demonstrations in April 2009 receive adequate compensation, without taking into account the results of the criminal investigations undergone against offenders; ensuring adequate measures at the disposal of the victims for psychological and medical rehabilitation.

With reference to the statistical data, according to the study developed by Association „PROMO-LEX" and CREDO during the first half of 2009 there have been on average 82 assemblies per month. Thus, in February 2009 there have been 85 meetings, in March – 141 meetings, in April - 65 meetings, in May – 53 meetings and in June – 79 meetings, all having as sources the parliamentary elections. The most frequent have been the assemblies with a number of participants below 50 persons, the second place being individual manifestations, being followed by meetings with more than 300 participants.

Aimed to ensure the observance of the constitutional human rights and freedoms by the public central and local authorities, institutions, organisations and enterprise, irrespective of the type of property, nongovernmental organisations and persons with decision making powers of

all levels of responsibility, the institution of ombudsmen has expressed its concern with regard to the incident which took place on the 29 January 2009, when citizen M. was arrested by the law enforcement agents when he was manifesting his protest in front of the General Prosecutor's Office.

It is worth mentioning that the ombudsmen have previously repeatedly appraised the Ministry of Interior with the issue of it accepting the behaviour of certain law enforcement agents which breaches the provisions of the legislation in force, especially the provisions of the Law on assemblies no. 26 from 22.02.2008, while acting on the participants of assemblies. Regretfully, the formalistic answers given by the Ministry of Interior do not have a positive impact on the existent situation on this particular aspect, this being also a source of appraisal of the European Court of Human Rights by the citizens who consider to have their freedom of assembly, thought and expression been breached. Freedom of assembly is as such in a functional connexion with other rights and freedom guaranteed by the European Convention for the protection of human rights and fundamental freedoms, such as the freedom of opinion and expression, freedom of thought etc.

With reference to the incident from 29 January 2009, where citizen M was arrested, intimidated and forcibly escorted by the law enforcement agents to the Riscani District Police Commissariat of the Chisinau municipality on the basis of the fact that the protest he was involved in did not have a authorisation issued by the Mayoralty of the Chisinau municipality, although according to the provisions of the Law on assemblies no. 26 from 22.02.2008, in order for a meeting to take place there is no need for authorisation from the local public administration, but instead the respect of the procedure of notification. It comes as a natural conclusion that the law enforcement agents are not familiar with the provisions of the Law no. 26. In this respect, article 12 paragraph (5) of the Law on assemblies expressly states that there is no obligation to notify the local public administration by means of a preliminary declaration when the assemblies are in small number of participants.

Therefore, under the conditions specified above citizen M did not needed an authorisation to show his protest, nor make any notification to the Mayoralty of the Chisinau municipality.

Even worse is that the actions admitted by the law enforcement agents towards citizen M. have eliminated the possibility of the latter to be invited for discussions by the representatives of the General Prosecutor's Office (the authority which was subject of the protest), although a representative of the General Prosecutor's Office showed availability.

In this respect, the ombudsmen have self-appraised the issue and have asked for explanations from the Ministry of Interior on the incident which took place on 29.01.2009 with

reference to citizen M, including identification of persons who have committed the arrest, on whose initiative (orders); the reasons of arrest, exact duration of detention, the way the Recommendations on the maintenance of public order during assemblies adopted by means of Order of the Minister of Interior no. 274 from 06.08.2008 have been implemented, the measures taken towards law enforcement agents who admitted abuse while performing their service duties (with the indication of their number).

According to the answer of the Ministry of Interior, "…with the purpose to identify all the circumstances an internal investigation was launched on the above mentioned case, where breaches admitted by the law enforcement agents have been identified an namely of the Ethics and Deontology Code of the Policeman, adopted by means of Governmental Decision no. 481 from 10.05.06, the Law no. 416 from 18.12.1990 on police, the Statute of the police patrol and sentinel service, approved by means of Order of the Minister of Interior no.157 from 26.07.94, as well as of the Law on assemblies no. 26 from 22.02.08, as a result of which the Lieutenant Major X. was disciplinary sanctioned with "culpability" whilst policemen K. and D. – with "warning".

In June 2009 the ombudsmen have been appraised by the parents of certain minors (citizen G, year of birth - 1991, citizen R. year of birth - 1994), who participated at an authorised protest from 15.06.2009, which took place in front of the Teleradio Moldova Company. The petitioners have invoked the illegal actions admitted by the police agents of the Centre District, Chisinau municipality against protest's participants.

During the investigations on the above mentioned case, the ombudsmen have appraised the Police Commissariat of the Centre District of the Chisinau Municipality, have discussed with the minors, with their parents, as well as with the organisers of the protest, have examined the files of the administrative cases and have made the following conclusions with regard to the incidents which took place on 15.06.2009.

Both the organiser of the protest and the minors have declared that the police agents have intervened in short after their presence in front of the Teleradio Moldova Company's premises (on 15.06.09, at approximately 10:00) invoking that the former do not respect the distance of 50 meters from the premises. In this respect, it must be mentioned that the Law on assemblies no.26 from 22.02.08 does not provided for special conditions for the distance which must be observed during a meeting.

Although the intervention of the law enforcement agents was illegal, the protesters complied with their request. Subsequently, (after a half an hour) a second intervention of the police agents who have requested identification of the protest participants took place. Thus, the

lack of identity document was used a reason to escort the participants to the Central District Police Commissariat of the Chisinau municipality. During the second intervention the police agents have not identified themselves, did not offer plausible explanations relevant for the legality of the actions committed against protester, have not taken into consideration their explanations, as well as the fact that the organised protest have not breached the provisions of the legislation in force.

At the same time, the minors have declared that from the moment of their retention their legal representatives have not been informed of the arrest. Moreover, inside the Police Commissariat the minors have been exposed to intimidations, have been bullied, aggressed, exposed to psychological pressure, threatened, actions and language that have been accepted being qualified as inadmissible for the persons holding such positions, all these circumstances directly breaching dignity and honour.

Referring to the above mentioned cases, it must be mentioned that the parents of the minors have been informed of their arrest only at around 17:00 while at the registry another hour of entrance of the minors to the police commissariat was written.

At the same time, the ombudsmen have asked the parents of the minors to present additional materials which could justify and would confirm the preliminary conclusions of the Centre for Human Rights related to the claimed illegal actions of the police agents against the arrested minors. Taking into account that the petitioners have not presented the requested materials, the ombudsmen have decided to stop the examination of this case.

A relevant case with reference to the breach of the freedom of assembly is the example of the protest which took place on 13 December 2009 in the centre of the Capital, which resulted in the dismantlement of the Jewish symbol „Menorah" by a group of orthodox parishioners, which was installed based on an preliminary authorisation on the 11 December 2009, linked to the Hanukkah holiday.

The representative of the Church „Preafericita Maica Matroana", accompanied by around 120-150 persons arrived at the Europe Square and ordered the dismantlement of the Jewish symbol „Menorah" and its placement on ground at the right side of the monument of the „Ştefan cel Mare şi Sfînt".

The ombudsmen vehemently and firmly condemn racial and ethical hatred, anti-Semitism, xenophobia and discrimination, any call for xenophobe manifestations, as well as any recourse which incites to breach of human rights, guaranteed both by the Constitution of the Republic of Moldova and the international treaties to which the Republic of Moldova is a party to.

At the same time, the ombudsmen have qualified these protest actions as intolerable in a democratic state, governed by the rule of law, where human dignity, his rights and freedoms, the free development of the human personality, justice and political pluralism represent supreme values and are guaranteed.

The freedom of expression imposes an obligation not only on states but also on those who claim to be its holders: everyone enjoys the freedom of expression, undertakes obligations and responsibilities the width of which depends on existent situation and the used technical procedure.

The concept of freedom suggests negative actions from the State, i.e. abstention from interventions in the enjoyment of its citizens of the freedom of assembly. Despite this, a real and effective freedom of peaceful assembly is not compatible with a simple obligation of non-intervention from the State, but also includes a positive obligation to ensure peaceful development of a legal manifestation. Therefore it is the obligation of the state to protect its citizens from a potential intervention of other persons with violent intentions.

Freedom of religion oversteps the simple freedom of thought because it does not obtain its true sense only if it is exteriorised.

The European Court of Human Rights has established that (*Kokkinakis vs. Greece*) *„in a democratic society where more than one religion coexists in the ambit of the same population, it can be proved necessary to dose this freedom with limitations capable to reconcile and ensure the respect of each person's beliefs"*.

In accordance with the provisions of paragraph (1) and (3) article 31 of the Constitution of the Republic of Moldova, the freedom of conscience is guaranteed, it must manifest in a spirit of tolerance and mutual respect, whilst between religious beliefs any hostile manifestations are prohibited.

Article 32 of the Constitution of the Republic of Moldova acknowledges the fact that the freedom of expression may not damage honour, dignity and the right of other person to a different personal view and that the law prohibits and prosecutes contestation and calumny against the state and the nation, inducement to war and aggression, national, racial or religious hatred, inducement to discrimination, territorial separatism, public violence as well as other manifestations which threatens the constitutional regime.

Also, the ombudsmen reiterate that the freedom of assembly is guaranteed to all persons, irrespective of their race, nationality, ethnical origin, language, gender, opinion, political affiliation, property, social origin or any other criterion.

On the other hand, pursuant to article 4 of the Law of the Republic of Moldova on religious beliefs and their component parts no. 125 from 11.05.2007, any persons has the right to freedom of thought, conscience and religion. This right must be enjoyed in a spirit of mutual respect and covers the freedom of adhere or not to a certain religion, to have nor not to have any particular beliefs, to change its religion or beliefs, to practice religion or beliefs in an individual or collective level, in public or in private, by means of education, religious practices, cults and proceeding to rituals. Any person and religious community may freely adhere to a particular religious cult.

Article 8 of the mentioned law stipulates that confessional intolerance, manifested by means of acts which jeopardise the free enjoyment of a religious cult, inducement to religious hatred are offences and are prosecuted and punished as provided by the legislation in force.

As a conclusion of the above-mentioned the ombudsmen have launched an appeal to the authorities empowered by law to monitor the proper observance of the human rights and freedoms to initiate the necessary investigations on the case and identify the persons who are culpable of committing illegal acts.

Also, the ombudsmen consider that in if the provisions of the Constitution and other laws relevant to the freedom of conscience and religion shall be interpreted and applied in accordance with the Universal Human Rights Declaration and the international treaties to which the Republic of Moldova is a party to, the practical implementation of the European human and legal values and requirements greatly depends on the capacity to efficiently cooperate of the central and local public authorities, state institutions and the civil society at large, as well as on each particular citizen.

The recommendations of the ombudsmen:

1. *Ensuring the implementation of initial and continuous training programme for the agents of the Ministry of Interior in the field of observance of human rights (Centre for Human Rights expresses its availability to ensure the necessary human resources needed to implement these actions and the financial means with the support of the "Support to Strengthening the National Torture Preventing Mechanism in accordance with the provisions of the Optional Protocol to the CAT", financed by the European Union and co-financed by the United Nations Development Programme, signed between the Centre for Human Rights and the United Nations Development Programme in Moldova);*
2. *Ensuring efficient, complete and public investigations of cases in which persons claim to have been exposed to torture and other cruel, inhuman or degrading treatment or punishment, therefore excluding potential convictions of the Republic of Moldova by ECtHR;*
3. *Continuous training of subjects involved in granting the freedom of assembly – local public administration authorities, law enforcement agencies; implementation of*

information campaigns in society to increase de level of awareness of rights and obligations of the „participants", regulated by the law on assemblies;

4. *Amendment of article 40 of the Constitution of the Republic of Moldova with the aim to adjust it to the provisions of the European Convention for the protection of human rights and fundamental freedoms by means of placement of provisions on restrictions to the exercise of freedom of assembly, the obligations and responsibilities which the present freedom entitles.*

§ 6. Right to employment and labour protection

In increase of number of petitions sent to the Centre for Human Rights on the breach of the right to employment and labour protection was registered in 2009.

Although the complaints which have a prescribed procedure of examination in the labour legislation, are not within the ambit of the ombudsmen's activities, the issues raised by the petitioners with regard to a possible breach of the right to employment imposes only in certain cases the involvement of the ombudsmen because in the majority of cases the verification of the circumstances offered by citizens requires the involvement of bodies empowered with monitoring and control functions over the observance of the labour legislation.

In most of its part the issues raised in the complaints of the petitioners directed to the ombudsmen are similar each year. The most frequent complaints cover the issue of use of labour force without an individual employment contract as provided by law; lack of necessary registrations in the workbook; lack of workbook issued within the legal timeframe; breach of the labour legislation when the employee is dismissed; delays in payment of salaries and debts of salaries; unjustified refusal of employment.

Breach of the normal timeframe of the working time constitutes a problem frequently invoked by citizens during discussions with the Centre for Human Rights. Thus, most of the time employees accept conditions imposed by the employer to keep their jobs, as the general situation which shows that the number of unemployed grows constantly pressed them.

The creation of the Labour Inspection, a central body specialised in state control over the observance of the labour legislation, has as aim the elimination and prevention of abuses and breaches from the employers, irrespective of from of property, the former being empowered

with certain functions, including sanctioning of employers which are guilty of breaching the specialised legislation.

The examination of a large number of petitions from citizens offered the ombudsmen the possibility to conclude on many occasions that this authority does not use the entire potential of competences offered by the Law on Labour Inspection no.140 from 10.05.2001, in many cases avoiding the application of sanctions. Giving summons to eliminate identified breaches at enterprises where a control was made implies monitoring and control from the inspector of the employer on the conformity with the respective requirements once the deadline elapsed and further act in accordance with the competences given by law.

From the point of view of the ombudsmen the state of affairs in the field of observance of the right to employment and labour protection could be resolved by means of improvement of the activity of the Labour Inspection, a body empowered with state monitoring functions to ensure observance of the normative acts in the field of employment.

The approval of the Law on labour security and health no.186 from 10.07.2008, in force from 01.01.2009, subscribes to the commitments taken by the Republic of Moldova when it ratified the International Labour Organisation Convention no. 155 (1981) on security, health of workers and labour environment.

Having as objective the instalment of measures to promote the improvement of the workers' security and health at workplaces the law provides for general principles on the prevention of professional risks, protection of workers' health and security, elimination of risk or unforeseen risk factors, information, consultation, training of workers and their representatives, as well as general directions for the implementation of these principles.

The evaluation of the level of viability of the proposed objectives shall be possible only after the development of implementation mechanisms for the above mentioned law.

According to the information offered by the Labour Inspection, in 2009 alone 432 accidents have been communicated, as a result of which 469 persons has suffered, out of which 74 accidents were fatal, which generated 75 deaths.

Rigorous observance of the labour protection legislation by the employees on one hand, and the creation of conditions of security and hygiene at the workplaces, elimination of risk factors by the employer, on the other, shall undoubtedly contribute to their decrease.

Late communication or lack of communication from the employer to the Labour Inspection of an accident constitutes one of the impediments for their objective investigation. At the same time, the complaints from citizens to the ombudsmen suggests the tendency of the employers to hush up the accidents produced at the workplace, the latter making recourse to

various methods to misinform the employees with the final aim to avoid pecuniary responsibility for damages caused to employees by labour accidents or occupational diseases.

On the other hand, the accidents with the involvement of persons employed without a legalised relationship generates major difficulties during the investigation process. The reduced level of awareness of employees on the social benefits offered in case of industrial accidents and those outside labour relations, the consequences of illegal labour relations is, from the point of view of the ombudsmen, one of the causes of tolerance of such state of affairs.

In this respect, the ombudsmen recommend the Labour Inspection and specialised trade unions to strengthen their efforts in increase the training process of the participants at the labour process in issues related to the labour security and health as well as consultations on the legal framework pertinent to the labour relations.

According to the data offered by the Labour Inspection, on 1 January 2010 in the entire country there were 373 salary payment delays registered, which is a raise with 17 unit compared to the situation at 1 January 2009, the amount of salary debts being 153,5 million lei compared to a 101,3 million in the previous year.

The number of complaints on this issue received by the ombudsmen both in office, as well as during field trips, has considerably increased in the reporting year. In some cases, after the intervention of the ombudsmen, by means of conciliation of parties, the issue at hand is being solved; in other cases the involvement of the responsible bodies is necessary. It has been determined that some circumstances generate deficiencies in ensuring payment of salary debts.

The situation worsened considerably as a result of the world economic crisis, the consequences of which are also felt in the Republic of Moldova. Thus, freeze of employers' bank accounts which are insolvent and termination of the activity of certain economic agents have led to the impossibility to pay salary debts.

Pursuant to the provisions of the Labour Code, the payment of the salaries is made by the employer on a priority basis compared to other payments, including in case of bankruptcy of the entity. The complaints of citizens which mention the non-implementation of the court decisions on the payment of salary debts, the debtor being an enterprise in a bankruptcy process, are relevant.

From the point of view of the ombudsmen, this problem should be a priority on the agenda of the Government and use the available resources at maximum to ensure full observance of the right to employment, having the commitment from the Republic of Moldova to progressively ensure by all available means the rights provided for in the International Covenant on economic, social and cultural rights.

In this respect, Republic of Moldova was convicted on many occasions by the European Court of Human Rights for non-implementation of court decisions on payment of the salaries. The Court mentioned that the applications which relate to the reinstatement in a previously held job as well as the payment of the salary are of "crucial importance" for the claimants and they must be "swiftly" solved. In this respect the circumstances of the *Bulava vs. Moldova* case according to which the period of 7 months and 16 days for the enforcement of a court decisions on the payment of the salary was not considered a reasonable one. Therefore, the Court established the breach of article 6 of the Convention and Protocol 1 of the Convention.

In 2009 an essential increase of unemployed was registered at the employment agencies compared to years 2007 and 2008 (79241 in 2009 compared to 48396 – in 2007 and 46230 – in 2008). At the same time, the number of unemployed involved in jobs is decreasing (17001 in 2009 compared to 23367 – in 2007 and 22185 – in 2008). From the point of view of the ombudsmen, one of the factors which influence the increase of the number of unemployed is the massive dismissal from enterprises (in 2009 - 6821 people dismissed compared to 3015 – in 2007 and 3272 – in 2008).

In this respect, the ombudsmen recommend the Government consolidated efforts in the development of a short term action plan for new jobs creation by means of support of employers in the private sector.

The recommendations of the ombudsmen:

1. *Improvement of the activity of the Labour Inspection.*
2. *Strengthening the efforts of the Labour Inspection and the specialised trade unions to speed up the process of training of the labour process participants in the field of labour security and health, as well as consultations on the legal framework related to labour relations.*
3. *Increased efforts to develop a short term action plan for new jobs creation, inclusinv by means of supporting the private sector employers.*

§ 7. Right to private property and its protection

Pursuant to article 46 of the Constitution of the Republic of Moldova and article 1 of the First Protocol to the Convention for the protection of human rights and fundamental freedoms every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

During the reference year the issues tackled by citizens with respect to the observance of the right to private property and its protection do not differ substantially from those invoked in the preceding years. Thus, the most frequent applications on this issue have come from owners of land plots and shares in common property, deponents of the Banca de Economii (Savings Bank), persons exposed to political repressions and subsequently rehabilitated.

A few urgent issues which need immediate solutions are in the agenda of the ombudsmen for a considerable time.

The ombudsmen are still appraised by the persons exposed to political repressions and subsequently rehabilitated, who invoke the issue of restitution of goods and recovery of the value of those goods through payment of compensations.

The adoption of the Law no. 1225 from 08.12.1992 on the rehabilitation of the victims of political repressions, with the subsequent amendments, reflects the tendency of the state to reinstate the property rights of the victims of political repressions of the totalitarian regime, thus undertaking the commitment to decrease the consequence of the political repressions and implementation of the universal legal principle on the inadmissibility of deprivation of person of his/her property. At the same time, the ombudsmen declare that it is not sufficient to state certain legal provisions, but it is important that those provisions be implemented in a way that would offer just satisfaction of the victims of repressions.

Appropriate resolution of the problems with which this category of persons confronts implies active and honest involvement of the central and local public authorities to avoid the preconditions for this issue to become a subject of analysis by the international jurisdiction institutions.

The ombudsmen consider that the legislators must review certain primary and important aspects of the legislation in discussion to create an efficient and fair mechanism of restitution of confiscated, nationalised or otherwise excluded from possession property.

The study developed by the ombudsmen during the years 2007-2009, based on the information supplied by the local public administration authorities and the complaints of citizens, allows underlining certain deficiencies in the process of reinstatement of the property tights of people exposed to political repressions.

Therefore, pursuant to Law no. 186 from 29.06.2006 on the amendment and completion of the Law no. 1225 from 8 December 1992 on the rehabilitation of victims of political repressions the aim of improvement and clarification of the mechanism of property restitution or payment of compensations was pursued. The Regulations on the restitution of the value of goods by means of payment of compensations to persons exposed to political repressions, as well as payment of compensations in case of decease as a result of political repression, approved by means of Government Decision no. 627 from 05.06.2007, provide for a detailed mechanism of restitution of the value of the goods of persons exposed to political repressions, but its efficient application imposes a series of deficiencies.

The beneficiaries of above-mentioned actions of the Regulations are usually the elderly with a reduced income for whom the instated legal procedures to demonstrate the fact of confiscation, nationalisation and evaluation of their goods in relation to the bureaucracy of certain public servants constitute an impediment which consumes time and resources.

According to the information offered by 32 authorities from 36 contacted, during 01.01.2007 - 01.01.2008 from an amount of 5719 applications issues by applicants only 203 have been resolved, which is around 3.5%, the rest being rejected or not examined.

The small number of applications reported to those issues underlines the efficiency of the mechanism offered by the authorities to observe the right to property.

Thus, pursuant to article 12^1 paragraph (3) of the Law no. 186 "The Committee identifies the goods which must be recovered and determines their value on the basis of documents which confirm confiscation, nationalisation or any other means of deprivation of property, papers issued by the archives and other responsible institutions, or by means of other legal proof", whilst pursuant to paragraph 5 of the Regulations approved by means of Government Decision no. 627 from 05.06.2007 the burden of proof is put on the applicant. Taking into account that the same legal provision expressly establishes the competence of the committee to evaluate the goods, the ambiguous provision from letter g) paragraph 5 of the Regulation which states that

“if the applicant has not filed in an application where it asks the committee to determine the value of the goods” leaves a large margin of interpretation for competent authorities.

On the other hand, because of the fact that the household registries of years 1944-1949 do not contain a detailed description of the real estate, as it is required by the regional cadastre bodies to evaluate them in accordance with the current market prices, it becomes impossible to practically implement these legal provisions.

It has been determined that the lack of documentation as prescribed by paragraph 5 of the Regulations is one of the reasons frequently invoked by special committees to suspend/reject the examination of the applications filed in by potential beneficiaries. The majority of chairmen of special committees have mentioned that obtaining the mentioned documents is among the main difficulties which the applicants confront.

From another perspective, lack of clarifications on the source of funds which shall cover the value of the goods which cannot be recovered, as it is now in article 12 paragraph (6) of the Law no. 1225, creates difficulties in implementation, as there is not clear specification what amount is paid from the local and state budgets.

Republic of Moldova was repeatedly convicted by the European Court of Human Rights for non-implementation of the court decisions which relate to the recovery of sums as compensation for the confiscated, nationalised or otherwise deprived property from the victims of political repressions.

In this respect, the ombudsmen urge for the payment of compensations for the property of deported from the state budget.

After the analysis of the information received from executive bodies it has been established that the legislation on the statute of limitations for the recovery of property or payment of its value is being differently applied. The legislator established that the applications for restitution of confiscated, nationalised or otherwise deprived goods or recovery of their value are to be issued during 3 years from the moment the person exposed to repressions has been informed of his/her rehabilitation (article 12).

The law states that the citizens of the Republic of Moldova exposed to political repressions and subsequently rehabilitated who at the date of entry in force of the Law no. 186 from 29.06.2006 have consumed their statute of limitations for the application of restitution of deprived goods can apply at the special committees within one year from its date of entry. Therefore, based on the information the ombudsmen have, some of the special committees have refused the review of applications filed in after 01.01.2008 due to the expiry of one year since

the entry in force of the Law no. 186. At the same time, other committees have accepted applications filed in after that date.

Based on the information offered by the Directorate Information and Current Records within the Ministry of Interior, during the period of 01.01.2008 - 10.08.2009 alone, the Ministry of Interior issued 292 rehabilitation certificates. Not all repressed persons or their relatives have been informed of the rehabilitation due to the impossibility to establish the identity and the domicile (around 98% of the rehabilitated persons had the respective certificates). In the current state of affairs when the special committees refuse to examine applications due to the expiry of the statute of limitations, it is obvious that persons who have obtained rehabilitation certificates after 01.01.2008 do not hold any chances to enjoy the right given by law.

Another reasons of refusal to examine the compensation applications is the provision of paragraph 2 of article 2 of the Law no. 186 from 29.06.2006 pursuant to which the persons exposed to political repressions and subsequently rehabilitated who have been previously compensated before the entry in force of the present law are not subject to the respective provisions.

There are some deficiencies with respect to this provision. From the point of view of the ombudsmen the legislative body should have specified the definition of compensation. The current version of the law leaves it to the discretion of the special committees to evaluate who are the persons who have been already compensated. In this respect, compensation received on the basis of certain provisions which have been once in force and subsequently have been declared unconstitutional (Governmental Decision no.338 from 26.05.1995) may not be considered effective.

There is already a vicious practice in accordance with which persons on whose name decisions to offer compensations have been issued on the basis of the Government Decision no. 338 may not claim other forms of compensation, even if they have not been actually paid.

The Constitutional Court in its decision no. 16 from 12.06.2007 has qualified the amounts of compensations, which varied between 200 and 90 lei offered to deported families as oblivion, these provisions being found to be in collision with article 53, paragraph (1) of the Constitution.

A separate category of repressed people are those who before deportation lived in the Eastern part of the Republic of Moldova. These people have even smaller chances to enjoy their right to property.

In this respect the ombudsmen consider necessary a consolidated effort from the governmental committee responsible for issues of victims of political repressions with the final aim to identify all the deficiencies in the application of the current mechanism of restitution of the value of goods of persons exposed to political repressions and implementation of efficient measures to resolve the problems which this category of people confronts.

The ombudsmen reiterate their concern with respect to the method of payment of recalculated sums for bank deposits of citizens at the Banca de Economii (Savings Bank), which can be appreciated as a breach of the right to property guaranteed by the Constitution and which does not fully correspond to the concept of the European law on the status of property and the constitutional requirements.

During previous reports on the respect of human rights in the Republic of Moldova, the ombudsmen have presented their position on certain aspects underlined in the petitions of citizens with respect to the current mechanism provided for in the Law on recalculation of deposits of citizens at the Banca de Economii (Savings Bank) no. 1530 from 12.12.2002, which does not ensure all persons who had deposits made an equal treatment before the law.

One of the aspects of ensuring the right to private property and its protection relates to the recalculation of deposits of foreign citizens – former citizens of the Republic of Moldova who had deposits made in the Banca de Economii (Savings Bank) at the situation of 2 January 1992 and who cannot benefit from the payment of recalculated sums. Article 2 of the Law no. 1530 expressly states that the beneficiaries of the Law are only citizens of the Republic of Moldova. Subsequently, the citizens – beneficiaries of recalculations who lived and were actively involved in the Republic of Moldova but recently became citizens of other states are deprived of the right to pick up the savings made at the Banca de Economii (Savings Bank).

In this respect, it is worth mentioning that in article 1 of the above-mentioned law the state recognised pecuniary obligations towards all citizens of the Republic of Moldova, who had savings in the Banca de Economii (Savings Bank) on 2 January 1992, establishing the main principles related to the recalculation, amount and procedure of payment of recalculated amounts. At the same time, article 9 of the Law states that recalculation and payment of the savings of citizens of the Republic of Moldova at the branches of the Banca de Economii (Savings Bank) situated on the left bank of the Nistru river shall be reviewed after the reestablishment of the financial and budgetary relations of this region with the state budget of the Republic of Moldova.

From the point of view of the ombudsmen this regulation conflicts with the aim of Law no. 1530 and is discriminatory in nature towards citizens who deposited their funds in the

branches of the Banca de Economii situated on the left bank of the Nistru river, because they cannot enjoy the right to private property despite the fact that they fulfil all the requirements.

In this respect a need to review the Law on recalculation of the deposits of citizens at the Banca de Economii is foreseen so that no difference in treatment by the law is permitted, ensuring equality in opportunities for each person while he/she enjoys her property rights.

Recommendations of the ombudsmen:

1. *Increased activity of the governmental Committee responsible for the problems of the victims of political repressions;*
2. *Review of the normative framework in force which deal with the rehabilitation of persons exposed to political repression with the aim to develop an efficient and fair mechanism of restitution of confiscated, nationalised or otherwise deprived property to this category of people;*
3. *Review of the Law on recalculation of deposits of citizens at the Banca de Economii no. 1530 from 12.12.2002.*

§ 8. Right to social assistance and protection

The issues with regard to ensuring the right to social assistance and protection do not differ in most of their part one year from another. The observance of social rights resulting in complete coverage for each and every person a decent level of living and free development remains one of the most difficult problems. The actual socio-economical realities of the country reside in the desire to promote a stable economic growth, but which until present did not register a significant growth of the population's wealth.

In 2009 an increase of the number of petitions referring to the claimed breach of the right to social assistance and protection sent to the Centre for Human Rights was registered. Thus, during the reference year 170 petitions have been registered with this issue, which is with around 34.5% more than compared to 2008. This fact could be explained by the effects of the economic crisis, which constituted a painful hit for the socially vulnerable parts of the society, this being materialised through decrease of the income of the population, increased number of unemployed, increase of costs for certain services etc.

Among the issues raised by the petitioners are the following: the small amount of the pensions and other social services; the way in which the pensions are calculated/reviewed; the method of calculation of the contribution period, especially in the public service; ensuring the right to a decent life; prolonged examinations of pension applications; review of pensions for pensioners who continue employment after the establishment of the pension.

As before the presence of the elderly – beneficiaries of social services, is registered as inferior to the other groups. More and more citizens invoke the lack of a decent life, asking the intervention of the ombudsmen to obtain financial support to pay debs for utilities, treatment services etc. In this situation, the ombudsmen are put in an unpleasant situation to explain to citizens their right to appraise the public institutions which are responsible for the direct and financial support of the socially vulnerable persons – the Population Support Funds. In this respect, *the ombudsmen consider certain actions from the Republican Population Support Fund of awareness rising of the population as necessary.* Obviously, the local public administration

must also intervene with the support, conciliation, financial and moral support for vulnerable parts of the society and awareness rising with regard to their rights.

Aiming at the observance of the right to social assistance and protection and a decent life, the state must undertake efficient actions of a legislative nature and implement the legislation in force.

The level of appreciation of the decentness of life is formed of the incomes of the population, obtained from various activities in national economy and those offered by the state as various social payments.

Although, during the latest years the main income of the majority of the population of the Republic of Moldova – the salary – registered an increase, the issue of correlation between the salary and the costs of vital needs remains unresolved. A significant difference between salaries in different sectors of activity is registered. Pensioner, beneficiaries of social services, beneficiaries of childcare allowances are in a deplorable situation.

In this respect, the observance of the state guarantees given to citizens in obtaining a minimum income and exclusion of cases of discrimination of certain categories of citizens against others can be ensured only through the adjustment of the minimum salary, the minimal pension and the social payments to the amount equal to the minimal existence allowance set for the country.

Taking into account that the Republic of Moldova does not have a legislative framework to determine the minimal subsistence allowance, the ombudsmen recommend the adoption of a law which shall propose a mechanism of determination of the minimal subsistence allowance by means of correlation of the level of life, the minimal salary and social services to ensure a minimum of existence for each person.

One of the most important issues of a social and economic level is the current situation of the of the pensions system. The problem of ensuring payment of pensions is extremely sensible for the population. The quality of life of the pensioners substantially depends on the way the authorities tackle this issue, taking into account the social, economic, demographic factors which influence the pensions system.

The current pensioning system is a rather complex and poorly understood. It offers different conditions for pension calculation for different categories of workers. Because of this state of affairs the Centre for Human Rights continues to receive multiple applications on the method of calculation or re-examination of pensions, the methods of establishment of the contribution period, the small amounts of the pensions and social services, prolonged examination of applications on the establishment of the pension amount.

From the applications of the citizens cases are revealed, as those are seen by the ombudsmen, which could be avoided if the public servants of the social insurance bodies would manifest more diligence in the course of their duties, especially during the examination of applications on the establishment of the amount of pensions.

In the course of examination of a specific case the ombudsman has determined that the lack of clear provisions in the Law on state social insurance pensions no. 156 from 14.10.98 offers servants of the regional social insurance offices the possibility to arbitrarily apply certain of its provisions, which leads to long periods for setting the pension of the applicant and its delayed payment. Therefore, article 31 of the above-mentioned law does not specify the need to personally present the application nor any specific form of the pension application, as it is requested by the servants of the regional social insurance offices, which in effect leads to a late calculation of the pension, the applicant being thus deprived of his/her only source of existence until an effective payment of the pension. Contrary to the fact that the legislation imposes an obligation on the regional social insurance body to issue a decision on the right to receive a pension or reject the application during a period of 15 days from the day the application was filed in with all the necessary papers (paragraph (3) article 31), the applications of the petitioners to the ombudsmen demonstrated that these are examined with a delay of up to 3 months.

As a recommendation to the above-mentioned, the ombudsmen propose the National Social Insurance Agency to strengthen its social services provision efforts, implementing the legislation in the interests of the applicant.

From the applications of the citizens to the ombudsmen discrepancies have been identified in the application of the provisions which regulate the payment of pensions to various categories of persons and which generates impediments in the enjoyment of the right to social assistance and protection.

Thus, the lack of the implementation mechanism for the provisions of article 27 of the Law on theatres, circuses and concert organisations no. 1421 from 31.10.2002 made it impossible for the National Social Insurance Agency to implement a court decisions on the establishment and payment of a retirement pension. Due to the fact that presently there are no provisions on the procedure and method of payment of this type of pensions (the body that sets the pension, the method of calculation, the minimal and maximum amounts etc.), the beneficiary of pension as prescribed by article 27 of the Law no. 1421 did not receive the pension for a long period of time, even in the presence of a final court decision. Thus, according tot article 30 letter b) of the mentioned law, during 3 months since the entry in force

of the law the Government had the obligation to develop the necessary acts for its implementations, a provision which until present has not been implement.

As a result of the intervention of the ombudsmen to the Government, the petitioner received his pension for the period between 20.12.2002 and 31.12.2008, taking into consideration the equivalent of the minimal retirement pension amount. Despite this, the ombudsmen have repeatedly appraised the Government, insisting on the urgent development of the necessary mechanism to implement Law no. 1421. Following each intervention of the ombudsmen, the Government gave insurances that a draft law which shall coordinate the provisions of the Law no. 1421 with the provisions of the pension legislation in force is under development. Although, based on the information presented by the Ministry of Social Protection, Family and Child since 2004 draft laws are developed to ensure compatibility of the norms related to pensions for the artistic and creation personnel, this issue still remains unresolved until present.

The ombudsmen are concerned of the fact that, while the Republic of Moldova is being repeatedly convicted by the European Court of Human Rights for the fact that „the authorities have not undertaken all reasonable measures to ensure the enforcement of the court decision", the lack of enforcement of certain court decisions generates the breach of the right to social assistance and protection.

Another relevant example in this respect is the case of citizen M, who enjoys special social protection from the state as a person who suffered from the Chernobyl accident. The petitioner was imposed by the current state of affairs to make use of his right to social assistance and protection, which includes insurance of the health and quality of life a decent level, through a court of law.

Although, there is a final court decision on the issuance of a mandatory medical insurance on his name, the ombudsmen have found out about the former's non-enforcement due to the fact that the servants of the National Social Insurance Agency and the court executors have not followed with good-will their duties. As a consequence, the petitioner was forced to request for years the observance of his rights. Regretfully, but this case also found its solution only after the direct involvement of the ombudsmen.

Based on the previously mentioned cases, it can be rightfully claimed that the poor functional delivery of the authorities involved in the resolution of a certain issue may lead to convictions of the Republic of Moldova by the European Court of Human Rights.

After the identification of inconsistencies in legislation which allows differentiated interpretation of the legal provisions and not always in the favour of the citizen, the

ombudsmen have made use of their competences offered by article 29 of the Law on ombudsmen and proposed the Parliament to examine the possibility to amend article 5 of the Law on state social insurance pensions with the aim of its consistency with the provisions of article 124 of the Labour Code, according to which the partially paid leave for child care may be used by the father, grandmother, grandfather or other relative of the child who is directly involved in childcare, with the inclusion of the respective period in the employment record.

