Centre for Human Rights of the Republic of Moldova

REPORT

on the observance of human rights in the Republic of Moldova in 2010

Chisinau, 2011

Foreword

Pursuant to article 34 of the Law on ombudsmen no. 1349, the Centre for Human Rights presents to the Parliament of the Republic of Moldova the Report on the observance of human rights in the Republic of Moldova in 2010.

The report offers an analysis of the situation through the glass of the international treaties Republic of Moldova is a party to and the case law of the European Court of Human Rights in the area of human rights observance in the country and underlines the vulnerable issues where the most serious or the most frequent breaches of constitutional rights and freedoms are registered. The report also shows the registered progresses. The analysis was made based on the examination by ombudsmen of applications and interviews with citizens, research of reports and information offered by public institutions and bodies, reports, studies and surveys made public of national and international organization, information from mass-media and other sources.

Taking into account that in 2008 the position of ombudsmen for children's rights was created, the report contains a chapter reserved for the observance of the children's rights.

A separate chapter offers analysis of the situation on the observance of the right to life and physical and mental integrity from the perspective of the activity of the ombudsmen as a national torture preventive Mechanism.

Additionally, the report contains findings on the cooperation of the ombudsmen with public authorities, initiatives to improve the legislation in force and recommendations of a general character related to ensuring constitutional human rights and freedoms. The report also contains recommendations related to the improvement of the activity of the administrative structures.

The ombudsmen express their gratitude for all who have supported the activity of the Centre for Human Rights by offering the information presented in this report, pertinent to the analysis of the situation on the observance of human rights.

Anatolie MUNTEANU
Ombudsman,
Director of the Centre for Human Rights

CHAPTER I

THE OBSRVANCE OF HUMAN RIGHTS IN THE REPUBLIC OF MOLDOVA

1.1. Non-discrimination and the principles of equality of opportunity and treatment

„Where do actually universal rights start? In small places, close to the house – so close and small that they cannot be seen on any map of the world. They represent the world of each particular person…where each man, woman and child seeks for fair justice, equality of opportunity, equal dignity without discrimination. But if these rights have a meaning there, they have a meaning everywhere. When citizens do not act to maintain these rights where they live, we cannot expect a progress on a higher scale. To preserve these rights the citizens first need to know them. The high scale progress must start from the human rights education even in those small places, close to home". ***Eleanor Roosevelt***

The topic dedicated to the International Human Rights Day on 10 December 2010 was "Human Rights defenders act to end discrimination". The Human Rights Day in 2010 has reiterated and promoted the achievements of the human rights defenders and repeatedly underlined the primary responsibility which the Governments have to prevent and fight discrimination.

The European Commissioner for Human Rights, Thomas Hammarberg, has mentioned that human rights implementation is an issue of political will. It is not enough to adopt European and international regulations: these standards must also be transposed into a practical reality at all levels – national, regional and local.

The Republic of Moldova became a full fledged member of the Council of Europe on 13 June 1995 and the primary aim of the Council of Europe is to create a common democratic and legal area on the entire European continent, ensuring the respect of fundamental values, as well as human rights, democracy and the rule of law. Currently Republic of Moldova is a party to 72 Conventions of the Council of Europe.[1]

The implementation of Conventions is supported by the creation of international monitoring mechanisms. Thus, the signatory parties have the duty to present reports in the year following adherence, once in four years, or/and upon request, on the legislative, judiciary, administrative and other measures adopted to implement the provision of the Conventions and on the attained progress.

Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms states that the enjoyment of rights and freedoms set forth in the Convention must be ensured without discrimination on any ground such as gender, race, colour, language, religion,

[1] http://www.mfa.gov.md/consiliul-europei/.

political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Therefore, taking into account the main obligation of the Republic of Moldova, as a democratic state where the rule of law is supreme, to ensure the progressive enjoyment of all rights, as well as without any discrimination of rights recognised by international treaties to which the state is a party to, it is necessary to take all the legislative, administrative, judicial, political, economic, social and educational measures in the shortest possible terms to comply with existent European standards.

National legal framework versus non-discrimination

Currently, the Republic of Moldova does not have a general and comprehensive law which prohibits all forms of discrimination. The provisions related to the principle of non-discrimination are available in a series of normative acts, starting with the Constitution, article 16 which states the principle of equality.

On the other hand, the Republic of Moldova is a party to a series of UN Conventions against discrimination (CEDAW, ICERD), these international treaties being directly applicable and in case of conflict of provisions, having prevalence over national legislation.[2]

While this report was drafted the Government of the Republic of Moldova examined on 17 February 2011 the draft Law on the prevention and fight against discrimination, which was presented by the Ministry of Justice. After this the Government adopted the draft Law and sent it to the Parliament for examination and approval. The ombudsmen welcome the notable progresses registered by the Government in getting involved in the area of prevention and fight against discrimination and encourage the authorities to continue the efforts in this area.

The draft Law on the prevention and fight against discrimination contains significant improvements compared to the previous draft, developed in 2008. The area of application of the draft law is currently better specified and the provisions are directed to prohibit discrimination in the public area, such as employment, education, procurement of goods and services, social security, they way it is provided by the European Directives in the area of non-discrimination and the principle of equality of treatment.[3]

In spite of the above mentioned the representatives and experts of the civil society and of the international organisations affirm that the legal mechanisms in the new draft law prescribed

[2] Article 4 paragraph (2) of the Constitution of the Republic of Moldova

[3] Directive 2000/43/EC of the Council from 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin Directive 2000/78/EC of the Council from 27 November establishing a general framework for equal treatment in employment and occupation

to ensure observance of rights are yet unclear and insufficiently detailed. Thus, it is unclear which the competent court of law is, and when an act of discrimination implies criminal, civil, administrative or disciplinary measures. Moreover, the correlation between the existent draft law and the existent civil procedure is not sufficiently detailed and clarified to allow the courts of law to efficiently apply the provisions of the draft.[4] Therefore, the experts have expressed their concern that the new draft law, if adopted in the current version, without additional adjustments/improvements in the part of legal remedies, would not meet the expectations of an efficient application and an adequate level of protection against breaches of the right to equal treatment.[5]

At the same time, the ombudsmen reiterate the fact that the adoption of comprehensive non-discrimination legislation is an important step to implement the recommendations of the international organisations within the UN and of the monitoring institutions created by the treaties of the Council of Europe, such as the Committee for the Elimination of Racial Discrimination (CERD), the European Committee against Racism and Intolerance (ECRI).[6]

Furthermore, the ombudsmen plead in favour of Republic of Moldova ratifying Protocol 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which is a priority and an important instrument in order to eliminate all forms of discrimination and improvement of the applicable national legislative framework.[7] More importantly is however that Republic of Moldova is willing to ratify this international instrument thus being able to ensure authentic equality. This fact requires the creation of favourable conditions for a mentality willing to accept the genuine elimination of any discrimination.

National minorities

In February 2010 the Republic of Moldova presented the 8th and the 9th compiled Periodic Report of the Republic of Moldova on the implementation of the International Convention on the Elimination of all Forms of Racial Discrimination.

The Centre for Human Rights, as a national institution responsible for the promotion and protection of Human Rights, issued on the name of the UN Committee for the Elimination of all Forms of Racial Discrimination (CERD) alternative information which was planned for

[4] The Report of the experts of the European Commission on Chapter 4 of the Dialogue on the liberalisation of the visa regime
[5] Ibidem
[6] The Report of the Centre for Human Rights on the observance of human rights in the Republic of Moldova in 2008 and 2009, www.ombudsman.md/md/anuale
[7] Ibidem

discussion on the 78th session of the CERD, during 1-2 March 2011 in Geneva.[8] The information offers data on the implementation of the International Convention on the Elimination of all forms of Racial Discrimination.

Additionally, on 26 June 2009, the Consultative Committee on the Framework Convention on the protection of national minorities issued its 3rd Opinion on Moldova. It was preceded by the adoption by the Committee of Ministers of the Council of Europe on 5 May 2010 at the 1084th reunion of Deputy Minister of Resolution CM/ResCMN (2010)6 on the implementation of the Framework Convention on the protection of national minorities in Moldova. The document contains the conclusions and recommendations of the third round of monitoring of the Council of Europe on the implementation of the Framework Convention on the protection of the national minorities in the Republic of Moldova.

The Consultative Committee acknowledged progress in Moldova such as, for example the, fact that the authorities have implemented the complex approach in their relations with the representatives of the national minorities. Additionally, actions have been taken to improve the non-discrimination legislation and a significant activity was undertaken by the ombudsmen in the area of prevention and monitoring of acts of discrimination. The Committee also acknowledged the fact that the authorities continued to support the activities directed to protect and develop the cultural heritage of the national minorities, whilst the public television and radio continued broadcasting in the languages of national minorities. Additionally, a separate plot for funerals in the Chisinau municipality graveyard for Muslims and have extended the possibilities to study the languages of local minorities. However, some unresolved issues have been identified.

The Consultative Committee has the following findings:

- The results of the population census in 2004 on the ethnic origin and linguistic adherence are not entirely accurate; moreover, the information on the socio-economic situation and the level of literacy of persons representing national minorities remains limited; additionally, there is no systemic collection of data on cases of discrimination.
- The persons representing certain groups, such as non-European migrants and persons of Roma ethnicity frequently are treated with intolerance, which is sometimes taken over by the mass-media, accompanied by offences and acts of discrimination. Also, more data is present on the indecent and aggressive behaviour of police agents with respect to these people.

[8] http://www2.ohchr.org/english/bodies/cerd/cerds78.htm

- The adoption of the Law on religious beliefs and their components has not contributed to the resolution of problems of Muslim organisations in their efforts to register the Islamic cult in Moldova; this impedes the efficient enjoyment of their right to religious adherence and creation of religious institutions, organisations and associations.[9]

Bearing the above mentioned in mind, the Committee concluded that the authorities must undertake the following steps to further improve the process of implementation of the Framework Convention:

- Adoption as high priority of complex antidiscrimination legislation
- Perform periodic monitoring of discrimination manifests, racial hostility and anti-Semite actions.
- Ensure effective trials and sanctions for all cases of indecent police behaviour
- Adoption of more effective decisions to ensure the implementation of the Actions Plan for the support of Roma, namely essential and sustainable improvement of the Roma community in all areas, including by means of allocation of necessary resources for their implementation; undertake measures to extend representation of the Roma people at all levels
- Ensure that the next census is in full compliance with the international recommendations
- Ensure the freedom of religion to all Muslims and persons practicing other religions and right to create religious institutions, organisations and communities.
- Implementation of efficient measures to extend the participation of national minorities, including for the small groups in the public administration and holding public functions.

Additionally, it is important to mention that the Recommendation no. 7 of General Policy on the national legislation related to elimination of racism and racial discrimination, the European Committee against Racism and Intolerance (ECRI) recommends the Governments of member states to adopt legislation against racism and racial discrimination is such legislation is not existent or is incomplete. ECRI considers that adequate legislation to fight racism and racial discrimination must include provisions from all areas of law, particularly constitutional, civil, administrative, and criminal law.