In the support of the ombudsmen's proposal, the Parliament's Standing Committee on Social Protection, Health and Family proposed the Ministry of Labour, Social Protection and Family detailed examination of the invoked issue to avoid differentiated regulation of the same subject.

During the reference year petitions have continued to come from employed pensioners, making reference to the breach of the constitutional right to social assistance and protection as provided by the normative acts on social insurance pensions with special emphasis on the right to recalculate the pensions.

Presently, persons who enjoy their right to pension and continue to be employed, contributing with taxes for the formation of the national public budget, do not benefit from the right to have their pensions recalculated.

In a current state of affairs where the amount of the pension does not ensure a decent life for the elderly, this issue, already tackled in the previous years, deserves the attention of the competent authorities to ensure optimal solutions. Appropriate amendments to the Law on state social insurance pensions no.156 from 14.10.98 or exemption from state budget taxes is among the solutions proposed by the ombudsmen.

Part of the implementation of the priorities of the Economic Stabilisation and Revival Programme of the Republic of Moldova for year 2009-2011 approved by means of Government Decision no. 790 from 01.12.2009 the Government set as goal the implementation of a series of actions on the medium and long term directed to ensure efficient social protection. Taking into account that the launch of the mentioned Programme had as aim reinstatement of trust of the population in the Government's actions and in the life and employment opportunities in the Republic of Moldova, establishment of a growth track for the economy, as well as strengthening the premises for the development of a sustainable economy, it is of outmost importance that the instruments the Government proposes to use and the imperative effects of the reforms do not harm the interests of those who expect support.

Taking into account the importance of the actions that are to be implemented, the ombudsmen consider necessary initiation of a dialogue with the civil society and identification

of democratic solutions which shall increase the level of understanding and support from the society. The signals the ombudsmen received with respect to the tendency of the law enforcement bodies and the penitentiary system personnel of mass resignation and pension retirement have been quite evident in the latest months of 2009.

The main values in a democratic society are fairness and equal treatment of all citizens. Not a single category of citizens must remain outside the care of the authorities, irrespective of the nationality, religion, wealth, state of health. The international standards of protection of persons with disabilities are based on the common principle for the entire human rights protection system, the universal character of human rights and prohibition of discrimination. The value of this principle for persons with disabilities is based on the idea of creation of "society for all", which would allow any individual to develop his/her abilities without restrictions based on physical or mental condition.

Pursuant to international standards, the development of abilities may not take place without a general approach to resolve issues pertinent to disability, based not only on medical type actions. The main difference of the new approach – the change of the principle of "vulnerability" of the persons with disabilities with the concept of social inclusion – means actions to create conditions to adept these people to the social and economic life. Moreover, the international standards have changed the very concept of "invalidity" which is descriptive for a vulnerable group because such a attitude towards persons with disabilities hampers their integration in the society.

The regulation of the state protection for its citizens is, first of all, available through its normative and policy documents, describes the state's readiness to respect international standards for rights of certain categories of people.

Although the Law on social protection of people with disabilities no. 821 from 24.12.1991, which is an expression of national standards in the field of human rights for people with disabilities, provides for the observance of a large spectrum of social rights of people with disabilities, the lack of efficient implementation mechanisms and adequate financial support gives to some of its provisions merely a formal character.

Pursuant to the constitutional desideratum proclaimed in article 51, persons with disabilities benefit from special social protection from the state. Despite this, there is a series of problems these categories of people are facing, issues which need to be overcome: poor level of the social services; legal framework not harmonised with the international standards in the field of observance of the right of people with disabilities; procedure of establishment of disability; low rate of employment and reduced motivation for employers to hire people with disabilities;

limited access of the persons with disabilities to social infrastructure due to the inadequate physical environment from the architectural point of view; limited access to the informational environment; indifference of the society towards the problems of the people with disabilities.

The situation with the process of level of disability establishment remains alarming. The disapproval of the established level of disability is one of the frequently claimed issues in the petitions directed to the ombudsmen. The resolution of these categories of petitions reveals the level of awareness of the citizens included in a level of disability over the appeal/re-examination procedure of the decisions of the primary regional Councils of medical evaluation of vitality.

In this respect, the ombudsmen recommend the authorities responsible of the evaluation of vitality to ensure complete access to accurate information to the population on the respective procedure.

From another point of view, the Ministry of Labour, Social Protection and Family must undertake actions to review the current definition of invalidity and legal terms associated to it, placement of a single definition for people with disabilities, amendments of the current methodology of establishment of the disability level, with the purpose to determine the labour capacities of the persons aged for employment in such a way that these requirements should not be discriminatory and correspond to international standards in this area.

Also, there is a need to review article 51 of the Constitution by amending the definition of "handicapped people" with the notion of "persons with disabilities".

A first step in ensuring the effective observance of the rights of people with disabilities would be the ratification by Republic of Moldova to the United Nations Convention on the rights of people with disabilities.

The principle of non-discrimination on the basis of disability is at the heart of the mentioned Convention. Presently, the national legal framework, including the Constitution does not provide for an express prohibition of any form of discrimination based on disability. Article 16 paragraph (2) of the Constitution provides for an exhaustive list of criteria on the basis of which discrimination can take place. Therefore, the ombudsmen consider necessary the inclusion of this principle in the national legal framework or give a non-exhaustive list of criteria.

The problem of ensuring access of the people with disabilities to the physical and communication environment was one of the priorities of the ombudsmen in 2009. In this respect, the competent public authorities have been appraised to undertake habitual adaptation

measures to the needs of the persons with disabilities, including access to institutions by means of instalment of special mechanisms which would facilitate access to and within the buildings.

The adaptation of the physical infrastructure to the needs of the persons with disabilities constitutes the critical element in the creation of equal opportunities for these persons. By means of the provisions of chapter II of the Law on social protection of persons with disabilities the central and local public authorities are obliged to create necessary conditions for free access of the people with disabilities to houses, public and production buildings and constructions, use of public transport, telecommunications and information means. There is however a series of lacks in the implementation of the legal provisions.

The National Programme of Protection, Rehabilitation and Social Integration of Persons with Disabilities for years 2000-2005 provided actions to ensure access for the persons with disabilities to the habitual environment.

At the same time, the conclusions resulting from the monitoring of the situation at the chapter of accessibility to the habitual environment are rather pessimistic. Even if certain buildings have been equipped with access platforms those are not always appropriate, whilst the access for the persons with locomotive disabilities is limited to the first floor of the buildings only. From the point of view of the ombudsmen the actions provided for in this programme have remained at the level of intentions due to the lack of an implementation, control and necessary cost evaluation mechanisms.

The situation is even worse with regard to access to the public transport. There are no public transport units adapted to the needs of persons with disabilities.

In this respect, the local public authorities must take into account the adaptation criterion when new means of transportation are purchased.

Government Decision no. 1268 from 21.11.2007 regulates the method of compensation of the use of transport for persons with locomotive disabilities, establishing an annual compensation of 400 lei. The ombudsmen consider this amount oblivious because the expenses

for transportation considerably overcome this amount, taking into account the persistent difficulties of accessing public transport.

The Ratification of the UN Convention on the rights of people with disabilities by the Republic of Moldova may ensure that many of the expectations of these people become reality. This fact must be however supported with actions directed to adjust the national legislation in the field to the international standards.

From the ombudsmen's perspective the ratification of this Convention shall constitute a new phase in the promotion of human rights in the Republic of Moldova and the development of the system of social protection of the people with disabilities.

The ratification of this important document must be done simultaneously with the initiation of reforms in the field of disability, development of an action plan with specific actions with the aim to ensure that the provisions of this Convention become reality, also ensuring an estimation of costs of these political reforms.

After the ratification of the most important international treaties in the field of human rights the state already committed itself to ensure the observance of the rights of any person, including the rights of people with disabilities. The Convention does not provide for new rights, nor does it establish in a more detailed way the positive obligations of the state to ensure and promote the rights of the people with disabilities.

Most of the discussions start on the issue of ensuring the observance of social, economic and cultural rights, which require financial resources. Because the Convention offers the possibility of a gradual and progressive implementation of its provisions, the ombudsmen consider the discussions against the ratification of the Convention unjustified. Moreover, Republic of Moldova ratified the International Covenant of Social, Economic and Cultural Rights and undertook the commitment to progressively implement by all adequate means the rights provided for in the Covenant, using at its maximum the available resources.

Citizens who take care of the persons with a disability confront with a series of problems. According to the provisions of article 4 paragraph 4 of the Law on mandatory medical care no. 1585 from 27.02.98 the Government holds the position of insurer for persons who take of children with disabilities with the first level of severity or a child with disability at birth with the first level of disability confined to bed until the age of 18 years. Thus, if after 18 years of age the health condition of these people does not improve and the tutors remain to be the caretakers, it becomes senseless and unfair to deprive them of certain guarantees they enjoyed. *From the ombudsmen's point of view the development of state policies in the field of social protection must be coordinated with the situation of this category of citizens, so that the*

guarantees provided for by law are not conditioned by the age of the person who is being taken care of.

From another perspective, after the ombudsmen have identified a clash between the legal provisions in the Law on state social allocations for certain categories of citizens no. 499 from 14.07.99 with regard to the beneficiaries of social allocations who take care of a child with disabilities (article 3 letter f) and article 14 letter a)) it has been proposed to the Ministry of Social Protection, Family and Child to examine the presented circumstances and act to ensure their compliance. The present text of the respective norms may constitute subject to abusive of differentiated interpretation. The appraised authorities supported the proposal and ensured that actions shall be taken to initiate the amendment of the respective law.

The observance of the rights of persons confined to the social institutions of the Ministry of Labour, Social Protection and Family (asylums for the elderly, psycho-neurological institutions etc.) is not satisfactory. After the monitoring visits undertaken by the ombudsmen in some of the social institutions in the country gaps have been identified with respect to their activity, the quality of the services offered to beneficiaries. The ombudsmen have presented recommendations to the mentioned institutions and the Ministry of Labour, Social Protection and Family with regard to the observance of optimal living, rehabilitation conditions and delivery of decent medical care, creation of a favourable psycho-emotional environment for the patients.

Part of their duties, the ombudsmen have identified a series of impediments in the observance of the rights of citizens in courts of law due to their mental difficulties and social status. The national procedural legislations states that the rights, freedoms and legal interests of the persons who do not have full legal capacity and who are limited in legal capacity are represented in courts of law by the parents, foster parents, tutors or curators, other persons who have this right attributed by law. In practice however the legal representatives do not attend or show total indifference towards the people they represent. Thus, in hopes to offer the necessary help through community services, the authorities confine vulnerable persons to social care institutions or psychiatric hospitals, where there are insufficient procedural means which could ensure the observance of the fundamental rights and freedoms every time this proves necessary.

The recommendations of the ombudsmen:

1. *Approval of the legal framework on the determination of use of the minimum subsistence allowance;*
2. *Development in due course of the mechanisms of implementation of the legislation in force on the social assistance and protection;*
3. *Improvement of the awareness mechanism for citizens with regard to human rights;*
4. *Ratification of the UN Convention on the rights of people with disabilities;*
5. *Improvement of the legislation in force on the rights of people with disabilities and the persons who take care of them;*
6. *Amendment of article 51 of the Constitution in a sense to change the notion of "handicapped persons" with "persons with disabilities";*
7. *Monitoring of the enforcement of regulations which ensure the access of people with disabilities to the social infrastructure units, to communication and information systems etc.;*
8. *Purchase of public transport units adapted to the needs of people with disabilities.*

CHAPTER III

The activity of the Ombudsman Institution from the perspective of the provisions of the Optional Protocol to the UN Convention against torture and other inhuman or degrading treatment or punishment

Note: *The information presented in this chapter refer to the* ***constitutional right to life and physical and mental integrity, the right to individual freedom and security of the individual*** *as prescribed by the case law of the European Court of Human Rights*

The Objective of the Optional Protocol to the UN Convention against torture and other inhuman or degrading treatment or punishment

The Optional Protocol to the UN Convention against torture and other cruel, inhuman or degrading treatment or punishment was adopted on 18 December 2002 at the 57th session of the General Assembly of the United Nations Organisation. The Optional Protocol was signed by the Republic of Moldova at 16 September 2005 and ratified on 30 March 2006. It entered in force on 24 July 2006.

According to article 1 of the Optional Protocol its objective is to establish a system of regular visits undertaken by independent international and national bodies to the site of places where persons are deprived of their freedom, in order to prevent torture and other inhuman or degrading treatment or punishment.

Pursuant to the Optional Protocol deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority[19]. The definition given by the Optional Protocol to the deprivation of liberty makes it clear that in the case of the Republic of Moldova penitentiary, detention and preventive arrest institutions as well as medico-social institutions for persons with mental disabilities equally fall under the ambit of the former. At the same time, the spectrum of institutions which fall under the coverage of the national mechanism is not only large but it also has individual institutional complexity and peculiarity.

At the same time, at international level the OPCAT created a body of prevention within the UN – the Subcommittee against Torture, whilst at the national level the former requires the creation of domestic independent mechanisms of prevention.

The practice of implementation of OPCAT provisions does not offer a strictly determined formula for national prevention mechanisms, although the majority of European

[19] Article 4 of the Optional Protocol to the UN Convention against torture and other cruel, inhuman or degrading treatment or punishment was adopted on 18 December 2002 at the 57th session of the General Assembly of the United Nations Organisation, http://www2.ohchr.org/english/law/cat-one.htm

states which signed and ratified the OPCAT have opted for national institutions involved in the protection of human rights, because these have at their core the Principles on the status of the National Institutions responsible for human rights protection, known also as the Paris Principles, which envisage the existence of a large mandate, functional independence and pluralism. Therefore, the states parties have the freedom to select the type of body which suits best in each individual context of the country.

It is clear that the activity of regular review of the treatment towards persons confined to these institutions, as well as the formulation of recommendations to competent authorities to improve the respective treatment and detention conditions for persons deprived of their liberty presupposes the existence of an independent authority from the functional point of view, with appropriate resources ensured for a good management and functioning, with a personnel formed of experts with necessary knowledge and skills.

As a compliant measure to the requirements of article 3, 17 of the Optional Protocol to the UN Convention against torture and other cruel, inhuman or degrading treatment or punishment[20], the Parliament of the Republic of Moldova adopted the Law no. 200 from 26.07.2007 on the amendment and completion of the Law of the Republic of Moldova on ombudsmen no. 1349 from 17 October 1997[21] and attributed the mandate of the National Torture Prevention Mechanism to the ombudsmen. The European Torture Prevention Committee mentioned the progress registered in this area.[22]

For the Republic of Moldova the empowerment of the ombudsman with the respective mandate represented an admissible alternative, taking into account the fact that the ombudsman corresponds in full to the criteria prescribed in the Optional Protocol for the national prevention mechanism:

- *Functional independence (ombudsmen are appointed by the Parliament for a mandate of 5 years, hold immunity, is separate from the executive and judicial braches of power).*

[20] Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism). Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.

[21] Law on the amendment and completion of the Law no. 1349 from 17 October 1997 on ombudsmen no. 200 from 26.07.2007, Official Monitor no. 136-140/581 from 31.08.2007

[22] Paragraph 42 from the Report of the European Committee for the prevention of torture 27-31 July 2009 http://www.cpt.coe.int/documents/mda/2009-37-inf-eng.pdf

- *Needed professional skills and knowledge to fulfil the mandate, as well as large competences to inspect places where people could be held in detention.*

Also, understanding the need to involve the civil society in the national processes of eradication of torture the Centre for Human Rights was supplemented with a consultative council, which has the task to offer consultancy and assistance to the ombudsmen in the fulfilment of their mandates as part of the national torture prevention mechanism, holding directly linked competences to monitor the torture and other cruel, inhuman or degrading treatment of punishment phenomenon.

At the same time, Republic of Moldova confirmed its target towards transparency and pluralism in the process of torture monitoring when it offered unconditional access to civil society in detention places, which in their majority are special regime institutions, as well as the latter's empowerment with some of the ombudsmen's functions, showing at the same time the intention to establish an efficient cooperation between the civil society and the authorities.

The activity of the Consultative Council is prescribed by the Regulations on the organisation and functioning of the Consultative Council approved by means of the Order of the Director of the Centre for Human Rights from 31.01.2008, after positive endorsement from the Parliament's Standing Committee for Human Rights.[23]

The management of the National Preventive Mechanism

The ombudsmen and the members of the Consultative Council manage their activity by means of weekly meetings at the premises of the Centre for Human Rights.

The summoning of the members of the Consultative Council is disctated by the need to have a dinamic character to the activity of regular examination of the treatment applied to persons held in penitentiary, detention and preventive arrest institutions, as well as in medico-social institutions for persons with mental disabilities.

During the sessinos the ombudsman and the members of the Consultative Council decide on the periodicity of the monitoring visits, involvement of specialists and experts during the visits, the reports drafted after the visits, development of recommendations to improve the behaviour towards persons deprived of their libery, the detention conditions and torture prevention, examination of the received responses from the appraised authorities or persons with decision making powers, the revocation of the empowerments of the members of the

[23] Regulations on the organisation and functioning of the Consultative Council approved by means of the Order of the Director of the Centre for Human Rights from 31.01.2008, after positive endorsement from the Parliament's Standing Committee for Human Rights CDO-4 no.11 from 25 January 2008

Consultative Council, as well as on other issues pertinent to the good functioning of the National Torture Preventive Mechanism.[24]

In accordance with the competences of the members of the Consultative Council, presently the ombudsman who is responsible for the activity of the National Torture Preventive Mechanism and the members of the Consultative Council are divided into four mobile groups. Each group has the task to undertake preventive or monitoring visits to certain institutions. Besides these people, the personnel of the Centre for Human Rights and the representatives of the Centre in regions (Balti, Cahul, Comrat) are involved in the course of the mointoring visits.

After each visit, within a 72 hour period, the members of the Consultative Council and the employees from the Centre for Human Rights have the task to develop a report where they have to present their findings and recommendations which they consider necessary to improve the situation of the persons deprived of their liberty, with a subsequent reaction from the ombudsmen to the authorities. The employees of the ombudsman's office have developed methodologies and templates to unify the practice of monitoring and development of reports and increase the efficiency of the visits, such as:

- *Guidelines on the methodology of monitoring in preventive detention isolators and detention facilities within the police commissariats, referring to:*
  - *treatment of the detained persons (criminal),*
  - *treatment of the persons on whose name the arrest warrant was issued.*
- *Guidelines on the methodology of monitoring in preventive detention isolators and detention facilities within the police commissariats, referring to:*
  - *treatment of persons detained on the basis of the Code of Administrative Misdemeanours,*
  - *treatment of the persons on whose name a misdemeanours arrest was issued.*
- *Guidelines on the particularities of monitoring of cases of detention and/or arrest of minors.*

The activity within the Consultative Council is based on volunteer basis, being supported by individual engagement and dedication to the cause of prevention and fight against torture and is not inspired from financial interest.

The mandate of the members of the Consultative Council

[24] Paragraph 22 from the din Regulations on the organisation and functioning of the Consultative Council approved by means of the Order of the Director of the Centre for Human Rights from 31.01.2008, after positive endorsement from the Parliament's Standing Committee for Human Rights CDO-4 no.11 from 25 January 2008.

Pursuant to paragraph 8 of the Regulations on the management and functioning of the Consultative Council, the mandate of the members of the Consultative Council is 3 years.

The candidate for the position of member of Consultative Council must hold a high moral probity, as well as to fulfil a series of requirements which would not allow harm the reputation of the Consultative Council member.

Pursuant to the independent fulfilment of the mandate of torture prevention, the members of the Consultative Council have the right to[25]:

- *Have unlimited access to institutions, organisations and enterprises, irrespective of the type of property, nongovernmental organisation, police commissariats and detention facilities within the former, in penitentiary institutions, preliminary detention isolators, military units, centres of placement of immigrants or asylum seekers, institutions which delivery social, medical or psychiatric assistance, in special schools for minors with behavioural deviations and other similar institutions;*
- *Request and receive information, documents and materials necessary to fulfil their mandate from the central and local public administration authorities, persons with decision making powers at all levels of the hierarchy;*
- *Have unlimited access to any information pertinent to the treatment and detention conditions for persons deprived of their liberty;*
- *Receive explanations from persons with decision making powers at all levels of the hierarchy on the issues which must be tackled during the monitoring process;*
- *Have unlimited meetings and personal conversations, without witnesses, and if necessary, accompanied by a translator, with the persons placed in the mentioned institutions, as well as with any other person who, from his point of view, may offer the necessary information;*
- *Involve, during preventive visits to the detention sites where people are deprived of their liberty, independent specialists and experts in various fields, including lawyers, doctors, psychologists, representatives of nongovernmental organisations.*

The composition of the Consultative Council must mandatorily include representatives of the civil society.

Financial coverage of the activity of the National Torture Prevention Mechanism

[25] Art.23², 24 letters b-d, f, g) from the Law on ombudsmen no.1349 from 17.10.1997, Official Monitor no.82-83/671 from 11.12.1997

The State Parties shall guarantee functional independence of the national preventive mechanisms, as well as the independence of their personnel. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.[26]

As a guiding source the Optional Protocol requires the State Parties to examine the Principles on the status and functioning of the national human rights protection institutions, known as the "Paris Principles".[27]

The financial autonomy is a fundamental criterion, without which the national preventive mechanism may not show independence in the decision making process. The national preventive mechanism must be financially independent to be able to fulfil its main functions. The Paris Principles underline the need for an adequate financial coverage which would allow control over its personnel and premises and be independent of the Government and not be exposed to a financial control.[28]

Regretfully, the implementation of the National Preventive Mechanism in the Republic of Moldova was not supported by a additional increase of financial resources and this hampers its activity.

This issue was also tackled in the Report of the European Committee for the Prevention of Torture following a visit in the Republic of Moldova which took place between 27 and 31 July 2009[29], in the Recommendations of the ONU Human Rights Committee adopted as a result of the hearings of the second periodic report presented by the Republic of Moldova during 13-14 October 2009.[30]

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[26] Article 4 of the Optional Protocol to the UN Convention against torture and other cruel, inhuman or degrading treatment or punishment was adopted on 18 December 2002 at the 57th session of the General Assembly of the United Nations Organisation, http://www2.ohchr.org/english/law/cat-one.htm

[27] The principles on the status and functioning of the national human rights protection institutions adopted in March 1992, part of the UN General Assembly Resolution 48/134 from 20 December 1993, http://www.un.org/russian/documen/convents/paris.htm

[28] Principle 2 from the principles on the status and functioning of the national human rights protection institutions adopted in March 1992, part of the UN General Assembly Resolution 48/134 from 20 December 1993, http://www.un.org/russian/documen/convents/paris.htm

[29] The Committee recommends actions to be taken without delay to ensure that the National Torture Prevention Mechanism is exercising its competences in full and without restrictions, taking into account the recommendations, observations and orientations which have been developed by the UN Subcommittee on prevention to consolidate the capacities and the mandate of the National Prevention Mechanism.

[30] Paragraph 10 a): the State Party must fortify the NTPM and support its independence, especially by means of increasing the financial resources allocated for it.

Besides these, the burden to cover the necessary costs to ensure preventive visits, including the pay for experts involved in the preventive and/or monitoring visits was put on the Centre for Human Rights.[31]

An efficient implementation of the NTPM requires swiftness and mobility. However the regional representatives of the institution do not have access to transport means, whilst those of the Centre for Human Rights are exposed to a excessive wearing out.

The involvement of the nongovernmental organisations in the activity of the National Torture Preventive Mechanism

The cooperation with the civil society represents an important component of the activity of the Centre for Human Rights, transposed into a regular and dynamic dialogue directed to fulfil the commitments both related to torture prevention and other activity components.

As mentioned above, the Centre for Human Rights created a consultative council, the composition of which is formed of representatives of the civil society.

Moreover, from the perspective of internal organisation of the National Torture Prevention Mechanism in the Republic of Moldova there is a transparent selection of the members of the Consultative Council and was supported from the outset by the nongovernmental organisations involved in human rights issues. The candidates selection committee itself is formed of a group of 5 people who act independently, out of whom two are ombudsmen, two are representatives of the civil society and one representative of the academia, who enjoys recognised authority. The composition of the Committee is endorsed by order of the Director of the Centre for Human Rights.[32]

Additionally, while adopting the first composition of the Consultative Council emphasis was made on nongovernmental organisations, the stake being made first of all on their experience the monitoring of detention places, as well as the relationships of trust which they have most probably already established with the persons deprived of their liberty. Also, the representatives of the civil society are seen as an important branch of the national torture prevention mechanisms due to their membership in the Consultative Council with certain competences of an ombudsman.

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[31] Article 39 from the Parliament Decision of approval of the Regulations of the Centre for Human Rights, the structure, the nominal list of functions and its financing no.57 from 20.03.2009, Official Monitor no.81/276 from 25.04.2008; Article 35 from the Regulations on the organisation and functioning of the Consultative Council.

[32] Paragraph 10 of the Regulations on the organisation and functioning of the Consultative Council, approved by means of Order of the Director of the Centre for Human Rights from 31.01.2008, after positive endorsement from the Parliament's Standing Committee for Human Rights CDO-4 no.11 from 25 January 2008.

The activity of the Consultative Council is based on the voluntary participation and this makes it unattractive from the financial point of view. This situation, combined with the current activities of the nongovernmental organisations, which they manage, has lead to the fact that some of the members of the Consultative Council have not attended the working meetings and have not organised part of the planned visits, which in turn lead to a relatively reduced participation of the members of the Consultative Council at the preventive and/or monitoring visits. Additionally, an indicator which determines the quality of the torture prevention and eradication activity is the observance of the terms of report delivery and their quality.

From the date of approval of the first composition of the Consultative Council, during 2008 and 2009 the 5 members of the CC have filed in applications where they requested discontinuation of their mandate, motivating their choice with the presence of other activities which do not allow sufficient time to deliver on the undertaken commitments.

On 16 October 2009 the Centre for Human Rights announced the vacancy to supplement the positions of the Consultative Council, the deadline for application being set for 1 November 2009. Because only 2 applications have been received the deadline was prolonged until 13 November 2009. At the end of the process 7 applications have been received.

It is important to mentioned that starting with November 2008 a new practice was instated according to which the members of the Consultative Council received full discretion in selection the detention place they wish to visit and that they can arrange a visit without the participation of the ombudsman. Prior to Anatolie Munteanu's nomination approval the preventive visits were possible only with the participation of his predecessor.

Preventive visits undertaken pursuant to the requirements of the Optional Protocol to the UN Convention against torture and other inhuman or degrading treatment or punishment

During 2009 the National Preventive Mechanism continued its activity by means of regular monitoring of the treatment of the persons deprived of their liberty pursuant to the indication of a state body or based on its decision, or with its tacit agreement or consent, aiming at strengthening the protection of these persons against torture or inhuman or degrading treatment or punishment.

During the reference period 125 preventive and/or monitoring visits have been organised, out of which:

- *71 visits have been organised by the ombudsmen;*
- *22 visits have been organised by the ombudsmen and the members of the Consultative Council;*

- *32 visits have been organised by the members of the Consultative Council.*

With regard to the institutions monitored:

- *41 visits have been organised in the institutions subordinated to the Ministry of Justice;*
- *73 visits have been organised in the institutions subordinated to the Ministry of Interior;*
- *6 visits have been organised in the institutions subordinated to the Ministry of Health;*
- *3 visits have been organised in the institutions subordinated to the Ministry of Social Protection, Family and Child;*
- *2 visits have been organised in other institutions.*

At the same time 50 preventive visits have been organised during the events of 7 April 2009.

As a result of the undertaken visits the ombudsman intervened with 26 reaction acts, out of which 17 requests to initiate disciplinary or criminal procedures against the person with decision making powers who committed breaches which lead to considerable hampering of human rights and freedoms and 11 appraisals with recommendations on the measures which need to be taken to reinstate persons in their rights. As a result of these actions 22 criminal proceedings were initiated, 6 persons have been exposed to disciplinary measures, 8 persons out of which 2 directors of penitentiaries have been warned of the unacceptable deficiencies in the activity of the respective institutions. All prescribed measures, except those provided for in 3 appraisals, have been implemented by the designated authorities where the activities did not require major financial investments.

Compared to 2009, the number of visits undertaken in 2009 has considerable increased, as follows:

N/o	***Category of Institution***	***2008***	***2009***
1.	Institutions subordinated to the Ministry of Interior	27	73
2.	Institutions subordinated to the Ministry of Justice	13	41
3.	Institutions subordinated to the Ministry of Health	2	6
4.	Institutions subordinated to the Ministry of Labour, Social Protection and Family	1	3
5.	Other	-	2

With reference to the reaction acts which have been used for intervention within the National Preventive Mechanism, the situation can be described as follows:

N/o	***Type of act***	***2008***	***2009***
1.	Appraisals (article 27 of the Law of the Republic of Moldova on ombudsmen)	2	11
2.	Requests (art.28 paragraph (1) litter b) of the Law of the Republic of Moldova on ombudsmen)	2	17

The visits undertaken both in 2008 and 2009 within the National Preventive Mechanism have allowed the ombudsmen and the members of the Consultative Council to accumulate information and details related to the detention conditions and observance of the procedural rights of the persons in police custody. Subsequently, this information has made it possible to underline the main features which describe the state of affairs.

With reference to the situation in the transnestrian region, during 2009 the number of complaints received from citizens resident in that area has increased, as well as the appraisals received from the nongovernmental organisation Promo-LEX, involved in the promotion and protection of human rights, especial in the mentioned region, where the breach of the constitutional right to life and physical and mental integrity and the constitutional right to the liberty and person's security is invoked.

Particular emphasis is made on the large scale unjustified detentions, torture and other ill-treatment immediately after arrest applied by the employees of the so-called national security ministry, employees of the militia and the penitentiary system, with the aim to obtain confessions of imputed crimes from the arrested persons.

Other aspects invoked in petitions which may be qualified as inhuman and degrading treatment as provided by the case-law of the European Court of Human Rights relate to the inadequate detention conditions in penitentiaries and preliminary detention isolators, lack of adequate healthcare, insufficient quantity and inadequate quality of food.

The UN Special Rapporteur on torture issues showed concern with regard to the penitentiary institutions in respect to the level of violence between detainees. With regard to the treatment during the militia custody, the Special Rapporteur has received constant and credible complaints of frequent beatings and other forms of ill-treatment and torture, especially during

interrogations. The methods of torture include sever beating with fists and rubber truncheons, including on soles of feet and kidneys, electroshocks, needles under nails.[33]

In this context, the ombudsmen have intervened as part of their duties to the representative for Human Rights from the transnestrian regions, Mr. Vasile Kaliko, empowered to visit the detention facilities in the region.

Following a petition received from the nongovernmental organisation "Promo-LEX" the ombudsman intervened in the case of Mr. Matcenco Iurie, detained in the penitentiary nr. 3, in Tiraspol city, the relatives of whom were making reference to his illegal arrest, inadequate conditions of detention existent in the mentioned penitentiary, application of physical and moral pressing on him from the employees of the transnestrian bodies with the purpose to obtain declarations favourable for them. However, the obtained results, as well as the impediments related to the prohibition to visit detention facilities in the region, do not allow the formation of a complete and objective view on the treatment applied to the detainees.

Additionally, within a meeting with the representative for Human Rights in the transnestrian region the situation of the treatment applied by the transnestrian authorities on persons in detention was discussed, and some cooperation relations have been established, which however are not able to fully resolve the existent problems in the regions, a more active involvement of the state bodies being required here.

Also, pursuant to the Law on formulation of declarations to the UN Convention against torture and other cruel, inhuman or degrading treatment or punishment no. 178 from 26.07.2007, the ombudsmen, acting with reference to article 21 and 22 of the Convention and contributing to the legal awareness of the population, have encouraged the petitioners who claim to have become victims of a breach to issue individual applications to the UN Committee against torture.

The state of affairs of people detained in the institutions subordinated to the Ministry of Interior

Judging by its importance, one of the most striking deficiencies in the activity of the MI bodies in relation to the functionality of the National Preventive Mechanism is the awareness and/or defective application by some of the employees of the MI structures of their functional competences and the Law on ombudsmen, materialised by limitation of access of detention places in police commissariats or in other divisions.

[33] Paragraph 28, Report of the Special Rapporteur for torture and other cruel, inhuman or degrading treatment of punishment, Manfred Nowak, from 12 February 2009, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/107/71/PDF/ G0910771.pdf

During the preventive visit in the detention facility of the Chisinau Railway Station Police Transport Commissariat (12.01.2008), the access of the ombudsman was restricted. During the visit from 29.05.2008 the ombudsman and the members of the Consultative Council have been denied access in the "Scut" patrol and sentinel Regiment of the General Chisinau Police Commissariat. Additionally, the police officers of the guard unit, ***while jeopardising the mandate of the National Torture Preventive Mechanism,*** have suggested the ombudsman and the members of the Consultative Council to appraise the General Police Commissariat of the Chisinau municipality to obtain a written permission from the Commissar.[34]

During year 2009 other similar cases have been registered with the Operative Services Department of the Ministry of Interior – the visit from 28.05.09 of the employees of the Centre for Human Rights was possible only after 40 minutes; the visit of the ombudsman and the members of the Consultative Council to the Police Commissariat of the Riscani district of the Chisinau municipality has been restricted for a period of about 15 minutes; *no access was permitted at all:* on 09.04.09 in the Police Commissariats of the Riscani and Buiucani districts, on 11.04.09 – the General Police Commissariat of the Chisinau mun

icipality and the Police Commissariat of the Centre district of the Chisinau municipality. These event took place irrespective of the fact that during 8-10 April 2009 the ombudsman sent letters to all Police Commissariats of the Chisinau municipality, the General Police Commissariat of the Chisinau municipality as well as to the Ministry of Interior in which unconditional access of the ombudsmen and members of the Consultative Council was asked to visit the preventive detention isolators in subordination with the aim to ensure the good functioning of the National Torture Preventive Mechanism. Additionally, national and international documents which regulate the activity of the National Torture Preventive Mechanism have been sent for consultation.

The restrictions and delayed access to the Police Commissariats have been included in the repeated appraisals of the Ministry of Interior, but the efforts have been limited to issuing an internal circular to the management of the subdivisions of the MI, along with a copy of the Law of the Republic of Moldova on ombudsmen no. 1349 from 17.10.1997 and warned persons only. More recently, an internal investigation was initiated, the results of which have not been made public until present. Additionally, it is acknowledged that such cases have been registered after the measure taken the Ministry of Interior, which demonstrates their inefficiency. This fact demonstrates that the implementation of the National Torture Preventive Mechanism in the Republic of Moldova confronts certain deficiencies dictated the by the slow

[34] Report on the activity of the National Torture Prevention Mechanism in 2008, pag.10, http://www.ombudsman.md/file/Raport_mecanism.pdf

conformity of the authorities to the requirements of the Optional Protocol to the UN Convention against torture and other inhuman or degrading treatment or punishment.

The activity of the preliminary detention isolators within the Police Commissariats is regulated by the Order of the Minister of Interior on the management and activity of the guarding, escorting and detention of persons arrested and detained in the preliminary detention isolators, no. 5 from 5 January 2004.

Pursuant to paragraph 1.1 of annex no.2, the mentioned Order regulates the detention conditions of the detained and arrested persons, suspected and charged with committing crimes.

Actually, this Order is outdated and needs essential amendments. Thus, as mentioned, the Order was adopted to implement the provisions of the Law of the Republic of Moldova on preventive arrest no. 1226 from 27.06.1997 (repealed on 01.07.2005)[35] and the Criminal Procedure Code to ensure the observance of the rights of detained and arrested in preventive detention isolators.

Besides these, nor the Execution Code, nor the Law on the penitentiary system no.1036 from 17.12.1996, the Law on police no. 416 from 18.12.1990, the Law on the Centre for Fight against Economic Crimes and Corruption, nor the Statute of execution of the sanctions by the convicted adopted by means of Governmental Decision no. 583 from 26.05.2006 do not contain provisions on such institutions for the detention of persons.

Pursuant to the provisions of the Execution Code the persons, on whom the preventive arrest[36] or the sanction of misdemeanours arrest[37] was applied, must be detained in penitentiaries. With reference to the mentioned norms, there are chances for future convictions for the detention conditions during the execution of a misdemeanours arrest, because in reality it is being executed in provisional detention isolators within the Police Commissariats.

Under these conditions the issue of constitutionality of the respective detention facilities may be raised, which in principle exist in all regional police commissariats the activity of some of which has been suspended during the last 2 years.

Also, cases have been registered when the preventive detention isolator of the General Police Commissariat of the Chisinau municipality detained persons with a convicted status, transferred there from a penitentiary institution for criminal investigation activities. The respective transfers have been authorised on the basis of the decisions of investigating judges,

[35] Article 334 letter c) Execution Code, Official Monitor no.34-35/112 from 03.03.2005
[36] Persons on whom preventive arrest was applied are held in penitentiaries - art.323 paragraph (1) Execution Code, Official Monitor no.34-35/112 din 03.03.2005
[37] The served sanction of administrative arrest is ensured by penitentiaries – article 333 paragraph (3) Execution Code, Official Monitor no. 34-35/112 din 03.03.2005

who wrongfully have made reference to the provisions of article 217, paragraph 2 of the Execution Code[38].

Following the intervention of the ombudsman with reaction actions to the Supreme Council of Magistrates, where it underlined the defective interpretation and application of the legislation in cases of transfer of persons with a status of convicted from penitentiaries to provisional detention isolators under the subordination of the Ministry of Interior, the respective practice was stopped.

As acknowledged in most of the cases the preventive detention isolators facilities are situated in the basements of the police commissariats' premises and these would never be able to ensure detention conditions adapted to the persons placed under provisional detention.

The situation is even worse in the case of detention places within the Police Commissariats of the Chisinau municipality, the regional Police Commissariats where the activity of the provisional detention isolators was suspended, as well as in the case of police posts from the municipalities' and cities' districts and rural settlements.

In this respect, a first step in ensuring the observance of the right to physical and mental integrity resides in the need to transfer the preventive detention isolators from the jurisdiction of the Ministry of Interior to the jurisdiction of the Ministry of Justice. This is the only way to exclude the detention of persons in the institutions subordinated to the Ministry of Interior where it has been acknowledged that persons may not be exposed to an objective medical examination, the conditions of detention represent an imminent risk to be appreciated as breaching the international requirements in the field, persons are detained with the breach of fundamental guarantees, whilst the majority of them claimed to have been exposed to ill-treatment in the first hours of custody.

Recognising that the problem exists and is pressing, the authorities have decided to include it in the implementation of the National Human Rights Action Plan for years 2004-2008.[39] However this action was not accomplished one of the main reasons being the fact that the buildings which must be transferred shall need additional expenditures for which there are no financial means planed in the state budget. Also, arguments linked to the impossibility to physically separate the provisional detention isolators from the commissariats have been

[38] If it is necessary to undertake procedural acts on an offence committed by a convict who is serving his sentence or by another person, the convict, based on the conclusion of the investigating judge or the court of law, may be left in the criminal investigation isolator or transferred to it for a period of time which cannot be longer than the period of arrest provided for by article 186 of the Criminal Procedure Code.

[39] Chapter 7, paragraph 2 of the Parliament Decision on the approval of the National Human Rights Action Plan for years 2004-2008 no. 415 from 24.10.2003, Official Monitor no.235-238/950 from 28.11.2003

invoked. Linked with all these, the authorities have opted in favour of the construction of 8 arrest buildings, an objective which can be found in the Concept of reformation of the penitentiary system and the Action Plan for years 2004-2010 to implement the Concept of reformation of the penitentiary system, approved by means of Government Decision no. 1624 from 31.12.2003.

At the same time, the need to resolve the issue of transfer of preventive detention isolators from the jurisdiction of the Ministry of Interior to the jurisdiction of the Ministry of Justice was tackled by the Reports of the European Torture Prevention Committee as a result of the visits undertaken in the Republic of Moldova between 14 and 24 September 2007, 23-31 July 2009; the Reports of the Centre for Human Rights on the observance of human rights for years 2003, 2004, 2005, 2008, as well as the Report on the activity of the National Torture Prevention Mechanism for year 2008. However, these recommendations have not been followed by adequate reactions from the authorities.

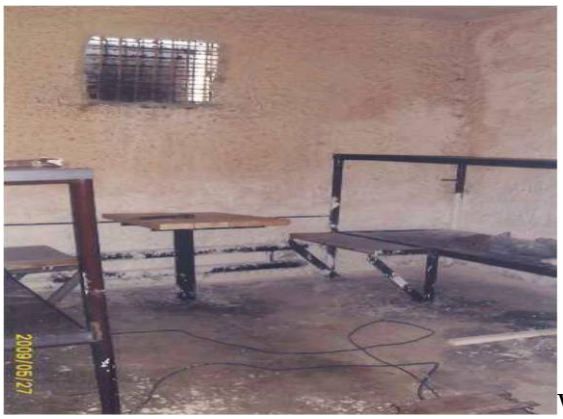
Physical detention conditions

Compared to 2008 – the first year when the National Preventive Mechanism was functional in the Republic of Moldova – in 2009 it was acknowledged that the conditions of detention in the provisional detention isolators within the Police Commissariats did not substantially improve, these being in their major part incompatible with the international standards in the field.

The Ministry of Interior holds 38 provisional detention isolators, the activity of 8 of them being suspended. The capacity of the ones in use is of 1065 persons, with a total of 279 cells.

Because of the incompatibility of the technical norms and standard of recognised detention, by means of the MI Order no. 291 from 13.08.2007 the activity of the provisional detention isolators within the Ialoveni, Donduseni, Straseni Police Commissariats was suspended; by means of MI Order no. 95 from 10.03.2008 the activity of the provisional detention isolators with the Criuleni, Stefan-Voda, Glodeni, Ceadir-Lunga Police Commissariats was suspended; and by means of MI Order no. 314 from 24.08.2009 the activity of the provisional detention isolators of Calarasi Police Commissariats was suspended.

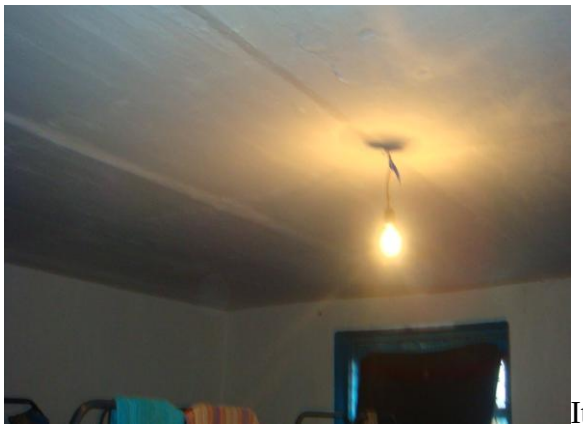
 Thus, in the majority of mentioned provisional detention isolators the problem of natural and artificial light persists. Because some of the provisional detention isolators are situated in the basements of the Police Commissariats, their cells are not equipped with windows. Here the provisional detention isolator of the Operative Services Directorate of the Ministry of Interior, the Balti, Soroca, Drochia Police Commissariats are to be mentioned. The number of provisional detention isolators situated in the basements of the Police Commissariats is equal to 30. In others, such as the provisional detention isolator within the General Police Commissariat of the Chisinau municipality, the Leova and Edinet district Police Commissariat although there are windows these are small and covered with metal bars doubled by a dense metal grid, which considerably limit the access of the natural light into the cells.

 With regard to the artificial light, it has been established that it was also unsatisfactory.

Having no national regulation in this respect, it is considered that these deficiencies are not only incompatible with the international regulations in the field,[40] but eventually may generate extremely negative consequences for the image of the Republic of Moldova on the international arena. Pursuant to those provisions, all facilities where detainees are required to

[40] The norms of the European Committee for the Prevention of Torture, http://www.cpt.coe.int/en/documents/eng-standards.pdf; Recommendation no. R(87)3 adopted by the Committee of Ministers of the Council of Europe on European Rules for Penitentiaries, http://www.coe.int/t/e/legal_affairs/legal_cooperation/prisons_and_alternatives/legal_instruments/Rec.R(87)3.asp; Resolution no.663 C of the UN Economic and Social Council on the Set of Minimal Rules on Treatment of Detainees, http://www2.ohchr.org/english/law/treatmentprisoners.htm;

work or live must have sufficiently large windows to allow detainees to read or to write without degrading their eyesight and must benefit from natural light in normal conditions. These requirements also relate to the artificial light. At the same time, the windows must be constructed to allow fresh air to enter the cells.



It must be mentioned that the mentioned documents recommend the states parties to use as guidelines the principles which derive from its text when adopting domestic legislation and implementing it in practice, those being also the minimal requirements accepted by the issuing authorities.

With reference to the existence of the ventilation systems, some Police Commissariats lack them (Edineț PC), in others, even if present, produce powerful noise, whilst in the case of provisional detention isolators where heating is absent (Sorocs PC), those cannot be used during the cold time of the year.

Also because of the placement of provisional detention isolators in the basements of Police Commissariats, some of them lack toilets and water basins in cells (the Operative Services Department of the MI, the Police Commissariats in Balti, Cahul, Vulcanaesti), making it impossible to connect to the water supply and sanitation. The General Police Commissariat of the Chisinau municipality was examined and it has been determined that the sanitation in the isolator's cells does not correspond to the sanitary and hygiene standards. Here the cells are equipped with a Asian type toilet and a tap, which is also used as water disposal and source of

drinkable water, representing a genuine source of infection. The wall separating the toilet fro the rest of the cell was not capable of ensuring the intimacy of the detainees.

At the same time, the enounced standards require that sanitary installations and access infrastructure be conceived to ensure each detainee the possibility to access them when necessary in conditions of cleanness and decency. The detention buildings, especially those reserved for detainees during the night must correspond to the hygiene requirements, taking into account the climate, especially with respect to the amount of air, minimal surface, illumination, heating and ventilation.

With reference to personal hygiene, during the visits it has been determined that the persons detained in provisional detention isolators in the subordination of the Ministry of Interior have the possibility to take a shower at least one per week. However, the detainees are not ensured by the administration of the detention facility with elementary objects for health and hygiene.

Similarly, the detainees enjoy the right to wear their own clothing. It has been determined that the majority of the detainees are imposed to use their own bed clothing given by their relatives, because the administration of the detention facilities cannot offer such objects.

 With regard to the sleeping places, during the visits organised to the Operative Services Directorate of the MI and the General Police Commissariat of the Chisinau municipality, these represented platforms covered with wood. A similar situation was acknowledged at the Balti, Anenii Noi, Drochia, Hincesti Police Commissariats.

With respect to the attested situation on the inadequate conditions of detention in the preventive detention isolator of the General Police Commissariat of the Chisinau municipality, the ombudsman has presented a review with recommendations to the administration of the Ministry of Interior to remedy the treatment of persons deprived of their liberty. As a result of the intervention of the ombudsman the metal protection tables and the organic glass were removed from the windows of the cells of the General Police Commissariat provisional detention isolator and this improved the natural light and ventilation; separating walls have been built to isolate the toilet from the rest of the cell's space; separate beds have been installed for each detained person, taking into account the necessary area for each detainee; washbasins and separate sanitation units have been installed; the beds have been supplemented with blankets, mattresses and pillows for each detainee; the walls of the cells have been refreshed with chalk solution; video systems have been installed on the perimeter and inside the isolator; the vacancy of medic has been filled, who reviewed the existent drugs, excluding those with an expired validity term, which have been identified during the visit of 27 May 2009.

Additionally, after the intervention of the ombudsman, the leadership of the Police Commissariat of the Edinet district has stopped the use of one of those three cells of the isolator until necessary resources are identified to undertake repair works.

It is to be mentioned that in the case of detention places within the Chisinau municipality Police Commissariats the cells are also not equipped with windows nor with a ventilation system.

The issue of the limit of the detention space was the subject of criticism against Republic of Moldova in the Reports of the European Torture Prevention Committee following

the visits which took place between 11 and 21 October 1998, 10-22 June 2001, 20-30 September 2004, 14-24 September 2007. This issue was specifically underlined during the 7 April events and persists until present.

In this respect the inadequate conditions of detention in the units of the Ministry of Interior are still one of the main reasons of conviction of the Republic of Moldova by the European Court of Human Rights. In fact, the state of affairs attested in 2008 and 2009 corresponds, with certain minor adjustments, to the description and appreciation of the European Court of Human Rights in the *Becciev vs. Moldova case* from 4 October 2005. Thus, the applicant has claimed that his detention during 37 days in the provisional detention isolator of the Operative Services Directorate of the MI constituted a breach of his right guaranteed by article 3 of the Convention. In this case the Court acknowledged the breach of article 3 of the Convention based on the justification that the detainees in the provisional detention isolator have not been ensured with sufficient food, the applicant did not benefit from walks in open air, the window of the cells where he was held was covered with metal plates which obstructed natural light, in the cell the artificial light was always on, whilst the detainees were obliged to sleep on wooden platforms without blankets, mattresses and pillows.

In two other cases, ***Popovici vs. Moldova***[41] and ***Stepuleac vs. Moldova***[42] Republic of Moldova was convicted for the breach of article 3 of the Convention for the same reasons.

At the same time, while issuing these decisions the Court made reference to the findings of the European Torture Prevention Committee following the visits in the Republic of Moldova in the periods of 10-22 June 2001[43] and 20-30 September 2004[44], considering that these offer at least a credible basis for evaluation of conditions in which the detainees are held.

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[41] Case Popovici vs. Moldova, applications no.289/04 and 41194/04, ECtHR Decision from 27 November 2007

[42] Case Stepuleac vs. Moldova, application no. 8207/06, ECtHR Decision from 6 November 2007

[43] Paragraphs 53-58: In its report on the visit from 1998 (paragraph 56), CPT was obliged to conclude that the material conditions of detention in the visited detention centres were in many aspects inhuman and degrading treatment and constituted also a significant risk for the health of the detained persons. Although it recognises that it is not possible to transform over night the existent situation in these institutions, the CPT recommended a number of immediate drastic measures which could guarantee basic detention conditions and respect the fundamental requirements of human life and dignity. Unfortunately, during the visit from 2001 the delegation did not find any trace of such improvement measures, on the contrary, it attested the worsening of situation. For instance, the renovation and reconstruction of cells in the PDI of the Department of fight of organised crime and corruption in Chisinau (reopened in 2000) which should have reflected the recommendations of the CPT in 1998, have proven to have a contrary effect. All conceptual and organisational deficiencies underlined by the CPT at the period have been consciously reproduced: cells without access to natural light, low level artificial light and always on, inadequate ventilation, furniture which was exclusively comprised of platforms without mattresses (although some of the detainees had personal blankets). A similar conclusion may be formulated in respect to the new section of the Balti PDI, built for detainees administratively sanctioned. It can only be regretful that the efforts of renovation of this building, in the current economic situation deserves appreciation, the Moldovan authorities have not paid any attention to the CPT recommendations. Actually, this state of affairs suggests that leaving aside the economic considerations, the material conditions of detention in the police sections remain influenced by a concept related to the liberty privation which has been long out-of-date. In the visited PDI the delegation received numerous complaints on the quality of food. This

In another case[45] Republic of Moldova was convicted for breaching article 3 of the Convention because of the inadequate conditions of detention in the preventive detention isolator of the General Police Commissariat of the Chisinau municipality. The applicant invoked the fact that the cells where he was detained were overcrowded, dark, humid, dirty, and had a high temperature. The natural light was absent and there was a very week electric bulb always on. The ventilation was not functioning properly, producing a consistent noise and was only moving the air from one direction to the other. The detainees were allowed to smoke in the cell, because of which the applicant had constant headaches and could check a respiratory disease. The cell had a toilet but without tap water, being separated from the rest of the cell with a 50 centimetres wall. There was a very unpleasant smell in the cell. The cell was infested with insects and rats and the detainees were allowed to take a shower with cold water only once in twenty days. The cells had an area of about ten or eleven square meters and at all times there were at least eight people.

An alarming situation was attested in the ***Malai vs. Moldova case***[46], the applicant invoking the inadequate conditions of detention in the provisional detention isolator of the Orhei Police Commissariat. Thus, the applicant has first stated that he was placed in a cell with no bed, chair or washbasin, this type of cell being reserved for detention periods no more then 3 hours. Subsequently, he was placed in cell no. 9 of the isolator, which did not have windows. The isolator did not have any ventilation. The electric light was always on, although it was so

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included in essence: a cup of tea without sugar and a piece of bread in the morning, cereals paste for lunch and a hot cup of water for supper. In some places the food was distributed only once per day and constituted of a soup and a piece of bread. With respect to the access to the toilet when needed, the CPT wishes to underline that it considers that the practice according to which the detainees satisfy their physiological needs using pots in front of one or several people, in such a limited space such as the PDI cells, which serve also as space of living, is by itself degrading, not only for the individual in discussion, but also for the ones who are forced to be witnesses to what is happening. Therefore, **the CPT recommends the surveillance personnel be clearly instructed that the detainees who are placed in cells without a toilet must – if they request it – be taken out from the cell without delay during the day to visit the toilet.**

[44] Paragraphs 41-47: From 1998, when CPT visited Republic of Moldova for the first time, it has serious concerns on the conditions of detention in the institutions of the Ministry of Interior. The CPT notes that in 32 out 39 PDIs there have been "cosmetic" repairs made and that in 30 have been created places for daily walks. However, the visit from 2004 did not allow eliminating the concerns of the Committee. Actually, most of the recommendations made have not been implemented. If to make reference to the visited police sections or PDIs, the detention conditions are invariably exposed to the same criticism as in the past. The detention cells do not have access to natural light or have very limited access; artificial light – with small exceptions – was mediocre. Nowhere persons obliged to stay over the night in detention do not receive mattresses or blankets, even those detainees held for longer periods. Whose who have such objects could obtain them only from their relatives... With respect to food… in PDIs the made arrangements were similar to those criticised in 2001 (consult paragraph 57 of the report on that visit): in general, three modest portions of food per day which included tea and a piece of bread in the morning, a dish with cereals for lunch and tea or hot water for supper. Sometimes only the lunch was served. Fortunately, the norms of the receipt of packages have been improved, which allowed the detainees who had relatives to slightly improve these insufficient daily food portions. In conclusion, the detention conditions in the police sections remain problematic; they remain disastrous in PDIs, continuing in many ways to constitute inhuman and degrading treatment for detainees.

[45] Case Străisteanu vs. Moldova, application no .4834/06, ECtHR Decision from 7 April 2009

[46] Case Malai vs. Moldova, application no. 7101/06, ECtHR Decision from 13 November 2008

weak that it was difficult to distinguish the faces of other detainees. The cell had a length of approximately seven meters and a width of three meters and there were seven detainees in it. There was no toilet in the cell, however in a corner, which was not separated from the rest of the cell there was a large bucket. There was no washbasin in the cell and the detainees had to keep the water in plastic bottles which were allowed to be filled form time to time outside the cell. There were no beds, but only a thick lug a bit above the floor on which four people could sleep. The cell was not equipped with bed clothes and the applicant claimed that the he could sleep only one hour per day. Moreover, the cell was infested with insects and as a result the applicant's body was covered with painful bites, some of which have become browses. The applicant sent photos to the Court where he showed the bites on his body. The food was insufficient and of a very poor quality. The detainees were fed only once per day in dirty dishes, the applicant experiencing permanent hunger. His relates were not allowed to bring food, because he did not recognise his guilt. The applicant did not have any contact with his relatives or with the outside world. He did not have paper, pens or envelopes. There was not TV or radio in the cell and because of the lack of natural light in the cell the applicant had lost the sense of time.

With reference to the general principles on the detention condition, the Court has established that the treatment may be considered "inhuman" because inter alia it was premeditated, was applied for many consecutive hours and caused either injuries, either intense physical or psychological suffering. The Court considered the treatment "degrading" because it caused the victims the sense of fear, concern and inferiority capable to humiliate or degrade them. When determining if a certain form of treatment is degrading in the sense of article 3, the Court shall take into account if the aim of this treatment was to humiliate and degrade the person, and if, with regard to the consequences, this treatment has negatively affected his personality in a way incompatible with article 3. Even in the absence of such a purpose the acknowledgment of breach of article 3 cannot be categorically excluded.

Article 3 requires the state to ensure that the person is detained in conditions which are compatible with the respect of his human dignity, that the method of penalty execution does not cause sufferings and intense pain which oversteps the level of sufferings inherent to his detention and, taking into account the exigencies of detention, the person's health and integrity are adequately ensured, among others, by means of delivery of the necessary medical assistance. When the detention conditions are evaluated, the cumulative affects of these conditions as well as the duration of detention must be taken into account.

Torture and ill-treatment

Besides inhuman and degrading treatment, the remarks made during the visits in 2009 have shown that application of torture against persons in police custody continues to exist. After an analysis of the reasons of committing crimes as a criterion, the illegal actions of the police agents can be classified as follows:

- *Committed to obtain favourable declarations, confessions, proof by illegal means;*
- *Committed to show the superiority sentiment over the victims of their illegal actions and ignorance of the general behavioural rules, as well as the possibility to use their positions to "educate";*
- *Committed during an abusive use of the powers without being aware of the legislation in force.*

During the visits organised to the institutions subordinated to the Ministry of Interior the majority of interviewed persons have invoked application of violence during detention in the Police Commissariats. These allegations have referred mostly to the fact the violence was applied by the police agents in the first hours of detention, during questioning and in the absence of a lawyer, and if they were refusing to make favorable statements, the ill-treatment continued during the period of detention in provisional detention isolators, a period which continued from 24 to 48 hours.

In this respect, the ombudsman have repeatedly expressed their concern, where they have categorically condemned the violent and vandalism actions admitted during the protests on 7 April 2009, considering them intolerable for a state where the rule of law prevails, democratic, where human dignity, rights and freedoms, the free development of the human personality, justice and political pluralism represent supreme values and are guaranteed.

These event gave the ombudsmen sufficient reasons to conclude on a defective implementation of the right to free assembly guaranteed by article 11 of the Convention for the protection of human rights and fundamental freedoms and article 40 of the Constitution of the Republic of Moldova, as well as on the existence of serious deficiencies in the observance of the right to life and physical and mental integrity guaranteed by article 3 of the Convention and article 24 of the Constitution of the Republic of Moldova.

Thus, during the preventive visits organised in the Police Commissariats after the events of 7 April, out of 45 persons arrested by the law enforcement agents due to the mass disorders in the centre of the Capital, who at that time were detained at the provisions detention isolator within the General Police Commissariat of the Chisinau municipality, 11 have invoked excessive application of violence from police agents when arrested. Two of them, M.A. and

M.S. have declared that they have been ill-treated in the offices of the 2nd floor of the General Police Commissariat.

It is to be mentioned that by means of the Order of the Centre for Human Rights during the visits the representatives of the Centre in regions were involved and preventive visits have been also organised in the regional Police Commissariats of Cahul, Cantemir, Comrat, Anenii Noi, Leova, Falesti, Edinet, Singerei, Balti, Glodeni, Briceni, Floresti, Ocnita, Riscani, Donduseni, Soroca, Drochia.

Almost all interviewed persons have been arrested in the night between 7 and 8 April and they have declared that they have been ill-treated by masked police agents, beaten with fists, feet and the back of the guns on various parts of their bodies. The ombudsman has also been informed that after persons have been brought to the General Police Commissariat of the Chisinau municipality they have been beaten with rubber batons and imposed to pass through a corridor where there were on both sides policemen who have beaten them with the rubber batons and with their feet.

Although the majority of the arrested enjoyed the services of a defender, some of them did not receive the services of a barrister, because the Code on administrative misdemeanours (version of 1985) does not provide for the obligation to ensure the arrested persons on the basis of a misdemeanour with a barrister, even if for the respective misdemeanour the person was suspected of there was no sanction provided in form of administrative arrest. However, these people encountered difficulties in the enjoyment of their right to use the services of a barrister.

It must be mentioned that the ombudsman has underlined the issue that the majority of the persons in detention within the Police Commissariats of the Chisinau municipality have been detained for non-aggravated hooliganism (article 164^1 CAM of the RM), to which mandatorily resistance during arrest (article 174^5 CAM of the RM) was added or humiliation of the police agent (article 174^6 CAM of the RM). Also, the consequences which may arise out of the provisions of article 249 paragraph 3 CAM of the RM (version of 1985) have been underlined, in accordance with which the above-mentioned misdemeanours once committed allowed the detention of the person until the case is examined by a court of law and that the police agents abused this provision each time they had this possibility.[47]

Persons who have been arrested in relation to the events in April 2009 have been incriminated the same articles.

[47] Report on the activity of the National Torture Prevention Mechanism for 2008, page 14

Although with delay, on 31 May 2009 the new Misdemeanours Code entered in force and brought clarity on the main reasons on which a person can be arrested, however the problem is not yet definitively solved.

The results of the visits have shown that in the case of detained/arrested persons of criminal grounds, the state guaranteed legal assistance offered by lawyers where not delivered accordingly, the assistance being of a purely formal nature, the barristers have shown lack of initiative while protecting the rights and legitimate interests of the suspects.

Therefore it becomes impetuous that the Bar Association monitor more efficiently the process of delivery of the state guaranteed legal assistance by means of a functional evaluation and monitoring mechanism of the quality of services offered by barristers, capable to prevent any mistake or breach of law from the judicial bodies.

A legal framework defectively applied by the police agents relates to the right of the detainees to inform their close relatives or any other person about their place of detention, which is in contradiction with the provisions of article 173 of the Criminal Procedure Code and article 247 of the Code on Administrative Misdemeanours (version of 1985). According to the claims of the detainees, the relatives found out about the place of their detention from colleagues, friend, district inspectors. In the case of citizen V.A. (year of birth 1983), detained in the preventive detention isolator of the General Police Commissariat of the Chisinau municipality, the place of his location was not communicated to anyone until the moment of the visit of the ombudsman.

At the same time, the issue of observance of the right to inform the relatives on the place of detention was positively tackled by the Police Commissariats of the Drochia, Vulcanesti and Taraclia regions, where the leadership of the Commissariats took all the necessary measures to ensure this right.

During the visit in penitentiary no. 13 of the Chisinau municipality, where there were 105 persons transferred at the time from the provisional detention isolator of the General Police Commissariat of the Chisinau municipality, at 27 of them various corporal injuries have been

detected and registered and these people have mentioned that these injuries have been caused by police agents during the arrest or during police custody.

At the same time, it has been established that with regard to 24 of the persons the minutes of arrest have been developed with breaches of procedure, having either no date or hour of arrest. In the case of 9 persons the minutes of arrest have been developed after the expiry of the legally prescribed period of 3 hours.

It must be mentioned that during the visits to the detention facilities 247 arrested persons have been interviewed, including on the basis of the code of administrative misdemeanours for committing misdemeanours during the protest actions on 07.04.2009, including 3 minors who at that time have been detained in penitentiary no. 13 of the Chisinau municipality.

As a result of the accumulation of information and the attested breaches during preventive visits on 17.04.2009 the ombudsman sent to the General Prosecutor's Office a review, where the list of detained persons was attached, who at the moment of transfer to penitentiary no. 13 of the Chisinau municipality had corporal injuries (registered by the doctors of the penitentiary) and recommended initiation of efficient and public investigation of these cases of ill-treatment, including establishment of circumstances under which these persons have suffered from injuries and identification and punishment of offenders. Also, the list of persons was attached against whom procedural breaches have been committed and the ombudsman recommended to prosecutors to acts accordingly.

Also on the 17.04.2009 the ombudsman has appraised the General Prosecutor's Office and asked initiation of investigation of cases of decease of citizens V.B., I.Ț, and E.Ț., including the Prosecutors' Office in Chisinau municipality, which was asked to investigate the cases of ill-treatment of citizens B.O., M.A. and C.V.

On 21.04.2009 the ombudsman appraised by means of a review the Ministry of Interior where it has been commented on the depicted deficiencies during the visits which deal with the inadequate medical examination of the persons in police custody, lack of appropriate medical assistance to these people during detention, defective fill-in of registries, inadequate detention conditions, and mentioned about the consequences which may arise out of these deficiencies.

After information was published on the www.unimedia.md, www.jurnal.md, www.chisinau.md news sites the ombudsman requested the General Prosecutor's Office to undertake necessary actions to establish the place of stay of citizens D.S. and G.A., who continued at that time to be declare missing after the events of 7 April. At last instance, those have been found.

In this respect it becomes unclear the way the appraisal of the ombudsman was examined with respect to the claimed sexual abused committed by police agents against the girls detained in the Police Commissariat. Thus, by means of the answer of the Chisinau Prosecutor's Office from 19.05.2009 the ombudsman have been informed that the respective allegations are not true and do not fit with the factual findings. Subsequently, the means of the answer received from the Internal Security Directorate of the Ministry of Interior from 18.02.2010 the ombudsman has been informed that such actions did take place and a criminal investigation was initiated on the respective allegations.

With respect to the reactive actions of the ombudsmen or based on those pertinent for the 7 April 2009 events, the prosecutors have initiated criminal investigations, as follows:

- *In 9 cases criminal investigations on alleged actions based on article 309/1 of the Criminal Code were initiated;*
- *In 2 cases criminal investigations on alleged actions based on article 328 paragraph (2) letter a) of the Criminal Code (12 victims) were initiated;*
- *In a case criminal investigation on alleged actions based on article 152 paragraph (2) letter e) of the Criminal Code was initiated;*
- *In a case criminal investigation on alleged actions based on article 187 paragraph (4) of the Criminal Code was initiated;*
- *In a case the decease of citizen B.V criminal investigation was initiated on the basis of article 151, paragraph (4) of the Criminal Code.*

The ombudsman insists on the vulnerability of the persons detained in provisional detention isolators of the Police Commissariats, where police agents have unlimited access in any period of day or night. This is an undisputable argument in favour of an urgent process of transferral of the provisional detention isolators from the subordination of the Ministry of Interior to the Ministry of Justice. A suspicion rises that the maintenance of the isolators within the criminal investigation bodies suits these subjects, which use the very detention as a mechanism of physical and mental influence to recognise, even a false one, of the guilt in committing crimes, as well as in the interests of those who use illegal means to obtain confessions. Judging from the above mentioned, the implementation of the objective which can be found in the Concept of reformation of the penitentiary system and the Action Plan for years 2004-2020 to implement the Concept of reformation of the penitentiary system approved by means of Governmental Decision no. 1624 from 31.12.2003, namely, the construction of 8 arrest houses is of absolute need.

The ombudsman considers, as it results from the Report of the Human Rights Commissar of the Council of Europe published after the visit in the Republic of Moldova during 25-28 April 2009[48] and the Report of the European Torture Prevention Committee published after the visits in the Republic of Moldova during 27-31 July 2009[49], that it is the duty of the competent authorities of the state to investigate and clarify the causes of circumstances of the events which took place on 7 April 2009, which may contribute, by establishing the truth and reality, to the healing of the deep trauma suffered Moldovan nation.

A positive aspect in the case of provisional detention isolators relates to the adequate equipment of the walk yards, with no complaints coming from the persons with respect to the refusal to be allowed walks, except for the persons arrested during the 7 April events, where due to the overcrowded isolators, this right was not possible to observe.

Another deficiency registered during the visits relates to the inadequate filling-in of the registers of people detained and the registry of visitors, in some of them the lack of chronology being depicted.

Thus, the Police Commissariat of the Ciocana discrict even if it had a registry in the form of a copybook of 48 pages, there was no registration of visitors made. The Botanica district Police Commissariat made registrations only if that was requested by the visitors. The Riscani district Police Commissariat of the capital was defectively registering the detained persons.

In the case of a minor who was arrested and ill-treated in the Leova region Police Commissariat, the registration with regard to his detention in the Commissariat was missing, although the police agents did not deny the presence of the minor during the respective time in the commissariat.

During 2009 the prosecutors have examined 6027 petitions where petitioners have invoked torture, inhuman and degrading treatment from the representatives of the state. This number rose considerably compared to the four previous years (in 2005 - 1155 complaints, in 2006 – 1386 complaints, in 2007 – 1289 complaints, in 2008 – 1075 complaints).

In 5334 cases of alleged crimes have not been satisfied by means of initiation of criminal investigations, due to lack of crime elements in the invoked persons' actions by the petitioners.

In 693 cases criminal investigations were initiated, as follows:

[48] Paragraphs 35-50 of the Report of the Commissioner for Human Rights of the Council of Europe following the visit to the Republic of Moldova on 25-28 April 2009, http://www.bice.md/UserFiles/File/chr-rpt-2009-md-ro.pdf
[49] The Report of the European Committee for the Prevention of Torture following the visit to the Republic of Moldova on 27-31 July 2009, http://www.cpt.coe.int/documents/mda/2009-37-inf-eng.pdf

- *208 cases have been initiated on the basis of article 309/1 of the Criminal Code of the Republic of Moldova, for acts of torture;*
- *438 cases have been initiated on the basis of article 328 of the Criminal Code of the Republic of Moldova, for acts of violence and excess of power;*
- *47 cases have been initiated on the basis of other articles for application of inhuman and degrading treatment.*

Out of the total number of investigated cases, the prosecutors have finalised investigations and developed the indictment in 293 criminal cases, these being sent for examination to the courts of law, having a total of 383 suspects.

In the same period, due to the fact that confirmation was not found to the allegations of victims in criminal cases of ill-treatment from the police, as well as because of the fact that the result of the investigations did not manage to collect sufficient proof to confirm guilt of certain police agents in application of ill-treatment, as well as other crimes, in 265 of the criminal cases the criminal investigation was stopped based on lack of crimes components in the actions of suspected persons.

As a result of the undertaken visits and the interventions of the ombudsman with reactive acts, as well pursuant to the European Court of Human Rights pertinent for this issue, the ombudsman acknowledge that the authorities empowered with investigation of cases of violence from the police agents continue admitting omissions.

A relevant example in this respect is the case of citizen C.S. who was transferred from the Straseni region Police Commissariat to the penitentiary no. 13 of the Chisinau municipality on 09.10.2009. After the examination made by the duty doctor of the penitentiary no. 13 of the Chisinau municipality, he depicted the following corporal injuries: contusion and excoriation of the soft tissues of the face and stern, abundant forehead excoriations.

After the visit of the penitentiary no. 13 of the Chisinau municipality citizen C.S. explained that on 09.10.2009 around 12^{00} hours, being escorted in the preventive detention cell of the regional Police Commissariat he was hit with his head by a nearby wall by the police agents, lieutenant-major C.M. because he refused to offer certain explanations on the crimes he is suspected of. Also, he explained that as a result of the hit he lost conscience and when he recovered it he found himself in the regional hospital. After he left the hospital he was escorted back to the Police Commissariat and then to the Court to be handed over to the escort. Initially, the police escort refused to take him for escort to penitentiary no. 13 of the Chisinau municipality, because he had corporal injuries, but after the phone call of the police agent C.M. to his superiors, citizen C.S. was accepted for escort.

Initially being refused in initiation of criminal investigation, after documentation the ombudsman determined with certainty that the corporal injuries have been caused to citizen C.S. during custody of state authorities.

The ombudsman intervened with a request to the General Prosecutor's Office as a result of which the decision not to initiate criminal investigations was cancelled and investigations initiated on the basis of article 309/1 of the Criminal Code of the Republic of Moldova.

In another case which took place on 28 July 2009 minor M.V. was brought and placed in a cell of the guard unit of the Police Commissariat, where he was ill-treated for about a half an hour by a road traffic police agent and another person dressed in civilian clothes. According to the report of the expert, issued by the forensic doctor on 08.07.2009, minor M.V. had average corporal injuries. Although the examination of cases of ill-treatment must be made by independent bodies, which have no circumstances which may question their impartiality,[50] *in the present case the investigation was made by the Police Commissariat who have intervened at the Leova region Prosecutors' Office with the proposal not to initiate criminal investigations. Following the intervention of the ombudsman on 10 August 2009 the Leova regional Prosecutors' Office initiated criminal investigation on the basis criminal component provided for in article 328 paragraph (2) letter a) of the Criminal Code of the Republic of Moldova.*

As mentioned above, the ill-treatment of persons in detention, as well as lack of effective investigations of ill-treatment complaints constitute severe breaches and omissions in the light of article 3 of the Convention, a fact already acknowledged in the cases examined by the European Court of Human Rights, the result of which was the conviction of the Republic of Moldova.

The European Court reaffirms in a quasi-permanent formulation that article 3 protects one of the fundamental values of democratic societies. Even in the most difficult conditions such as fight against terrorism and organised crime, the Convention forbids in absolute terms torture and inhuman or degrading treatment or punishment. Article 3 does not provide for

[50] Paragraph 19, 85-87 from the Istanbul Protocol from 1999 recommended by the UN General Assembly Resolution 55/89 from 4 December 2000, UN Manual on effective investigation and documentation on torture and other cruel, inhuman or degrading treatment or punishment www.ohchr.org/Documents/Publications/training8Rev1ru.pdf

restrictions, does not accept any derogation, even in case of public danger which threatens the life of the nation.