Sexual minorities and the gender identity

Recommendation 1474 (2000) adopted by the Committee of Ministers of the Council of Europe invites member states to include sexual orientation among the grounds of discrimination prohibited by national legislation and adoption of disciplinary measures against those who

[9] *Case Maşaev vs. Moldova*, 12 May 2009

discriminate homosexuals, as well as positive actions to fight homophobia, especially in schools, medical institutions, the army, police, by means of initial and continuous education.

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

The international community has registered important steps to ensure equality between sexes and protection against violence in society, communities and family. Additionally, the key human rights mechanisms of the UN have affirmed the obligation of the states to ensure efficient protection of all persons against discrimination based on sexual orientation or gender identity. In spite of above mentioned, the international response to human rights breaches based on sexual orientation and gender identity has been sporadic and inconsistent.

A large group of experts in the field of human rights has drafted, developed and discussed these principles. 26 distinguished experts from 25 countries specialised in various areas or fields of expertise pertinent to the issue of human rights have unanimously adopted, at the meeting of experts which took place at the University of Gagjah Mada, Yogyakarta, 6-9 November 2006, the Yogyakarta Principles on the application of international law to human rights in respect to sexual orientation and gender identity.

The Yogyakarta principles affirm the primary obligation of the member states to implement human rights and each principle contains detailed recommendations for member states which among others touch upon the right to equality and non-discrimination, the right to life, right to personal security, freedom of opinion and expression, freedom of assembly and association, freedom of movement etc.[10]

Year 2010 registered the adoption of Recommendation CM/Rec (2010)5 at 31 March 2010 by the Committee of Ministers of the Council of Europe, addressed to the member states on the measures to fight discrimination on grounds of sexual orientation and gender identity.

In its preamble the Recommendation recognises that "lesbian, gay, bisexual and transgender persons have been for centuries and are still subjected to homophobia, trans-phobia and other forms of intolerance and discrimination even within their family – including criminalisation, marginalisation, social exclusion and violence – on grounds of sexual orientation or gender identity, and that specific action is required in order to ensure the full enjoyment of the human rights of these persons".

[10] www.yogyakartaprinciples.org

The Committee of Ministers recommended the member states of the Council of Europe to take genuine measures to eliminate any form of discrimination, direct or indirect, based on sexual orientation or gender identity.[11]

The Annex of the Recommendation CM/Rec (2010)5 contains a detailed list of aspects of sexual minorities discrimination, as well as measures for states to improve their situation. They relate to the right to life, security and protection against violence, freedom of assembly, freedom of expression and peaceful meetings, right to respect of private and family life, right to employment, right to education, medical assistance, housing, right to asylum.

There have been no essential improvements registered in 2010 in respect to the situation of sexual minorities in the Republic of Moldova. Taking into account the fact that the problems the sexual minorities confront are still considered less important, the ombudsmen take the position that more time shall be required to better understand the rights of sexual minorities and that there is a need to develop a new culture of tolerance and understanding.

The major problems the sexual minorities in Moldova confront, confirmed by the Centre for Human Rights, are the impossibility to amend identity documents by transgender persons who follow hormonal therapy of sexual correction and impossibility of homosexual community to enjoy the right to assembly and to association, granted by article 40 of the Constitution of the Republic of Moldova and guaranteed by article 11 of the Convention.[12]

Actually, impossibility to enjoy the right to assembly was discussed in the previous reports of the Centre for Human Rights.[13] Year 2010 was not an exception from the rule. In this respect, the ombudsmen have reiterated on numerous occasions the special importance the freedom of assembly has and underlined the fact that the freedom of assembly is guaranteed to all persons, irrespective of race, nationality, ethnic origin, language, religion, gender, opinion, political adherence, property, social origin or of any other ground.

However, the existent legal provisions (i.e. the Law on assembly no. 26 from 22 February 2008) in the area of promotion and legally binding reconciliation, identification of problems and resolution of disputes have not been capable of granting the freedom of assembly for the representatives of sexual minorities (Informational Centre „GenderDoc-M"). In this respect, the latter's abandonment of peaceful manifestation planned for 2 May 2010 reveals the failure of the dialogue between the actors involved in ensuring the freedom of assembly[14] and does not

[11] https://wcd.coe.int/wcd/ViewDoc.jsp?id=1606669.
[12] The Report of the Centre for Human Rights on the observance of human rights in the Republic of Moldova in 2009, www.ombudsman.md/md/anuale
[13] The Report of the Centre for Human Rights on the observance of human rights in the Republic of Moldova in 2008 and 2009, www.ombudsman.md/md/anuale
[14] http://www.ombudsman.md/md/newslst/1211/1/4646/

exclude convictions of the Republic of Moldova on an international scale, taking into account the existence of the above mentioned international norms and standards.

Prohibition of any form of discrimination based on sexual orientation is consolidated by European Court of Human Rights case-law, which estimated in certain cases (*case Plattform Arzte fur Das Leben vs. Austria, 1985; Lustig-Prean and Beckett vs. UK, and Smith and Grady vs. UK, 1999*) that the participants must enjoy the right to organise a demonstration without fear of physical violence from those who oppose their ideas, otherwise they shall be impeded in expressing their views. In this respect, the right to a opponent manifestation may not extend to the expense of the right to manifest in the first place.

The ombudsmen reiterate the need to recognise and guarantee effective enjoyment of human rights and fundamental freedoms. However, their declarative nature may become an subject of potential trials against Republic of Moldova in front of the European Court of Human Rights.

With respect to the impossibility to amend the identity documents for transgender persons at their stage of hormonal therapy of sexual correction, the legal framework does not offer the possibility to legally recognise the new sexual identity of a transsexual exposed to surgery, which in turn creates multiple obstacles.[15] Due to the absence of a sexual correction procedure in the Republic of Moldova, the transgender persons who are at their hormonal therapy of sexual correction move outside the country to undergo surgical sex corrections and the lack of adjusted documentation generate impediments in their enjoying of fundamental rights and freedoms, including the freedom of movement.

According to the data offered by the Civil Status Service of the Republic of Moldova "the current administrative procedure provided to change the gender status in the respective compartment of the birth certificate and the change of name and surname is done in accordance with the provisions of paragraph 201 letter m), paragraph 204 of the Instructions on the procedure of registration of civil status documents. These applications are examined based on request by the civil status office in the district where the applicant has residence or by the office who registered the birth certificate. As a result of change of gender, a fact to be confirmed by the medical certificate, the data is changed in the birth certificate with respect to gender and name of the person. However, the legal provisions in force do not provide for changes of content of other civil status documents (marriage, divorce) of the person as a result of change of gender, as well as the impact of these circumstances on children".

[15] The Report of the Centre for Human Rights on the observance of human rights in the Republic of Moldova in 2009, www.ombudsman.md/md/anuale

At the same time, the Civil Status Service does not have a centralised data collection of all requests coming from the representatives of sexual minorities to amend the letter which indicates gender in the identity documents.

The Report of the Informational Centre „GenderDoc-M" on cases of discrimination of the homosexual community in the Republic of Moldova in 2010 confirms the existence of cases of instigation of violence, threats and hatred towards representatives of sexual minorities: creation of the group „Stop Gay!" within a social network which was launching messages with an aggressive, violent, intolerant and hatred driven content; inadequate and homophobe behaviour of some employees of the Chisinau Airport checkpoint, manifested towards two representatives of sexual minorities; inactions of some police agents in cases of intimidation, threat and insults towards some representatives of sexual minorities etc.[16]

The ombudsmen unconditionally condemn homophobia, as well as any manifestation and/or public speeches which call for discrimination and breach of human rights, guaranteed by the Constitution of the Republic of Moldova and the international Conventions to which the Republic of Moldova is a party to.

The recommendations of ombudsmen

1. *Amendment of article 16 of the Constitution of the Republic of Moldova and adjustment of its reading to the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms / other international Conventions.*
2. *Ratification by the Republic of Moldova of Protocol no. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.*
3. *Adoption as a matter of high priority of the Law on prevention and fight against discrimination*
4. *Implementation in national non-discrimination legislation of international human rights standards without discrimination based on gender identity, including Recommendation CM/Rec (2010)5 of the Committee of Ministers addressed to the member states on the measures to be taken to combat discrimination on grounds of sexual orientation or gender identity (adopted on 31 March 2010), the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, which should be used to offer guidance in the application at national level*

[16] The Report of the Resource Information Centre „GenderDoc-M" on cases of discrimination of the LGBT community in the Republic of Moldova for 2010

5. *Adoption of legislation which could offer special protection to transgender persons against trans-phobia crimes and incidents*
6. *Development of a rapid and transparent procedure to change the name and gender of transgender persons in birth certificates, identity documents, passports, educational certificates and other similar documents.*
7. *Development and implementation of policies to fight discrimination and exclusion which transsexual persons face on the labour market, in education and health.*
8. *Strengthening the dialogue between the authorities and representatives of the Islamic religion on the registration of the Islamic cult in Moldova*
9. *Ensuring the next census in full compliance with the international recommendations*
10. *Increase the level of participation of persons representing national minorities, including less numerous groups in public administration and public functions*
11. *Implementation of the projects oriented towards improving the activity of the representatives of public authorities in the process of prevention and fight against discrimination*
12. *Strengthen the awareness of the population at large with respect to the discrimination phenomenon.*

1.2. Free access to justice

„External independence of judges is not a prerogative or a privilege offered in the personal interest of the judges, but in the interests of the rule of law and the persons who ask for and expect justice”. ***Recommendation CM/Rec (2010)12 of the Committee of Ministers to the member states on judges: independence, efficiency and responsibilities***

Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms stipulates that any person has the right to “a fair trial of his case”. This expression combines multiple aspects of an efficient management of justice: the right to access an independent and impartial court created by virtue of law, respect of the right to defence during the trial, the principle of equality of arms, the principle contradiction in trial, right to public hearing, right to an interpreter, right to a reasoned decision and in a reasonable time, right to an effective appeal, effective court decision enforcement.

In 2010 the issue of free access to justice and efficient enjoyment of the right to a fair trial have remained critical, the same impediments being registered as in previous years.[17] Neither the number of complaints has decreased, there being a constant average of 25% of the total number of filed applications to the ombudsmen.