According to the standards instituted by article 3 of the Convention, when a person suffers from corporal injuries while in detention or police control, any such injury shall create a powerful presumption that this person was exposed to ill-treatment. It is up to the state to give a plausible explanation pertinent to the circumstances in which these injuries have been caused, the non-compliance with which issues a clear application of article 3 of the Convention.

During proof evaluation the Court usually applies the standard of proof "beyond a reasonable doubt". However, such proof may also be deducted from the coexistence of sufficiently reasoned, clear and coordinated conclusions or of certain similar factual incontestable presumptions. When the events in a case are in their entirety or vast majority known by the authorities only, such as the case of persons in authorities' custody, strong factual presumptions shall develop with respect to the corporal injuries which appeared during detention. Indeed the burden of proof is on the authorities, which must present satisfactory and convincing explanations.

The Court reiterates that when a person makes convincing declarations that he was exposed to treatment from police or other state agents which breaches article 3 of the Convention, the provisions of this article, read in the context of the general obligation imposed on the state by article 1 of the Convention to "recognise each person under its jurisdiction the rights and freedoms defined in the Convention", impose an official and effective investigation. Similar to an investigation made on the basis of article 2, such an investigation must allow identification and punishment of the responsible persons. Thus, general prohibition by a law of torture or inhuman or degrading treatment or punishment, irrespective of its fundamental importance, would be ineffective in practice and would make it possible for state agent in certain circumstances to commit abuses against persons under their control, them having in this case a virtual immunity.

Investigation of serious chargers of ill-treatment must be complete. This means that the authorities must take serious efforts at all times to find out what happened and must not relay on weak or unjustified conclusions to discontinue investigations and use them as basis for their decisions. They have to take all reasonable and available actions to ensure proof pertinent to the incident, including declarations of witnesses and forensic reports. Any omission during the investigation which may jeopardise the possibility to establish the cause of corporal injuries or the identity of the responsible persons risks breaching these standards.

Similar principles have been included in the national legislation thanks to the initiate of the Centre for Human Rights. Thus, pursuant to article 10 paragraph (3, 3^1) of the Criminal Procedure Code of the Republic of Moldova[51], during the criminal proceedings nobody can be exposed to torture or cruel, inhuman or degrading treatment, nobody may be detained in humiliating conditions, may not be obliged to participate in procedural actions which affects his/her human dignity. The burden of proof of non-application of torture and other cruel, inhuman or degrading treatment or punishment lies on the authority in which custody the person deprived of his/her liberty was, placed at the availability of a state body or pursuant to its order, with the express or tacit agreement of consent.

Also, any declaration, complaint or any other circumstances which allows ascertaining that a person was exposed to torture, inhuman or degrading treatment must be examined by the prosecutor as prescribed by article 274[52], in a separate procedure. Regretfully, these provisions are not always fully respected.

In 2009, based on the provisions or article 309/1 of the Criminal Code of the Republic of Moldova the courts of first instance have issued 5 decisions on 9 persons, all police agents. Out of these, 4 decisions against 8 police agents are of conviction and one decision on a police agent is of acquittal. With respect to all 8 police agents the courts of law have established penalties in form of privation of liberty, but with the use of the provisions of article 90 of the Criminal Code of the Republic of Moldova, the conditional suspension of the penalty was established. At the same time, as a complementary penalty they have been deprived of the right to hold certain functions or exercise certain activity within the Ministry of Interior.

With respect the convictions based on article 328 of the Criminal Code of the Republic of Moldova, during the reporting period the police agents have been exposed to 18 decisions on 23 persons, out of which 14 sentences against 16 persons of conviction and 4 sentences with respect to 7 persons of acquittal. Additionally, from those 16 agents only one was prescribed with a liberty privation penalty, the others being conditionally suspended from their penalty based on article 90 of the Criminal Code of the Republic of Moldova.[53] The complementary

[51] The burden of proof of non-application of torture and other cruel, inhuman or degrading treatment or punishment is on the authority in whose custody is the person deprived of liberty, placed at the disposal of a state body or at its indication, or with its tacit agreement or consent.

[52] Article 298 paragraph (4) Criminal Procedure Code no. 122 from 14.03.2003, Official Monitor no.104-110/447 from 07.06.2003

[53] If at the establishment of the imprisonment punishment for a period of up to 5 years for crimes committed with intention and up to 7 years for crimes committed with imprudence, the court of law, taking into account the circumstances of the case and the convict's personality, shall reach the conclusion that it is not rational for it serve the established sentence, it can conditionally suspend the serving of the sentence by the convict, mentioning in the decision the reasons of conviction with conditional suspension of serving the sentence and the probation period. In this case, the court of law decides on the non-serving of the sentence applied in the probation period it fixed and the convict shall not commit another offence and by means of exemplary behaviour and honest labour shall

penalty in form of deprivation of the right to hold certain functions or exercise certain activity within the Ministry of Interior was applied against 15 persons.

It must be mentioned that too indulgent sanctioning of the representatives of state authorities guilty of torture and other ill-treatment contribute to the persistence of such acts.

While the Court tackled the preventive effect of the interdiction of application of ill-treatment in the decision from 20 October 2009 issued on the case ***Valeriu and Nicolae Roşca vs. Moldova***[54], for the first time the Republic of Moldova was convicted for inadequate sanctions for persons who used torture, bringing serious criticism to the way justice is managed.

The claimants have declared to have been ill-treated by the Centre district Police Commissariat of the Chisinau municipality and the Ialoveni region Police Commissariat. According to the allegations of the claimants, they have been beaten during several hours in the Centre district Police Commissariat of the Chisinau municipality by the police agents who arrested them. Subsequently they have been escorted to the General Police Commissariat of the Chisinau municipality, where they have been handcuffed, electrocuted and their soles beaten with rubber batons, with the purpose to determine them to recognise their guilt in committing a crime which they did not commit. On 13 June 2001 the claimants have been transferred to the Ialoveni Police Commissariat to verify their involvement in other crimes.

In the same day, the Ialoveni Police Commissariat was visited by the members of the European Committee for the Prevention of Torture, to whom one of the claimants described the way and place he was ill-treated. It must be mentioned that the members of the Committee have visited the Ialoveni region Police Commissariat on 14 and 15 June 2001. Only on 18 June 2001 the claimants have been examined by a forensic doctor, who confirmed the existence of light corporal injuries.

Following the investigations undertaken by the authorities based on the complaints of ill-treatment from the applicants, three police agents have been considered guilty in committing the crime provided for in article 185 paragraph 2 of the Criminal Code of the Republic of Moldova (version of 1961), with a penalty of imprisonment for 3 years, with privation of the right to hold certain functions or be involved in certain activities for a period of 2 years. Also,

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recover the trust given to him. The control over the behaviour of those convicts with conditional suspension of serving the sentence is made by the competent authorities, whilst in case of military personnel – by the respective military commander. The period of probation is established by the court of law between 1 and 5 years.

[54] Case Valeriu and Nicolae Roşca vs. Moldova, application no.41704/02, ECtHR Decision from 20 October 2009.

the court decided to suspend the imprisonment penalty set for police agents for a period of one year.[55]

The claimants continued to allege that they are victims of ill-treatment, in spite of the disagreement manifested by the three police agents. Taking into account the intensity and the aim of which the applicants have been exposed to ill-treatment (and namely, to obtain favourable confessions), this treatment should have been qualified as torture as it is provided by article 3 of the Convention. They have also claimed that the state did not fulfil its positive obligation which derivates from article 3 of the Convention because the investigation undertaken based on the complaint on ill-treatment of the applicants took too long, almost 4 years, whilst through the application of a liberty non-privative penalty to the police agents the stat did not ensure the preventive effect of the legal interdiction to apply ill-treatment. Moreover, the claimants have expressed their disagreement with the legal qualification of the acts of the police agents, them being convicted for power abuse and not for torture.

In this case, the Court reminded that hits applied on applicants' soles (falaka) is a form of ill-treatment extremely condemned which presupposes intention to obtain information, intimidate or punish (***Corsacov and Levința***), and may be considered as torture within the scope of article 3 of the Convention.

The Court noted that it is for the national courts to establish the appropriate penalty for persons who committed crimes, which would on one hand ensure reinstatement of social equality, whilst on the other – prevent new crimes from being committed. The national courts have provided the respective explanations, motivating that the application of the suspension of penalty execution because of the: relatively young age of the offenders, lack of criminal records, presence of families and positive characteristics from the society. However, the Court has noted that national courts should have taken into account both aggravating and attenuating circumstances. The national courts have not taken into account that the police agents did not regret their actions and during the entire proceedings have denied application of ill-treatment against the claimants.

Finally, the Court considered that the preventive effect of the adopted legislation, especially to prevent acts of torture, may be insured only if such legislation is applied each time

[55] Excess of power or overstepping of duty competences, i.e. acts from a person with decision making powers which clearly overstep the limits of the competences provided for by law, if it caused considerable damage to the public interest or the rights and interests protected by law of the physical and legal entities, combined with acts of violence or the use of arms, or torture acts and which humiliate personal dignity of the victim – is punished with privation of liberty from a period of three to ten years, with privation of the right to hold certain functions or practice certain activities for a period of up to five years.

the circumstances require it. Along with it, the failure of the authorities to initiate a criminal procedure in accordance with article 101/1 of the Criminal Code (version of 1961)[56], without any explanation on the selection of another type of offence (abuse of power), is insufficient to ensure the preventive effect of the adopted legislation with respect to the prevention of application of acts of torture.

The Court stated that the procedural norms existent in article 3 go beyond a preliminary investigation, stage in which … the investigation leads to an action in justice in front of the national courts: the action in its entirety, including at the stage of court examination must fulfil the requirements of prohibition provided for in article 3. This means that the national judiciary authorities must ensure that physical and psychological sufferings shall not remain unpunished. This fact is essential for the upkeep of the trust of the society in justice, being a support for the law supremacy, as well as for the prevention of any aspect of tolerance or involvement of the authorities in committing illegal actions.

Medical services

Efficient functioning of the medical services in the provisional detention isolators may bring a substantial contribution to the prevention of torture and other ill-treatment. Along with that, during the visits it has been determined that the medical examination of the persons in detention is either superficial, or is done with delay, or is not performed at all. Thus, after the investigation of the circumstances of

[56] Actions by means of which pain or strong sufferings, physical of psychological are intentionally caused to a person, especially with the purpose to obtain from this person or from a third person information or confessions, to punish for an act which this person or a third person has committed or is suspected to have committed it, to intimidate or make pressures on him or to intimidate or make pressures of a third person, or on any other reason based on a form of discrimination, whatever it may be, when such pain or suffering are generated by an agent of public authority or any other person who acts with an official title or at the express of tacit indication of consent of such persons, with the exception of pain or suffering, inherent from legal sanctions or caused by them – is punished with privation of liberty for a period from 3 to 7 years.

the events of 7 April 2009, the examination of persons by a doctor was made only after their liberation from detention or after transfer to institutions subordinated to the Ministry of Justice.

The vacancy of doctor is vacant in the Comrat Police Commissariat since May 2009, in the Calarasi Police Commissariat – since November 2009, in Ialoveni Police Commissariat – since November 2009, in the Straseni Police Commissariat – since 2008, in provisional detention isolator of the Operative Services Directorate of the MI – since 1997.

At the same time, within the provisional detention isolators of the Nisporeni, Cimislia, Basarabeasca, Cahul Police Commissariat the doctors are employed part time, without an established working schedule and visit the isolators only when the police agents request it.

During police custody the medical examination of the person takes place in the presence of the police agents, more specifically the Chief of the provisional detention isolator, the latter having access to medical examination papers. Actually, the respective requirement derives from paragraph 2.11 of Annex no. 2 of the Order of the Ministry of Interior on the management and activity of the guarding, escorting and detention of persons arrested and detained in the preliminary detention isolators, no. 5 from 5 January 2004, in accordance with which the persons brought to the preventive detention isolators, before attributed to cells are asked by the doctor and in the presence of the duty agent on their state of health and exposed to sanitarian disinfection.

These provisions are contrary to the Norms of the European Committee for the prevention of Torture which recommend that medical examination in police custody takes place outside questioning and preferably not in the presence of the police officers. Further, the results of each examination, the relevant declaration of the detainee and the conclusions of the doctor must be officially registered by the doctor and given for consultations to the detainee and his/her barrister.[57]

With respect to the case-law of the European Court, in the ***Gurgurov vs. Moldova***[58] case, the state was convicted for the omission of the authorities to ensure an adequate investigation of the alleged ill-treatment of the claimant, which was materialised through a forensic examination with a delay of more than a week. Thus, the claimant states that immediately after arrest he was escorted to the Riscani district of the Police Commissariat of the Chisinau municipality were he was exposed to ill-treatment by the police agents each day during lunch breaks and in the evenings. After the first ill-treatment he was brought to his cell. His cell mates have put him in bed where he stood for 2 days. Because he issued a

[57] Paragraph 38 from the Rules of the European Committee for the prevention of torture, Chapters from the General Reports of the CPT, http://www.cpt.coe.int/lang/rom/rom-standards.pdf
[58] Case Gurgurov vs. Moldova, application no.7045/08, ECtHR Decision from 16 June 2009

complaint to the prosecutor's office, he was repeatedly brought to the General Police Commissariat of the Chisinau municipality where he was again beaten. The police agents requested him to withdraw his complaint on ill-treatment and threatened him with death. Following the ill-treatment the claimant was given disability of a second level of gravity.

Because the claimant could not rise up, on 3 November 2005 he was visited by two doctors. They have been escorted by one of the police agents who allegedly tortured him. The police agents told the doctors that the claimant fell of the bed. The doctors prescribed the diagnosis of hysteria and have recommended the services of a neurologist. After that, the claimant was brought in another room, where, according to his statements, the police agents requested him not to tell anyone about torture acts. He claims to have been threatened with death or twenty five years of imprisonment. A police agent gave an explanation from the claimant's behalf, where it is said that nobody beaten him and that he fell of the bed and caught a cold; the claimant declares that he was forced to sign this declaration.

Subsequently, on 11 November 2005 and 16 January 2006 the claimant was exposed to forensic examination where corporal injuries have been identified.

Starting with 15 February 2006 the claimant undertook a series of medical investigations at the Medical Rehabilitation Centre of Torture Victims "Memoria", which confirmed the corporal injuries identified by the forensic doctors. Here he was exposed to detailed analysis and examinations by different doctors. In a document entitled "Extract from medical file" from 26 February 2006 it was mentioned that the claimant was suffering from the consequences of a cranial trauma (brain concussion of the left hemisphere predominantly in the temporal part), post-traumatic organic brain syndrome, post-traumatic adhesive bilateral otitis, post-traumatic neuritis of the internal ear's cochlea, bilateral brain sensorial deafness and medullar lumbar concussion L1-L2 with a spastic tetra-paresis of the lower extremities. Additionally, plenty of psychological conditions have been identified which are inherent to torture victims.

In the ***Colibaba vs. Moldova***[59] case, on 28 April the claimant filled in a complaint to the Buiucani district Prosecutor's Office of the Chisinau municipality related to an alleged ill-treatment. On 29 April 2006 the claimant was brought to the policemen, who, as alleged, have ill-treated him at the Centre for Forensic Medicine, where he was exposed to a forensic examination in their presence. According to the claimant, the medical examination took merely a couple of minutes and was superficial. According to the forensic examination report from 28 April 2006, besides corporal injuries caused during the suicide attempt, the claimant did not have any other signs of violence on his body.

[59] Case Colibaba vs. Moldova, application no.29089/06, ECtHR Decision from 23 October 2007

With respect to such a medical examination ***the Court noted that it has doubts as to the credibility of the report from 28 April 2006. It notices with concern that the claimant was brought to the Centre for Forensic Medicine by policemen who allegedly have ill-treated him and that the medical examination took place in their presence. In such circumstances the Court cannot exclude the possibility that the claimant felt intimidated by the persons he accused to have tortured him. The Court refers to the accusation of the claimant that after he complained to the barrister, he was repeatedly ill-treated. The Court considered that it is difficult to give importance to a medical report based on a medical examination made in the presence and under the control of the persons to have allegedly ill-treated the claimant.***

The situation of persons detained in the institutions subordinated to the Ministry of Justice

The penitentiary system must guarantee the observance of the fundamental rights of the convicted persons who serve their penalties or liberty deprivation measures, their access to education to ensure reintegration, grow responsibility and increase the level of trust in society, by ensuring a healthy custodial environment. In this respect, the penitentiary system must ensure the social replacement and rehabilitation of persons deprived of their freedom, also taking into account the need to reduce the risk of degradation of the individual's condition while serving the penalty. Also, the penitentiary system must ensure failsafe mechanisms to limit barriers of any kind, identify, promote and apply accordingly the internal regulations in support to the legislation which guarantees the rights of the individual and discourage and punish abuses.

It is obvious that in any country, no matter how democratic, the population does not show interest and, even less, sympathy to the detainees. An almost general concept is that the place of the offenders is "behind bars". Free people tend to ignore the fact that after the sentences are served, the detainees return among them. In other words, the population perceives more the punitive part and less, or even not at all – the educative part. The direct consequence of this aversion of the population to the penitentiaries' world, attitude which can be found at even at the level of Parliament and Government of the Republic of Moldova, is the slow pace with which the absolutely necessary reform of the penitentiary system take place in the aspect of improvement of the detention conditions, accent on re-education and re-socialisation and, not least, the change of mentality. There is a need for political will for radical changes in the way the professional training of personnel takes place and, naturally, substantial funds to have all these elements implemented.

Along with it, the problems of the penitentiaries of the Republic of Moldova are far from being resolved. The political elite is fully aware of the fact that the reform of the judicial system is an essential condition to be fulfilled in the process of adherence to the European Union, and this element contains the requirement of improvement of conditions in penitentiaries and observance of human rights.

During 2009 complete monitoring visits have been organised for the first time in penitentiary no. 1 in Taraclia, no. 2 in Lipcani, no. 3 in Leova, no. in 6 Soroca, no. 7 in Rusca village, Hincesti region, no. 8 in Bender, no. 11 in Balti municipality, no. 16 in Chisinau municipality, no. 17 in Rezina, no. 18 in Branesti village, Orhei region. In some of the above mentioned penitentiaries repeated visits have been managed, which allowed monitoring of the measured undertaken by the authorities on the basis of the recommendations formulated by the ombudsman.

With reference to the reference period, from the penitentiary institutions 2053 persons have been liberated, out of whom:

801 – due to the effective and integral served sentence;

348 – due to the effective and integral served sentence with the application of the privileged compensation of the working days made in accordance with article 257 of the Execution Code;

755 – conditionally exempted from total sentence, based on article 91 of the Criminal Code;

10 – guarantees;

38 – based on the amnesty acts;

3 – freed due to state of health based on article 95 of the Criminal Code;

59 – freed due to change of the remainder of the sentence with a softer penalty.

It must be mentioned that the number of detainees in penitentiaries has actually decreased, this being inferior to the officially set detention limit. Along with it, despite the maximum established limit, there was no evaluation made of the living spaces in the penitentiary institutions, which may show if this upper limit respects the standard of 4 sqm, recommended by the European Committee for the Prevention of Torture for each detainee.

Also, compared to the last four years, in 2009 there was a significant decrease of mortality in the penitentiary system, as presented below:

N/o	**Name of malady**	**2005**	**2006**	**2007**	**2008**	**2009**

1.	Tuberculosis	17	8	17	9	7
	HIV/TB	8	4	8	6	4
2.	SIDA	1	1		2	3
3.	Cancer	9	1	2		1
4.	Neural system diseases	1	1		2	
5.	Cardio-vascular diseases	16	16	8	13	11
6.	Respiratory diseases	3	1	3	1	
7.	Digestive diseases	3	5	6	2	3
	- *Diabetes*	*1*		*1*	*1*	
	- *Cirrhosis*	*2*	*5*	*5*		*3*
8.	Trauma, poisoning	7	6	5	4	3
9.	Suicides	4	3	2	5	6
10.	Others	2	1		3	
	Total	**71**	**47**	**48**	**47**	**38**

Compared to preceding years the number of cases of hunger strikes and detainees' auto-mutilation has considerably increased, for 2009 it being 473 and respectively 992 cases. Actually, this represents certain protest measures of the detainees against inadequate detention conditions, against inhuman or degrading treatment to which they are exposed from the penitentiaries' personnel or from other detainees. In some cases, the detainees make recourse to such measures due to the disagreement with the actions of the administration of the detention facility, the actions of the criminal investigation bodies, as well as the disagreement with the decisions of the courts of law issued on the criminal cases with them being accused of.

In this respect, granting rights, advantages and a civilised detention regime, correlated with a strict observance of the obligations, interdictions and restrictions imposed by the Statute of serving the sentence by the convicted would reduce the desire of the detainees to make recourse to such measure, the majority being interested to serve the sentence in as advantageous as possible terms and leave the penitentiary.

The rights of the convicted become a growing concern on the European level, the majority of cases related to human rights filled in to the European Court of Human Rights having been resolved in favour of the convicted persons due to a non-application or a defective

application of the provisions of the Convention for the protection of human rights and fundamental freedoms.

In this respect, by means of Decision no. 1624 from 31.12.2003 the Government approved the Concept of reform of the penitentiary system and the Action Plan for years 2004-2020 to implement the Concept of reform of the penitentiary system, the main aim of which being in essence the creation of decent detention conditions and fulfil the international provisions, reformation of the process of education of the convicted, their re-education, specialisation and recycling of human resources for activities under new conditions. A very important aspect relates to the need to implement the provisions of article 172, paragraph (9) and article 338 of the Execution Code by means of construction of 8 arrest houses, placed in different regions of the Republic. Although, pursuant to the Concept the initiation of construction of the first arrest house were to begin already in 2008, whilst in the case of others – in 2009, regretfully we acknowledge that the authorities comply too slow to their own planned measures.

Physical detention conditions

The detention conditions in the domestic penitentiary system constitutes on of the priorities of the activity of the ombudsmen as a national torture prevention mechanism. During the visits undertaken discussion were held both with the detainees and the penitentiaries' personnel, the conclusions and recommendations of the ombudsmen being most of the time sent to the penitentiary institutions in discussion, and in some cases to the hierarchically superior bodies.

With respect to the ***nutrition of the convicted*** it is to be mentioned that the provisions of the domestic law are compliant to the international standards.[60]

[60] Paragraph 22 from the **Recommendation of the Committee of Ministers of the member states on the European Penitentiary Rules REC(2006)2, adopted on 11 January 2006 during the 952th reunion of the Delegated Ministers** https://wcd.coe.int/ViewDoc.jsp?id=955747: Prisoners shall be provided with a nutritious

The convicted persons' nutrition is marinated from the state budget funds, with the respect of the minimal standards provided for by the Government. The convicted are served hot meals three times a day at prescribed hours. The convicted pregnant women, women who breastfeed, convicted minors, convicted persons who work in hard or toxic working conditions, as well as sick convicted persons, as prescribed by the doctor, and with disabilities of the 1st and 2nd level of gravity receive supplementary nutrition. Also, the law prohibits reduction of quantity, quality and caloric value of the food given to convicted persons as means of punishment. The convicted are given permanent access to drinkable water.[61]

The Government adopted Decision no. 609 from 29.05.2006 on the minimal norms of daily nutrition and lavatory and household objects of the detainees, there being special nutrition plans adopted for certain categories of convicted persons.[62]

Although during 2009 the nutrition of the convicted persons has improved, this issue continues to be tackled by the convicted persons during the visits in the penitentiary institutions.

Such complaints have been predominantly coming from the penitentiary institutions no. 17, Rezina, no. 18, Branesti village and no. 2, Lipcani.

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diet that takes into account their age, health, physical condition, religion, culture and the nature of their work. The requirements of a nutritious diet, including its minimum energy and protein content, shall be prescribed in national law. Food shall be prepared and served hygienically. There shall be three meals a day with reasonable intervals between them. Clean drinking water shall be available to prisoners at all times. The medical practitioner or a qualified nurse shall order a change in diet for a particular prisoner when it is needed on medical grounds;
Paragraph 20 from the Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955, http://www2.ohchr.org/english/law/treatmentprisoners.htm: Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served. Drinking water shall be available to every prisoner whenever he needs it.

[61] Article 247 Execution Code no.442 from 24.12.2004, Official Monitor no. 34-35/112 from 03.03.2005

[62] Article 1: It is being approved: the general minimal amount of daily food for detainees, according to Annex no. 1; minimal amount of daily food for pregnant detainees and mothers who breastfeed, according to annex no.2; minimal amount of daily food for detainees with tuberculosis, according to annex no. 3; minimal amount of daily food for minor detainees, according to annex no.4; minimal amount of daily food for detainees with illnesses and with disabilities of the 1st and 2nd level of gravity, according to annex no. 5; minimal amount of cold food during escort, according to annex no. 6; minimal amount of toilet objects and personal hygiene for detainees, according to annex no. 7; amounts of detergent, soap and cachinnate soda consumption at mechanic wash (expressed in grams for each kilogram of dry clothing, depending on the level of dirt and hardness of water), according to annex no.8.

 During the visits undertaken to the penitentiary institution no. 5, Cahul and no. 18, Branesti village, it has been established that potatoes were missing from the served food, and their substitution[63] with other products when detainees were served has generated serious unrest from the latter in penitentiary no. 18.

During the discussions with the convicted persons they have declared that the food is of poor quality and insufficient, it is one and the same each day and it is prepared in conditions which cannot ensure adequate hygiene.

Also, the discussions with the administration of the respective penitentiaries have revealed that it is impossible to ensure nutrition to detainees as prescribed by the variety of products included in the Governmental Decision no. 609 from 29.05.2006.

 At the same time, during the visits the conditions in the kitchen, as well as the inventory in the canteen in the penitentiary institutions no. 2, Lipcani and no. 18, Branesti village, do not correspond to the sanitary and hygiene regulations. The inadequate sanitary condition existent in the kitchen, confirmed by the members of the group, does not require confirmation from experts in the field, it being too obvious. Under the respective circumstances the ombudsman has concluded on the insufficient and inefficient observance of the obligations by the medical service, the personnel of which is obliged to regularly check the sanitary and hygiene condition of the buildings and the territory

[63] Order of the Ministry of Justice on the approval of nutrition norms for detainees for exceptional cases when supply of detainees with hot meals is not possible, and the norms of substitution of certain food products with others no.100 from 07.03.2007, Official Monitor no.36-38/149 from 16.03.2007

of the penitentiary, and, if needed, present the warden a report with recommendations to improve the situation.[64]

Because of the fact that the ombudsman was appraised by a considerable number of convicted persons who serve their sentence in the penitentiary institution no. 18, Branesti village, Orhei region, who invoked inadequate quality and insufficient quantity of food, lack of adequate medical assistance, breach of sanitary and hygiene regulations, as well as poor detention conditions in the penitentiary, the involvement of the Department of Penitentiary Institutions was requested to check the situation in the penitentiary and clarify the circumstances which generated unrest among the convicted persons.

The explanations of the administration imply that the disinfestations of the penitentiary took place in May 2009. The response of the Department of Penitentiary Institutions no. 1/4514 from 28.10.2009 gives insurances that the sanitary and epidemiological condition of the penitentiary is satisfactory, a condition contrary to that acknowledged during the visit from 25 November 2009. The problem of disinfestations continue to be invoked by the detainees, which allows the ombudsman to conclude on the simplistic attitude of the leadership of the Department of penitentiary institutions on the deficiencies made public and recommendations of the ombudsman.

The visit from 25.11.2009 took place with participation of a forensic doctor within the National Science and Practical Preventive Medicine Centre, who noted the following: „the storage for bread is equipped with 2 shelves and a table to cut bread.

[64] Article 252 Execution Code no.442 from 24.12.2004, Official Monitor no.34-35/112 from 03.03.2005

In the room on the table and on the shelves excrements of rats have been detected. Some pieces of bread had holes as a result of them being eroded by rats. There was not inventory registered for cleaning purposes, the window was broken. On one shelf of the same room was the butter, which according to the allegations of the convict cook B.R. was brought on Monday.

The food storage in the kitchen had a sack with sugar, a sack with buckwheat, a sack with peas and a sack with grain with depicted rat excrements. There are also two fridges, one of which had unprocessed meat, fish and margarine, which breaches the sanitary, and hygiene norms and the rules of storage of food products.

Other 8 boxes with margarine were kept on the floor.

With respect to the penitentiary institution no. 2, Lipcani, although the food allowance put in the kettle per person for period 06.09.2009-05.10.2009 was approved by the warden, the paper confirming it did not have a date of approval and was not signed by the chief of the medical service and the chief of the logistics service. Also, the schedule of food repartition (the menu) was missing in the canteen.

Such a state of affairs is contradictory to the provisions of article 32 of the Order of the Ministry of Justice on the approval of the Regulations on the management of the nutrition of convicts in penitentiaries no. 512 from 26.12.2007.[65]

An adequate case relevant for this issue was acknowledged at the penitentiary institutions no. 1, Taraclia, no. 7, Rusca village, Hincesti region, no. 11, Balti municipality.

It is most welcome that the legislation permits the convicts to receive packages with provisions, parcels and banderols and keep the food products in unlimited quantity, with the exception of those which require thermal processing before consumption and alcoholic drinks.[66] However, the visits have shown that very many detainees are neglected by their families and friends, other come from too poor families to be able to send these packages. The ombudsman expresses his concern with respect to the cases, although rare, which continue to manifest, when the administration of the penitentiaries, while showing its superiority over the convicts, hand over the packages with delay.

[65] The nutrition repartition tables are developed by the chief of logistics of the penitentiary, with the chief o the medical unit and the chief of the canteen. The nutrition repartition tables are signed by the deputy chief of logistics of the penitentiary (chief of the logistics service) and the chief of the medical unit. The nutrition repartition tables are approved by the chief of the penitentiary. The nutrition repartition tables are developed and are approved 2-3 days prior to the start of the month, week and are sent in due course to the canteen for the personnel to use them as guidelines in preparation of food products. The nutrition repartition tables may not amended, except for special circumstances and only with the written permission of the chief of the penitentiary. The nutrition repartition tables are developed separately for each subsistence norm (including for special nutrition schedules) for a week with its repetition each week during the month. Depending on the conditions and needs, the nutrition repartition tables may be developed for one or more days. The tables are developed in two copies, out of which one (the original) is stored in the penitentiary's accounting office and serves as confirmation for the purchase of the products for the canteen, and the second is placed in the section of hot meals preparation.

[66] Article 230 Execution Code no. 442 from 24.12.2004, Official Monitor no.34-35/112 from 03.03.2005; article 87, 163 letter a) from the Stature of serving the sentence by the convicts, approved by Government Decision no. 583 from 26.05.2006, Official Monitor no.91-94/676 from 16.06.2006

With respect to the ***sanitary conditions, light and ventilation***, these issues persists practically in the majority of the penitentiaries' buildings in the Republic of Moldova, exception here being only the penitentiary institution no. 1, Taraclia and no. 7, Rusca village, Hincesti region.

Republic of Moldova inherited old penitentiaries with degraded buildings, of a bushing nature, compliant to soviet standards. These types of penitentiaries do not correspond to the requirements of the national and international acts, whilst the financial possibilities of the state do not allow them to be reconstructed or renovated.

The penitentiary institutions, with the exception of those with a status of criminal investigation isolator, host convicts in large

dormitories which do not fully have the facilities to cover the daily needs of the convicts, such as: the sleeping space, the day use space and sanitary installations. The detainees are held in extremely tight, dark, humid spaces, without ventilation, where the cigarette smoke is abundantly present. Along with the above mentioned some of the penitentiaries which have beds in two levels seriously hamper the access of the natural light in living spaces.


Besides these findings, the existence of adequate conditions was detected in the detention block for minors of the no.2 penitentiary, Lipcani city and the sector for minors in the no. 11 penitentiary, in Balti municipality.

A more degrading situation was attested in the case of quarantine cells, transit cells and the cells of the disciplinary isolator.

Immediately after reception, the convict is placed in the quarantine room for a period of up to 15 days, during which he is exposed to medical examination to establish his state of health and labour capacity and prescription, if needed, of individual treatment.[67]

Usually, the quarantine spaces are comprised on 1 to 3 cells. Thus, when the visits have been organised in the penitentiary institution no. 18, in Branesti village, Orhei region, in the two quarantine cells was cold and both of the windows were covered with blankets. Additionally, it was attested that the condition

[67] Article 219 paragraph (6) Execution Code no.442 from 24.12.2004, Official Monitor no.34-35/112 from 03.03.2005

of the windows was disastrous, the wood was decayed, and to keep warm in cells the convicts have covered the perimeter of the windows with cotton from the mattresses.

In penitentiary institution no. 2 the quarantine cells were equipped with a toilet and bed clothing, the beds and the furniture to keep the personal things of the convicts were in a disastrous condition. In penitentiary institution no. 2, in Leova the quarantine cell could be characterised by excessive humidity and abundant cigarette smoke.

Actually, the detention conditions in quarantine have attracted the attention of the members of the international delegations who have inspected the penitentiaries of the Republic of Moldova.[68]

The cells of the disciplinary isolator hold persons who have been exposed to disciplinary measure in form of incarceration as a result of the decision of the penitentiary's administration, as well as those provisionally placed until the arrival of the warden. Along with these people convicts who present danger to the personal security of the convicted persons are also held there, because of the lack of other spaces.

[68] Paragraph 35, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, from 12 February 2009, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/107/71/PDF/G0910771.pdf: As confirmed by the authorities, persons arriving in penitentiary institutions, as a general rule have to spend 15 days in quarantine in order to undergo a medical examination of their overall state of health and their labour capacities The Special Rapporteur found that conditions in quarantine cells are generally worse than elsewhere and was concerned about the high risk of infection in these cells, since detainees with contagious diseases seemed not always to be separated.

 The findings for these cells are that they are very small, with a sanitation facility, which is a genuine infection source. The upper part of the toilet has a tap which is also used as water disposal and a source of washing. Not every time this space is divided by the rest of the cell and this does not allow adequate privacy. The cumulative effects of these conditions prove to be extremely negative for the detainees. The penitentiary institution no. 8, in Bender municipality contains cells where repair works have not been made for a very long time.

Moreover, the detainees held in these cells do not have the possibility to serve dinner in adequate hygienic conditions and there is no necessary inventory for that. Also, in some cells the windows with direct exit to natural light are absent, those being covered by other installations or constructions, in other the windows are covered with drilled metallic plates.

During 2009 repair works have been made in the disciplinary isolator of the penitentiary institution no. 9, of the Chisinau municipality, as well as 2 cells of the disciplinary isolator repaired of the penitentiary institution no. 18, Branesti village, Orhei region. The rooms for interviews are in general adequately equipped. The rooms for long meetings are equipped with beds, table and chairs, whilst some of them even have TV, audio and video equipment. Also, the convicts who enjoy long term visits, as well as their relatives have the possibility to use kitchens equipped with the necessary furniture, gas cookers and fridges. Similarly, the rooms for meetings are equipped with shower cabins and other sanitary installations which correspond to the sanitarian and hygienic norms.

With respect to the bathrooms, during the visits it was attested that their condition varies. In some penitentiaries these are kept in adequate condition in spite of limited financial resources (penitentiary no. 11, Balti municipality), in other capital repair works have been made (penitentiary no.2, Lipcani, the building for minors), in others repair works have been made due to the intervention of the ombudsman (penitentiary no. 3, Leova, penitentiary no. 18, Branesti, Orhei region).

An alarming situation was attested in penitentiary no. 18, Branesti village, where there are 4 other rooms in the same space with the bathroom, which are used as locker room to keep the clothes of the convicts involved in extraction of limestone from the mine, two serve as rooms for professional school and a room equipped for temporary living for two persons. The ombudsman is worried of the existent conditions in the locker room for convicts involved in underground works.

In this respect it must be mentioned that the poor condition is an argument in favour frequently brought forward as justification of breach of human rights in the third world countries. However, the European Court of Human Rights did not give importance to this aspect. While pleading in front of the Court, the Government of the Republic of Moldova

mentioned that the lack of financial means could be a reason for breaching article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Government argued that because of the insufficient financing it is not always possible to offer meat, fish and milk products. However, the Court does not accept such arguments to justify the poor detention conditions. In ***Poltoratskiy vs. Ukraine***[69] case, the Court stated that the lack of resources cannot in principle justify the conditions in jails, which are so bad that they do not meet the necessary conditions to observe the provisions of article 3 of the Convention. Under these conditions, the economic situation of a country may explain certain cases of breach of article 3, but in no way can it justify them. The case-law of the European Court of Human Rights does not allow the consideration of the economic situation of a country when the decision is taken whether such breaches of human rights are acceptable.

With reference to personal hygiene, clothing and blankets, although the Government Decision on the approval of minimal standards for daily nutrition of detainees and issuance of detergents no. 609 from 29.05.2006 provides for the standards of issuing soap for detainees' baths and other sanitarian and hygienic purposes, this issue remains still unresolved during 2009.

According to article 245 of the Execution Code and article 495 of the Statute of sentence serving by convicts, the convicted person has the possibility to take a bath and shower, at admissible temperatures, for so often as the general hygiene requires it, but not less than once per week, with the mandatory change of the personal and bed clothing. Subject to the financial possibilities and within the allocated funds, daily shower is permitted.

During the visits and concluding from the discussions with the administration of the penitentiaries and detainees, it has been attested that the latter have access to baths at least once per week. Daily shower is offered to the convicts involved in underground works.

[69] Case Poltoratskiy vs. Ukraine, application no.383812, ECtHR Decision from 29.04.2003; Paragraph 4 from the Preamble of the Recommendation no. R(87)3 adopted by the Committee of Ministers of the Council of Europe on European Penitentiary Rules, http://www.coe.int/t/e/legal_affairs/legal_cooperation/prisons_and_alternatives/legal_instruments/Rec.R(87)3.asp

It has been attested that the convicts used their right to wear own clothing.

With respect to the change of bed clothing, this issue has not been tackled by the convicts nor by the personnel of the penitentiaries. It has been detected that the bed clothing differs from one convict to another, which demonstrates that they are the property of the convicts and are brought by their relatives.

The amendments applied to the Criminal Code to reduce the sanctions for certain offences and decriminalisation of other offences, as well as the approval of the two Laws on amnesty had as consequence the decrease of the overcrowdings in penitentiaries. At first glance, the problem of overcrowded penitentiaries was resolved, however it continues to exists in the preventive detention isolators.

The described detention conditions are valid for the case of penitentiaries with the purpose of criminal investigation isolator, especially the penitentiary institution no. 13 situated in the Chisinau municipality, also mentioned in the conviction decisions of the Republic of Moldova issued by the European Court of Human Rights.

In the ***Ostrovar vs. Moldova***[70] case the applicant claimed to have been detained in a cell of 25 sqm, sometimes with more than twenty people. There were twenty metal beds, without mattresses or blankets and it was not always possible to have access to a bed due to overcrowdings. After he filled in his application to the Court, he was transferred into another cell even smaller, of 15 sqm, where he claimed that had to sleep as per established queue and where the conditions of detention were much worse than in the previous cell.

Smoking was not prohibited by the internal regulations of the prison and because there were no separate spaces for smoking, the detainees were obliged to smoke inside the cell. The claimant was suffering from asthma and the administration of the prison knew about this fact, because he was arrested and brought to prison shortly after a followed treatment against asthma in a hospital where he was arrested. Due to the exposure to cigarette smoke, the claimant suffered multiple asthma attacks which usually would take place two to three times per day.

[70] Case Ostrovar vs. Moldova, application no.35207/03, ECtHR Decision from 13 September 2005

The situation was worsened by the fact that the windows of the cell were closed with window blinds through which fresh air could not enter. Moreover, the cell did not have a ventilation mechanism and as a result was very humid. Because of the lack of heating and thermal isolation, the cell is very cold during winter and very hot during summer.

The window blinds do not allow the entrance of the natural light. Despite this, the administration of the prison limited electricity in cells to an amount of six hours per day; therefore, the detainees had to live in darkness and had huge difficulties in preparing food.

The cell was supplied with water for ten hours per day only, and sometimes even less. Access to hot water was limited to only once in fifteen days. There were no spaces to wash and dry clothes. The detainees were obliged to dry out their clothes in the cell.

Because of the insufficient medical assistance and the poor hygienic conditions, the cells have been infested with chinches, lice and ants. The cell mates were suffering from infectious diseases, such as tuberculosis, respiratory and skin infections.

The toilet was 1.5 meters from the table used for lunch and was open at all times. It was impossible to prevent the bad smell due to the lack of appropriate water supply and lack of cleaning products.

The food served to detainees was of a very low quality, being formed of boiled water with a bad smell, being almost impossible for consumption. The claimant declared that the Government spent 2.16 Moldovan lei (MDL) (equivalent to 0.14 Euro (EUR) at that time) for the daily nutrition of a detainee, whilst the price of a piece of bread was higher than 3 MDL.

Taking into account the cumulative effects of the conditions in cells, lack of full medical assistance, exposure to cigarette smoke, inadequate food, the period of detention and the specific impact of these conditions on the claimant's health, the Court considered that the sufferings endured by the claimant overstep the inevitable level inherent to detention and acknowledges that the sufferings which followed have overstepped the level of severity in the sense of article 3 of the Convention.

Additionally, during the examination of the respective case, the Court took into account the documents of the European Committee for the prevention of torture issued as a result of the

visits undertaken in the Republic of Moldova during 11-21 October 1998[71], 10-22 June 2001[72] and 20-30 September 2004.[73]

Most of the penitentiary institutions managed capital repair works and reconstruction of heating systems took place in penitentiaries no. 17 in Rezina, no. 4 in Cricova and no. 3 in Leova to improve the conditions of detention in penitentiaries and prepare for the cold season.

During this year penitentiaries no. 6 in Soroca, no. 9 in Chisinau municipality and no. 15 in Cricova and no. 18 in Branesti village had their heating systems repaired for the living spaces.

The Department of penitentiary institutions has already bought 40 washing machines with a capacity of 5 kg, 10 washing machines with a capacity of 25 kg and 10 drying machines with a capacity of 10 kg and distributed them to the penitentiaries. Also, pursuing the aim to ensure the hygienic norms and resolution of the problem of lack of bed clothing, ten thousand sheets, three thousand pillows, three thousand blankets, five thousand towels and three thousand mattresses have been bought. The respective goods have been distributed predominantly to the vulnerable categories of detainees: minors,

[71] Paragraphs 77, 80-83 from the Report on the visit undertaken in Moldova by the European Committee for the prevention of torture during 11-21 October 1998, http://www.cpt.coe.int/documents/mda/2000-20-inf-fra.pdf

[72] Paragraphs 69, 78, 82 from the Report on the visit undertaken in Moldova by the European Committee for the prevention of torture during 10-22 June 2001, http://www.cpt.coe.int/documents/mda/2002-11-inf-rom.pdf

[73] Paragraphs 53, 55, 79, 83 from the Report on the visit undertaken in Moldova by the European Committee for the prevention of torture during 20-30 September 2004, http://www.cpt.coe.int/documents/mda/2006-07-inf-fra.pdf

women and sick detainees. Two water heating installations with a capacity of 1500 litters were purchased to ensure hygiene and prevent infectious maladies for the detainees in the penitentiary institutions no. 9, in Chisinau municipality and no. 15 in Cricova, as well as two installations with a capacity of 3000 litters for penitentiaries no. 18 in Branesti village and no. 17 in Rezina.

The Department of penitentiary institutions purchased 6 refrigeration rooms with a capacity of 6 and 3 sqm to store food products in large quantities, where subsequently shall be used to store products which require low temperatures.

On 5 August 2009 the penitentiary institution no. 16 in Chisinau municipality officially opened-up the ***Mother's and child's House*** built with the support of a series of foreign donors and its purpose is to detain convicted pregnant women and mother with children who are in detention. The opening up of such an institution shall offer the possibility to deliver appropriate medical assistance to women, as well as the opportunity to spend more time with their children in an environment similar to the one in liberty. The building is equipped with five bedrooms of two beds each, each room being equipped with a kitchen, shower cabin and toilet. The first floor has a medical room, the storage and the playroom for children. There is also a courtyard for walks appropriately equipped.

The considerable efforts from the authorities to renovate the penitentiaries by means of capital repairs, adjustment of heating systems, procurement and instalment of certain new small boilers, repair of toilets, current repair works of water supply systems, electrical and heating networks, demonstrates that actions are taken to improve the situation, but these actions are too timid in the context of the existent problems.

Torture and ill-treatment

Although compared to the preceding years torture and other ill-treatment in penitentiaries has substantially diminished, there have been however depicted cases during

2009 of application of excessive force against convicts, as well as cased of violence between convicts.

The ombudsman examined the problem of physical and psychological violence applied against certain categories of convicts, put by the majority in disadvantageous conditions. While examining the problem the main reason of the violent behaviour between the convicts was identified and it resides in hierarchical classification of convicts in penitentiaries. The ill-treatment of unfavoured convicts is mostly expressed by physical and psychological violence, brutal and aggressive behaviour, humiliation and their constraint to do or not to certain actions, the result of which is the feeling of fear and continuous insecurity of these convicts.

Thus, if the observance of the personal integrity and security of the unfavoured convicts is incompatible with the common detention, if requested by the convicts or pursuant to the initiative of the penitentiary, they are isolated or placed in groups of convict who have similar problems as provided by article 225 of the Execution Code.

To conclude on the force of the psychological impact produced by violence and abuses with which unfavoured convicts are facing, the example of a detainee who due to security reasons refused to visit public spaces for all convicts such as the bathroom and the canteen shall be described. Thus, although his personal security was ensured by the penitentiary agents, he refused to visit the bathroom for more than a year and received his food from other convicts or from relatives by means of packages, all this because he feared he could face other convicts.

Other examples of abuses mentioned by unfavoured convicts represent their forced involvement in unpaid public service labour in penitentiaries for other convicts, being thus obliged to perform double work to the amount provided for by the legislation. Also, the issue of monthly transfers from the accounts of unfavoured convicts to the accounts of other convicts against the will of the former has been underlined.

In this respect, the measures taken by the administration of the penitentiaries to depict cases of application of physical and psychological violence, as well as constraints of any type, which are limited merely to the isolation of the respective convict, are from the point of view of the ombudsmen insufficient and without any effect. Moreover, after the discussions held with the respective group of convicts it cannot be excluded that in some cases the abuses against convicts take place with the tacit approval of the penitentiaries' employees, which from the ombudsman's point of view is absolutely inadmissible.

In this respect, article 166 of the Execution Code guarantees the right to defence and observance from the institution or body which ensures the service of the conviction of the

dignity, the right and freedoms, including not being subjected to torture or to cruel, inhuman or degrading treatment or punishment.

It must be mentioned that it is the authorities who must ensure and guarantee individual security and protection of each person placed in custody or under their control. As a conclusion to this issue, we consider insufficient and insignificant the actions undertaken by the penitentiaries' administrations to ensure personal security and protection of unfavoured convicts against violence and abuses, the consequences of which may constitute an issue judged in perspective proceedings initiated against the Republic of Moldova at the European Court of Human Rights, the breach of article 3 of the Convention being invoked and it does not exclude conviction of the state on the international level.

During 2009, cases of violence between convicts have been registered in penitentiary institutions no. 17 in Rezina, no. 13 in Chisinau municipality, no. 5 in Cahul and no. 2 in Lipcani.

On 15.09.2009 the ombudsman was informed of an incident which took place in the penitentiary institution no. 5 in Cahul, where convict I.A. was ill-treatment by two other convicts, who tattooed his forehead with an uncensored word.

This incident constituted source of an internal investigation, which ended with the disciplinary sanctioning of four employees of the penitentiary institution no. 5 in Cahul and with the warning of one for duty negligence. Thus, the warning was applied to the deputy schedule and supervision officer, lieutenant majoring justice Carastan Alexandru; with reprehension – the supervisor of the schedule and supervision service, soldier in justice Suverjan Iurie; with warning on incomplete duty service – deputy schedule and supervision officer, captain in justice Crotogolov Valeriu and the superior supervisor of the schedule and supervision service, sergeant major in justice Rogoza Ion. At the same time the specialist of the security service lieutenant major in justice, Ciobotaru Alexandru, was warned.

Additionally, in this incident the Cahul region Prosecutor's Office has initiated by means of the order from 22.09.2009 criminal investigation of the convicts who ill-treated I.A. based on the offence elements specified in article 151 paragraph 1 of the Criminal Code.

The ombudsman considered that the application of disciplinary sanctions against penitentiary employees who due to negligence admitted violence acts among convicts are insufficient because during the investigations it has been determined with certainty that convict I.A. had strong physical and psychological sufferings, which created fear, anxiety and inferiority sentiments, which according to article of the Convention reach the gravity threshold to quality it as inhuman an degrading treatment. Following the intervention of the ombudsman,

by means of General Prosecutor's Office decision from 6 November 2009 the initiation of criminal investigations has been decided with respect to the employees of the penitentiary on the basis of offence provided for in article 327 paragraph 1 of the Criminal Code, presently the case being under investigation at the Military Prosecutors in Cahul.

The ombudsman considers that the disciplinary sanctions applied to the employees of the penitentiary system who are guilty of duty negligence and acceptance violence actions between convicts, without any explanation of such behaviour, are insufficient to ensure the preventive effect of the legislation prohibiting torture. Moreover, the application of disciplinary sanctions does not have serious consequences for the warned personnel and the authorities do not offer sufficient redress to the ill-treated person.

During the preventive visit undertaken on 11 December 2009 in the penitentiary institution no. 17 in Rezina all interviewed convicts, who at that time were in block no. 3, have mentioned that during the ransacks between 23 and 30 November 2009, on 7 and 10 December 2009 the penitentiary's personnel have unjustifiably applied excessive physical force and specialised equipment.

During the visit six of the interviewed convicts had corporal injuries and signs of lack of adequate medical assistance.

All these persons except one have explained that the corporal injuries have been caused by the penitentiary's personnel during ransacks after the application of physical force and specialised equipment. Additionally, they have not been examined by the forensic doctor delegated from the Forensic Medicine Centre in Chisinau to participate in the group of visitors.

Thus, the convict P.A. declared that the data offered to the ombudsman to be used according to his competence, mentioning that on 23.11.2009 he was ill-treated by agent G.M. and two other employees when he was supposed to have his daily walks. On 08.12.2009, again aimed to demonstrate inferiority, the agent G.M, ordered him to stand on his feet although he was only dressed in his underwear and irrespective of the fact that at that time there was another person in the cell of feminine gender (doctor). For the refusal to stand on his feet he was handcuffed and escorted to one of the cells of the disciplinary isolator (being dressed only in his underwear) where he was beaten with the rubber baton on his hunkers and feet by agent G.M. while agents M.I. and B.D. were holding him.

Convict G.S. told that on 29.11.2009 he was ill-treated by the agents of the penitentiary, being beaten with fists, legs and rubber batons on various parts of his body. He explained that the conflict started as a result of a simple argument appeared because the doctor did not want to examine him, although he issued to written requests in this respect. He said that he does not know the names of the agents who ill-treated him, but would recognise them if needed.

Convict L.I. explained that on 31.11.2009 he was in the wood processing workshop when, without any explanation he was aggressed by 7 agents of the penitentiary, who beat his face with their fists and used their rubber batons to beat his body.

Actually, the declarations of the convicts pertinent to the application of force and special equipment were identical. The ombudsman has declared that in this case the physical force was not justified and disproportionate, the aim proposed by the employees of the penitentiary was to impose the convict to have a "legal" behaviour.

The administration of the penitentiary justified the application of the physical force and special equipment to eliminate physical resistance of the convicts shown during ransacks, manifested by refusals to be checked, although some of the convicts were about to leave for their daily walks.

Concluding on the above mentioned the ombudsman considers that the imprudent actions of the administration of the penitentiary, which had as aim underlining superiority over convicts, have led to the creation of an extremely tense atmosphere in the penitentiary.

Also, the fact of existence of corporal injuries with the mentioned convicts confirms the reasonable suspicion according to which the other convicts of block no. 3, who have alleged ill-treatment but who did not present any tracks of violence, have been subject to repeated acts of violence, humiliation and abasement.

Following the intervention of the ombudsman, based on the decision of the Rezina region Prosecutors' Office from 28.12.2009 criminal investigation was initiated on the basis of article 328, paragraph 2 of the Criminal Code, the case being presently developed by the Chisinau Military Prosecutors' Office.

Pursuant to the case-law of the European Court of Human Rights the state has the obligation to respect the prohibition imposed by article 3 of the Convention, an essentially negative obligation not to apply ill-treatment to persons under its jurisdiction, as well as the obligation to protect physical integrity of persons under its jurisdiction, especially of the persons deprived of their liberty due to increased vulnerability.

Physical integrity of any person is guaranteed in absolute terms even in cases of fight against terrorism and organised crime. In **Selmouni vs. France**,[74] the Court stated that any use of force against a person in a situation of inferiority, because he/she is deprived of his/her liberty, is prohibited by the ambit of article 3 of the Convention. This principle is applied as well in cases of violence committed against detainees by the personnel of the penitentiary system (**Labita vs. Italy**[75]). In **Tomasi vs. France**[76] case the Court established that ,,any use of physical force against a person deprived of her liberty which does not have a necessity determined strictly by her behaviour hampers human dignity and in principle constitutes a breach of the right guaranteed by article 3.

Investigation of cases of torture from the perspective of the Istanbul Protocol

International standards with respect to the efficiency of investigation of cases of alleged torture are extremely high and, as a principle, it is sometimes very difficult or even impossible for the states to fully respect them.

In their complete shape these principles are to be found in the document called the Principles on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment recommended by the UN General Assembly resolution no. 55/89 from 4 December 2000.

The aim of an efficient investigation and documentation of torture and other cruel, inhuman, degrading treatment or punishment (herein after "torture and other ill-treatment") contains *the following:*

- *Clarification of the facts and establishment and acknowledgement of individual and State responsibility for victims and their families;*
- *Identification of measures needed to prevent recurrence;*
- *Facilitation of prosecution and/or, as appropriate, disciplinary sanctions for those indicated by the investigation as being responsible and demonstration of the need for full reparation and redress from the State, including fair and adequate financial compensation and provision of the means for medical care and rehabilitation.*

States shall ensure that complaints and reports of torture or ill-treatment are promptly and effectively investigated. Even in the absence of an express complaint, an investigation shall be undertaken if there are other indications that torture or ill-treatment might have occurred. The investigators, who shall be independent of the suspected perpetrators and the agency they

[74] Paragraph 87, Case Selmouni vs. France, application no.25803/94, ECtHR Decision from 1999
[75] Paragraph 120, Case Labita vs. Italy, application no.26772/95, ECtHR Decision from 06.04.200
[76] Paragraph 113, Case Tomasi vs. France, ECtHR Decision from 27.08.1992

serve, shall be competent and impartial. They shall have access to, or be empowered to commission investigations by, impartial medical or other experts. The methods used to carry out such investigations shall meet the highest professional standards and the findings shall be made public.

The investigative authority shall have the power and obligation to obtain all the information necessary to the inquiry. The persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige all those acting in an official capacity allegedly involved in torture or ill-treatment to appear and testify. The same shall apply to any witness. To this end, the investigative authority shall be entitled to issue summonses to witnesses, including any officials allegedly involved, and to demand the production of evidence.

Alleged victims of torture or ill-treatment, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation that may arise pursuant to the investigation. *Those potentially implicated in torture or ill-treatment shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation.*

Alleged victims of torture or ill-treatment and their legal representatives shall be informed of, and have access to, any hearing, as well as to all information relevant to the investigation, and shall be entitled to present other evidence.

In cases in which the established investigative procedures are inadequate because of insufficient expertise or suspected bias, or because of the apparent existence of a pattern of abuse or for other substantial reasons, States shall ensure that investigations are undertaken through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any suspected perpetrators and the institutions or agencies they may serve. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these principles.

A written report, made within a reasonable time, shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. Upon completion, the report shall be made public. It shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based and list the names of witnesses who testified,

with the exception of those whose identities have been withheld for their own protection. The State shall, within a reasonable period of time, reply to the report of the investigation and, as appropriate, indicate steps to be taken in response.[77]

In the Republic of Moldova most of the complaints are not properly investigated and are rejected at almost all times. Also, the fact that the ex-officio investigations do not function constitutes a major problem. The judges, prosecutors or the penitentiaries' personnel hardly ever initiate investigations, even if there is medical proof or of other type of torture acts. The fact that the system of internal remedies does not function is demonstrated as well by the relatively high number of breaches of article 3 of the Convention, confirmed by the European Court of Human Rights in the latest years.[78]

Another aspect which shows serious concern when investigating cases of torture refers to persons who have the position of victim, or are witnesses in criminal cases initiated on torture or other ill-treatment committed by the employees of the penitentiary system. Most of the time, the convicts who have been ill-treated continue to serve their sentence in the institutions of the penitentiary system. Along with this, due to the closed character of these institutions, the persons who could deliver relevant information on the ill-treatment of a detainee are the same convicts who also serve their sentence in penitentiaries. Also due to the closed nature of the institutions, their administrations have sufficient means of direct and indirect psychological influence which determine a convict to renounce from his/her prior declarations.

Thus, during the visit undertaken on 14 September 2009 in the penitentiary institution no. 13, located in Chisinau municipality, four of the interviewed detainees have said that they are permanently exposed to psychological pressure from other convicts, as well as intimidated by means of unjustified disciplinary sanctions applied by the administration of the penitentiary institution no. 13, of the Chisinau municipality to determine them to withdraw their declarations on the criminal case where one of the suspects is an employee of the penitentiary system.

During the criminal investigation on a case where an employee of the penitentiary institution no. 4 from Cricova, Mr. P.S. was accused of committing a crime provided for by article 328, paragraph 2, letter a) of the Criminal Code of the Republic of Moldova, by means

[77] Chapter III, letter B) paragraph 78-82 from the Istanbul Protocol from 1999 recommended by the UN General Assembly Resolution 55/89 from 4 December 2000, UN Manual on effective investigation and documentation on torture and other cruel, inhuman or degrading treatment or punishment www.ohchr.org/Documents/Publications/training8Rev1ru.pdf

[78] Paragraph 67, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, from 12 February 2009, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/107/71/PDF/G0910771.pdf

of decision of the Chisinau Military Prosecutors' Office from 19.08.2008 state protection measures have been ensured for convicts B.G., C.V. and M.E. to ensure personal security, as provided by the Law of the Republic of Moldova on state protection of the victims, witnesses and other persons who offer assistance in criminal investigations no. 1458 from 28.01.1998 (in force at that time). However, the data collected during the visit from 14.09.2009 at the penitentiary institution no. 13 of the Chisinau municipality as well as during the one from 13.02.2009 at the penitentiary institution no. 18, in the Branesti village, Orhei region, where at that moment the convicts were detained, have allowed the ombudsman conclude on the defective application of the above mentioned law and the Law of the Republic of Moldova on the protection of witnesses and other participants in criminal investigations no. 105 from 16.05.2008.

During the visit at the penitentiary institution no. 18 in Branesti village, Orhei region (13.02.2009) the convict B.G. was isolated, as a result of a request issued to the administration of the penitentiary on the reason of existence of danger for his personal security. Similarly, complaints have come from the victim and the other witnesses who have invoked that they are threatened by other convicts. Following the intervention of the ombudsman the situation was resolved. However, it was attested that the problem reappeared with their transfer to the penitentiary institution no. 13 in Chisinau municipality. Thus, it has been established that on 07.09.2009 the mentioned convicts have been transferred from the penitentiary institution no. 18, in Branesti village, Orhei region to the penitentiary institution no. 13 in Chisinau municipality with the aim to ensure their participation in court sessions at the Court of Appeal in Chisinau. However, the personal files of these people did not contain the decisions of the Director of the Penitentiary Institutions Department on the basis of which their transfer and detention in penitentiary institution no. 13 in Chisinau municipality was decided, which is a breach of the provisions of article 218 of the Execution Code[79] and articles 98, 99 from the Statute of sentence serving by convicts.[80]

[79] Sending the convicts to the place of serving the sentence and their transferral to another penitentiary under escort, with the observance of the rules of separate detention of women and men, of minors and adults, the convicted to life imprisonment and other categories of detainees. Convicts suffering from active tuberculosis or who have not followed a complete treatment of venereal diseases or who suffer from mental deviations, which do not exclude criminal responsibility, shall be transported separately from healthy convicts, and if necessary, based on the medical report, shall be accompanied by medical personnel. The transferral of convicts takes place from the state's funds as provided by the Execution Code and the Status of sentence serving by convicts.

[80] The transfer of detainees from one penitentiary institution to another takes place on the basis of decision of the Director of the Department of penitentiary institutions. The transfer may be orders in the following cases: when requested by the criminal investigation body or the court of law in the procedure of which a criminal case is being examined where the respective detainee is a party or a witness; to ensure uniform repartition of detainees according to the needs of the penitentiary system; reorganisation, liquidation or change of the category of the penitentiary; the need to separate the detainees involved in the same criminal case as defendants, witnesses or victims; implementation of security, schedule or prophylaxis measures; prevention of conflict situations between

In this respect, the above mentioned convicts have invoked their disagreement with their detention in the penitentiary institution no. 13 in Chisinau municipality as well as the fact that they have not been informed of the decision on the basis of which they have been transferred, mentioning that the reason why they have been transferred was acquired from a different source.

Also, convict B.G. said that during the period of detention in penitentiary institution no. 13 in the Chisinau municipality he had a discussion with the chief of mentioned penitentiary's security service and was subsequently visited by another convict P.A, who categorically insisted on him withdrawing his statements previously made, the latter threatening him with physical reckoning. Another agent of the penitentiary institution no. 13 in Chisinau municipality to whom the convict B.G. makes reference and who exercised pressure upon him is Mr. V.I. The mentioned agent was enrolled in the penitentiary institution no. 4 in Cricova, where the incident took place, when citizens L.V. and L.P. have been ill-treated and is also a witness in the respective criminal case.

The findings allow sufficient grounds to suspect that the treatment of the mentioned convicts is incompatible with the provisions of article 6, paragraph 1, letters c) and d) of the Law of the Republic of Moldova on the protection of witnesses and other participants at criminal investigations no.105 from 16.05.2008, according to which the body empowered to protect witnesses and other participants in criminal investigations must identify the necessary and sufficient solutions to apply the optimal protection measures, as well as to develop the protection programme in cooperation with the protected person.

All these took place having on the other side the provisions of article 9 of the Law of the Republic of Moldova on the protection of witnesses and other participants in criminal investigations no. 105 from 16.05.2008 according to which the administration of the detention facility is empowered to use urgent and necessary assistance measures whilst article 225 of the Execution Code obliges the administration of the penitentiary to take such measures.

Under these circumstances, the ombudsman has concluded on the existence of reasonable doubt as to that similar intimidation actions against witnesses and victims have taken place and continue to take place.

On the respective case the ombudsman appraised the General Prosecutor's Office to undertake the measures necessary to isolate the respective convicts from any actions and threats which come from other convicts and from the employees of the penitentiary institution no. 13

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detainees; according to the medical indications; due to an exceptional family situation (for women – existence of infants or of pregnancy).

in Chisinau municipality. Also, he asked the Ministry of Justice to check the legality of their transfer and detention in penitentiary institution no. 13 in Chisinau municipality.

Consequently, it has been determined that the transfer of the respective convicts took place without informing the Department of penitentiary institutions, thus the provisions of article 218 paragraph 2 of the Execution Code being breached.[81] As a result of these violations the wardens of penitentiaries no. 6 in Soroca and no. 18 in Branesti village have been warned on the need to observe the provisions of the legislation in force.

Medical services

With respect to the health care in penitentiaries, this is offered by a qualified personnel, free of charged, each time this is necessary. Any penitentiary must have a general doctor, a dentist and a psychiatrist. The convicts receive treatment and medicine free of charge.[82]

In practice, the adequate implementation of the above-mentioned provisions remains problematic, first, because of the fact that specialised medical personnel is absent in penitentiaries. It has been determined during the visits that many positions of psychiatrist, pharmacist, nurse, as well as other categories of medical and sanitary personnel are vacant, as follows:

N/o	Penitentiary institution	Vacancy	Date when position became vacant
1.	Department of Penitentiary Institutions	Chief of Medical Division	29.12.2009
		Deputy Chief, chief of the curative section and of the medical and military committee	28.12.2009
		Superior specialist, internist doctor, curative section and the medical and military committee	27.11.2009
		Superior specialist, doctor, psychiatrist, narcologist, curative section and medical and military committee	30.12.2009
2.	Penitentiary no.1, Taraclia city	Specialist, psychiatrist	22.08.2005
		Pharmacist	10.07.2008
3.	Penitentiary no.2, Lipcani city	Chief doctor	24.03.2008

[81] The transfer of convicts takes place from the state's funds as provided by the Execution Code and the Status of sentence serving by convicts.

[82] Article 249 Execution Code no.443 from 24.12.2004, Official Monitor no.34-35/112 from 03.03.2005; Section 41 from the Statute of sentence serving by convicts, approved by means of Government Decision no.583 from 26.05.2006, Official Monitor no.91-94/676 from 26.05.2006

		Doctor psychiatrist	18.02.2007
4.	Penitentiary no.3, Leova city	Chief doctor	12.10.2009
		Specialist, psychiatrist narcologist	23.04.2008
		Doctor, radiologist	22.10.2005
5.	Penitentiary no.4, Cricova city	Chief doctor	31.12.2008
		Specialist, therapeutist	16.12.2009
		Specialist, psychiatrist	13.12.2005
6.	Penitentiary no.5, Cahul city	Chief doctor	18.02.2009
7.	Penitentiary no.6, Soroca city	Specialist, therapeutist	26.01.2009
		Sanitary agent	08.12.2009
8.	Penitentiary no.7, Rusca village	Nurse	08.09.2008
9.	Penitentiary no.10, Goian village	Psychiatrist, narcologist	01.02.2009
		Dentist	01.02.2009
		Sanitary agent	01.02.2009
		Pharmacist	01.02.2009
10.	Penitentiary no.12, Bender municipality	Specialist, therapeutist	25.11.2005
11.	Penitentiary no.13, Chisinau municipality	Doctor, dermatologist-venereologist	23.03.2009
		Specialist, phthisiologist	06.09.2007
		Specialist, psychiatrist, narcologist	11.06.2007
		Sanitary agent	08.12.2009
		Sanitary agent (civilian employee)	11.09.2006
		Assistant – radiologist	10.05.2007
		Nurses (4 positions)	01.01.2009
	Penitentiary no.16, Chisinau municipality	Deputy chief for curative activity	23.09.2009
		Specialist, phthisiologist, section	16.02.2010

12.		contagious diseases	
		Specialist, infectiologist, section contagious diseases	11.04.2008
		Specialist, neuropathologist, section of psycho-neurology	31.12.2008
		Chief, section internal diseases	29.12.2009
		Chief, section radiology	07.10.2009
		Specialist, phthisiologist, section phthisiology no. 1	09.11.2009
		Specialist, phthisiologist, section phthisiology no. 2 (2 vacancies)	09.11.2009
		Specialist, phthisiologist, section phthisiology no. 3	18.06.2008
13.	Penitentiary no.17, Rezina city	Deputy chief, chief of hospital	27.03.2009
		Chief	27.03.2009
		Specialist, therapeutist	15.10.2004
		Chief, section of phthisiology no.1	15.10.2005
		Chief, section of phthisiology no.2	15.10.2005
		Specialist, phthisiologist (3,5 vacancies)	15.10.2004
		Doctor – gynaecologist	01.06.2009
		Superior nurse	01.06.2009
14.	Penitentiary no.18, Branesti village	Sanitary agent	10.09.2008

Although a mobile group was created (surgeon, psychiatrist, oculist, otorhinolaryngologist, dermatologist-venereologist, infectiologist, therapeutist, phthisiologist) from doctors of the penitentiary institution no. 16 of the Chisinau municipality, which during 2009 have made medical examinations in all the penitentiaries of the Republic, the insufficiency of medical personnel has however consequences on the quality of the offered medical assistance.

Along with it, it is the obligation of the medical service of the penitentiary to regularly check on the sanitary and hygienic condition of the rooms and the territory of the penitentiary. It has been established that the doctors in penitentiaries are too reserved with respect to the

presentation of conclusions on the results of inspections where recommendations may be on the measures to be taken to eliminate deficiencies. Frequently, the doctors limit their conclusions to the lack of any complaints from the detainees.[83] Here penitentiaries no. 2 of the Lipcani city and no. 18 of the Branesti village can be mentioned.

Breaches have been found with respect to the observance of the provisions of article 251 paragraph (3) of the Execution Code, manifested by means of non-implementation of obligations by the doctor who made the medical examination of the convicts, to appraise the ombudsman if it has been determined that the convicts have been exposed to actions of torture, cruel, inhuman or degrading treatment or other ill-treatment. In this respect, article 251 paragraph (3) of the Execution Code with the amendments included by the Law of the Republic of Moldova on the amendment and completion of certain legislative acts no. 13 from 14.02.2008 clearly provide that the doctor who makes the medical examination must inform the *prosecutor and the ombudsman* in case it has been established that the convicted person was exposed to torture, cruel, inhuman or degrading treatment or other ill-treatment, as well as the obligation to include the findings and the declarations of the convicted person pertinent to them in the medical file.

Thus, the ombudsman was not been informed by the doctor of the penitentiary institution no. 17, in Rezina city of the case of ill-treatment of convict S.S. who at the moment the preventive visit from 13.07.2009 was in the cell of the disciplinary isolator and had visible corporal injuries.

Following the intervention based on which it has been requested to initiate a disciplinary investigation of the doctor who is guilty of this omission, the ombudsman has been informed by the administration of the penitentiary no. 17, in Rezina city that article 251 paragraph (3) of the Execution Code does not provide for such an obligation for the doctor, which indicates on the fact that the administration of the penitentiary does not take into account the amendments operated in legislation. Subsequently, due to unsatisfactory performance of duties the block sanitary agent A. Peşchin was sanctioned with a reduction of his single allowance with 10%.

It has been determined that the failure to perform this duty is in most of the cases dictated by the lack of knowledge of the standards enshrined in article 3 of the Convention, the

[83] Article 252 paragraph (2) Execution Code no.443 from 24.12.2004, Official Monitor no.34-35/112 from 03.03.2005: The chief of the penitentiary is obliged to get acquainted with the report and the recommendations of the doctors and of the medical service and urgently take the necessary measures. If the chief of the penitentiary considers that the observance of the recommendations in the penitentiary is impossible or if it is unacceptable, he presents a report to the Department of Penitentiary Institutions with the opinion of the doctor or of the medical service.

administration of the penitentiaries and the medical personnel invoking their personal omission as a justification.

A striking case was detected on 11.12.2009 during a preventive visit to the penitentiary institution no. 17, in Rezina city, where the convicts were given "CINARISIN" pills with an expired validity term. Moreover, the pharmacy of the penitentiary had another 200 packages with "CINARISIN" pills with their expired validity period. As a result of this findings the ombudsman has concluded on the defective observance of duties by the medical personnel and the administration of the penitentiary who are obliged as part of their duties to coordinate and control the way of prescription, issuance and management of drugs.

The General Prosecutors' Office initiated criminal investigations based on article 327 of the Criminal Code following the depicted breaches and the intervention of the ombudsman.

Although, according to the national legislation medical assistance is offered to convicts every time they need it or when they request it, the implementation of this obligation is defective in some penitentiaries.

Thus, during the same visit organised at the penitentiary institution no. 17, in Rezina city, the convicts who have been exposed to physical force and special equipment during the ransacks from 23-30 November 2009, 07 and 10 December 2009 have invoked lack of medical assistance, although is has been repeatedly requested, including examinations to establish existent corporal injuries.

Only two of the convicts had papers which confirmed the medical examination, however in both cases the papers of the medical examination did not correspond to basic requirement of a doctor's consultation: presentation of personal data, anamnesis, establishment of objective data, diagnosis and recommendations.