Today there are more institutionally and administrative driven deficiencies, which impede an efficient enjoyment of justice. Along a series of years there have been underlined and still remain without remedy and consequent approach a series of problems courts of law face. Thus, the overloaded courts of law, especially the Court of Appeal in Chisinau and the municipal courts in Chisinau affect the quality of justice, qualified by the Supreme Court of Justice as below expectations, and the timeframe of trials, qualified as at the limit of the requirements of article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.[18] The

> ***Conform raportului statistic despre activitatea primei instanțe privind judecarea cauzelor penale pentru 12 luni ale anului 2010, prezentat avocaților parlamentari de către Departamentul de administrare judecătorească, 302 cauze penale s-au aflat pe rol mai mult de 12 luni, 38 cauze penale – mai mult de 24 luni, 17 cauze penale – mai mult de 36 luni.***
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> ***Situația privind judecarea cauzelor civile este următoarea: 16 dosare civile s-au aflat pe rol mai mult de 12 luni, 8 dosare civile – mai mult de 8 luni şi 4 dosare civile – mai mult de 36 luni.***

[17] The Report of the Centre for Human Rights on the observance of human rights in the Republic of Moldova in 2005, 2006, 2007, 2008, 2009, www.ombudsman.md

[18] Decision of the Supreme Court of Justice Plenum no. 4 from 28 January 2011 on the activity of the Supreme Court of Justice for year 2010, www.csj.md

impossibility to create court panels due to judges vacant positions[19] do not allow for the transfer of retrial of these cases in the respective courts of law. As a result, other appeal courts are overloaded and thus inevitably grow the trial timeframes, which in turn lead to more expenses from justice beneficiaries involved in those trials.

The lack of assistants (referents) in courts of first instance and appeal courts, direct involvement of courts in technical work directly affect the procedural aspects and the timeframes of justice.

The high rate of employee fluctuation in courts of law (employees of archives, registrars, translators and other employees) has a negative impact on the efficient management of the courts and on the quality of the public services offered by this group of servants.[20]

The scarcity of court hearings halls and inadequate equipment of the existent ones (metal cages) are pertinent to the entire judicial system. Court hearings in the judges' offices, sometimes overcrowded, affect the solemnity of justice and the image of the judiciary system.

Thus, the authorities responsible for management and functioning of the judiciary system are obliged to create such conditions to the judges which would allow them to manage their mission and then require efficiency, while protecting and respecting their independence and impartiality.

Reasonable criminal and civil procedures are one of the main safeguards for an efficient enjoyment of the fundamental right to free access to justice. Occasionally, postponement and prolonged examination of cases take place due to objective reasons, such as judges being overloaded with applications, complexity of cases, need to order experts' opinions, absence of parties in trials in sessions etc. On other occasions, the delays and postponements of court trials take place due to the judges' inefficient workload management. An important degrading factor of prolonged litigation resolution and diminished justice quality is the growing workload versus the number of judges, a phenomenon constantly present in the last years. For there to be an improvement of the situation and increase of justice efficiency there is a need to enlarge the number of judges in courts of law.

One of the aspects which affect the reasonableness of the trial timeframe, previously developed by the ombudsmen[21], is the good management of the courts of law and cooperation with the institutions which ensure enforcement of criminal convictions. The ombudsmen have

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[19] According to the information presented to the ombudsmen by the Department of Judicial Administration at 1 January 2011 there were 45 vacant positions of judges in district courts and 10 vacant positions in courts of appeal

[20] At 1 January 2011 there were 28,5 vacant public servant position and 30 units of other employees in district courts, 9 public servant positions and 28 units of other employees in courts of appeal.

[21] The Report of the Centre for Human Rights on the observance of human rights in the Republic of Moldova in 2009, www.ombudsman.md

found lack of cooperation between the Supreme Court of Justice and the Department of Penitentiary Institutions on the subject of convicted being informed of their participation in appeals trials. 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 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. According to data offered by the Department of Penitentiary Institutions, pursuant to the need to ensure participation in recourse trials in 2010 the no. 13 penitentiary in Chisinau received transfers from other penitentiary institutions amounting to 456 convicts (523 in 2009) and for participation in criminal and civil cases – 799 convicts (631 in 2009). The information on state budget expenditures on convicts' transfers is not aggregated. After the analysis of the issue from two perspectives – efficient justice management and efficient resource management – the ombudsmen issue a proposal to the responsible servants to examine the possibility to implement a system of videoconferences between the penitentiary institutions and the courts of law. The implementation of this system implies substantial expenditures and essential amendments to the procedural legislation.[22] The United Nations Development Programme showed interest in offering financial support to equip certain special rooms in penitentiaries with videoconference equipment.

The ombudsmen have been repeatedly informed of the breach by courts of law of certain procedural norms which ensure the right to a fair trial – violation of the period reserved for issuing the motivating part of the decision and its delayed delivery, breach of the period reserved

[22] In case *Sakhnovskiy vs. Rusia*, ECtHR stated that „with respect to the videoconference, although does not breach the right to a fair trial, it must be taken into account that the participation of the application must have been effective within the process, in other words be capable of following its developments, be capable of being freely understood without technical obstacles and be able to communicate with his lawyer under effective and confidential terms".

to hand over a copy of the conviction sentence, delayed translation and/or mailing of procedural papers in the language the participants of the trials understand.

The legislative has established certain mandatory requirements and restrictive timeframes on the delivery of motivated court decisions with the view to ensure the observance of procedural rights of parties, including disciplinary liability of judges applied in cases of breach of legal provisions related to timeframes reserved for motivated court decisions.

The Supreme Court of Magistrates introduced the practice according to which court of law chairmen weekly undergo checks of the court chancelleries with respect to judges transferring case materials and discuss the results of these reviews with the courts personnel, do no permit judges and registrars to go on annual leave without handing over the case materials to the court chancellery, inform at all times the Supreme Court of Magistrates on cases where court decisions and sentences are issued with the breach of the legally banding timeframes, all done to avoid breach of the provisions of article 343 paragraph 1 of the Criminal Procedure Code[23] and article 242 of the Civil Procedure Code.[24]

Indeed, the respect of the reasonable time trials is still an urging issue for the judicial sector in the Republic of Moldova and it seams that the undertaken measures are not too effective. Out of those 425 applications logged to the Centre for Human Rights in 2010, having the issue free access to justice, 62 of them contain the plea of abnormally long trials.

Developed democracy in European states means that citizens must have access to adequate information with respect to the public authorities' organisation and under which conditions legal drafting takes place. Furthermore, it is important that citizens know how the judicial bodies function. Ensuring transparency in the activity of the judiciary is one of the key objectives of the Strategy for Strengthening the Judiciary System, approved by the means of Parliament Decision no. 174 from 19 July 2007. Web sites have been created for the courts of law of the Republic of Moldova, including Appeal Courts and the Supreme Court of Justice to improve the dialogue between the civil society and the judiciary. Here information can be found of the structure of the court of law, the schedule of trials, the list of cases under examination, a

[23] In the case where only the final part of the court decision is presented, it is integrally drafted within not more than 10 days from the day of presentation, by one of the judges who participated at the judgement of the case and is signed by all judges in panel of judges

[24] (1) The decision is issued immediately after the trial of the case ends. The drafting of the motivated decision may be adjourned for a period of up to 15 days; however its introductory part and the final part must be communicated by the court in the same session when the judiciary debates have taken place. The final part of the decision must be signed by all the judges in the panel and attached to the case files.
(2) If one of the judges from the panel does not have the possibility to sign the drafted decision, the chairman of the session signs instead, and if the chairman cannot sign, the court chairman signs the decision. In all cases the court decision mentions the motivation of impossibility to sign.

database with court decisions and statistical data, useful information for the public, vacancies and contact details. The placed information helps the parties, their lawyers, the general public and the mass-media to better understand the activity of the court of law. The web pages of almost of courts of law offer information on the current scheduled trials, the list of cases and the database of decisions. On the other hand the "useful information" directory is not filled in or the information placed there does not help the beneficiaries. For example, according to paragraph 49 of the Internal Template Regulations for courts of first instance and courts of appeal, the daily work programme is made public by means of placing that information in a visible spot and on the website of each court. This requirement is not followed by more than a half of the courts of first instance and courts of appeal, among which the Centru Court, Chisinau municipality, the Court of Appeal in Chisinau and the Economic Appeal Court. Most of the courts of law which made their work programme public have limited themselves to placing the beginning and end of the work programme (information which is relates more to the working hours of the courts' employees), thus ignoring the importance of chancelleries' hours open to public,[25] and the archives of the courts of law, the procedure of filling in a court application.[26] At the same time, the working hours of the courts of law, the chancelleries' hours open to the public and that of the archives vary from court to court, creating discomfort to citizens. This state of affairs is particularly sensitive for citizens residing in the Chisinau municipality, where there are five courts of first instance alone.

The ombudsmen recommend the Supreme Court of Magistrates, the chairmen of courts of first instance and the appeal courts to examine in the light of the free access to justice right of citizens the possibility to harmonise the courts daily working hours, the chancelleries and archives open hours to the public.

These being mentioned, there are other aspects of efficient justice management that need mentioning.

Justice is one of the pillars, which supports any democratic society and, at the same time, is a service of public interest, the main mission of which is to satisfy the needs of the members of the society. If judges are to ensure the rule of law and correctly manage their responsibilities, they are to be provided with a status and special safeguards: *independence and impartiality.* Independence and impartiality are or should be the mirror of judges in the same manner as

[25] Pursuant to paragraph 25 of the Template Regulations of internal management for district courts and appeal courts, adopted by means of Decision of the Supreme Council of Magistrates no. 401/16 from 20 December 2007, the opening hours of the chancellery is decided by the court chairmen, but it cannot be less than four hours in each working day.

[26] In some courts of law the claims are presented in the chancellery during opening hours (District Court Botanica), in other courts of law – at the judge on duty (District Court Buiucani).

professional competence, thus ensuring the trust of those who seek rehabilitation of their breached rights. The individual independence of each judge is guaranteed by the independence of the judiciary system in general. For there to be a practical enforcement international instruments have ensured a number of safeguards – objective criteria of selection of judges; independent and strongly responsible mechanism of recruitment and sanctioning of magistrates; duration and stability of mandate; immovability of judges in the course of their mandate; protection of judges; financial security; training and education; liability of judges.

Committee for Human Rights, underling the important role of and independent judiciary and mentioning that the immovability safeguard is a major component of that independence, has showed concern[27] of the fact that the judges in the Republic of Moldova are initially appointed for a period of five years and, only after that period of time elapses, appointment on a permanent basis. According to the *Final Observations of the Committee for Human Rights*, Republic of Moldova "must review its legislation to revise its 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". The ombudsmen reiterate the need for a review of the procedure of appointment of judges in courts of first instance and appeal courts and the exclusion of the initial appointment for five years, this being on the first steps in creating an efficient, professional and independent judiciary system in line with European best practices.

The principle of the independence of the judiciary means the independence of each judge in the course of exercise of judiciary functions. Judges must take decisions in an independent and impartial way, must be able to act without constraints, inappropriate influences, pressure, threats or interventions, either direct or indirect, from any authority, even a judicial one. In this respect, supplementary disciplinary sanctions[28] available for judges placed by the amendments adopted in 2010 to article 22 of the Law on the status of the judge no. 544 from 1995 may be interpreted as an attempt to limit the freedom of judges to impartially resolve disputes based on the law and the own fact evaluation. Certainly, when professionally incapable or for disciplinary breaches the judge may be liable with actions taken in this respect. However, pursuant to the Recommendations of the Committee of Ministers *Rec (2010) 12 to the member states on judges:*

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[27] *Final Observations of the Committee for Human Rights*, adopted after reading of the 2nd periodic Report presented by the Republic of Moldova during sessions 2559 and 2560 from 13 and 14 October 2009, which include information on the measures taken by the state to implement the International Covenant on Civil and Political Rights.

[28] A Court decision subsequently considered by the European Court of Human Rights to breach human rights and fundamental freedoms, inconsistent interpretation or application of the legislation, intentionally or negligently, if not justified by the change of judicial practice constitutes a disciplinary offence

independence, efficiency and responsibilities, judges should not be personally responsible if their decision is annulled or amended in an appeal or recourse procedure. Civil or disciplinary liability of the judge may not be triggered on the sole reason of interpretation of law, evaluation of facts or pieces of proof, except in case of bad faith or serious negligence. Being the protectors of independence and promoters of the law, judges cannot be subject to disciplinary trials on the mere fact of performing their judiciary duties, except when the inappropriate behaviour of the judge is proven. More importantly is the fact that judges may not be constrained to act under threat of sanction, including financial ones, the existence of which may alter, even unconsciously, the issued decisions. Judicial errors must be resolved by way of appeal, following the rules of jurisdiction and procedure, interpreting the law, applying the law or evaluating the pieces of proof. Other judiciary errors which cannot be channelled through this filter must lead, at most, to an action of the unsatisfied party against the state.

Account should be taken of the fact that the court decisions are based, first of all, on the laws adopted by the Parliament. This source of law establishes not only the rights citizens have and the actions prohibited by criminal law, but also define the procedural framework of court decision making. Therefore, the opinions of the Parliament influence the type and amount of cases to be brought in front of the courts of law, as well as the way they shall be resolved. Thus, the quality of judiciary decisions may be affected by the changes in legislation operated to often, by a less satisfactory drafting or unclear contents of the laws or by an insufficient procedural framework. Meanwhile, judges must resolve a series of theoretical and practical problems, determined by the dynamics of changes which takes place in the economic and social relations. Until a unified practice of resolution of controversial legal issues is formed it is possible that the solutions adopted by magistrates be different. Pursuant to the above mentioned reasoning, the ombudsmen have supported the need to perform a constitutional review of the supplementary reasons for disciplinary sanctions.[29]

A strong justice influences, determines and maintains a healthy economic state, a society where social order is fully manifested. When due to certain reasons the functionality and the role of the judicial power is diminished, the state looses the control over the rule of law with all the economic and social consequences and implications deriving from it. If separation of powers in the state is not well defined, then the social reality is uncertain, unclear and the judicial power is not a branch of power anymore, but a state function, there being no more separation of powers,

[29] By means of Constitutional Court Decision no. 28 from 14 December 2010 the provisions of article 22 paragraph 1 of the Law no. 544 from 20 July 1995 "on the status of the judge" have been declared unconstitutional, according to which a disciplinary offence is the inconsistent interpretation or application of the law, intentionally or negligently, if this is not justified by the changes in judicial practice.

but that of functions in a state. The current composition of the Supreme Court of Magistrates[30], body of judicial self-management corresponds neither to the international nor the regional standards in the field: the European Charter on the status of judges, Recommendation CM/Rec (2010) 12 of the Committee of Ministers to the member states on the status of judges: independence, efficiency and responsibilities, the Opinions of the Consultative Council of European Judges (CCJE).

Based on the mandate of the Committee of Ministers of the Council of Europe the Consultative Council of the European Judges issued in 2007 its opinion no. 10 on the structure and role of the Supreme Court of Magistrates or of an equivalent body as a component to the rule of law, balance between the legislative, executive and judiciary branches of power.[31] The Supreme Court of Magistrates, besides its functions of management and administration of judges, should also represent the autonomous governance of the judicial power and allow judges to manage their duties outside the control of the executive and legislative powers and any other unjustified pressure from within the judicial power. Thus, the Council may be composed exclusively of judges, or alternatively from judges and representatives of other powers. When the is a mixture in the composition, the Consultative Council of European Judges considers that the Council must have a substantial majority of judges elected by their own to avoid nay manipulation or inadequate pressure. Such a mixed composition would present the advantages both of avoiding the perception of self-interest, self protection and cronyism and of reflecting the different viewpoints within society, thus providing the judiciary with an additional source of legitimacy. However, even when membership is mixed, the functioning of the "Council for the Judiciary shall allow no concession at all to the interplay of parliamentary majorities and pressure from the executive, and be free from any subordination to political party consideration, so that it may safeguard the values and fundamental principles of justice. Prospective members of the Council for the Judiciary, whether judges or non judges, should not be active politicians, members of parliament, the executive or the administration. This means that neither the Head of the State, if he/she is the head of the government, nor any minister can be a member of the Council for the Judiciary. Each state should enact specific legal rules in this area."

[30] The Supreme Council of Magistrates comprises 12 members. The Supreme Council of Magistrates is comprised of judges and professors, as well as the chairman of the Supreme Court of Justice, the Ministry of Justice and the General Prosecutor, who are members ex officio. Five members from the panel of judges are elected by secret ballot by the General Council of Judges from the Republic of Moldova. Four members are elected by the Parliament from the panel of professors, with the majority of elected MPs, at the proposal of at least 20 MPs in the Parliament.

[31] The Opinion of the Consultative Council of European Judges (CCEJ) brought to the attention of the Committee of Ministers of the Council of Europe in the interest of society, adopted at the 8th reunion (Strasburg, 21-23 November 2007).

It’s the value, authority and the role of the Supreme Council of Magistrates needed in the creation of a system of safeguards, which, in turn, determines the inherent qualities of independence, impartiality and immovability of the judges, which determines the need to amend the current composition of the judicial management body – the Supreme Council of Magistrates. In this respect the nature and the destination of the Supreme Council of Magistrates ensures the non-political character of the courts of law of all levels and monitors the quality of the decision making, its compliance with a democratic legislative and constitutional system.

If the rule of law in the Republic of Moldova is present, such as article 1 (3) of the Constitution states and if its expressly states that the “legislative, executive and judicial powers are separated and cooperate in the fulfilment of their duties, it is worth reminding that the observance of the independence and immovability of the judges may not be the subject of any negotiation, nor can it be limited by political, economic or other reasoning. The significance of state powers lies within the obligation of one or the other two, jointly or separately, not to intervene, nor to interfere in the constitutional and legal area of the other power. The independence of justice, of the courts of law and judges, as well as the immovability of judges must not be the object of negotiations between powers.

The system must open and learn how to make itself known and therefore contribute to the transparency of the judicial process if society is to understand the essence of justice. Certainly, a full transparency is not possible, especially because of the need to protect the efficiency of investigations and the interests of the involved persons. However, an understanding of the way the judicial system functions is undoubtedly valuable from the educational point of view and should help increase the level of trust of citizens for the judicial system.

The impression of the population with respect to the judicial system is formed by the impressions of citizens who participate in trials and is influenced by the mass media. These impressions shall stay negative if the judicial system shall seem to be partial and inefficient due to the activity of its actors. It is important to ensure that the perceptions citizens have about the judicial system are as correct as possible and reflect the efforts of the judges and the supporting personnel of the courts of winning the respect and the trust and respect of citizens on their capacity to deliver.

Mass media has access to judicial information and to the trial sessions as provided by law. The mass media participants are free to choose which stories should be brought to the public and how to present them. No attempts to prevent the mass media criticizing the judiciary should be allowed. In turn the judiciary must respect the role of the mass media as an observer, which may underline certain gaps and may have a constructive approach to the improvement of the processes and the quality of services the judiciary offers to the public.

The Supreme Council of Magistrates should be empowered not to only publicly express its view, but take all the necessary measures with the public, the public authorities, and when necessary, the courts of law to protect the reputation of the judiciary institution and/or of its members. The Council could become a body able to play a direct and more generous role in the protection of the image of justice, this implying identifying a balance, between rights and freedoms in conflict, the social and political actors and the interest of the public for an independent and efficient judiciary system.

Thus, if the starting idea is that independent justice represents the key element of the rule of law and democratic governance and is the instrument which should ensure the necessary support for other reforms, the Government must promote legislative, structural and procedural reforms in the judiciary. These reforms shall increase the level of integrity and professionalism of the judges, shall ensure the creation of an independent, impartial, functional and transparent judicial system, known to a state with European aspirations, shall ensure the stable and efficient financing system of the judiciary and shall initiate the revision of legislation to ensure the immovability and independence of judges.

1.3. Private and family life

„The right to private life is the area of any existence where nobody can interfere without invitation”. ***I. Rivero***

The concept of right to private life was first described as the “right to be left in peace”, but it evolved until our days in much larger concept, which could be defined as the right of a person to de decide how much personal information, to whom and for what reason to disclose.

The European Court of Human Rights established through its vast case-law that protection of family is understood as the protection of family links, even if they have not been officialised through marriage, adoption, paternity recognition etc. The right to private life contains the right to social relations, right to intimacy of private life, right to a healthy environment (right not recognised, but indirectly protected if due to environment pollution the physical and moral integrity of the individuals is affected).

Currently Republic of Moldova is at the stage of promotion of the essence of right to private life. This right is not yet sufficiently perceived as a right inherent to a human being, which requires the state not only abstinence from intromission, but also positive obligations which require reasonable and adequate actions from the authorities to protect the rights of the individual.

Tapping phone calls

The need to develop protection against intromissions in private life is also dictated by the technological developments in the last 50 years. The fact that a persona may be monitored both by the state and private entities due to the use of mobile phones, the GPS, the internet or bank cards, other accessible and easy to use means for the majority of the population may lead to serious implications for the private life of humans.

It is beyond any doubt that the audio and video tapping and recordings represent important means to fight and prevent crimes, taking into account the advanced level of current technologies. Even though the state enjoys discretion with respect to the way this surveillance system operates, its powers should not be unlimited, with adequate and sufficient safeguards against abuse.

The national legislation “does not offer a control mechanism over the actions of phone tapping and does not contain sufficient safeguards against eventual abuse from the authorities in

the light of article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms".[32]

Indeed, the differences of the legislative framework influence the functioning of the secret surveillance system currently present in the Republic of Moldova and these should be urgently approached by the authorities with respect to adequate protection against state abuse in the area of phone tapping. The draft amendments to a series of legislative acts (Law on investigation activity no. 45 from 12 April 1994, the Law on electronic communication no. 241 from 15 November 2007, the Criminal Procedure Code) developed at the beginning of 2010 by the Ministry of Justice, directed to end the framework of measures of investigation, considered abusive by the ECtHR due to inadequate legal safeguards, has not been yet promoted.

Having one investigation case sent to the court by the General Prosecutor's Office in 2010 on illegal tapping of phone calls by employees of the investigation office of the Ministry of Interior,[33] with the number of endorsements issued by judges for phone tapping constantly growing, it is regretful to acknowledge that the authorities have not taken the necessary measures to resolve the issue of tapping through the glass of observance of the right to private life.