In this respect, with reference to the standards of examination of ill-treated persons, the Istanbul Protocol[84] states that medical experts involved in the investigation of torture or ill-treatment should behave at all times in conformity with the highest ethical standards and, in particular, must obtain informed consent before any examination is undertaken. The examination must conform to established standards of medical practice. In particular, examinations must be conducted in private under the control of the medical expert and outside the presence of security agents and other government officials. The medical expert should promptly prepare an accurate written report. This report should include at least the following:

[84] Paragraphs 83-84 from the Istanbul Protocol from 1999 recommended by the UN General Assembly Resolution 55/89 from 4 December 2000, UN Manual on effective investigation and documentation on torture and other cruel, inhuman or degrading treatment or punishment www.ohchr.org/Documents/Publications/training8Rev1ru.pdf

- *The circumstances of the interview: The name of the subject and name and affiliation of those present at the examination; the exact time and date, location, nature and address of the institution (including, where appropriate, the room) where the examination is being conducted (e.g. detention centre, clinic, house, etc.); any appropriate circumstances at the time of the examination (e.g. nature of any restraints on arrival or during the examination, presence of security forces during the examination, demeanour of those accompanying the prisoner, threatening statements to the examiner, etc.); and any other relevant factors;*
- *The background: A detailed record of the subject's story as given during the interview, including alleged methods of torture or ill-treatment, the time when torture or ill-treatment was alleged to have occurred and all complaints of physical and psychological symptoms;*
- *A physical and psychological examination: A record of all physical and psychological findings upon clinical examination including appropriate diagnostic tests and, where possible, colour photographs of all injuries;*
- *An opinion: An interpretation as to the probable relationship of physical and psychological findings to possible torture or ill-treatment. A recommendation for any necessary medical and psychological treatment or further examination should also be given;*
- *A record of authorship: The report should clearly identify those carrying out the examination and should be signed.*

The report should be confidential and communicated to the subject or his or her nominated representative. The views of the subject and his or her representative about the examination process should be solicited and recorded in the report. The report should be provided in writing, where appropriate, to the authority responsible for investigating the allegation of torture or ill-treatment. It is the responsibility of the State to ensure that the report is delivered securely to these persons. The report should not be made available to any other person, except with the consent of the subject or when authorized by a court empowered to enforce the transfer.

The recommendations of the ombudsmen:

1. *Ensure the practical implementation of the provisions of the Istanbul Protocol to efficiently investigate the cases of torture, inhuman and degrading treatment;*
2. *Ensure efficient, complete and public investigations on cases when persons allege to have been tortured or exposed to other cruel, inhuman or degrading treatment or*

punishment, excluding thus perspective convictions of the Republic of Moldova by the ECtHR;

3. *Direct responsibility imposed on the Police Commissariats for alleged cases of torture, inhuman and degrading treatment as prescribed by article 10 (paragraph 3^1) of the Criminal Procedure Code of the Republic of Moldova and prompt and consequent disciplinary and criminal reaction towards those chiefs of units who have been accused on ill-treatment and who would put the Government in a difficult position to offer plausible explanations on the ill-treatment of persons during their detention in police custody;*
4. *Undertake measures to create an efficient protection and rehabilitation system for the victims of torture and strengthen and consolidate the activity of the existent ones;*
5. *Ensure the implementation of an initial and continuous professional training programme for the personnel of the Ministry of Interior and the Department of Penitentiary Institutions in the field of observance of human rights (the Centre for Human Rights expresses its availability to ensure the necessary human resources needed to implement these actions and the financial means with the support of the "Support to Strengthening the National Torture Preventing Mechanism in accordance with the provisions of the Optional Protocol to the CAT", financed by the European Union and co-financed by the United Nations Development Programme, signed between the Centre for Human Rights and the United Nations Development Programme in Moldova);*
6. *Take measures within the Ministry of Interior structures to ensure the observance by the police agents of all levels of the Law of the Republic of Moldova on ombudsmen no.1349 from 17.10.1997 to ensure unconditional access in detention places or in places where people may be detained;*
7. *Increase efforts and speed up the construction of arrest houses, to ensure the implementation of the preventive measures and misdemeanours arrest in conditions which would eliminate ill-treatment towards persons held in these institutions;*
8. *Ensure the real implementation of the right to a fair trial, sufficient and efficient for alleged victims of torture, by means of initiating research in certain units which would exclude subjective attitude towards the adopted solution;*
9. *Bring the existent detention conditions in the preventive detention isolators under the subordination of the Ministry of Interior to the national and international standards in the field.*

CHAPTER IV

OBSERVANCE OF THE RIGHTS OF THE CHILD IN THE REPUBLIC OF MODLOVA

Children have right wherever they are – home with their natural parents, in substitutive families, in caretaking institutions and in schools. The parents and the families, the professional groups who work with children, but also any responsible citizen should know of the existence of these rights.

The rights of the child are clearly established for the first time, the main responsibility to raise a child is first of all on his natural parents. The law also obliges the state to offer support to families during the caretaking and education of children.

The state has the role to be guarantor of these rights and to ensure their observance. This fact contradicts the main perception according to which the state may substitute the parents since it can ensure the child with a shelter and food. The idea of alternative services of a family type was promoted o eliminate this prejudice, this being a support for the prevention of separation of children from their parents, contrary to the practice in the residential institutions.

If his rights are breached, the child is exposed to higher risks: abnormal physical and mental development, poor health condition, nonparticipation in the schooling system, school abandon, lack of shelter.

It is the duty of the entire society to prevent the breach of the rights of the child and make possible the application of the Law on the rights of

the child, the one which proposed to promote the observance of the rights of all children in the Republic of Moldova.

§ 1. Protection of orphans and children left without parental care

Each child has the right to live in a family, to know his parents, to enjoy their care, to cohabitate with them, with the exception of cases when separation from one or both parents is necessary in the interests of the child. Children who are temporarily or permanently left without the family environment or who cannot be left in this environment to protect their own interest, enjoy according to legislation protection and special support from the state.

Orphan children and those left without parental are adopted or placed in other families or in state institutions for children. Institutionalised children must enjoy the necessary conditions for physical, intellectual and spiritual development, to preserve their maternal language, culture, national traditions and customs, development of independent life habits. By means of Governmental Decision no. 784 from 09.07.2007 aimed to ensure the rights of the child to develop in a family environment the National Strategy on the Reformation of the Residential Childcare System for years 2007-2012 was adopted.

Starting from the fact that currently the child protection system is fragmented, the residential institutions are oriented to educational or medical assistance services, depending on the ministry to which they are subordinated, in many cases the responsibility of the family in raising and educating its own children is diminished, the community is insufficiently involved in the resolution of social problems of the family and child, the Strategy promotes the idea based on the needs and the right of the child to be raised in a family or in an environment as close as possible to the former, irrespective of the age, illness, disability or the school he is enrolled in.

The studies in the field of child protection demonstrate that residential care seriously affects the development of child's personality and creates multiple problems in the process of children's social registration. At the same time, from the financially point of view institutional care is a costly and inefficient form compared to the protection systems based on family support and community services.

Out of around 788417 children in the Republic of Moldova (excluding the region on the left side of the Nistru river and Bender municipality), 9196 are placed in 61 residential institutions. According to the information offered to the ombudsman by the local public authorities, only 262 children are placed in family type institutions and 152 children in the service of parental assistants.

Although the state has recognised the inefficiency of the existent residential system from a series of points of view, there is no stimulation identified which would determine the increase of the number of family type institutions or the number of parental assistants.

During the monitoring visits in the family type institutions the ombudsman responsible for child protection was informed that the financial resources allocated for each child and the help offered to the family who takes care of at least three children does not offer them a decent life.

The position of the ombudsman responsible for children's rights is that the small number of children in parental assistants' care and of the family type institutions is influenced by the insufficient resources allocated for childcare. The population cannot commit to such obligations without being financially supported. It is important to mention that the expenditures covered by the state for institutionalised children are higher than for those placed under the alternative caretaking system. Thus, in 2009 the average expenses for a child under residential institution care was around 29 394 lei, whilst for a child placed in a communitarian institution (alternative care) – 17.8 thousand lei.

According to the study financed by UNICEF Moldova and developed by the Moldovan Social and Economic Investment Foundation - CASE, as a result of a successful implementation of the residential childcare system reform, the state would save around 210.9 million lei until 2012, and 272.3 million lei until 2020. If the reform would discontinue than for the same period there would registered losses of around 310.5 million and 452,7 million lei respectively.

In this respect, after the combined analysis of the second and third periodic reports presented by the Republic of Moldova on the measures taken to give effect to the rights recognised by the International Convention on the rights of the child, the Committee for Children's Rights issued a series de recommendations on ensuring necessary financial and human resources to implement the National Strategy and Action Plan on the reformation of the residential childcare system for years 2007-2012. The Committee insisted on the adoption of prevention of child institutionalisation policies and programmes; on strengthening of progressive actions towards deinstitutionalisation, ensuring that the alternatives to institutionalisation are developed (support to families, extension of parental assistance network).

From the point of view of the ombudsman responsible for children's rights protection the implementation of the recommendations proposed by the Committee for Children's Rights shall contributed to the implementation of the residential childcare system reform.

§ 2. The rights of the child who lives separately from his parents

A negative effect, generated by the migration phenomenon, is the high rate of divorces.

Out of the total number of petitions received by the ombudsman responsible for the protection of children's rights, approximately 30% are examined through the issues of observance of the rights of child separated from a parent as a result of divorce.

Usually, the parent who has left the country for employment when returns back home requests marriage discontinuation and determination of the domicile of the minor child in his favour, after he was raised and educated by the parent remaining in the country. Taking into account the competences of the ombudsman and the existence of court decisions relevant to the actions on marriage discontinuation between the husbands with minor children, the intervention and examination and/or resolution of each particular case is impossible. In majority of such cases the ombudsman intervenes with actions directed to ensure the observance of the rights of the child, using as a guide the superior nature of his interests.

Thus, minor A, was raised and educated for 4 years by his father. His mother went to Italy to seek employment and returned in 4 years with another child and her partner. She filled in an action of marriage discontinuation and obtained custody over her child, motivating in front of the court of law that the child needs special care because he is ill, and his father cannot offer the treatment the child needs due to financial reasons. In his petition to the ombudsman the father of the child showed his concern with regard to the fact that he is hampered from free communication with his child and that there is lack of information pertinent to his schooling. A reason of concern of the parent was the passing of the state frontier by the minor without his registration at the Border Guard Service, a fact confirmed by the ombudsman.

The ombudsman requested the participation of the authorities of the Republic of Moldova and of the Italian Republic to check if the rights of the child are observed. During the development of the report the Department of Consular Affairs of the Republic of Moldova did not offer a distinct answer to the request of the ombudsman, invoking that lack of official data from the Italian authorities.

In the case of minor B, of 4 years old, after the divorce of the parent, she remained in the care of a stranger. The mother did not institute tutorship over the child according to legal provisions, but entrusted a third person by means of a empowerment authenticated by notary to be the legal representative of the child and take care of her. The father has difficulties in communicating with the child.

The described situations do not respect the provisions of article 64, paragraph (1) of the Family Code, where it is mentioned that "the parent who lives with the child does not have the right to obstruct the contact between the child and the other parent who lives separately". At the same time, the right of the children to communicate with the parents, right provided for in article 17 of the Law on the rights of the child, is not respected.

From the point of view of the ombudsman responsible for the protection of children's rights while examining the divorce cases between husbands with minor children, the courts of law must take into account the superior interests of the child, thus fully implementing the provisions of article 54 of the Family Code (the right of the child to expression of will). In this respect, the tutorship authorities are called to diligently perform their duties when issuing conclusions on the claims to establish the domicile of the minor child.

§ 3. Family's responsibility for the child

The migration phenomenon remains one of the reasons of increasing number of children separated by one or both parents.

According to the official date there are about 400 thousand persons out of the frontiers of the Republic of Moldova. Following their leave their children remain without tutelage. According to the data offered by the local public authorities the number of children whose parents have migrated abroad for employment is around 86 647, out of which 61 089 are children separated from one parent and 25 558 – separated from both parent. Reported to the number of children separated from both parents to the number of 4065 children on whom tutorship has been established, it results that for those almost 20 000 children unofficially left without the care of third parties, nobody holds any responsibility. The local public authorities do not hold strict monitoring of each child in such a situation, therefore they are not ensured with necessary assistance. Frequently some of the children left in the care of their grandparents show behavioural deviation, abandon school or even end up in penitentiary institutions.

In this respect a larger receptivity from the public authorities to the problems of the minors is welcome, especially from the local public administration, which is familiar with the issue in discussion. It must promptly react to the diverse initiatives and applications issued locally.

It must be mentioned that the Committee for the Rights of the Child is concerned with the fact that the children left in the custody of caretakers, other than the parents, do not always receive the education and moral support they need, that they are neglected, forced to assume responsibilities of mature people and are more vulnerable to become exploited or juvenile delinquents. Thus, the Committee recommends Republic of Moldova to implement measures to decrease the effects of migration on the affected children's welfare, especially by offering support at local level, by means of an improved social and psychological support for the affected children, by means of training caretakers.

In this respect the ombudsman proposed to the Parliament amendment of legislation which would have an impact on the combat of the phenomenon and ensure the observance of the rights of the child. Among these is the proposal to oblige each citizen who leaves the

country for employment to present at the passing of the state frontier the proof of tutorship over the minor child.

At the same time, the ombudsman reiterates the need to develop new Regulations on the management of the tutorship authority with respect to minors, which would regulate the conditions of organisation and implementation of the activity of the tutorship authorities pertinent to the protection of the rights and legal interests of minor children, including of orphans and those left without parental care, establishment of the responsibilities of the tutorship authorities and of the tutors/curators. In this respect, the Centre for Human Rights insists since 2006 on the need to approve this normative act.

§ 4. Right to recreation

Pursuant to the provisions of article 12 of the Law on the rights of the child each child has the right to recreation and free time, right to participate in games and recreation activities pertinent to his/her age and participate in the cultural and artistic life. The state stimulates and materially supports the creation of a large network of extra-schooling institutions, sports buildings, stadiums, summer camps and other infrastructure which contributes to the recovery of health, offers easements to attend cultural and educational institutions, sports and summer camps during vacations.

The right of the children to recreation, free time and games is breached when they are overloaded with homework, when their parents interfere with the decision on the activity during their free time, when security of children is not ensured within the recreation facilities.

Children do not enjoy sufficient places specifically equipped to spent free time in communities. There are cases when adults change the destination of the existent spaces. In some residential areas courtyards there are bars built, whist the majority of the playgrounds are transformed into parking for cars.

Many places where children can recreate are inappropriate and present risk for their health: the equipment present in the playgrounds are old, defective, rusty; there are unfenced high voltage pillars in the immediate vicinity of the playgrounds and sports facilities; the sports grounds are full of gods; the sports grounds are places close to roads, markets which are not cleaned, close to precipices, unauthorised dumps; in the majority of the recreation sites (parks, stadiums) there are no toilets or these are not being taken care of; there are no showers and lavatories in sports and dance halls.

The places to spend free time are not adapted for children with special needs. They do not even want to participate in free time activities, because the personnel of the institutions does

not offer them the needed attention and does not create a favourable atmosphere for interaction between children.

Within the meetings with the ombudsman responsible for the protection of children's rights with the representatives of local public authorities with the participation of children, a series of issues have been underlined relevant to the observance of the right to recreation and free time. The persons present at these meetings have expressed their views not only as public servants, but also as parents. During these discussions a series of problems have been underlined.

The heavy school programme determines the children who whish to register good schooling results to dedicate their free time to prepare their homework, the taught material being very complex and oversteps the real needs which would develop certain abilities directed to prepare the children for an independent life.

According to the study of the Ministry of Health "the morbidity of children in secondary educational institutions during years 2006-2008" children indeed have little free time. Thus, in 134 secondary educational institutions (9%) the duration of breaks is 5 minutes; in 153 institutions (10,2%) there is large number of hours during the week; in some institutions the inclusion of supplementary lessons during the week and holidays to prepare pupils for exams is accepted; excessive solicitation of the instructive and educational process takes place in the majority of the institutions both in I-IV and in V-XII grades.

The study developed by the Ministry of Education in the context of the Curricular Reform in the Republic of Moldova mentions the children's heavy instructive and educational programme. The schooling programme is overstrained because of the large number of subjects at the level of lyceum (in total 19 subjects which have different quotas at the level of lyceum grades); the programmes are too heavy with information and are in detriment to the attention they must pay in developing skills, structuring attitude and necessary values for the youth's education; information is not relevant from the point of view of the interest of the schools' population; nor is it relevant for the long term formation of the young people; the academic, theoretic type knowledge is still predominant and due to this the aspects of functional studying are suffering, whilst the "awareness" elements are insignificant.

Another aspect of the children's health is their recreation activities. It has been established that not all educational institutions ensure recreation, cultural and artistic activities, when the schedule is prepared account is not taken of the alternation of subjects such as mathematics and physics with those of music and physical training.

The negative effects on the health of the children influenced by the above mentioned factors are alarming. There is a registered increase of cases of maladies such as: figure derogations – 6 times; gastrointestinal system disorders - 5,4 times; diseases of the circulator system - 3,4 times; eye diseases - 2,7 times; disorders of the osseous, rheumatic, muscles and conjunctive tissues, as well as the endocrine, nutrition and metabolism systems- 2,6 times. There is a registered increase of pupils with extra weight – 2,1 times, increase of the number of pupils with weight deficit of I and II levels - 1,6 times, inhibition from physical development - 1,4 times.

The ombudsman recommends the Ministry of Education to monitor the observance of the right to recreation of the child and take measures to avoid situations when children are imposed to recover the hours during the week or during holidays, to consolidate efforts to implement the new curricula which would correspond first of all to the interests of the child, and which would develop skills, structure relevant attitudes and values for long term formation of the youth.

During 2009 the number of holiday tickets for children in summer camps was reduced. Due to the small number of given tickets, in Nisporeni region an incorrect distribution of tickets by the leadership of the regional trade union was signalled. The person who appraised the ombudsman mentioned that for second consecutive years he received a negative response using the justification that no holiday tickets have been issued.

The leadership of the Republican Council of the Education and Science Trade Union informed the ombudsman that the request of the applicant was fulfilled. Moreover, the application to receive another ticket for another child in the same settlement was granted, a gesture with which the leadership of the Republican Council of the Education and Science Trade Union suggested that the right to recreation of the children who did not benefit from a holiday ticket was breached, however not the right of the child of the applicant.

The ombudsman qualified this answer as a gesture of elimination of culpability, as the problem was resolved immediately after the field visits of the representatives of the Centre for Human Rights.

In this respect the need to develop a transparent and fair repartition mechanism of holiday tickets is paramount.

In rural settlements activities for children and teenagers are missing. Teenagers less than 18 years do not have the possibility to spend their free time in a healthy way by means of them being enrolled in sports activities. According to the same study developed by the Ministry of Health in around 329 educational institutions (22,1%) sportive sections have not been created

and only 39 institutions (5,1%) have swimming pools, out of which only two are functional. At the same time, there no cultural activities such as societies, workshops etc. An exception are the regional centres, where efforts are made to support whenever possible such activities.

The mayoralties in villages do not have youth experts. The lack of a person responsible for organisation of such activities created an emptiness in spending free time, the consequences of this situation being reflected in the statistical data on the increase of offences committed by minors, behavioural deviations etc.

During roundtables organised in the regions of the country there was an initiative proposed to the ombudsman to intervene to authorities to institute this position.

The ombudsman recommends the reinstatement of the position of experts in youth and sports issues; strengthen the activities in this respect, which represents a priority for our country.

§ 5. Right to education

From the children's point of view the right to education is breached by both the family and the school. The biggest problem which children confront is the migration of parents. Children remain home alone and are left in the care of their grandparents or other relatives. This negatively affects their education.

There can be situations attested in educational institutions when pupils are unequally treated, depending on various criteria: school records, readiness for classes, social position of the family, relation between the parents and their parents.

In the majority of schools there are situations when children are forced to abandon the school or have prolonged absences, because they work to sustain themselves. Frequently, children with one parent work along with them. Many children whose parents are employed abroad do not attend the school because the persons who take care of them do not ensure or monitor this process.

According to the provisions of article 35 of the Constitution education in the Republic of Moldova is free of charge. Contrary to this constitutional provision it is attested that sums are collected by parents with various justifications for various needs and in different forms. Thus, the majority of schools oblige children to regularly pay sums for the class/school fund, this money being used to repair the classrooms. There are frequent cases when money is collected for paper, ink etc. before examinations. In many schools the pupils of gymnasium and lyceum grades rent of buy books.

The Centre for Human Rights did not register complaints containing such issues. However they have been brought to the attention of the ombudsman during the field visits.

Persons who manifest disagreement with the tendency to collect money avoid appraising the competent authorities because they fear for their children and they try to avoid conflicts which may affect the result of their children, isolation and discrimination etc.

In many cases the school taxes are collected by means of parents' associations, officially registered at the Ministry of Justice on the basis of the Law on nongovernmental organisations no. 837-XIII from 17.05.1996, which regulates the activity of nongovernmental organisations.

Meanwhile the phenomenon is gaining ground the parents being asked to pay excessive amounts which cannot be justified.

There are cases when children who come from socially vulnerable families are exempted from payment of school taxes. At the same time children of parents who do not fulfil their obligations as members of the associations (financial obligations) are discriminated and stigmatised.

The "voluntary" funds become mandatory from the moment the child is matriculated in the educational institution. A mandatory condition for parents is their quality of member of the parents' association. Thus the voluntary process becomes one of coercion, because the parents are not offered an alternative, there being already universally valid experience, especially in the educational institutions of the Chisinau municipality.

After this subject was tackled by the country mass media, the authorities have been forced to express their position, which was not a clear one. The impression was that the authorities agree and approve what takes place in the educational system of the Republic of Moldova.

From the ombudsman's perspective it is appropriate for the competent authorities to verify the legality of the school taxes.

At the same time, the elimination of the parents' associations is not a solution to resolve the problem of school taxes because it would breach the right to association, provide for by article 22 of the International Covenant on civil and political rights.

During 2009 the problem of ensuring free transport to pupils to the educational institutions in rural settlements located in distances longer than 3 km has been felt.

Around 100 rural settlements in which children are forced to walk daily large distances to attend schools irrespective of season have been identified.

A relevant example is the situation in the Telenesti region identified by the ombudsman when examining the petition filed in at the Centre for Human Rights by the group of petitioners, inhabitants of the Chitcanii-Noi village.

As a result of the field visits of the ombudsman the following findings have been recorded.

Those 45 children who live in this settlement have their education in the near by settlement, situated at a distance of 6 km. Children wake up each day at 5:00 to go to school with a route bus according to a schedule established on the basis of a service contract signed between the mayoralty and a transporter. Because the lessons start at 7:30 the pupils wait a considerable period of time until the door of the educational institutions is open.

According to the provisions of article 17 of the Law on education no. 547 from 21.07.1995 the preparation of the pre-schooling children for school is mandatory at the age of 5 and it takes place in preparatory groups, in kinder-gardens, schools, or if requested by the parents – in their families. The state ensures the necessary material and financial conditions for the instructive and educational process in preparatory groups. Depending on the local conditions these can be organised within the primary schools.

Pre-schooling children, inhabitants of the Chițcanii-Noi village, who attend the preparatory group organised within the primary school of the near by settlement, are involved in educational process until 19:00. Under these conditions, the parents can choose between two possibilities: either to accept their minor children walking by foot distances of 6 km or decide abandoning the instructive and educational process.

According to the information offered by the representatives of the local public administration to the ombudsman this issue is still pressing for the inhabitants of the Chițcanii-Noi, Sărătenii-Noi Valley 1, Sărătenii-Noi Valley 2, Zahareuca, Zăicanii-Noi villages of the Telenesti region. The local public authorities invoke the impossibility to resolve the problem of ensuring free transport of pupils to and from the educational institutions from the rural settlements, invoking lack of financial resources.

The ombudsman, paying major importance to the observance of the right to education, has requested the intervention of the Government of the Republic of Moldova to offer a transport to the Chițcanii-Noi mayoralty in the Teleneşti region. At the same time, the ombudsman requested the examination of the possibility to intervene in similar situations registered in other settlements of the country.

From the ombudsman's point of view the resolution of issue of free transport of pupils to the educational institutions in rural settlements for distances bigger than 3 km needs involvement from the state.

§ 6. Protection of the children's rights in special educational institutions

On 17 June 2009 the ombudsman for the protection of children's rights participated in a working visit at the Boarding School for children with behavioural deviations from Solonet, Soroca region, where a series of breaches of children's rights have been attested.

All the children detained in the special educational institution at the time of the visit of the ombudsman where in the boarding school for more than 6 months – the minimal period of stay in the special educational institution.

Settlement	***No. of pupils***	***Settlement where the attended institution is located***	***Distance between settlements***
Chițcanii-Noi	45	Chițcanii-Vechi	6 km
Sărătenii-Noi,Valea 1	30	Ratuş	8 km
Sărătenii-Noi,Valea 2	40	Coropceni	4 km
Zahareuca	35	Sărătenii-Vechi	6 km
Zăicanii-Noi	20	Ratuş	3 km

 According to the Statute of the special type boarding school for children and teenagers with behavioural deviations, the minors-delinquents are kept in the special boarding school until the age of 16 years; until their return to a new life, but no longer than 3 years. It has been attested that the majority of children in this institution are in that institution for more than 3 years; a case was registered when the child was in that institution for a period of 5 years and 9 months. These breaches have been immediately brought to the attention of the Ministry of Education. (Annex nr.)

Children in this educational institution have invoked the fact that the members of the committee for minors in Soroca – the authority which has the final say when deciding to free the minors – examine the files very slowly. On the other hand, the chairman of the respective committee declared that the director of the school did not finalize and send the files of the children to the committee for it issue its decisions.

The ombudsman was informed that children mandatorily deliver works which relate to the "management of the school's household": cleaning in school and outside the building, participate in agricultural labour (the school has 28 hectares of arable land), take care of animals. The children are not paid for their labour, the director of the school mentioning that this money was used to buy equipment necessary for the school. As a result of the verifications made on the legality of child labour initiated as a result of the ombudsman's appraisal the regional Labour Inspectorate in Drochia issued verification minutes according to which child labour was prohibited until the age of 15 outside technological education hours and admittance of labour of children above 15 years old was permitted only within the limits of the labour legislation.

One of the most difficult problems depicted is the lack of psychologist. From the ombudsman's point of view the presence of a psychologist in a special type boarding school for children with behavioural deviations is absolutely necessary. A mandatory condition of detention of children in special educational institutions is their re-education aimed to place them back into a normal life.

In this context, the ombudsman issued an appraisal with recommendations to the Ministry of Education, requesting: immediate liberation of children who have over stayed in this institution; employment of a psychologist for minors to benefit from qualified psychological rehabilitation and social integration according to the statute of the school; development of a special school curricula, adapted to the needs of this category of children; undertake appropriate measures to prevent child labour exploitation.

After the examination of the appraisal of the ombudsman, the Ministry of Education adopted the "Action Plan to redress the situation in the boarding school for children with behavioural deviations from Solonet, Soroca region".

Among the recommendations forwarded by the ombudsman only two have been implemented: by means of Decision of the Regional Council for Child Protection no. 39 from 06.07.2009 children who have over stayed the maximum amount of stay in that institution; a psychologist was hired.

Considering important the actions formulated in the "Action Plan to redress the situation in the boarding school for children with behavioural deviations from Solonet, Soroca" the ombudsman shall monitor their implementation.

§ 7. Right to person's inviolability, protection against physical and psychological violence

 Any voluntary action of a person by means of which the life, physical, mental, moral development or physical or mental health of the child is endangered is considered child abuse. The child must be protected from all forms of violence, injury or physical/mental abuse, disregard or negligent treatment, including from sexual abuse.

The national legal framework comprised of article 24 of the Constitution, which guarantees the right to life and physical and psychological integrity, by article 6 of the Law on the rights of the child, which obliges the state to protect the child's personal inviolability, protecting him from any form of exploitation, discrimination, physical or mental violence.

When ratifying the Convention on the rights of the child Republic of Moldova committed to see that no child shall be exposed to torture, other cruel, inhuman or degrading treatment or punishment.

Even though there are families or groups of children, parents and teachers who "get along", there are still children who suffer from violence coming from adults or other children.

Violence is frequently found in schools, on the street, in family, almost everywhere.

With the purpose to discipline pupils and show disagreement in front of them, some teachers show behaviour incompatible with their noble title of teacher, using insulting or obscene words, use humiliating gestures, threaten with violence, negative grades or expulsion. Some teachers punish the entire lass for a breach committed by one pupil, grading all their behaviour with 2. Often this situation generates arguments among pupils. Some teachers destroy personal items passed among pupils during classes or impose them to genuflect as a means of punishment.

The majority of teachers in schools use physical force to discipline children. Violence used in some schools in the Republic of Moldova is condemned in any of its manifestation form.

The ombudsman self appraised in a case of application of physical force on pupils, which took place in one of the settlements in Criuleni region. The incident was recorded and was broadcasted in mass media but the teacher denied the trustworthiness of the images. She however recognised that she is strict with children.

The ombudsman appraised the Ministry of Education, asking the investigation of this case. Thus, the Ministry of Education attested that the institution in discussion has previously admitted cases of disciplinary punishment by means of low grading, violence manifested on pupils (designation, raised voice, corporal punishments etc.) and these are tolerated by the administration. At the same time it has been confirmed the fact that that case which appeared in mass media is not a separate incident, there being other cases registered in similar circumstances.

Because it has been determined that violence manifests against children from teacher B. was not a separate incident, after psycho-pedagogic investigations undertaken in the respective educational institution by a team formed of employees of the Ministry of Education and of the Institute of Science and Education, the Ministry of Education by means of Order no. 153 from 16 March 2009 requested the director of the school to discontinue the contract with the teacher and take measures against the tolerance from the directorate of the educational institution and the violent teaching style. The mentioned Order of the ministry expressed the view on such phenomena considering violence manifestation against children incompatible with the title of teacher.

According to the information received from the General Directorate of Education, Youth and Sport of the Criuleni region, this teacher continues her activity because the executive bureau of the regional Chisinau centre of the educational and science trade union, based on

article 209 paragraph 2 of the Labour Code decided not to issue the approval to discontinue the employment contract with the teacher, who is the chairman of the school trade union.

Pursuant to the provisions of the Law on education, which provides for prohibition of corporal punishments, any form of application of physical or psychological violence and of the Labour Code according to which the use, even once, of physical or psychological violence against pupils is a justification to discontinue the individual employment contract, the ombudsman considers that the dismissal of the teacher was inevitable.

From the point of view of many parents verbal and physical violence is a way to educate children. However, there is no reason for which the child may be attacked, hit or humiliated. Education does not need violence from the parents. On the contrary, the child becomes aggressive with others or becomes inhibited, unfriendly. Frequently, victims of violence become children of parents who consume alcohol or orphan children.

In many families parents beat their children with the aim to educate them or because they blame them for their own lack of happiness. Parents hit their children on their faces, beat them with different objects (wattle, belts, broom, carpet cleaners), throw different objects at them and extinguish cigarettes on their hands.

Mature people frequently do not understand the consequences of violence against children; however this attitude leaves severe trauma in their souls, behaviour and personality. Any hit provokes pain; any swear brings them psychological sufferings. Children who are exposed to physical abuse do not feel pain only, but also humiliation, abasement. In both cases children feel helpless, aggrieved, neglected. As a result, their development is stopped by adults and all the others who are indifferent to their sufferings.

In this respect, being alarmed of the school violence, the ombudsman for the protection of children's right reiterates the concern of the Committee for Children's Rights on the phenomena of corporal punishments both in house and school conditions, which is frequently used to discipline children and recommends the institution of an official statistics on the corporal punishment applied to children by parent and

teachers, initiation of awareness rising campaigns directed to families, the school system and other educational institutions.

> ***„States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society".***
>
> *(Article 40 of the International Convention on the rights of the child)*

The youth protests on 7 April have raised many questions on the respect of the right to life and physical and mental integrity. There has been information placed in mass media about ill-treatment of young people, among them minor children. Following the request of the ombudsman, the Municipal Directorate for the protection of the rights of the child confirmed the information placed in mass media, mentioning that the children have been questioned for more than 2 hours, the parents have not been informed immediately after their arrest, psychological pressure has been used on minors, some of them had signs of corporal injuries.

The ombudsman has self appraised and filed in to competent authorities certain recommendations to ensure the observance of the rights of detained children. In this respect recommendations have been sent to the General Prosecutors' Office, according to which the verification of the police commissariats, initiation of disciplinary or criminal investigations against persons who committed breaches was requested, including observance of the provisions of the Convention on the rights of the child and the Convention against torture and other cruel, inhuman or degrading treatment or punishment.

The Ministry of Education and Youth received the recommendation to intervene to prevent the exit of the children from schools to protests organised by the youth during hours and also inform them of their rights and obligations, of the danger and consequences of participation in meetings.

The recommendations for the Ministry of Interior include the following: informing during 6 hours the relatives or other persons about the place of detention of minors; observance of legislation by the police agents; observance of the provisions of article 40 of the International Convention on the rights of children.

The answers given by the authorities have been formalistic and without sense.

The ombudsman for protection of children's rights considers that the authorities have not taken appropriate attitude to the recommendations proposed to ensure the observance of rights of arrested minors.

It is not the first time when the Ministry of Interior receives a series of recommendations from the ombudsman which are not taken into account.

It is the case of a minor from Hincesti region who was ill-treated by the police agents with the purpose to confess that he committed an offence. Although it has been demonstrated that the crime was not committed and that police agents applied physical force, there has been no criminal investigation immediately initiated against these agents. Only after the intervention of the ombudsman certain actions have been taken, with a subsequent discontinuation of the criminal investigation due to lack of offence elements. Criminal investigation was reinitiated and repeatedly discontinued. Until present the issue has not been resolved, the victim declaring that will use the recourse at the European Court of Human Rights.

The ombudsman for the protection of children's rights insists that the authorities of the state take account of the national normative framework and the international treaties the Republic of Moldova is a party to and ensure each minor citizen the rights provided for according to the provisions of the above mentioned acts. At the same time, it is appropriate to severely sanction the representatives of the law enforcement bodies who used torture, inhuman and degrading treatment.

§ 8. Prohibition of discrimination

The principle of non-discrimination means that all children should enjoy their rights without any unjustifiable distinction. When Republic of Moldova ratified the international Convention on the rights of the child, it committed to observe the rights which are proclaimed in the Convention and guarantee all children under its jurisdiction, irrespective of any distinction, race, colour, gender, language, religion, opinion of the child or of parents, or of his legal representatives, the national, ethnic or social origin, financial situation, incapacity, birth or any other criterion. The state must undertake appropriate measures for children to be effectively protected against any form of discrimination or by sanctions motivated by the legal situation, activities, declared opinions or beliefs of their parents, their legal representatives or the members of their families.

During the analysis of the combined version of the second an third periodic report of the Republic of Moldova the Committee for the Rights of Children, attesting the existence of the phenomenon in the Republic of Moldova, expressed concern on the fact that "despite the

legislative guarantees against discrimination, the principle of non-discrimination is not fully observed in practice and that children from socially vulnerable families, children with disabilities, children with HIV/AIDS or children cu are part of various ethnic groups or of various religious beliefs may confront the discrimination phenomenon".

The discrimination of children who are part of various ethnic groups is a phenomenon which the children of Roma ethnicity are facing. From the point of view of the ombudsman, discrimination against these children is mostly felt in field of education – access to education, investments in the field of education etc.

The reasons for not attending the educational institutions by Roma children are both of objective and subjective nature. From the objective point of view the Roma invoke the lack of financial capacity to support the studies of their children, problems related to infrastructure of the educational institutions. The subjective part deals with the reduced efforts of parents to encourage their children to get involved in studies since many of them consider that they already have the necessary level of education, early marriages and discrimination perceived by Roma. Another important factor which could influence the educational process is migration abroad, a process in the Roma involve the entire family.

After the monitoring of the situation by the representatives of the civil society it has been determined that the funds allocated for the education of children of other ethnicities is up to 200 times higher. Roma children most of the times study in one or two rooms, where there are children of different ages and level of knowledge. The schools from settlements where most of the population is Roma are not sufficiently equipped with paper, pens and other equipment necessary for the good educational process. The book funds in libraries are of a couple of hundreds of units, and almost 80% of the books are from the soviet times and written in Cyrillic. Kinder gardens are absent in all settlements with Roma population.

Because the teachers are not of a Roma ethnicity and many Roma children do not posses the state language in a sufficient manner, they encounter big difficulties learning, being thus discouraged to attend educational institutions. During the monitoring visits in the respective settlements it has been determined that only a few children knew to read and write.

Roma ethnicity children who study in schools with children of other ethnicities are discriminated and stigmatised, they receive unpleasant appellatives.

Sometimes they are exposed to physical violence from their colleagues. Thus, a student from College no. 1 in Soroca was physical aggressed by a colleague in a racially driven attack. The teachers have not interfered to discontinue the incident and have not intervened post-factum to punish the student who breached the law.

The problems stated above constitute the main factors which influence the indicator of attendance of schools by Roma children.

The Committee for Human Rights showed concern that people infected with HIV/AIDS in the Republic of Moldova confront discrimination and stigmatism.

During the meetings with the representatives of the civil society and the authorities of the Balti municipality ombudsman confirmed the persistence of this phenomenon. Thus, in the Balti municipality, the city most gravely affected by the HIV/AIDS, the parents of children infected with such illness encounter difficulties in their matriculation in pre-schooling institutions. Despite the fact that the each case is resolved individually, the existent situation represents a source of concern for the ombudsman, which proposed himself as priority for 2010 the study of the discrimination phenomenon in the Republic of Moldova.

In the same context it must be mentioned that discrimination of this vulnerable group is manifested not only through the behaviour and the attitude of the society, but also through normative acts in force. Thus, in 1994 by means of a common Order of the Ministry of Science, Ministry of Health and Ministry of Justice the methodical and instructive Indications on adoption have been approved, which are still in force. According to this document the HIV/AIDS is included alongside other illnesses in the list of absolute contraindications for a child candidate for adoption.

The ombudsman was informed of the fact that this Order is the basis of court decisions in cases of adoption.

The ombudsman for the protection of the children's rights considers necessary an urgent review of this document, which does not correspond to international standards and which was developed on the basis of national normative acts presently abolished.

In the same context the provisions of article 116 paragraph (2) of the Family Code are to be mentioned, according to which the adoption of brothers and sisters by different persons is prohibited, with the exception of cases when this requirement breaches the interests of children or if one of the brothers (sisters) may not be adopted due to health reasons.

The ombudsman considers that the provisions of article 116 in the part related to the restrictions of adoption due to health reasons are discriminatory and must be revised. At the same time, it is appropriate to consider the adoption of a special law which would regulation the process of adoption.

§ 9. Juvenile justice

As a result of a series of studies developed by UNICEF Moldova it has been determined that children who are in conflict with the law are confronting serious problems. Even the short detention periods negatively influence the development. The most frequent ways of manifestation is stigmatism, isolation from the community and family and less opportunities for education. Only a very small number of children who have spent a few years in prison adopt a new life when they reach liberty again. The most common offences have an economic character and are usually done by boys between 16 and 17 years. These children come from socially vulnerable families and had issues with the school, family, being without a shelter and are victims of abuse.

Because of the above mentioned children in conflict with the law represent a priority for the society. This is a subject long being in the visor of the state institutions, but also of the international organisations (UNICEF) and NGOs. The ombudsman carefully monitors the implementation of the provisions of international conventions to which the state is a party to and monitors the situation of children in detention.

Although important actions have been undertaken to reform the juvenile justice system, their implementation lacks behind.

As a result of the monitoring visits made by the ombudsman a series of breaches have been identified. Thus, frequently the presence of psychologists who should assist the minor at questionings is a formal one and they only sign to confirm their presence.

Children benefit from education which contributes to their intellectual development and prepares them for social reintegration when they are free again, or even reduces the ratio of illiteracy which is very high. There are specially equipped rooms for this purpose.

Before reaching the penitentiary minors declare that they are beaten by policemen to confess that they committed offences which in reality they did not. The Committee for Children's Rights mentioned this issue as well in its recommendations. The ombudsman does not state that these declarations are entirely true and that persons are wrongfully convicted, but it underlines the factor which relates to the violent practices used to obtain confessions, which regretfully are also used in the case of minors.

Children in penitentiary institutions have invoked that state barristers do not fulfil their duties, are just shadows which assist at the court sessions. Most of the times, the barrister visits the minor only once, the interests of whom he is "representing" in court.

Court decisions are issued very cumbersome. During all this time the minors are held in arrest. There have been cases when children waited more than a half a years for a court decision to be issued, a period of time which from the ombudsman's point of view cannot be considered reasonable.

The ombudsman recommends the creation of courts of law responsible for juvenile issues and appointment of judges trained in juvenile issues; application of alternatives to liberty deprivation.

Challenges and perspectives

During 2009 the ombudsman identified a series of problems related to the observance of children's rights. Some of them have been resolved in 2009; others represent a priority for the ombudsman for 2010. These have been identified as of major importance and are as follows:

1) Right to education
2) Non-discrimination of children
3) Prohibition of violence against children
4) Children in conflict with the law

CHAPTER V

INFORMATION AND PROMOTION OF HUMAN RIGHTS IN COMMUNITIES

Human rights are the rights of citizens, essential and inherent for the existence and free development of the human personality. The participation of citizens at the life of the society is conditioned by their correct and continuous information, a determinant factor in the establishment of a legal culture pertinent to human rights.

Legal information and education of the population of fundamental human rights and freedoms provided for in the specialised national legislation and the international legal acts to which Republic of Moldova is a party to, constitute one of the prerogatives of the ombudsman national institution.

During the reference period the institution undertook human rights informational activity with accent on reflection of the legal issues, awareness of the need to know of the observance of fundamental human rights and freedoms and offer possibilities for the protection, as well as institutional promotion, mediatisation of ombudsmen's activities.

Various instruments have been used to implement the above mentioned segments: mass media – TV, radio, written press and the electronic webpage of the institution, Hot line on torture issues 0 8001 2222, Hot line – the child's line – 0 8001 1116, informative publications, promotional materials with visualisation of the logo and coordinates of the institution, other activities.

It is difficult to check the quality of media coverage of the Centre for Human Rights mediatisation and the activities of the ombudsmen, with evaluation of mass media presence and references, with a total of 230 media materials. Thus, during 2009 34 TV materials have been presented, where the activities of the institution, self appraisals or interventions of the ombudsmen during various events have been reflected. Among the TV institutions who broadcasted the messages of the ombudsman to the public with a larger frequency are the National Television, TV 7, PRO TV Chisinau, Eu TV and the on-line TV - Jurnal TV; less by N4, TVC21, NIT.

The radio media broadcasted 36 events organised by CHR, around 10 of them being in Russian. The products of the radio broadcast have been presented at the news bulletins and other shows. A constant cooperation relationship has been established with Radio Moldova, Vocea Basarabiei, Antena C, Europa Liberă, Europa Plus.

The written press issued about 40 articles. The DREPTUL journal was open for cooperation with the ombudsmen, by means of which the public was informed of the activity of the Centre for Human Rights, exchange of experience with similar institutions from abroad etc. Other newspapers such as Moldova Suverană, Ziarul de Gardă, Timpul, Jurnal de Chişinău,

Asigurare Socială have occasionally reflected parts of the institution's activities. At the same time, 6 articles have been published in Russian on the pages of the newspapers Социальное Страхование, Время, Труд 7, Молдавские Ведомости.

During the reporting year the ombudsmen have had 5 press conferences:

„Presentation of the Report on the observance of human rights in the Republic of Moldova for year 2008'' (17 March 2009) – a presentation was made of the areas where frequent breaches of fundamental human rights and freedoms was attested;

„Presentation of the Report on the activity of the ombudsmen's institution in semester I of 2009'' (20 iulie 2009) – the activity of the National Torture Prevention Mechanism was presented for 2008 and the first half of 2009.

„Official launch of the Hot Line for Children – the Child's Line – 0 800 11116'' (20 August 2009)

– children from the Republic of Moldova for the first time have a Line of the Child, where they can report cases of breach of their rights and ask for legal advice in any area related to children's rights protection.

„Twenty years since the adoption of the UN Convention on the rights of the child'' (20 November).

Appraisal of the Constitutional Court on the breach of the rights of persons who live in Palanca village, Ştefan Vodă region (23 December).

The Centre for Human Rights, making use of the provisions of article 33 of the Law on ombudsmen no. 1349 from 17.10.1997, according to which "the ombudsmen undertake actions to promote knowledge in the field of fundamental constitutional human rights and freedoms protection", has organised and managed working sessions, roundtables, a conference, thematic visits which aimed at the information of the population and provocation of participants to debate public interest issues.

On 16 February 2009 the Ministry of Justice, in partnership with the ombudsmen institution organised a roundtable with the aim to launch a dialogue between the public authorities and civil society on the actions undertaken to ensure the enjoyment of the right to assembly, where the way this right is implemented in the Republic of Moldova has been discussed. The representatives of the Ministry of Interior, General Prosecutor, Governmental Agent, representatives of the Ministry of Foreign Affairs and European Integration,

representatives of the Superior Council of Magistrates, OSCE Mission in Moldova and NGOs involved in the field of human rights have participated at the event.

On 1 June – the International Day of Children, the children from the Day Centre for protection of children from socially vulnerable families "Prometeu" from Străşeni enjoyed a genuine festival organised by teachers and ombudsmen, activity which has already become a tradition. During the event a Contest of drawings with the subject "Your Rights" has been organised, with the aim to ensure that pupils know their rights enshrined in the UN Convention on the rights of the child. At the end of the festival the works of children have been graded and the best ones rewarded.

On the World Day against Child Labour Exploitation (4 June), instituted by the International Labour Organisation in 2002, the Centre for Human Rights was visited many children who discussed about children's rights within a round table with the children's ombudsman and the manager of the International Programme for elimination of child labour (ILO IPEC) in the Republic of Moldova. The meeting was a good possibility for children, who represented many NGOs in Moldova (CCF-Moldova – Copil, Comunitate, Familie, Centrul de zi „Speranța", „Amici dei Bambini") to express their views, fears and suggestions at the chapter of child exploitation through labour. The participants at the roundtable have reached the conclusion that the family, the state and the community must combine efforts in the process of fight against child exploitation through labour.

 On 30 June the ombudsman responsible for the protection of children's rights and the NGOs preoccupied with the protection of children's rights have organised a roundtable where start of a new cooperation was given. The participants at this event have examined a list of problems which they confront each day, as well as various aspects related to the process of deinstitutionalisation and placement of children in families, prevention of child abandon by parents, prevention of trafficking and illegal migration, actions in the field of juvenile justice etc.

The representatives of NGOs have proposed solutions for the identified problems, which relate to the methods of management of social assistance, financial funds, reformation of the fiscal system and review of the responsibilities and obligations of local and central public authorities. In this respect, the need to create multidisciplinary teams in settlements was mentioned, with a responsibility to monitor all cases of breach of children's rights; increase flexibility of social services; integration of children from residential institutions in communitarian schools; redirection of financial sources from the residential type institutions to the ones of a family type; development of fiscal policies which would advantage the families with many children etc.

The children's ombudsman and the representatives of NGOs have agreed on the need to synchronise efforts to accomplish proposed objectives. In this respect, the ombudsman committed to inform the decision making bodies and forward the proposals of improvement of the legal framework in the field of child protection.

On the International Day of Support of Victims of Torture – 26 June 2009, the ombudsmen have organised a roundtable with the subject "Torture Prevention – priority for authorities and civil society" to identify solutions to eradicate the torture phenomenon in the Republic of Moldova, according to the

data of the Report on the activity of the national torture prevention Mechanism in 2008 and first semester of 2009. During the event the launch of the "Hot line – 0 8001 2222" was announced, for the first time in Republic of Moldova, for potential victims of torture. The event was attended by representatives of the Ministry of Interior, General Prosecutor's Office, the Department of Penitentiary Institutions, representatives of international organisations accredited in the Republic of Moldova, as well as NGOs who are active in the field of human rights.

The National Ombudsman Institution, in cooperation with the Causeni Law Centre have organised on 24 November 2009 a first regional roundtable "Creation of partnerships in prevention and fight against torture and other cruel, inhuman and degrading treatment or punishment", the aim of which being initiation of a partnership between ombudsmen and decision makers in the region involved in the prevention and fight against torture.

On 7 December 2009 in Stefan Voda a roundtable was organised with the same issue, at the end of which a series of recommendations for the Action Plan in the field for years 2010 – 2011 being underlined.

The two roundtables organised in Căuşeni and Ştefan Vodă are part of the series of actions organised with the support of the "Support to Strengthening the National Torture Preventing Mechanism in accordance with the provisions of the Optional Protocol to the CAT" Project, financed by the European Union and co-financed by the United Nations Development Programme.

During these meetings the ombudsman expressed his availability to initiate a constructive partnership in the prevention and fight against torture and other cruel, inhuman or degrading treatment or punishment.

In the context of the International Day of the People with Disabilities, the Union of Persons with Disabilities Organisations in the Republic of Moldova, in cooperation with the ombudsmen institution has organised on 1 December 2009 a roundtable was organised with the subject "The rights and opportunities of the persons with disabilities in the Republic of Moldova", where the Report on the monitoring of the public institutions was presented aimed at their adaptation to the needs of the persons with disabilities.

Following the discussions, the participants of the events have proposed the ratification of the Convention on the rights of people with disabilities; approval of a legal framework to determine and use the minimum subsistence allowance; improvement of the legislation in force with respect to the rights of people with disabilities and persons who take care of them; amendment of article 16 of the Constitution of the Republic of Moldova to exclude any form of discrimination on the disability criteria and/or speed up the process of adoption of the Law on the prevention and fight against discrimination; constructive involvement of the civil society in order to develop draft normative acts in the social field, endorsement of these normative acts by the societies of people with disabilities.

At the end of 2009 the National Ombudsman Institution organised the traditional annual conference dedicated to the International Human Rights Day. The ombudsmen and the representatives of the public authorities, UNDP Moldova, OSCE Mission in Moldova, resident experts of the diplomatic missions, members of the Consultative Council of the National Torture Prevention Mechanism, as well as the representatives of nongovernmental organisation – actors involved in the process of promotion and protection of human rights have met on 9 December 2009 to mark the International Human Rights Day.

The event with the subject: "Fundamental

human rights and freedoms – supreme values". Starting from the interest to jointly resolve the problems in the field of reinstatement in legal rights of citizens and the desire to cooperate in the interests of the citizens on the basis of the respect for human rights and freedoms and the rule of law, the ombudsman Anatolie Munteanu called the participants of the event to ensure an efficient partnership to promote and protect fundamental human rights and freedoms.

On 23 December 2009 the ombudsman responsible for the protection of children's rights has organised a roundtable with the subject „The overloaded school curricula and its consequences on pupils' health" with the participation of the representatives of the Ministry of Education, Ministry of Health, Institute of Science and Education, UNICEF, NGOs, professors and pupils. The need to debate this subject was motivated by its frequent tackling during those 46 roundtables, organised by the children's ombudsman and the local public authorities in the regions of the country and in the Chisinau municipality.

In the context of the tackled subject the actions with the Ministry of Education took in 1999 to reform the school curricula have been presented, mentioning that the third and final evaluation took place in 2009 and the new curricula should be approved in February 2010, after consultation with the beneficiaries and specialists in the field, so that on 1 September the new school year starts with a new programme who shall correspond to the interests of pupils.

The new curricula was developed after the evaluations made by the Science and Education Institution with the support of UNICEF, on a number of 1000 pupils, 500 parents and 400 teachers and adapted to the needs of the pupils.

The development, editing and dissemination of the informative materials on the standards and mechanisms of protection of fundamental human rights and freedoms is an important component of the process of information and promotion of human rights because they allow the

citizens know better their constitutional rights and freedoms, the existent possibilities and mechanisms in their observance and protection.

In this respect, the Centre for Human Rights developed 7 publications from financial sources allocated by the state budget:

The annual report on the observance of human rights in the Republic of Moldova in 2009 makes a short presentation of the areas where frequent breaches of constitutional human rights and freedoms are attested based on the contacts with the citizens, examined petitions and investigations initiated by ombudsmen;

The Prospectus "The Rights of People with Disabilities'' reflects the legal and institutional framework and guarantees established by the state aimed to ensure the rights and legitimate interests of the persons with disabilities. There is also information on the advantages offered to this category of citizens in accordance with the legislation in force;

The Prospectus "Aspects of equality of opportunities between women and men" makes a summary of information, based on the Law on the insurance of equality of opportunity for women and men no. 5-XVI from 09.02.2006, related to the enjoyment of fundamental rights and freedoms for women and men in the political, economic, social and cultural lives, with the respect of equality of opportunity and non-discriminatory treatment;

The Prospectus "The Rights of the child left without family support" specifies the priority objectives of the policies of social protection of the family and, especially of families with children, which are promoted by the state, the rights inherent for a child left without a family environment or parental care;

The Prospectus "Domestic Violence" makes a presentation of the domestic violence phenomenon, the factors which favour this phenomenon, mentions the standards and mechanism on the prevention and fight against the violence phenomenon;

The Prospectus "Prevention and fight against discrimination" makes emphasis on the prevention of the discrimination phenomenon, because each person prevails in his/her fundamental rights and freedoms and discrimination breaches the principles of equality in rights and respect for human dignity;

The Prospectus "the National Torture Prevention Mechanism" reflects the objectives of the national torture prevention Mechanism, the competences of the members of the Consultative Council in the prevention and eradication of the torture phenomenon, created to offer assistance to the ombudsman when the functions of the national torture prevention Mechanism are exercised.

Regretfully, the fact that Centre for Human Rights is financially dependent of the state budget makes the number of publications to be modest. In this respect, the OSCE Mission was receptive to the ombudsmen's appeal and with their support the following have been published:

The "Avocatul parlamentar" newsletter where various aspects of the activity of the institution in the process of information, promotion and protection of human rights have been presented, interventions and reactions of ombudsmen directed to contribute to the observance and protection of citizens' rights have been reflected. As an information source in the field of human rights directed to develop the process of promotion and protection of fundamental human rights and freedoms, those three publications have underlined the role of the ombudsmen in intensifying the dialogue and cooperation at national, regional and international levels between the CHR and the institutions involved in the human rights area;

The Report on the activity of the National Torture Prevention Mechanism in 2008 offers a review of the activity of the National Torture Prevention Mechanism in the Republic of Moldova, with special emphasis on the steps directed to create the mechanism, its activity, the results of the visits undertaken in the institutions subordinated to the Ministry of Interior, Ministry of Justice, Ministry of Health and Ministry of Labour, Social Protection and Family;

The Prospectus "National Torture Prevention Mechanism" presents in brief the standards and international and national mechanism of torture prevention and prohibition, as well as the organisation and functioning of the Consultative Council, who offers consultancy and assistance in the exercise of the mandate of the ombudsman as a National torture prevention Mechanism;

The Poster "Preventing torture" specifies that torture, cruel, inhuman or degrading treatment or punishment as a phenomenon is a problem which affects all of us. In this respect the publication states that if exposed to ill-treatment the person can ask the help of the ombudsman, who is invested with the mission of national torture prevention Mechanism;

The Prospectus "The ombudsmen for protection of children's rights" which reflects the competences of the ombudsman responsible for the protection of children's rights (the Children's Ombudsman) in order to guarantee the observance of the child's constitutional rights and freedoms and implementation at the national level by central an local public authorities, persons with decision making powers of all levels the provisions of the UN Convention on the rights of children through the glass of the Law on ombudsmen;

Republication of the Prospectus "The Rights of the Child", which contains brief information on the legal children's rights protection framework and the legal status of the child as a independent subject.

The published informative materials have been disseminated during the activities of the institution, of the partners, sent abroad to institutions and organisation preoccupied with the human rights area, to foreign offices accredited in the Republic of Moldova, as well as to those interested in human rights issues.

With the financial support of the "Support to Strengthening the National Torture Preventing Mechanism in accordance with the provisions of the Optional Protocol to the CAT" Project, financed by the European Union and co-financed by the United Nations Development Programme, during the reporting period various promotional materials with the symbols of the institution have been produced: 2 banners, small flags, block notes, pens.

The ombudsmen, assisted by the national ombudsman institution, use as guidelines in their activity the Principles on the Statute of the National Institutions for the Promotion and Protection of Human Rights (the Paris Principles), one of the fundamental UN documents which is the main source of normative standards and reference.

The national ombudsman institution is the authority which supports the dialogue between the public authorities and society, ensuring the observance of fundamental human rights and freedoms and is involved by its own specific procedures in the reinstatement of citizens in their breached rights. The experience of other states demonstrates that the correct functioning of the National human rights protection Institution may be efficient with an appropriate support from the society. In this respect, the efficiency of the activity of the ombudsman depends on the dialogue with the public authorities and the activism and level of maturity of the civil society, materialised by means of understanding the existence of a common goal – ensure the observance of human rights.

Open and engaging dialogue consolidates and develops the process of promotion, observance and protection of fundamental human rights and freedoms. In this respect the ombudsman had an active participation, opting for intensified dialogue and cooperation at the national, regional and international level between institutions.

In the context of an open and engaged dialogue the 22 meetings of the ombudsmen with representatives of various institutions and organisations from abroad in official working visits in the Republic of Moldova can be mentioned, as well as officials of the foreign offices accredited in the Republic of Moldova:

Meeting with the Hungarian ombudsman (11 February 2009). The ombudsman for the protection of children's rights Tamara Plămădeală had a meeting with her colleague Aary Tamas Lajos, the children's ombudsman from Hungary, where aspects of the situation on the observance of the rights of children from both countries have been discussed and the need to sign a cooperation agreement between the Centre for Human Rights and the Ombudsman Institution in Hungary to exchange best practices has been underlined.

Meeting with a group of experts of the Council of Europe (23 April 2009). The ombudsmen had a meeting with a group of experts from the Council of Europe who where in a visit to Chisinau to monitor the process of implementation in the Republic of Moldova of the Framework Convention on the protection of national minorities and establishment of lasting cooperation relations to accomplish this task.

Meeting with the Commissioner for Human Rights of the Council of Europe, dl Thomas Hammarberg, visiting Republic of Moldova to evaluate the state of affairs after the events of 7 April 2009 and presentation of a report to the General Assembly Plenary of the Council of Europe from 29 April 2009 (28 April 2009). During the meeting the ombudsman Anatolie Munteanu informed the European official of the actions undertaken by the ombudsmen to ensure the rights of detainees in the custody of the Ministry of Interior and the Ministry of Justice, especially the observance of the fundamental guarantees when arrested. It has been mentioned

that the identified breached have been specified in the Preliminary Report on the observance of the rights of detainees following the 7 April 2009 events and brought to the knowledge of the responsible authorities.

The Visit of the European Parliament Delegation. During 27-29 April a delegation of the European Parliament comprised of the representatives of the parliamentary groups in the European Parliament: Marianne Mikko, Marian-Jean Marinescu, Karin Resetarits, Anne Isler Béguin, undertook a post-electoral monitoring visit in the Republic of Moldova. During the meeting with the delegation of the European Parliament ombudsmen have informed the European officials on the results of investigation of circumstances of the respective events. From their part the visitors stated that they shall develop a report on the political situation and the way in which human rights are observed in the Republic of Moldova.

Meeting with the member of the Coordinating Council of the British organisation Hope and Homes for Children (HHC) on 4 June 2009. The member of the Coordinating Council of the British organisation Hope and Homes for Children (HHC), Richard Storey and the children's ombudsman Tamara Plămădeală have discussed the need to consolidate the process of deinstitutionalisation of children in the Republic of Moldova. The ombudsman has underlined that the reduction of number of children in residential institutions and their integration in their biological families or other institutions of a family type is among her priorities. From the children's ombudsman point of view, the process of placement of minors in families must take place as soon as possible and the state should commit to promoting the deinstitutionalisation reform, financial coverage of the beneficiaries (the family), take measures to obstruct the abandon of children etc.

Meeting with the international expert in the field of human rights **(**30 June 2009). The ombudsmen have had a meeting with the international expert in the field of human rights, Clarisa Beneomo, who was visiting Chisinau to document herself with the situation in the field of human rights after the 7 April 2009 events. Ombudsman Anatolie Munteanu informed on the actions undertaken starting with 7 April, especially the Appeal launched by the ombudsmen to the authorities and civil society to stop all protest actions which degenerated into violent actions, the list of visits in penitentiaries, detention isolators, police commissariats etc. At the end of the meeting the ombudsman ensured that in the future necessary actions shall be taken to ensure the observance of the constitutional rights of citizens.

The meeting with the CPT delegation (27 July 2009). In the context of the working visit in the Republic of Moldova (27-31 July) of the delegation of the European Committee for the prevention of torture and other inhuman and degrading treatment or punishment within the Council of Europe (CPT), ombudsman Anatolie Munteanu met with the chief of CPT delegation Silvia Casale (Great Britain), member of the European Committee for the prevention of torture and other inhuman or degrading treatment or punishment within the Council of Europe (CPT) and Marija Definis Gojanovic (Croatia), member of CPT, interested by the organisational and functional aspect of the National Torture Prevention Mechanism. Taking into account the requirements of the members of delegation, Anatolie Munteanu, ombudsman and chairman of the National Torture Prevention Mechanism offered a review of the structure, composition and activity of the NTPM since its creation, underlining the problems and difficulties it encounters. At the end of the meeting it has been mentioned that in the future supplementary efforts need to be made to develop the cooperation of the ombudsman, as a National Torture Prevention Mechanism, with the Council of Europe in

the field of prevention and eradication of torture and other inhuman or degrading treatment or punishments.

The visit of the delegation of the Council of Europe (13 October 2009). The Institution of Ombudsmen was visited by a delegation of the Council of Europe, chaired by Claudia Luciani. The aim of the visit organised during 12 - 14 October was to get acquainted with the evolutions of the cooperation stage between the Republic of Moldova and the Council of Europe and examine the projects which could be included in the Package for Democracy for Moldova. The ombudsmen have mentioned three strategic directions of institutional development: improvement of the legal framework which regulates the activity of the ombudsmen, including the amendment of the Constitution of the Republic of Moldova with a chapter dedicated to the ombudsmen; strengthening the activities of the employees of the institution by means of use of the best practices of similar institutions with experience in human rights protection and relevant financial support for the institution. At the end of the meeting, the members of the delegation showed openness to support the ombudsmen in their initiatives to increase the utility and functionality of the institution.

Efficient and important actions in the context of international relations are the exchange of experience with similar institutions in other countries, meetings organised by the International Ombudsman Institute (IOI), the Association of Francophone Ombudsmen and Mediators (AFOM), the Council of Europe, the European Network of Ombudsmen for Children (ENOC), the OSCE Mission in Moldova, UNDP Moldova, other international institutions and organisations who are active in the field of human rights, where the ombudsmen, the employees of the institution had an active presence, opting for consolidation and development of the international and regional dialogue.

For 2010 the ombudsmen have proposed themselves to organise a series of workshops, roundtables and meetings with representatives of central public authorities such as: the Ministry of Interior, the Ministry of Foreign Affairs and European Integration, the Ministry of Justice, the Ministry of Labour, Social Protection and Family, General Prosecutor's Office. Other activities planned for the next year are: development of video and audio spots, development of informational and promotion materials, periodic organisation of press conferences, briefings,

creation of permanent newspaper columns who shall inform the population on the protection of human rights and the National Conference, traditionally organised on the occasion of the International Human Rights Day, celebrated on 10 December.

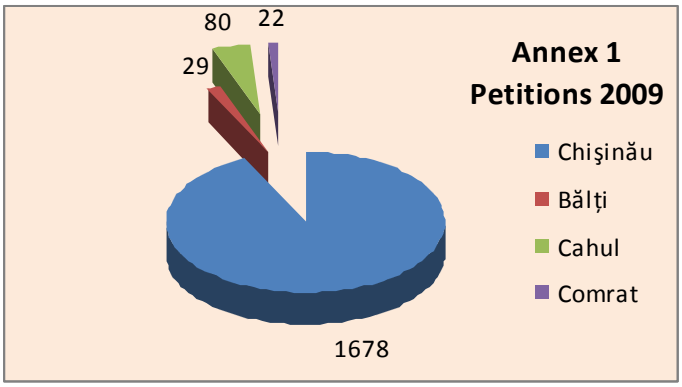
CHAPTER VI
THE ACTIVITY OF THE CENTRE FOR HUMAN RIGHTS

§ 1. The activity of the Centre for Human Rights in numbers

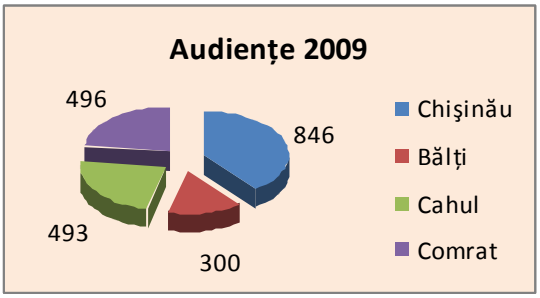
The activity of the ombudsman is directed to ensure the observance of constitutional human rights and freedoms by the central and local public authorities, institutions, organisations and enterprises, irrespective of type of property, nongovernmental organisations and persons with decision making powers of all levels.

While attaining the aims of the institution, the ombudsmen have the task to contribute to the protection of human rights by means of prevention of breaches and recovery of rights, improvement of the legislation which deals with human rights protection and legal training of the population, as well as to promote the uniform application of laws, underlining legislative divergences, application of procedure mentioned in the Law on ombudsmen.

The main sources of identification of system problems and legislative gaps are still the petitions from citizens and the information obtained during meetings, which take place daily with the participation of the ombudsmen and the employees of the Centre for Human Rights in the central office in Chisinau and in the regional offices in Balti, Cahul and Comrat.



Annex 2



According to the Law on ombudsmen no. 1349 from 17 October 1997, the ombudsmen examine the petitions of the citizens of the Republic of Moldova, foreign citizens and stateless persons who temporarily live on the territory of the country, herein after call petitioners, whose rights and freedoms have been breached in the Republic of Moldova.

Thus, each citizen has the right to ask the ombudsman the investigation of cases of breach of rights and freedoms with the condition that the alleged infringed right to be a constitutional one, whilst the breach be imputed to one of the institutions expressly mentioned in article 15 of the same law. ANEXA 3

During 2009 the Centre for Human Rights in Moldova received 1800 petitions signed by 2257 persons as petitioners. The number of 1800 includes the applications received in Chisinau and the regional offices in Cahul, Comrat and Bălți, as presented in annex no. 1.

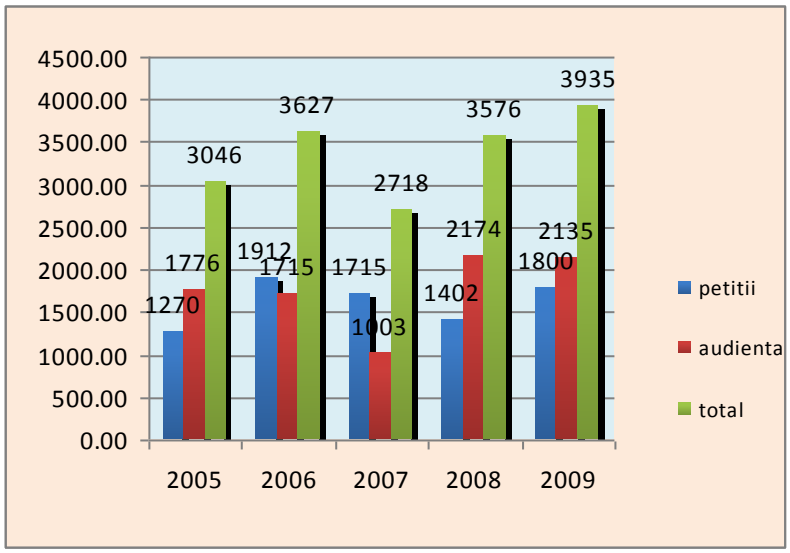
Subject	Audiences Chisinau	Audiences Comrat 2009	Audiences Cahul 2009	Audiences Bălți 2009	total CHR 2009
Private Property	163	105	92	74	435
Right to employment	53	89	142	78	362
Personal security and dignity	32	6	4	4	46
Right to social assistance and protection	91	35	79	56	261
Right to health environment	6	2	2	2	12
Free access to information	120	100	15	5	240
Free access to justice	187	29	36	44	296
Right to healthcare	15	7	34	3	59
Family life	21	44	21	8	94
Free movement	9	3	1	2	15
Right to citizenship	7	25	1	5	38
Right to administration	3	3	10	0	16
Right to petition	11	3	1	3	18
Personal freedoms	2	6	7	0	15
Right to education	12	3	2	0	17
Right to defence	27	19	2	2	50
Intimate and private life	3	0	2	0	5
Others	66	13	44	35	156
Total	**827**	**496**	**493**	**319**	**2135**

Another method to receive information from first source on the alleged infringements of rights is the daily audiences.

According to article 38 of the Law no. 1349 the ombudsmen receive petitioners in audience, but not less than ANNEX 4

three times per month in Chisinau municipality, and in other cities and municipalities, according to the schedule adopted each month by order of the director of the institution. In other days audiences take place with participation of the employees of the Centre for Human Rights. Annex 4

Following the purpose to create fair conditions to access the services of the national human rights protection institution for all citizens of the Republic of Moldova, there are three regional officers, situated in Bălți, Cahul şi Comrat.



According to article 40 of the Law on ombudsmen, One of the functions of the braches of the institution is to receive citizens for audience at the premises of the branch, with the presentation of data on the issues tackled by citizens and if the alleged breach can be examined from the perspective of the Law on ombudsmen, to encourage them to file in the papers.

The purpose of these audiences is to identify the breaches which can be investigated by the institution, the petitioner being recommended to issue an application to the ombudsman by means of completion of a template, and if the problem is outside the mandate of the ombudsman, the citizen is directed to the competent body and receives a legal consultation.

Thus, as there have been 1800 applications, signed by 2257 citizens and 2135 persons in audience (Annex 2 and 3), the conclusion is that during 2009 the services of the institution have been delivered to around 3935 citizens (Annex no. 4).

As provided for in Annex 3, 5 and 6 the most frequent reasons to appraise the Centre are constantly related to the breach of the right to social guarantees, right to private property, right to employment, limitation of the access to justice and breach of the right to security and personal dignity.

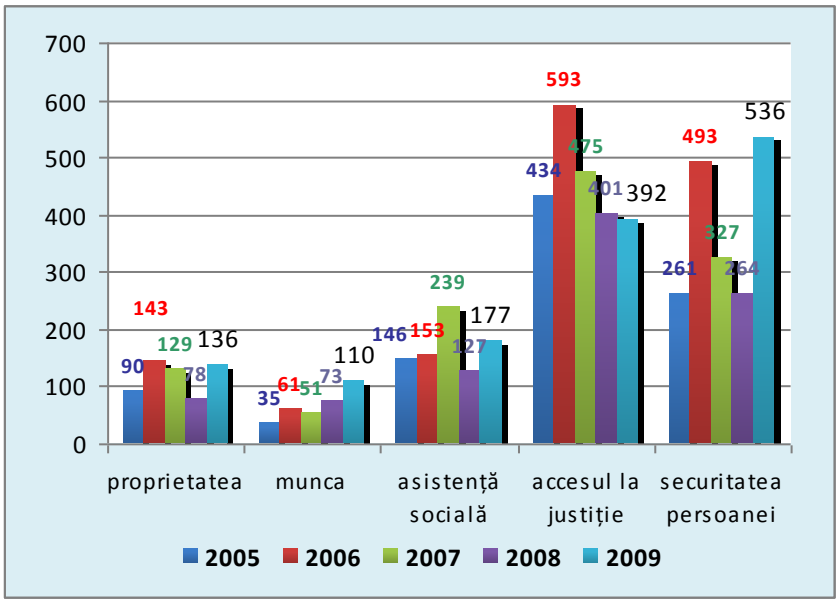
Out of the total of 1800 petitions received during the year, 1351 or around 75% tackles one of the above-mentioned issues (Annex 3, 5, 6).

This fact may be explained both by the plenitude and complexity of these fundamental rights and by certain subjective factors, linked to the personality of the applicant.

Thus, the breach of the right to social assistance and protection is usually invoked by pensioners and persons with disabilities, who consider that the state does not undertake the necessary efforts to guarantee these categories of people a decent life.

Or, for instance the breach of personal security and dignity is one of the problems with which citizens suspected to have committed a crime are confronting with, or those who already serve their sentence and claim to have not been informed of their rights when arrested, have been illegally ransacked, ill-treated by state agents, as well as claimed detention conditions and the hostile and discriminatory attitude from the administration of the penitentiary institutions.

ANNEX no. 5



A separate situation is that in the field of access to justice, with petitions in this area which show essential gaps with respect to the independence and impartiality of the courts of law, and secure the implementation of court decisions. From the moment of creation of the institution this issue is under permanent consideration of the ombudsman, having repeatedly underlined the need to ensure free access to justice for Moldova citizens and reduce bureaucracy in the judicial system and its closeness to the citizen.

Annex 6 shows the number of applications received by the Centre for Human Rights in 2008 and 2009 segmented on issues tackled by the petitioners. It must be mentioned that the reduced solicitation of certain subjects does not necessarily mean that there is a high level of observance of citizens' rights in these fields, but rather the impossibility to appraise the Centre due to various subjective reasons, tolerance for breaches and reduced level of damage, or resolution of the issues via courts of law.