Requests to authorise phone tapping

year	examined	accepted	refused
2005	2609	2578	31
2006	1931	1891	40
2007	2372	2354	18
2008	2366	2355	11
2009	3848	3803	45
2010	3890	3859	31

Thus, based to the findings of the European Court of Human Rights in the case „Iordache and others vs. Moldova" and the press releases of the General Prosecutor's Office on the illegal phone tapping of a series of politicians, serious allegations of a group of

[32] In decision in case „Iordachi and others vs. Moldova" the Court considered that the sole existence of legislation implies for all those who could lie within the ambit of its application a threat of surveillance; this threat surely attempts on the freedom of communication between the users of postal and telecommunication services and is an "interference from a public authority" in the enjoyment of the right to respect for applicants' mail. Additionally, the Court determined that phone tapping is a very serious interference into the individual's rights and only strong motivation based on reasonable doubt that a person is involved in a criminal activity may serve as reasoning to authorise it.

[33] The telephone communication of MPs Veaceslav Untilă and Serafim Urechean, as well as other 9 persons have been illegally tapped and recorded by a series of employees of the intervention services of the Ministry of Interior. At the end of 2010 the Prosecutor General's Office sent for trial the criminal case where the employees are incriminated with the breach of right to privacy of telephone conversations, abuse of power and use of false public documents. From the probation documents it results that an MI inspector has deliberately placed false data in an act of investigation. According to the document, the leaders of criminal groups have used in their schemes a series of mobile phones. Thus, the policeman is incriminated with the fact that he invented that there were other people involved in these groups, among which some political persons, thus finding a reason to tap their phones. Thus, the inspector drafted an illegal order, on the basis of which he obtained a tapping mandate from the judge, according to which during 6 July – 5 September 2009 the phone tapping was ordered. The respective persons did not have any relation with the case under investigation. http://www.datepersonale.md/md/newslst/1211/1/4058/

persons on the processing of personal data by representatives of enforcement agencies by means of illegal phone tapping and collection of data from the electronic communication service providers "Orange" and "Moldcell", the National Personal Data Protection Centre (hereinafter NPDPC) initiated the legality of processing of the respective people's personal data.

After generalising the answers presented by the electronic communications service providers "Orange" and "Moldocell" to the group of citizens who invoked illegal tapping of phone calls, the NPDPC has concluded on the breach of the right to access to information by the personal data holders, guaranteed by article 10 of the law on the protection of personal data.[34]

The mobile phone service providers refused to present the National Personal Data Protection Centre the relevant materials and information, making unreasoned reference to article 212 of the Criminal Procedure Code[35] and to the fact that according to the provisions of the Instructions on the management and implementation of investigation measures in the electronic communication networks, adopted by the Joint Order of the Information and Security Service, the Ministry of Interior and the Centre for Fight against Economic Crimes and Corruption no. 44, 249, 91 from 14 July 2008 services providers to not maintain the log of tapping operations organised by the Information and Security Service. The Ministry of Justice, from which information was requested with the involvement of the investigating judges, issued the NPDPC to the General Prosecutor's Office without offering any additional data. The ISS refused disclosure of information on the ground that this data was classified and the General Prosecutor's Office has firmly declared that after verification undertaken by this authority no phone tapping was managed.

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[34] Article 10 paragraph 1 of the Law on personal data protection no. 177 from 15 February 2007 states that any entity of personal data processing, while this data is processed, has the right a) to access his personal data, obtain information with respect to the holder of personal data, his seat, the aim the personality of the holder; b) request information on his personal data who have been exposed to processing, on the source of information pertinent to this data, including where have they been sent or should be sent; d) obtain information which contains confirmation of the fact of personal data processing by the holder of such data, aims and methods of such processing, date of latest amendments in personal data of the subject of personal data, as well as information with legal consequences for the subject of personal data generated by its processing.

[35] Article 212 of the Criminal Procedure Code: (1) The criminal investigation documents may not be published except if authorised by the person conducting the criminal investigation and only in the limits considered by the respective subject to be possible, with the observance of the presumption of innocence and with no breach of interests of other persons and the criminal investigation; (2) if confidentiality is needed, the person who runs the criminal investigation informs the witnesses, the victim, the claimant, the pecuniary responsible party or their representatives, the experts, specialists, interpreter, translator and other persons that participate in the criminal investigation activities of the fact that they cannot reveal information related to criminal investigation. These persons shall give a written declaration that have been informed of the liability they bear pursuant to article 315 of the Criminal Code; (3) disclosure of criminal investigation data by the person who runs the criminal investigation or by the person entrusted with the control over criminal investigation activities, if this action caused moral or pecuniary damage to the witness, victim and their representatives or which damaged the criminal investigation, hols criminal liability pursuant to article 315 of the Criminal Code.

This exercise, coupled with the controversial nature of the information gathered by the NPDPC has proved not only the unsatisfactory level of implementation at national level of the principles in Convention no. 108[36] and in the Additional Protocol to this Convention related to the supervision authorities and the transnational transfer of persona data, but also the lack of mechanisms which would ensure efficient balance between the right of the individuals to confidentiality and the measures to "protect national security, public safety, the monetary system of the state or repression of crimes". Furthermore, it has been concluded that the National Personal Data Protection Centre, being the competent authority for personal data protection, is not able to exercise control over the compliance of the personal data processing in the area of electronic communication to the provisions of the Law on personal data protection no. 17 from 15 February 2007.

The overcome of this situation, which the ombudsmen consider difficult, requires: the review of the Instructions on the management and implementation of investigation measures in the electronic communication networks, adopted by the Joint Order of the Information and Security Service, the Ministry of Interior and the Centre for Fight against Economic Crimes and Corruption no. 44, 249, 91 from 14 July 2008 and the review of its compatibility with the normative acts pursuant to which it has been adopted, as well as to the provisions of Community Law. It is also required to increase the pace of adoption of the draft Law on personal data protection in new reading and of the draft amendments to the Code on Misdemeanours.

In this respect, the competences of the National Personal Data Protection Centre are inherent to any monitoring institution, it having the task to investigate personal data processing which falls within the ambit of the law. Thus, the law empowered the monitoring body in the area of monitoring of personal data processing with competences inherent to the insurance and protection of the right to private life of physical entities in the course of personal data processing and trans-border transfer**,** without efficient regulatory basis and mechanisms to ensure efficient exercise of mandate by means of discontinuation or termination of data processing, minutes, penalties and monitoring the implementation of prescriptions issued by the Centre to private entities. The lack of penalties in case of breach of principles of protection of personal data and the lack of regulatory framework which would clarify the role and the position of the Centre in this area make it impossible for the entrusted mission to be achieved.

Starting from the main objective of the National Personal Data Protection Centre, which is the protection of fundamental rights and freedoms of physical entities, particularly the right to

[36] Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, ratified by means of Decision of the Parliament of the Republic of Moldova no. 483 from 2 July 1999

private life in respect to the processing and trans-border transfer of personal data, the authorities of the Republic of Moldova must take all the necessary legislative and administrative measures to ensure the good functioning of this autonomous authority with a particular mission.

Review of public servants holder and candidates

Another aspect of the observance of the right to private life when processing personal data relates to the inconsistencies of the current legislative framework.

The Parliament of the Republic of Moldova adopted he Law on review of the public servants holders and candidates on 18 December 2008, which sets the principles, aims, the procedure, forms and methods of review of data inherent to citizens of the Republic of Moldova in public service or who apply for such service.

The review takes place with the written consent of the public service holder or candidate after filling in the application form which confirms the consent to process personal data inherent to the person and a questionnaire, the content of which is provided for by Annex 1 and 2 of the Law no. 271 from 18 December 2008 on the review of public service holders and candidates. Pursuant to the law the public service holder or candidate must indicate information in the questionnaire which relates to the held citizenships, income obtained along with the spouse in the previous year; movable property exciding 5000 lei and real estate of all types earned with the spouse at the date the questionnaire is filed in; name, surname, patronymic, IDN, year, day and place of birth, citizenship of spouse, parents and children, held position and address of the organisation where they work or study; previous activity in social and political organisations etc.

The ombudsmen object to the amount of requested information, which represent personal data, endanger the right to private life of both public service holders and candidates, as well as members of their families.

Personal data processing, except cases exhaustively provided for in article 6 and 7 of the Law on personal data protection, may take place only with the consent of personal data holder. Contrary to the above mentioned, the law on public service holders and candidates does not regulate how the consent of family members of the holder or of the candidate is obtained in the part of the processing of data which relates specifically to them and deals with common income and properties. Furthermore, the law does not regulate the process of ensuring the right to information of these persons pursuant to article 10 of the Law on personal data protection, whilst the consent, a template for which is provided for in Annex 1 of the Law no. 271 covers the expression of consent only with respect to the access of personal data of the public service holder or candidate by the chief of the public authority.

The signature of the application form is a confirmation from the public service holder/candidate that the supplied data is authentic. However, conflict of interest, presentation of inaccurate, old data on income and property of family members of persons in review is not excluded, thus triggering the breach of principles enshrined in the Law on personal data protection[37]. In this respect, the provisions of article 372 of the Civil Code are relevant, which provide for that the property of the spouse before marriage, as well as the property obtained during marriage pursuant to a donation act, inheritance or other gratuitous way, is the exclusive property of the spouse who hold or obtained them. Therefore, these goods may not be considered common and data on them can be supplied exclusively by the owner.

The international instruments and the GRECO reviews recommend the states to create their own viable prevention and punishment mechanism for corruption acts, especially in the public service sector. However, fighting corruption must not be transformed into a legal mechanism of breach of fundamental human rights. It is clear that when accepting a public service position or a public service leadership position a person complies with certain constraints, willingly limiting the right to private life (accepts certain working hours, is precluded from pursuing certain activities, becomes a subject of income reviews etc.). However, these limitations should not affect the members of his/her family.

Pursuant to the Strasbourg Court case-law, gathering of data about the individual by public servants without their consent affects the private life and derives from article 8 of the Convention. Therefore, the opinion of the ombudsmen is that the public authorities' immixture into the private life of the family members of the public service holders or candidates through gathering of personal data mentioned at Annex 2 of the Law no. 271 from 18 December 2008 does not comply with the requirements of paragraph 2 article 8 of the Convention, namely: if the immixture pursues one or more legitimate aims, if it is proportional and if it is necessary in a democratic society.

Meanwhile, the legal provisions pertinent to collection of this data are discriminatory for the persons who are members of the holders' or candidates' families compared to other citizens of the Republic of Moldova as they prescribe for the constraint of the right to their private life because they are close relatives of the persons exposed to review as provided fro by the Law on the review of public service holders and candidates. Thus, they are treated differently without any objective and reasonable motivation and this is a breach of the constitutional principles of universality of fundamental rights, freedoms and duties and equal treatment.

[37] Article 5 letter d) from the Law on personal data protection no. 17 from 15 February 2007: Personal data which are the object of processing must be exact and updated in due course, if relevant.

In the light of the above mentioned the ombudsmen have requested the Constitutional Court a review of constitutionality of the provisions of Annex 2 of the Law no. 271 from 18 December 2008 on review of public service holders and candidates in the part which deals with the certain personal data protected by law.

Personal data protection in the judiciary informational system of the Republic of Moldova

The state of affairs with respect to the observance of private life and the principles of personal data protection in the judiciary informational system of the Republic of Moldova, confirmed by the National Personal Data Protection Centre, became an area of intervention of the ombudsmen.

Legal documentation of the citizens is an important aspect, thoroughly developed in the Recommendation of the Committee of Ministers of the Council of Europe R (95)11 from 11 September 1995 on the selection, processing, presentation and archiving of court decisions in the automated systems of legal documentation. After the amendments operated in the Law no. 514 from 6 July 1995 on judicial organisation court of first instance have been obliged to publish their decisions on their websites. Accordingly, the Supreme Council of Magistrates adopted Decision no. 472/21 from 18 December 2008 on the approval of the Regulations on the publication of court decisions on websites. These Regulations has not been until now published in the Official Monitor of the Republic of Moldova as this is required by article 8^1 of the Law on the Supreme Council of Magistrates.[38]

According to the provisions of paragraph 10 of the above mentioned Regulations, the court of law, taking into account the type of information from the text of the decision pertinent to the property of the parties, inheritance, private life and other information which need to be protected, may change the contents of the decisions by means of shortening the manes of the parties and other participants to their initials; exclude information pertinent to the parties and other participants with respect to: date, month, year and place of birth, job and hold titles, residence, legal address, with respect to property, car matriculation number etc.

The ombudsmen highly appreciate the efforts undertaken to develop the informational system of the judiciary and its compliance with the European standards, but currently the decisions of the courts of law are published in full and accessible without any restrictions on the websites, those containing an enormous amount of personal data, such as: names, surnames,

[38] Article 8^1 paragraph (1) of the Law on the Supreme Council of Magistrates: The Regulations of the Supreme Council of Magistrates are published in the Official Journal of the Republic of Moldova

patronymic, year of birth, origin, residence, nationality, citizenship, education, data pertinent to the physical, physiological, psychological, economic elements of persons etc. This is a breach of the provisions of the Convention for the protection of individuals with regard to automatic processing of personal data, the Law no. 17 from 15 February 2007 on personal data protection and Recommendation R(95)11.[39]

The experience of the National Personal Data Protection Centre reveals that certain personal data holders motivate their activities of processing and illegal disclosure of personal data with the fact that those are placed on the websites of the courts of law, present data accessible to the public at large and there is no need for consent from those persons.[40]

Pursuant to the legislation in force, processing of personal data is allowed in the absence of consent only if this is done in the interests of justice or if data is collected to fulfil a public authority mandate. However, placement of personalised court decisions in sources open to the public is not done in the light of the above mentioned objectives, but with the purpose to the ensure the attainment of the objectives mentioned in the Concept of the Judiciary Informational System. Therefore, the consent of the entities is mandatory by virtue of the fact that the court decisions present not only information about the identity of the physical entity, such as the name, year ob birth, residence, education, job etc., but also specific aspects of the private and intimate life, including their state of health or criminal convictions.

The ombudsmen consider that the forced intrusion of the representatives of the judiciary may not continue outside the limits of the court proceedings and materialise through placement of personalised court decisions as open sources for the public.

Having a situation when the use of information and communication technologies to disseminate the case-law is constantly rising and the courts of law, the public and private sector tend to develop electronic services to spread judicial information, such a development rises serious concerns with respect to the protection of personal data. Consequently, quantitative and qualitative changes in information and personal data management are needed and the requirement to ensure the balance between the right to information of the public and the obligation of the state pursuant to Convention no. 108 to guarantee the right to personal data

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[39] Recommendation no R (95) 11 of the Committee of Ministers to the Member States concerning the selection, processing, presentation and archiving of court decision in legal information retrieval systems: any aspect of the private life which appears when there is legal informational systems must be regulated in accordance with the national law and the principles of the Convention for the protection of individuals with regard to automatic processing of personal data

[40] A good example is the case of "Termocom" S.A. who placed on his official website on 9 July 2010 open to the public the list of consumers who have debts to the utilities providers. The enterprise justified its actions making reference to the Law on judicial organisational and the Regulations on the publication of court decisions on the websites, motivating that the irrevocable court decisions on those 403 consumers from which personal data was extracted, were initially taken from the website www.justice.md

protection, including the case of data processing and electronic dissemination of court decisions must be approached. This balance may twist in accordance with the various criteria linked to the litigation or the categories of involved persons.

The review of the Regulations on the publication of court decisions on the websites and the placement of guidelines for publication of court decisions are needed, which would set rules on the personal data processing such as change of names of parties and other trial participants with their initials in all court decisions issued in criminal and misdemeanours cases, as well as in trials covering litigation in family, employment, adoption, minors, partial or total limitation of legal capacity, forced placement and treatment, psychiatric examination or placement in psychiatric establishments cases.

Another solution would be to propose the parties the option to fill in an application where they could express their consent to processing of personal data by means of placement of court decisions related to them in sources open to the public or their publication.

The ombudsmen have requested the Supreme Court of Justice and the Supreme Council of Magistrates take the appropriate measures to stop the interference in the right to private and family life.

The Chairman of the Supreme Court of Justice informed the ombudsman on the impossibility to unilaterally decide on the subsequent publication of decisions on the websites due to the fact that the issue touches upon aspects regulated by the Supreme Court of Magistrates and the Parliament. Irrespective of the situation, the Supreme Court of Justice ensured that it shall take the necessary steps to stop the publication of court decisions which contain information about minors, adoption, as well as court sentences on sexual crimes.

In turn, the judiciary administration body informed that the issues related to the amendments of the Regulations on the publication of court decisions on websites, adopted by means of Decision of the Supreme Council of Magistrates no. 472 from 21 December 2008 shall be resolved after the adoption of the new Law on personal data protection.

This position of the Council on the issue in discussion, which confirms tacit approval of the breach of right to private life of citizens is not comprehensible, in the light on one hand of the constitutional desiderate according to which Republic of Moldova is a state with the rule of law, where human dignity, right and freedoms, the free development of the human personality, justice and political pluralism represent supreme values and are guaranteed, and that on the other the Supreme Council of Magistrates is a body of judiciary self-management.

Body search and intimate examination of persons who come at meetings with convicts

During 2010 the ombudsmen have been repeatedly informed of the breach of the right to private life by means of body searches and intimate examinations of persons who come at long term meetings with convicts.

The ombudsmen have concluded that in the absence of a distinct normative the persons coming at long term meetings may be exposed to thorough checks, including the vaginal tact procedure and check of other body cavities, to prevent transmission to convicts of objects or substances prohibited in penitentiaries.

The Ministry of Justice and the Department of Penitentiary Institutions informed with respect to the Recommendation of the Council of Ministers to the member states on the rules in European penitentiaries Rec (2006) 2 and some provisions of the Status of enforcement of penalties by convicts that body searches, including inspection of certain body cavities are done to reveal prohibited objects such as mobile phone, drugs, money etc. and are necessary to prevent the decrease of security, managing order and good functioning of the penitentiary institutions, observance of the detention schedule by convicts.

The ombudsmen totally support the responsible ministry and plead in favour of strengthening the measures which would maintain the schedule, order and security in penitentiaries, on the condition that they shall be taken in an efficient manner with minimum immixture in the right to private life of persons who come to meetings with convicts.

Even if body searches, including examination of intimate areas, are done due to security reasons, they are generally considered compatible with article 8 of the Convention for the protection of Human Rights and Fundamental Freedoms, these measures are normally an immixture in the right to private life.

According to the case-law of the European Court of Human Rights *"such immixtures are generally admissible, taking into account the reasonable and ordinary requirements of prison life: a specific environment may justify, based on the aim of crime and disorder prevention, larger immixtures than those tolerated for free persons"* (case *McFeely vs. United Kingdom*). From this perspective the Status of enforcement of penalties by convicts specifically provides for the cases when convicts may be exposed to corporal searches, full searches.[41] The way the body search of convicts in penitentiaries take places is regulated by the Regulations of the security service of the Department of Penitentiary Institutions, approved by means of order of the Ministry of Justice no. 106 from 6 March 2003. Meanwhile, persons who enter the penitentiary,

[41] The notion of "thorough checks" is used in the Status of enforcement of penalties by convicts, approved by means of Governmental Decision no. 583 from 26 May 2006, without specifying the specific requirements necessary for this procedure

including persons coming to meetings, may be exposed to body searches or their personal belongings may be searched.[42]

Thus, there is no normative act at national level which would expressly provide for body search, including intimate examination of persons who come at meetings with convicts, as well as rules of the search.

The ombudsmen reiterate the fact for there being a compliance with the provisions of article 8 of the Convention, the immixture must be provided by law, which in turn must meet two criteria: be accessible to all, which imposes minimum of publicity, and be expectable, i.e. the one subject to it must understand its purpose and feel subjected to it.

Concluding from the above mentioned considerations, the Ministry of Justice and the Department of Penitentiary Institutions received recommendations to start the process of amendment/supplementation of the regulatory framework in force to strictly regulate the procedure of body search of visitors who come to visits with convicts, which would comply with Rule 54 of the Recommendation of the Committee of Minsters to the member states with respect to the rules in European penitentiaries Rec (2006) 2[43]. There was no pertinent reaction from the summoned authorities.

The Ministry of Justice should adopt a conceptual approach to this issue at legislative level to avoid a legally prescribed immixture in the private life of citizens by means of body search and intimate examination of persons who come to visit convicts and prevent eventual convictions at the European Court of Human Rights.

Similarly, pursuant to the Status of enforcement of penalties by convicts, the detainees are exposed to complete body search when entering the penitentiary and taken over to be escorted from one penitentiary to another or to the court of law, whilst their goods are exposed to thorough examination. Before and after meetings with visitors, convicts are exposed to detailed body search to depict object, goods or substances prohibited in the penitentiary. Whilst frequent searches generate the dissatisfaction of convicts, the circulation of prohibited objects in

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[42] Paragraph 297 from the Status of enforcement of penalties by convicts: If there are sufficient reasons to consider that the person coming to visits intends to transmit the convict objects, goods or substances which are not admitted in the institution or to illegally receive goods from the convict, the chief of the institution informs this person that the meeting shall be allowed only if accepts the check of goods and clothing before and after the meeting. If the person coming to the meeting refuses the check of objects and clothing, the long term meeting with the convict is prohibited, however can be allowed to have a short term meeting, if the convict holds such right.