ANNEX 6

	Chişinău			**Comrat**			**Cahul**			**Bălţi**			total		
Subject	Petit. 2008	Petit. 2009	*Comp.*	Petit. 2008	Petit. 2009	*Comp.*	Petit. 2008	Petit. 2009	*Comp.*	Petit. 2008	Petit. 2009	*Comp.*	*total 2008*	*total 2009*	*Comp.*

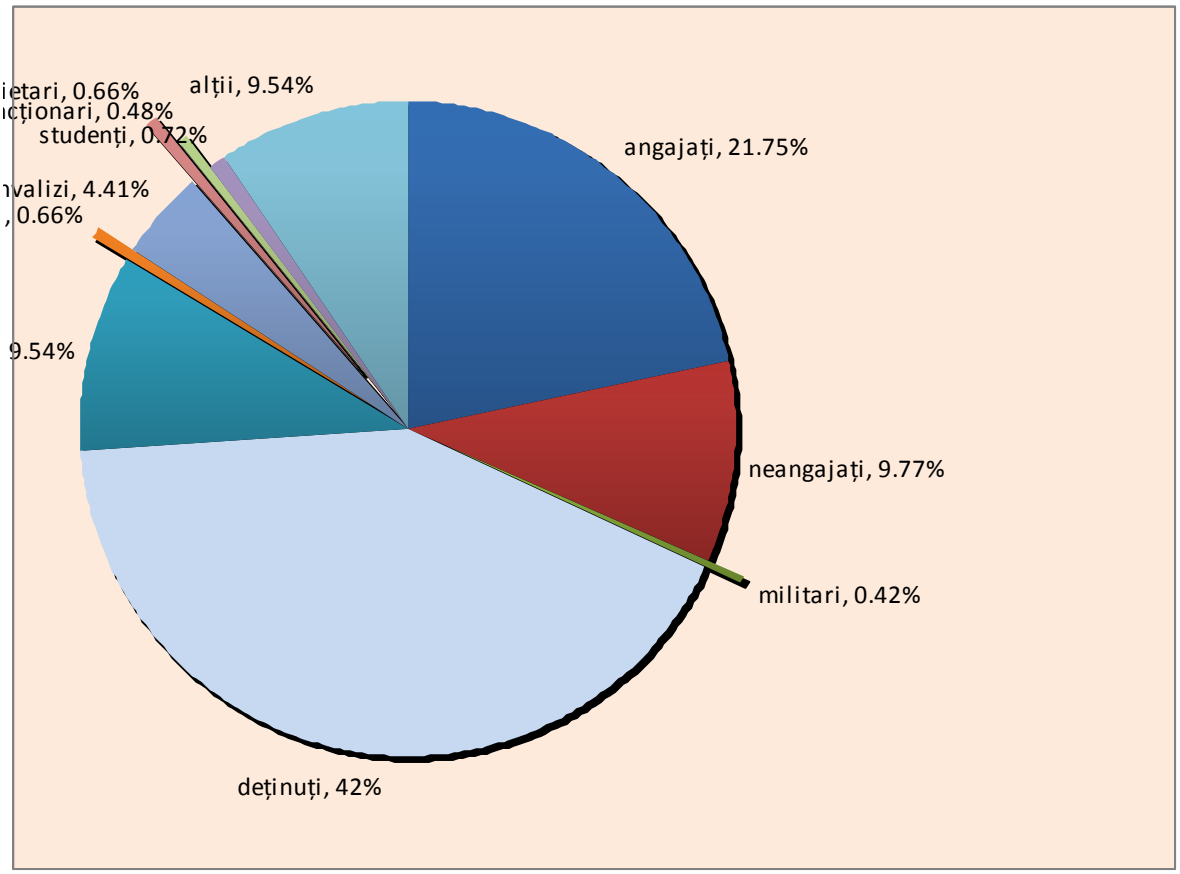
Private Property	69	114	+45	0	2	+2	5	16	+11	4	2	-2	78	136	+58
Right to employment	51	72	+21	1	4	+3	19	31	+12	2	3	+1	73	110	+37
Personal security and dignity	259	517	+258	1	0	-1	4	14	+10	0	5	+5	264	536	+272
Right to social assistance and protection	122	172	+50	1	2	+1	4	2	-2	0	1	+1	127	177	+50
Right to health environment	4	6	+2	1	0	-1	1	2	+1	0	1	+1	5	9	+4
Free access to information	127	142	+15	1	0	-1	1	4	+3	2	0	-2	131	146	+15
Free access to justice	379	381	+2	3	0	-1	5	4	-1	14	7	-7	401	392	-9
Right to healthcare	42	42	=	0	0	=	2	1	-1	0	0	=	44	43	-1
Family life	26	86	+60	0	2	+2	1	0	-1	0	0	=	27	88	+61
Free movement	10	18	+8	0	0	=	0	0	=	0	0	=	10	18	+8
Right to citizenship	5	4	-1	0	0	=	1	0	-1	0	1	+1	6	5	-1
Right to administration	2	0	-2	0	0	=	3	2	-1	0	0	=	5	2	-3
Right to petition	21	15	-6	0	1	=	2	0	-2	0	0	=	23	15	-12
Personal freedoms	11	9	-2	0	4	+4	0	2	+2	1	0	-1	12	15	+3
Right to education	1	9	+8	1	0	-1	0	0	=	0	0	=	2	9	+7
Right to defence	8	63	+55	2	5	+3	0	1	+1	2	0	-2	12	69	+57
Intimate and private life	4	14	+10	0	0	=	0	0	=	0	0	=	4	12	+8
Others	172	12	-160	0	2	+2	3	10	+7	3	0	-3	178	98	-80
Total	**1313**	**1678**	**+365**	**11**	**22**	**+11**	**50**	**80**	**+30**	**28**	**20**	**-8**	**1402**	**1800**	**+392**

The compartment “others” includes the applications in which there is no breach of constitutional rights invoked and which cannot be included in none of the existent compartments, such as for instance consumer rights.

Who asks for assistance from the ombudsmen?

The analysis of the statistical data shows that during 2009 the Centre for Human Rights received petitions from 705 convicts, 365 employees, 170 pensioners, 175 unemployed, 85 persons with disabilities, as well as other less numerous categories.

ANNEX 7



With respect to the geographical source of petitions, the statistical data demonstrate that the majority of petitions come from the Chisinau municipality, similarly to previous years (around 40% of the applications and around 38% of persons in auditions), which is explained by the accessibility of the institution to the inhabitants of the municipality and the near by settlements.

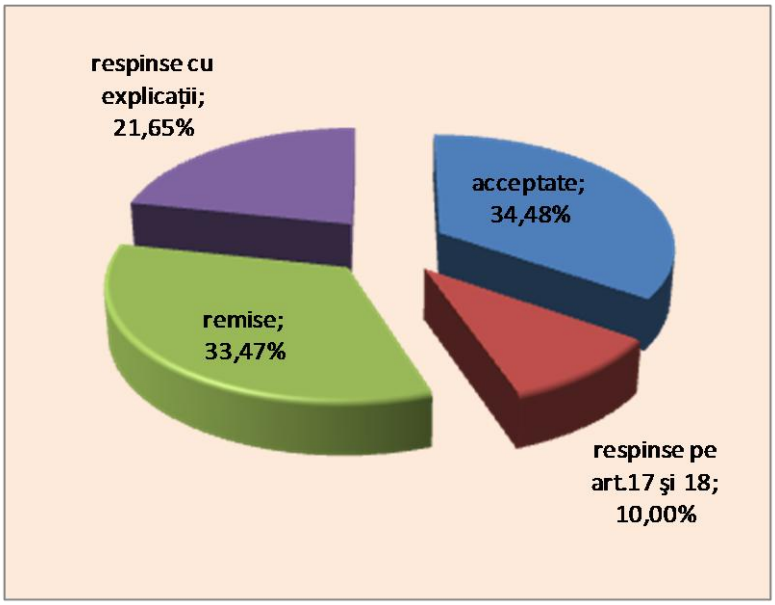
Over the years the region on the left side of the Nstru river remains a space where the observance of human rights needs an approach compliant to the current tendencies of a democratic society. The lack of competence offered to the Moldovan authorities for the rights of the citizens on the left side of the Nistru River, explains the small number of appraisals to the Centre for Human Rights (Annex no. 8). Thus, the impossibility of the ombudsmen to intervene to protect the rights and freedoms of the population in the left side of the Nistru River remains an unresolved problem over the years. After a series of attempts to establish cooperation relations with the ombudsman in transnistria, during the reference year a progress

was registered at this chapter, thanks to which mutual tackling of certain subjects of increased interest for the inhabitants of both banks of the Nistru River was possible.

For this category of citizens of the Republic of Moldova issues which relate to the breach of the right to free movement, right to life and physical and mental integrity, right to vote, social assistance and protection, right to education etc. are of outmost importance. (The Report on the observance of human rights in Moldova for year 2008)

Thanks to the support and efficient cooperation with the "Promo-LEX" association, which starting with 2004 has concentrated its activity in the transnestrian region, the ombudsmen have the possibility to monitor the situation in the field of human rights in this region and intend to establish cooperation relations with organisations involved in the same subject.

During last year a series of measures have been planned and implemented which made the activity of the Centre for Human Rights closer to the rural settlements, which are however too little to create an opinion about the Ombudsmen Institution. Being in regions, the ombudsmen and the lawyers of the Centre had meetings with employees at enterprises, with representatives of local public administration, have accessed information on the activity of various state institutions such as special schools for children with physical and mental disabilities, asylums for the elderly and people who suffer from illnesses, military units, penitentiaries etc.



The practice of ombudsmen's audiences in regions is to be developed in 2010. It must be mentioned that many citizens come to the Centre for Human Rights with problems which are not of the competence of the ombudsmen. However, taking into account the real situation and desire to be proactive with the citizens' needs, the ombudsmen and the lawyers take on board the resolution of the most serious ones, or if the applicant, due to various reasons, is not capable to resolve it by himself, they contribute to its resolution. This happens also due to the fact that the Centre, as a National institution responsible for the Promotion and Protection of Human Rights

in the country, is the only state institution of this type which has the right to investigate individual applications from citizens.

The reasons mentioned in the previous paragraph, but also the insufficient mediatisation of the general aim, the tasks and methods of work of the ombudsman's institution in the Republic of Moldova are at the heart of the large number of application which are outside the mandate of the ombudsman, which cannot either substitute nor assume competences of other state bodies, empowered with various legal functions.

After the registration of the application, pursuant to article 20 paragraph 1 of the Law on ombudsmen, the ombudsman has the right to accept the application or to reject it, explaining the petitioner the procedure he could use to protect his rights and freedoms, or to forward the application to the competent authorities to be examined pursuant to the Law on petitions. In reality all received applications pass through preliminary examination, which has as aim the identification of the alleged breached right, verification of applications' grounds relative to the domestic and international legislative and normative framework, examination of the possibility to involve the ombudsman and if the application is outside the mandate, determination of the competent authority to resolve the case. Irrespective of the decision on the application (acceptance, forwarded, rejection), the ombudsman get acquainted with the invoked data.

As it results from the content of Annex 9, out of the total number of applications registered at the chancellery, 34,48% have been investigated with own resources, 21,65% - after preliminary verification have been rejected, other 33,47% have been forwarded for consideration to competent bodies, most of the time under the scrutiny of the ombudsman.

With respect to the applications sent to other institutions it is important to mention that taking into account the aims of the institution to ensure the observance of human rights by public authorities, enterprises, organisation and decision makers, it is natural that the application sent to the ombudsman against these bodies be preceded by an application to the respondent institution, or the hierarchically upper one to resolve the issue at hand. The attachment of proof that the case was examined by the competent authorities pursuant to the request of the ombudsman, although it is expressly requested in paragraph 22 of the Regulations of the Centre for Human Rights from Moldova, adopted by means of Parliament Decision no. 57 from 20.03.2008, is a less known practice. In these cases, or when it is obvious that the individual application of the petitioner to the competent bodies shall not result into a desirable effect, the ombudsman forwards the application with a reference letter which usually contains the facts and the position on the case, with the request to inform on the process and result of the case review if relevant. Thus, on one hand the excessive bureaucracy is avoided

and on the other the activity of the respondent institution with respect to petition resolution becomes clear.

It is remarkable that a series of authorities have grown to recognise their competences, but also the professional competence of the employees of the Centre for Human Rights, which can be also proven by the special attention paid by certain institutions to the appraisals of the ombudsmen. In this respect, the institutions of the penitentiary system, the prosecutors and police bodies, those subordinated to the Ministry of Health and Ministry of Labour, Social Protection and Family, Ministry of Justice show attitude not only to the applications where it is expressly asked their participation, but also with respect to applications forwarded, informing the ombudsman of the results of the examinations.

However, a series of institutions, especially those from the local public administration and those with private capital superficially examine the appraisals from the ombudsmen, frequently answering formally with the breach of the indicated timeframes for response.

With reference to diagram from Annex 9, the rejection of applications is explained with reference to articles 17 and 18 of the Law on ombudsmen. Pursuant to the provisions of the mentioned articles anonymous applications and those filed in after the expiry of one year from the date the petitioner found out or was expected to find out about the alleged breach, are to be rejected. Thus the applications which could not be examined due to these reasons had to be rejected.

After the identification of breaches of constitutional rights and freedoms, the ombudsmen are empowered to request the authorities to reinstate the rights with or without penalties applied to persons who have proved to be guilty of these breaches.

Annexes 11 and 12 present the reaction activities of the ombudsmen and to whom these have been addressed.

ANNEX 10

Type of reaction activity	2008	2009	compared
Review (based on article 27)	13	68	+55
Request and appraisals (based on article 28 letter b and d)	8	33	+25
Appraisals to the Constitutional Court	2	2	=

Proposals to improve legislation in the field of human rights (Parliament and Government)	10	5	-4

ANNEX 11

Appraised institution	**Reviews**	**Requests (28/b)**	**Appraisals (28/d)**
Government and central public authorities	3	-	1
Ministry of Health, including subordinated institutions	-	-	1
Ministry of constructions and regional development	1	-	-
Ministry of Labour, Social Protection and Family, including subordinated institutions	3	-	-
National Social Insurance Agency and regional offices	4	-	2
Ministry of Informational Technologies and Communications (former MID) and its subunits	1	-	-
Ministry of Education and subordinated institutions	5	-	4
Ministry of Interior, including subordinated institutions and de-concentrated services	6	1	2
Ministry of Justice, including subordinated institutions	12	3	2
The Judiciary system	4	1	-
General Prosecutor's Office and prosecutors' bodies	5	11	4
Local Public Administration of first level	5	-	3
Mayoralty/Council of Chisinau municipality	8	-	2
Local Public Administration of second level	4	-	1
Enterprises which provide services of public interest	3	-	1
Legal entities	4	-	-
TOTAL	**68**	**16**	**23**

Another information sources on the deficiencies in the field of human rights observance, also used to promote knowledge and skills in this area, are the **informational services**, or so called "green lines", which can be accessed free of charge from any part of the country, which operate daily from 8.00 to 20.00 hours.

On 1 July 2009 with the "Torture Prevention" project the Hot Line of the National Torture Prevention Mechanism was launched. The project is financed by the European Union and co-financed and implemented by the United Nations Development Programme. The activity of the Hot Line of the NTPM relates to the registration and monitoring of human rights breaches, more specifically of cases of torture, as well as consultation and education of persons who have reported such breaches.

Initially, the main task of the Hot Line operators was to register cases of torture, offer legal consultation to the caller and of course immediately appraise the NTPM. Because of the fact that besides torture cases an increased number of calls reported other breaches of constitutional rights, which could be used as justification for the ombudsman to self-appraise, it has been decided to register all cases of human rights breaches. This decision contributed to the increase of efficiency of the Hot Line and to the labour productivity offered by the legal councillors involved in the project.

Thus, persons who have called the Hot Line have received legal consultations in various fields based on the legislation in force. The Hot Line of the NTPM obtained the status of a phone number where free legal consultation is given in any field. During July – December 2009 there have been 689 registered calls. Out of them, 21 calls have been registered as requests and sent for consideration and resulted on application a disciplinary sanction, 3 criminal investigations initiated on offences provided for by articles 189 paragraph (3) letter b), article 309/1 paragraph (3) letter c) e) and article 328 paragraph (2) a) of the Criminal Code, and the decision of the prosecutor not to initiate criminal proceedings was cancelled with supplementary preliminary verification.

The Hot Line of the Child was launched on 20 August within a press conference organised by the children's ombudsman Tamara Plămădeală in partnership with CCF Moldova – Child, Community, Family and the sponsor of the project – OSCE Mission in Moldova.

The aim of this service is to offer counselling on protection and promotion of children's rights, inform and guide the beneficiaries to the competent authorities, appraise central, local authorities and law enforcement agencies on the cases of breach of children's rights etc. beneficiaries can be children, parents or future parents, experts who work in the area of child

protection and any other person who wishes to obtain information on the rights of the child or who wishes to report a case of breach of children's rights.

During August 2009 – February 2010 there have been 440 registered calls. This number includes repeated calls, representing around 9%, whilst most of them have tackled social problems: social services, allowances and nominative compensations – 127 calls.

§ 2. Other aspects of the activity of the Ombudsmen Institution

From the declaration of independence of the Republic of Moldova human rights became extremely important in the domestic political message. The level of "democratisation" or even "civilisation" of Moldova is evaluated by the international institutions, especially the European ones (European Commission, Council of Europe, the European Court of Human Rights etc.) using in most of its part the progress in observance of human rights.

Numerous reports of the European Commission warn Moldova on the gaps in ensuring political rights (the first generation of rights), as well as the right to free expression and/or freedom of press, right to assembly and less, the respect of social and economic rights (second generation of rights), combined with such elements as corruption, lack of independence of the judiciary and insufficient guarantee of the rule of law.

In this respect numerous convicts of the Republic of Moldova by the ECtHR have already become proverbial (according to various sources the penalties already reach 18 million Euro) and the international and local nongovernmental organisation have become extremely influent by their frequent appearances in national mass media, accusing the state in insufficient guarantee of the observance of fundamental human rights and freedoms.

The need to promote the image of the country has held the government to constantly demonstrate the availability to deliver on the commitments, whilst in relation to the European bodies, also the capacity to implement priorities commonly agreed, including in this sensible area such as human rights.

Monitoring of observance of fundamental rights by authorities and decision makers in Moldova was entrusted to the Centre for Human Rights, which based on the competences of the ombudsmen, is the public institution which "contributes to the protection of human rights by means of preventing their breach and reinstatement into human rights, increase legal awareness of the population" by means and procedures mentioned in the specialised law.

From the moment of its creation, the ombudsmen have been exposed to situations where they had to confront a series of obstacles in fulfilling their mandate, especially due to the

existent gaps in the legislative and normative framework, insufficient logistical means and not less important, the formalistic or even hostile attitude of certain authorities.

In the desire to overcome these difficulties the ombudsmen, while presenting the situation on the observance of human rights in Moldova, but also with other occasions, have insisted to draw the attention of the Legislative on the discrepancies between the tasks entrusted to the institution and the means given to their disposal to implement the former.

With reference to the reaction capacity of the institution it has been mentioned that the Centre for Human Rights encounters deficiencies of infrastructure correlated to the exigencies of the Principles on the national institutions responsible for the promotion and protection of human rights (Paris Principles), according to which the national institution must have sufficient financial resources. At the same time, according to the Paris Principles the allocation of financial resources for activity (personnel, premises, transport etc.) must be made in such a way so that the independence of the institution is not jeopardised and it does not have a direct dependence from the Government, the activity of which it is monitoring.

A retrospective view of the events shows that the ombudsmen started their activity in 1998, following the adoption on 5 February 1998 of the Parliament Decision no. 1484 on the approval of the Regulations of CHR, whilst the Government was to ensure the institution with premises and necessary equipment, as well as to resolve the issue of transport during one month, but this did not happen. As a result, the Executive was repeatedly requested by means of Parliament Decision no. 254 from 07.06.2001 to "implement during 2 months the Parliament Decisions no.1484-XIII from 5 February 1998 and no.909-XIV from 30 March 2000 in respect to ensuring the Centre for Human Rights and its branches with premises, equipment and transport means" and to present the information on the implementation to the Parliament.

Receiving such an attitude from the outset the way the legal provisions have been implemented shall obviously generate surprise, including the quality of infrastructure of the ombudsman's institution. A brief description of the state of affairs when the report for 2009 was developed is as follows:

The building situated in Chisinau municipality, on Sfatul Tarii str. no. 16, where on an area of 323,8 sqm is the central office of the Centre for Human Rights from Moldova, despite of its good positioning, may only cover the minimal functionality requirements for an institutions, but not of a one which has the task to "ensure the observance of constitutional rights and freedoms by the central and local public administration authorities, institutions, organisations and enterprises, irrespective of their type of property, nongovernmental

organisations and persons with decision making powers of all levels" (article 1 of the Law on ombudsmen).

Moreover, the building itself, which started to be used since 1948, is damaged, with a reduced seismicity and does not correspond to the construction norms and technical standards, a fact confirmed by the expertise acts issued in 1998 by the State Service of verification and monitoring of buildings within the Ministry of Constructions and Regional Development.

This fact may be found until present, thanks to the numerous cracks registered on the ceilings and main walls, which have been just covered by cosmetic repairs necessary each time the mail walls vibrate only at the movement of the personnel or the cars which move in the near vicinity. The mentioned vibration makes it impossible to change the current security system into an autonomous one, desired to reduce the current expenses.

It must be mentioned that the conclusions from 1998 recommend the examination of the possibility to demolish the building and construction of a new one, respecting all current requirements.

Besides the fact that the employees of the Centre for Human Rights are imposed to work in risk conditions, there is also the problem of overcrowded offices on one hand and the physical and moral ageing of a large part of the equipment and furniture on the other.

Summarising the information presented above, taken altogether, including the exterior aspect of the CHR premises, we consider that the current state of affairs hampers the image of the National Institution for the Promotion and Protection of Human Rights and, at first glance, generates doubts for visitors on its capacity to "reinstate persons in their rights".

With respect to the transport means, the Centre for Human Rights has the following vehicles:

Toyota HIACE (minibus) – year of make, 1998 and received in 2001, on the basis of a UNDP project;

VAZ 2107 - year of make 2002, given on the basis of Government Decision no. 1193 from 13.10.2006;

Pursuant to Parliament Decision no. 163 from 18.05.2001 and pursuant to the Decision of the Parliament's Administration no. 254 from 18.07.2008 the Centre received two vehicles of car make GAZ 2410 (year of make 1991) and GAZ 3102 (year of make 1993), with a consumption of 156 litters of gas at each 1000 km, which is quite costly for the limited budget of the institution.

It is to be mentioned that the two vehicles received in 2008, pursuant to the request send to the prime-minister of the Republic of Moldova are not used due to the considerable maintenance costs.

With respect to the Branches in Cahul, Comrat and Bălți, the positioning of the office in Cahul at the 4th floor of the Cahul Mayoralty (on 29,4 sqm) partially limits the access of the elderly or with disabilities to the services of the institution.

Also, the positioning of the Balti and Cahul offices in the local public administration buildings inevitably has a negative impact on their independence from the owners, thus limiting their capacity to promptly react to complaints against these authorities.

The situation of the Comrat office is different as it is placed in a separate building, with an exit to the street, located in the centre of the municipality and it is thus more accessible to the public at large.

Budget 2009

The Centre for Human Rights from Moldova is an independent state institution, which has the status of legal entity and has a separate budget which is part of the state budget. The draft budget of the institution, endorsed by the Ministry of Finance, is approved by the Parliament at the same time when the state budget is adopted.

Pursuant to the Law on state budget for year 2009 no. 244-XVI from 21.11.2008 the Centre for Human Rights from Moldova had approved financial recourses at the expenditures chapter equal to 3944 thousand lei.

Pursuant to the letter of the Ministry of Finance of the Republic of Moldova no.08/1-17 from 08.04.2009 on the revision of the state budget approved for 2009 and the proposal to reduce allocations, mandatorily indicated in annex no. 1 of the above mentioned letter, the amount of expenses of the main state budget component was reduced with 789 thousand lei. Thus, in the budget year the national institution for the protection of human rights received 3155.9 thousand lei, out of which 3082.4 thousand lei have been used.

The budgetary component of special means have been approved at the level of 5357.3 thousand lei. Because the financial administration of the project on the Strengthening of the National Torture Prevention Mechanism is made directly by the United Nations Development Programme, the Centre for Human Rights asked the amendment of the initially approved financial plan, thus the amount initially specified for the expenditure year was approved at the level of 312.7 thousand lei.

The amendments previously mentioned have been approved by means of the Law no. 82-XVIII from 03.12.2009.

Among the allocations adopted for 2009 and according to the limits of state budget financed expenditures, the Centre for Human Rights had the possibility to plan the following expenses:

1. Expenses for labour retribution – 2297.4 thousand lei (including: contributions for state social insurance fund – 373.0 thousand lei, medical insurance premiums – 56.7 thousand lei), which is 79% of the total allocations.

2. Expenses to ensure the functionality of the institution and delivery of the activities of the ombudsmen – 814.1 thousand lei (including: 131.7 thousand lei rent and utilities, 138.6 thousand lei interdepartmental security, 59.1 thousand lei transport expenditures (petrol), 132.2 thousand lei printing services etc.) which is around 10% of the total allocations.

3. Expenses for payment of membership fee at specialised international organisations – 12.0 thousand lei.

4. Expenses for official visits 32.4 thousand lei (including: 2.4 thousand lei visits within the country and 30.0 thousand lei visits abroad).

The implementation of the budget for 2009 is at the level of 97,7%.

Retribution

Currently, on the international level the Ombudsman Institution is considered an important attribute of a democratic society, based on the rule of law. The ombudsmen consider that in the Republic of Moldova as well the state should be interested not only in the existence of this institution, but also in its efficient activity. In this respect, the current procedure of approval of necessary financial means for the well functioning of the institution does not correspond to one of the main principles inherent to the ombudsman institution – financial independence from the executive branch, which is/should be inherent to the national Human Rights Promotion and Protection Institutions pursuant to the contents of the Paris Principles.

The employees of the Centre for Human Rights are employed on the basis of the Law on the retribution system in the budgetary sector no.355 from 23.12.2005. The level of retribution of the public servants of the institution, although part of the central public administration authorities, is at the level of retribution of local public administration servants of the village levels and comparably lower to the ones of the central public administration authorities, as it is shown in Annex no. 2.

For instance, the Romanian ombudsmen institution (similar to CHR) the leadership and specialised implementation function is assimilated to those of the Parliament's administration. This attention shown to the motivation of persons which ensures the activity of the ombudsmen resides in the vocation of the institution, which from its creation (Sweden 1809) is defined as an authority entrusted by the Parliament and responsible in front of it, whish receives by means of the Constitution or of a special law the right to resolve the complaints which are received from citizens, who claim that the executive bodies have breached or ignored their rights recognised at constitutional level.

During the reference period part of the ***international cooperation*** the ombudsmen and the employees of the Centre for Human Rights participated at a series of conferences, seminars and workshops and after their return used the obtained knowledge and skills in their daily activity (detailed participation at international events is specified in Annex IV).

It must be mentioned that the insufficiency of funds did not allow the response to all invitations among which the 9th World Conference of the International Ombudsman Institute which took place in Sweden.

Being aware of the importance of partnership with similar institutions, it is regretfully attested that because of the same limited resources during 2009 the Centre for Human Rights did not organise any conference of reunion of an international level.

Internal environment

At the date of reporting the Centre for Human Rights from Moldova had the following personnel: 3 ombudsmen, after the leave of the ombudsmen Oleg Efrim due to his appointment as deputy minister of justice on 11.11.2009, 25 servants who ensure the ombudsmen the organisational, informational and analytical support, including 6 from the regional offices, as well as 8 units of technical personnel (drivers, premises' care takers etc.), in total a number of 36 people, compared to the amount of 55 positions in the structure of employment.

All employed public servants have higher education in the occupied fields, whilst 3 have specialised graduate studies, 3 persons have graduated two faculties.

The structure of the institution, according to the Regulations of the Centre for Human Rights, the structure, personnel and financing, approved by means of Parliament Decision no. 57 from 20.03.2008 and the level of completion of the positions is presented in detail in Annex no. 3

Here it must be mentioned that the Centre for Human Rights confronts insufficiency of trained personnel, thus currently the ombudsmen institution functions with a high personnel fluctuation, the employees preferring to go to other positions with higher financial motivation.

Thus, in 2008 the Centre for Human Rights employed 9 persons, out of whom 3 have been dismissed, and in 2009 employed other 7 persons after another 4 have left.

ANNEX I

Implementation of the financing plan for 2009 according to economic classification of expenditures

Thousand lei

Nomination of indicators	Classifier		Planned 2009	Accomplished 2009
	Art.	Alin.		
Labour retribution	111	00	1 867. 7	1 865.5
Contributions to state social insurance fund	112	00	373 .0	371,0
Medical insurance premiums	116	00	56 .7	56.3
Total expenditures for labour retribution	111 112 116		2 297.4	2 292,8
Office supplies, building maintenance goods	113	03	84 .9	77 ,3
Books and periodicals	113	06	10 ,0	9 ,2
Telecommunication services and mail	113	11	57 ,4	46 ,2
Rent of transport and maintenance of own transport means	113	13	94 ,0	76 ,6
Current repairs of the equipment and inventory	113	18	0,8	0,3
Rent of offices	113	19	131 ,7	124 ,9
State and local symbols, state distinction signs	113	20	2 ,0	
Printing services	113	22	132 22	131 ,3
Protocol expenditures	113	23	4 ,9	1 ,5
Interdepartmental security	113	29	138 ,6	138 ,3
IT works	113	30	38 ,0	31 ,9
Garbage evacuation	113	35	2 ,4	2 ,2
Goods and services not included in none of the above	113	45	66, 2	62 ,6
Total expenditures for payment for goods and services	113	00	763 ,1	702 ,3
Internal visits	114	01	2 ,4	1 ,4
External visits	114	02	30,	26, 7
Total expenditures for duty visits	114	00	32 ,4	28 ,1
Other transfers abroad (membership fee in international organisations)	136	03	12 ,0	11,4
Total transfers abroad, payment of membership fees in specialised	136	00	12,0	11,4
Purchase of fixed property	242	00	51,0	47, 9
TOTAL			**3 155, 9**	**3 082,4**

ANEXA II

CHR		**Mayoralties of villages**	**With more than 6500 inhabitants**	**Central administration of Ministries**		**Parliament's Administration**	
Function	**Retribution lei**	**Function**	**Retribution lei**	**Function**	**Retribution lei**	**Function**	**Retribution, lei**
Councillor of the ombudsman	1100-1650	Secretary of Mayoralty	1100–1650	Director of General Directorate	1850–2600	Chief of section	2250–3000
Chief of service	1100-1650	Chief accountant of the Mayoralty	1000–1500	Chief of Directorate	1700–2450	Councillor of the vice-chairman of the Parliament	1900–2650
Chief accountant	1100-1650	Specialist: for regulation of the land regime; in issues of taxation; for planning	800–1200	Chief of Section, councillor of Minister	1500–2250	Chief of Section, Chief Accountant	1900–2650
Chief of branch office	1100-1650	Specialist in other fields	700-1000	Chief of Administrative Directorate (section) Chief of service (sector)	1400–2100	Chief of service, sector	1800–2550
Main Consultant	1000-1500			Main Consultant	1300–1950	Main Consultant	1750–2450
Superior Consultant	900-1400			Superior Consultant	1200–1800	Superior Consultant	1400–2100
Main Specialist	800-1200			Consultant	1100–1650	Main Referent	1400–2100
Coordinating Specialist	750-1100			Main Specialist	1000–1500	Superior Referent; referent of the standing committee	1300–1950
				Coordinating Specialist	900–1400	Referent	1100–1650
				Specialist	800–1200	Specialist	900–1400

ANEXA III

	According to employment schedule	Factually employed
Ombudsmen	4	3
Personnel of the ombudsmen	8	6
Service training programmes, public relations	3	2
Service protection of children's rights	3	2
Service reception of petitions and management of auditions	3	1
Service investigation and monitoring	19	9
Chancellery	2	2
Administrative service	7	5
Branches	6	6
TOTAL		

Final Recommendations and Observations of the international bodies developed for the Centre for Human Rights

The Committee for Human Rights studies the second periodic report presented by the Republic of Moldova which contains useful information on the measures adopted by the state party to gradually implement the *Covenant on civil and political rights* (CCPR/C/MDA/2) within the sessions no. 2559 and 2560 from 13 and 14 October 2009 and has adopted the following final observations within the session no. 2582 from 29 October 2009:

"The Committee is concerned that the Centre for Human Rights is inadequately funded and is dependent on the Executive for its funding. It also notes with concern that the majority of complaints addressed to the Centre for Human Rights are not formally investigated. The Committee notes the absence of information on the measures taken to publicise the existence and functions of the Centre for Human Rights and the National Preventative Mechanism. (art. 2):

The State party should take the necessary measures to ensure that the Centre for Human Rights has adequate human and financial resources to exercise its mandate effectively. It should also take active measures to raise awareness of the existence of these mechanisms and of their mandate with a view to ensuring full compliance with article 2, paragraph 3, of the Covenant."

With reference to the ombudsmen and the NTPM (National Torture Prevention Mechanism), ***the Committee against Torture*** mentions with concern (during its session no. 922 (CAT/C/SR.922) organised on 19 November 2009) that serious legislative and logistic constraints impede effective functioning of the national preventive mechanism established under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Committee is particularly concerned about the lack of clarity as to what constitutes the national preventive mechanism (arts. 2, 11 and 16)*:*

"The State party should clarify what constitutes the national preventive mechanism, and strengthen the independence and capacity of parliamentary advocates and the national preventive mechanism, including its consultative council, to carry out regular and unannounced visits to all places of detention. In particular, the State party should:

(a) Clarify the legal provisions in relation to the rights of members of the national preventive mechanism to conduct regular and unannounced visits to all places of detention, without restriction, and to ensure that all members of the consultative council enjoy equal

status as part of the national preventive mechanism, to enable it to fulfil its role effectively as a torture-prevention mechanism;

(b) Provide the national preventive mechanism as a whole, including the consultative council, with adequate support and resources, including logistic and secretarial support;

(c) Provide training and take relevant measures to ensure that all persons conducting visits under the Optional Protocol to the Convention are able to fulfil their role in documenting treatment of individuals in detention;

(d) Ensure that all persons involved in the administration of places of detention are aware of the rights of all members of the national preventive mechanism to have unhindered and unaccompanied access to all areas in all places where persons are deprived of their liberty, without any form of prior notice; these powers should include the possibility for the national preventive mechanism to examine, on demand, detention-related registries, including medical registries, taking due account of the rights of the persons concerned;

(e) Initiate disciplinary proceedings against officers who interfere with the free access of all persons conducting visits under the Optional Protocol to the Convention to all places where people are deprived of their liberty, or otherwise deny them private and confidential access to detainees, restrict their ability to review and copy registries and other relevant documents, or otherwise interfere with the performance of their duties;

(f) Ensure that, as a rule, and unless there are compelling human rights reasons to the contrary, the report and recommendations of each individual visit of the national preventive mechanism are made public and posted on the Internet website of the Centre for Human Rights of Moldova shortly after the visit, following measures to ensure rights of personal security of person and privacy for detainees, and following collegial approval within the national preventive mechanism as a whole;

(g) Develop other measures to ensure public awareness of torture and other forms of ill-treatment in detention facilities in the Republic of Moldova."

The Committee on Elimination of Racial Discrimination notes (in its session from 16 May 2008 on the 5-7 combined periodic reports presented by the Republic of Moldova on the measures taken by the state party in accordance with article 9 of the *International Convention on the elimination of all forms of racial discrimination*) that *at the chapter Centre for Human Rights from Moldova the ombudsmen had only a few examined complaints of racial discrimination.*

The Committee recommends the state party to promote and consolidate the role and activities of the ombudsmen in relation to complaints on racial discrimination, and take into account the status of the Centre for Human Rights with that of a national institution for human rights, as provided by the Paris Principles (Resolution of the General Assembly no. 48/134, Annex, from 20 December 1993)".

According to the 3rd *Report on the Republic of Moldova* adopted by the ***European Committee against Racism and Intolerance*** (ECRI) *from 14 December 2007*:

ECRI reiterates its recommendations for the Moldovan authorities to insert in the Constitution the status of the Ombudsman institution to increase its independence. They shall also need to take measures to guarantee the implementation of the decisions of the Ombudsman and ensure all means and resources for them to undertake their various functions, including fight against racism and racial discrimination.

In the same context is reiterated the *Recommendation 1615 (2003) of the Parliamentary Assembly of the Council of Europe to the Ombudsman Institution*:

Thus, the Assembly concludes that certain characteristics are essential for any ombudsman institution to efficiently operate and those are the following: establishment at constitutional level of a text which guarantees in essence the characteristics described in this paragraph, with the development and protection of this characteristics in legislation which shall allow the status of a bureau.