[43] 1. Detailed procedures shall be provided for, which the personnel must observance when performing checks: places where they work, live and meet with convicts; convicts, visitors and their objects; members of the personnel. 2. The situations when these checks are necessary and their nature must be defined in the national legislation. 4. The persons exposed to checks shall not be exposed to humiliation during the checking process. 5. The persons shall be checked only by the members of the personnel of the same gender 6. The penitentiary personnel may not perform checks on corporal cavities of convicts. 7. In case of a check, only the doctor can perform intimate examinations. 9. The obligation to protect the security and safety must be counterbalanced with the respect of privacy of visitors.

penitentiaries continues to persist. Thus, during 2010 there have been 15681 body searches applied on convicts with a number of 2950 depicted mobile phones, 7 photo cameras, 1217,46 grams of drugs, 1142 litters of alcoholic drinks of industrial and household production, 7818, 5 litters of bosa, 1934 sharp objects, 1272 spongious objects. This reality shows the old character of the searches/checks undergone in penitentiary institutions and underlines the need to use efficient technical means. The ombudsmen recommend the Government undertake organisational measures to equip the penitentiary institutions with efficient technical means and detection mechanisms, even if those imply considerable costs, to raise the efficiency of the measures directed to maintain the schedule, order and security in penitentiaries and improve the situation in this area.

Private life versus freedom of expression and access to information

The information providers have enhanced responsibility in the actual social context of the Republic of Moldova. On one hand, there is a real "bombardment" with information from public entities, news agencies, spokesmen, an assault the information providers must withstand from the deontological point of view and which have to choose what to present to the public. On the other hand, the race for sensational stories and audience brings more and more cases of breach of the right to private life. Under these conditions, a journalist who respects the professional ethics and the law is always in the situation of a fragile balance between correct presentation, and at the same time, profitable, of information and breach the law unintentionally. In essence, the one thing which protects the right to private life and, to a certain extent the right to information, is the borderline between the public and private, between the intimate aspects of someone's life protected by law and the ones which could be brought to the knowledge of the media consumer. This borderline is not a fixed one, it is exposed to changes generated by the social and political evolvement of the community in general and the evolution of any benchmark person in particular.

In this respect, the ombudsmen have repeatedly showed concern[44] with respect to the way certain TV stations broadcast information from the law enforcement agencies' press releases on the crimes under investigation, images with detained persons, information which is personal for the detainees, persons under criminal investigation or having other procedural positions.

The ombudsmen support the intentions of the law enforcement agencies directed to ensure the transparency and society's and media's access to data about their activity, but

[44] Report on the observance of human rights in the Republic of Moldova in 2004. Report on the observance of human rights in the Republic of Moldova in 2006. Report on the observance of human rights in the Republic of Moldova in 2007, www.ombudsman.md.

consider that it is mandatory that the official statements, press releases, news broadcasted at TV stations observe the right to private life altogether with the principle of not guilty until proven otherwise.

Pursuant to the case-law of the European Court of Human Rights the right to image touches upon the individual in his/her stile of life, therefore it is part of the right to private life. Whichever the printed area – drawing, picture, photo, film, TV recording – the image of the person may not be offered to the public without his consent. Consequently, the Centre for Human Rights sent requests[45] to the directors of TV stations and underlined the need to avoid broadcasting data if they breach fundamental human rights. The Centre also contacted the Audiovisual Coordination Council, as the authority responsible for the implementation and observance of the Audiovisual Code and protector of the public interest in the audiovisual area, to promptly react to the reported case. Regretfully, the situation does not improve; on the contrary the phenomenon is spreading.

The decisive role in provision of trustworthy, objective, correct and high quality data to journalists lies with the responsible units of the law enforcement agencies, which should develop relations with the media and use efficient methods to communicate the information. In turn, the journalist has the task to inform the public in a manner that does not jeopardise human rights.

Each person has his/her own image and its use subject to an absolute right, which allows resistance to it being printed, reproduced and broadcasted without the appropriate consent. This formula must become the "golden rule" for each journalist when presenting the news and events of the day to the public. And if the right to information generates a moral responsibility for the journalist, but nevertheless provided for in the Code of Professional Ethics of the journalist, the right to life is full of dangerous traps and is supported by law.

This is also the case for broadcasted data about public persons. Undoubtedly, the right to image may be interpreted in a more restrictive fashion to protect an anonymous person than public persons, including political personalities, because the essence of this right is directly dependent from the right holder. The person who chooses a public activity is exposed to the video and photo cameras and his/her right to image has a reduced protection compared to the one of a person who wishes to stay anonymous.

However, the observance of the right to image knows limits only with respect to the public life of one's life: when the image of a public personality goes into a private area, for instance family, vacation or treatment, the observance of the right to image is reinstated. Only the person who gives consent to publish his image looses the right to protection. A relevant

[45] Report on the observance of human rights in the Republic of Moldova in 2004, www.ombudsman.md.

example is the decision of a person to get involved in public administration. Switch to this category implies not only rights almost automatically earned (remuneration, bonuses and other similar advantages), but also obligations. Among those is the transfer of an important part of one's life into the public opinion's interest. The first step is the property statement, an act which allows any persons get acquainted with the living standard of the elected person. Almost instantly a series of data from his/her life, possibly not known before or hidden, or included in the category of personal data, become public.

While reiterating the importance of observance of the human rights and fundamental freedoms is a democratic society in general, and the right to private life, in particular, the ombudsmen call on to the mass media to demonstrate maximum responsibility and correctness towards each person when presenting the news to the public, irrespective of the formers' social status.

Confidentiality of health related data

The observance of the confidential nature of the health related data is an essential principle of the legal system of all the parties to the Convention for the Protection of Human Fights 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 doctors and health services generally. If absent, persons who need medical care may be discouraged to offer personal and intimate data, necessary to write a prescription of adequate treatment and even consultation with a doctor.

While recognising the international standards, the Republic of Moldova agreed to ensure each person the right to confidentiality of data related to the medical secret and prohibit any interference in the private and family life of the patient without his/her consent. Thus, the regulatory framework requires doctors, other healthcare employees and pharmacists to keep secret the information related to the disease, intimate and family life of the patient, except when there is a danger of spread of transmissible diseases or when reasoned request comes from criminal investigation bodies or courts of law.[46]

One of the general principles of the medical doctor is the observance of the rights and interests of the patient, as well as his/her relatives. The Law[47] obliges medical doctors keep the professional secret and not disclose information related to call for medical assistance, state of health, diagnosis and other data obtained during the examination and treatment of the patient.

[46] Article 14 of the Law on healthcare no. 411 from 28 March 1995
[47] Article 13 of the Law on medical practice no. 264 from 27 October 2005

The persons who have obtained information which is considered professional secret are liable for disclosing that information in accordance with the law.

In this respect, the ombudsmen have criticised certain provisions of the Regulations on the medical examination in the Armed Forces of the Republic of Moldova, adopted by means of Government Decision no. 897 from 23 July 2003, which does not ensure the confidentiality of the diagnose.[48] After evaluating the disclosure of data on the state of health of citizen X as an immixture of the right protected by article 8 of the Convention for the protection of Human Rights and Fundamental Freedoms, the ombudsmen have filed in a proposal to the Government to amend certain provisions of the above mentioned act. Regretfully it is acknowledged that the servants of the State Chancellery and of the responsible ministries have not reacted to the proposal of the ombudsmen for over a year now, making reference to the political situation in the country and the floods which took place in summer 2010. Meanwhile the defective normative act is being enforced until now, whilst citizen X filed in a complaint to the European Court of Human Rights.

Touching upon the same subject, it is acknowledged that after the opening up of new TV stations and launching of talk-shows and political analysis TV programmes, there is frequent discussion of the private life of public persons. The ombudsmen have showed concern with respect to the excessive mediatisation of a public person's allegations of abduction and maltreatment and have invoked that the state is obliged to make its conclusions based on an objective evaluation of circumstances claimed by the alleged victim, as well as to avoid unjustified and premature conclusions.

Beyond an efficient investigation, the state is obliged to ensure the confidentiality of the criminal investigation and the inviolability of the private life while taking procedural actions. The fact that TV stations organised public discussions on this issue, especially the state of health of citizen R. and invited the responsible medical doctor, the doctor who prescribed placement, the representatives of the criminal investigation agencies, is interpreted by the ombudsmen as inadmissible as these actions have disclosed the data on call for medical assistance, state of health, diagnosis and other data obtained at the examination and treatment of the patient.

Limitations to the right to conclude a marriage

The condition to conclude a marriage is the freely and full consent of the future spouses. The existence of free, mutual, unconstrained, personally expressed and unconditional consent to conclude a marriage is a diriment condition as provided for by article 48 of the Constitution and

[48] Report on the observance of human rights in the Republic of Moldova in 2009, www.ombudsman.md

article 11 of the Family Code. The importance of these conditions also results from the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Thus, family protection in international law has a place due to the promotion of marriage and respect for family life. In fact, the European Court of Human Rights interpreted the right to private life stated in article 8 of the Convention as there being "*no interference accepted from the public authority in enjoying this right".*

With respect to the right to marriage the Convention makes reference to the national legislation, whilst the case-law of the Court follows very closely the limitations the national legislator may apply, stating that "*national laws which regulate the enjoyment of the right to marriage may regulate it, but may not substantially impede it*".

The ombudsmen have asked the Constitutional Court to examine certain provisions of the legislation in force[49], which impose the mandatory medical examination for persons who wish to marry, its absence being an impediment in the creation of a family.

Document identification of transgender persons

According to the *Concluding Observations of the Committee for Human Rights, adopted on 29 October 2009 after reviewing the second Periodic Report of the Republic of Moldova on the implementation of the International Covenant on Civil and Political Rights*, the information that discrimination based on sexual orientation is widespread in the entire society was risen serious concerns.

The ombudsmen have previously touched upon certain issues which transgender persons face, who cannot enjoy the needed medical assistance and do not have the possibility to change their identity documents[50], because the regulatory framework in force does not allow the possibility to recognise the new sexual identity of a trans-sexual exposed to surgery. Thus, the ombudsmen request the authorities of the Republic of Moldova deal with the issues this category confronts to ensure the observance of rights and freedoms guaranteed by the Constitution. A priority now is the development of a sex correction mechanism by the Ministry of Health and review of the normative framework to ensure appropriate identity documents after hormonal treatment.

The recommendations of the ombudsmen

[49] Article 13 paragraph (1) of the Family Code no. 1316 from 26 October 2000; Article 46 paragraph (2) of the Law on healthcare no. 411 from 28 March 1995; Article 15 paragraph (1) of the Law on the rights of the child no. 338 from 15 December 1994

[50] Report on the observance of human rights in the Republic of Moldova in 2009, www.ombudsman.md.

1. *Speed up the process of development of a viable legal framework, capable to ensure the functioning of the secrete surveillance system, limiting as much as possible the immixture into the right to private life.*
2. *Pursuing legislative and managerial measures necessary for a good functioning of the National Personal Data Protection Centre, capable to contribute to the adequate attainment of the institution's functions in this area.*
3. *Ensure protection of personal data in the informational judiciary system of the Republic of Moldova.*
4. *Initiation of amendment/improvement of the current normative framework to regulate the way body search is applied on persons who visit convicts.*
5. *Public and mass media awareness rising with respect to the need to observe private lives when using the right to access information and freedom of expression.*
6. *Amendment of Annex no. 8 of the Regulations on medical examination in armed forces of the Republic of Moldova, adopted by means of Government Decision no. 897 from 23 July 2003 to eliminate the requirement of medial capacity which serves as motivation to be excluded from military registering.*
7. *Awareness rising of the medical personnel and of the management of medical and sanitary institutions on the obligation to keep the professional secret, nondisclosure of information with respect to call for medical assistance, state of health, diagnosis and other data obtained when examining and treating the patient.*
8. *Review of the current normative framework which regulates the mandatory medical examination prior to concluding marriage.*
9. *Development by the Ministry of Health of a sex correction mechanism and revision of the current normative framework to ensure issuance of identity documents to transgender persons.*

1.4. Right to vote and right to be elected

„The right to free and secret vote elections, when they ensure the freedom of expression of the nation, is the basis for any democratic society". ***European Committee of Human Rights, decision from 5 November 1969, in case Denmark, Norway, United Kingdom and Sweden against Greece***

The right to vote is one of the fundamental political rights, inherent to any democratic society and is the symbol of the people's power. This is one of the rights considered essential for instatement and maintenance of the pillars of an effective and complete democracy, governed by legal principles.

Undoubtedly, elections are one of the most important instrument used by citizens to influence the decision making process. Moreover, the constitutional provisions state that the will of the people is the basis of the power in a state. The will is an expression of free elections, which take place periodically by means of universal, equal, direct, secret and freely expressed ballot.[51]

The right to vote is a complex right, because it contains both constitutional elements and regulation at the level of ordinary law. The Election Code, adopted by means of Law of the Republic of Moldova no. 1381 from 1997, including amendments until now, creates the enforcement mechanism for the right to vote, reiterating in articles 2-7 the constitutional features of the vote, i.e.:

- The vote is universal when it is available for all citizens with certain minimal conditions, which relates to age and the enjoyment of civil rights. The electoral code provides for that: *"the citizens of the Republic of Moldova may elect and be elected irrespective of race, nationality, ethnical origin, language, religion, gender, opinion, political adherences, heritage or social origin*"(art.2, Electoral Code).
- The equality of voting rights means that each citizen has the right to express only one vote for the same elected state body and each vote has equal legal value (art.3 Electoral Code).
- The direct nature of the vote means that the voter can and must express his vote in a direct manner without the participation of an individual. Such a provision can be found in article 5 of the Electoral Code.
- The vote is expressed in secret, meaning that this should exclude any possibility to influence the voter's preferences (art.6 of the Electoral Code), and finally,

[51] Article 38 of the Constitution of the Republic of Moldova, adopted on 29 July 1994

- The vote must be freely expressed, which means that on one hand the voter chooses at his free will to participate or not to participate at the ballot, and on the other, in case of participation – to freely express his preferences of one particular candidate.

Pursuant to article 3 of Protocol 1 of the European Convention for the protection of Human Rights and Fundamental Freedoms the elections must be free, i.e. must take place in a constitutional framework and ensure the free expression of people's will.

On the other hand, article 3 does not guarantee the elections based on a certain ballot, the only condition being that equal treatment is observed for all citizens[52].

Year 2010 registered the constitutional referendum on 5 September 2010 and early parliamentary elections on 28 November 2010.

Pursuant to the Central Electoral Commission Decision no. 3337 from 16 July 2010, the Regulations on the electoral campaign publicity in mass media with respect to the constitutional referendum of 5 September 2010 have been approved. These Regulations' aim is to ensure equal, impartial publicity of the constitutional referendum by mass media structures, protect the freedom of expression, inclusion of mandatory norms for practical enforcement of these principles by mass media, on one hand, and the participants at the referendum, on the other.[53]

Indeed, free elections and the freedom of expression, especially the freedom of political debate, forms altogether the founding pillar of any democratic system.[54] These two rights are interlinked and function to strengthen each other: for instance, as the Court as previously held, the freedom of expression is one of the necessary "conditions to ensure the freedom of people's opinion to elect the legislator".[55]

Pursuant to article 7 paragraph 3 of the Audiovisual Code the broadcasters have the obligation to correctly, fairly and impartially present the electoral campaign to encourage and facilitate the pluralist expression of opinions. The concepts of broadcasters with respect to electoral campaigns are approved by the Audiovisual Coordinating Council and are presented to the Central Electoral Commission, ensuring compliance with the legislation in force.[56]

Thus, during the session from 15 September 2010 the Audiovisual Coordinating Council adopted sanction decisions for certain television operators, which was qualified by media operators of the Republic of Moldova as "an intimidation of democracy and democratic values

[52] European Committee for Human Rights, decision from 9 December 1987, in case *Fournier vs. France*
[53] „Official Journal" no.138-140/496 from 6 August 2010
[54] Case Mathieu-Mohin and Clerfayt vs. Belgium from 2 March 1987/ Case *Lingens vs. Austria* from 8 July 1986
[55] Ibidem
[56] „Official Journal" no. 131-133/679 from 18 August 2006

and a dangerous precedent for the freedom of press and the role of it has in electoral campaigns"[57]:

- Decision no. 99 from 15.09.2010 on the review of the complaint on breach of electoral legislation by the public television operator "Moldova 1".[58]
- Decision no. 100 from 15.09.2010 on the review of the complaint on breach of electoral legislation by the public television operator „Publika TV".

Pursuant to these decisions both television operators have been sanctioned by means of public warning as a result of violation of provision of article 64^1 paragraph 1 of the Electoral Code and paragraph 23 of the Regulations of the Central Electoral Commission on the presentation of the electoral campaign for the constitutional referendum from 5 September 2010 by the mass media operators in the Republic of Moldova, according to which "during the referendum day the mass media institutions shall broadcast only releases issued by the Central Electoral Commission and information related to the pace of the voting process".

A group of media organisations, such as the Independent Journalism Centre, the Association of Independent Press, Centre "Acces-Info", Centre of Journalistic Investigations, the Association of Electronic Press, have signed a declaration by means of which expressed the disapproval of the ACC decision from 15 September 2010 according to which certain TV stations have been sanctioned because they have broadcasted civic education advertising during the day of the constitutional referendum from 5 September, whilst the Civic Coalition for Free and Fair Elections insisted on the difference between the terms "electoral advertising" and "electoral education", provided for by the Electoral Code of the Republic of Moldova, expressing the view that the democratic values must be the corner stone of each electoral process.

Here worth mentioning is the case *Bowman vs. United Kingdom* from February 1998, where the Court considered that the proceedings initiated pursuant to an electoral crime, as a result of the applicant's distribution during elections of materials which revealed the position of each candidate with respect to abortions and experiments on embryos, are a breach of article 10 of the Convention. According to the Court, the provision in dispute did not directly restrict the freedom of expression, but limited it to a certain extent. With respect to elections article 10 must be interpreted in the context of the rights protected by article 3 Protocol 1 to the Convention because as the Court considers "those two rights are interdependent". With respect to the subject matter of the dispute the Court considered that the provisions of the national law "*created as a result an absolute barrier"* to the publication of information which served the purposes of the

[57] http://www.ijc.md/Publicatii/Declaratii/2010/Declaratie_M1_CCA.pdf
[58] „Official Journal", no.194-196 /667 from 5 October 2010

applicant. According to the Court "…*individual freedom of expression, as an essential element of a democratic society, must be considered part of free elections and cannot be excluded except in case of plausible justification".*[59]

Another decision to sanction a TV station is dated 29 October 2010.[60] Thus, the Audiovisual Coordinating Council examined the requests of the representatives of certain political parties with respect to the way the "NIT" TV station presented the electoral campaign for the early parliamentary elections from 28 November 2010, where it has been held that the TV station violated the principle of access to information from many sources, the events have been tediously commented by the presenters and the sense of reality has been altered by means of mounting, comments, way of formulation and titres. Moreover, the TV station was qualified as favouring only one political party.

As a result, the "NIT" TV station was sanctioned by means of prohibition to broadcast commercials for 3 days, as a result of breach of provisions of article 7 paragraph (1) and (4) letter b) and c) and pursuant to article 38 paragraph (1), (2) letter f), paragraph (3) of the Audiovisual Code.

Freedom of expression is inseparable from mass media, therefore mass media itself and its activity is a symbol of a democratic right to expression and access to information.

Therefore, a free, pluralist and independent press is an essential component of an authentic democratic society.

The protection of freedom of expression is an essential condition to ensure a democratic political governing and each and everyone's personal development.

Freedom of opinion, freedom to receive information, as well as freedom to communicate information and ideas must be enjoyed without the intervention of public authorities, except in cases specifically provided for in the legislation in force. In this respect, the state is obliged to justify any type of interference of any kind.

Freedom of opinion "is valid not only for the information or ideas willingly accepted or considered inoffensive or indifferent, but also for those which offense, shocks or unrests the state or a part of the population. This is how pluralism, tolerance and opened spirit desire without which there is no democratic society" (*case Handyside vs. United Kingdom, 1976; case Sunday Times vs. United Kingdom, 1991*).

In case *Dalban vs. Romania, 1999,* the Court decided that "freedom of press includes also resort to exaggeration to a certain extent, even provocation".

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[59] Case *Bowman vs. United Kingdom* from 19 February 1998
[60] „Official Journal" no. 227-230/851 from 19 November 2010

From this perspective, the state must not try to dictate its own citizens and make difference between people based on their opinions. Moreover, the unilateral promotion of certain information by the state may become a serious and unacceptable obstacle in the enjoyment of the freedom of opinion.

There is also significant that the freedom to communicate information and ideas has a strategic importance for the political life and the democratic structure of a country. While this freedom absent, it becomes impossible to organise truly free elections. Additionally, a full enjoyment of the freedom to communicate information and ideas allows free criticism against the Government, which is the main indicator of a freely and democratic governing system. The freedom to criticise the Government was explicitly confirmed by the Court in 1986 in case *Lingens vs. Austria:* it is up to the press to "communicate information and ideas discussed on the political arena, just as any other subject matter of public interest. The press has not only the duty to communicate such information and ideas to the public, but it is also the public which has the right to receive them".

The Court supported in the same decision that the freedom of press is one of the most efficient means by which the public knows and forms itself opinions about the ideas and attitudes of the political leaders and, thus, that the freedom of political debate is the essence of the concept of democratic society.

In cases *Groppera Radio vs. Switzerland, 1990* and *Casado Coca vs. Spain, 1994*, the Court declared that the interference of the national authorities into the relations between the broadcast station and the TV spectator/ listener is not allowed, because both parties have the right to a reciprocal direct contract.

The protection of expression, which implies a risk of damage or, even actual damage of the interests of third parties, is inherent to the scope of application of article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Therefore, the protection offered by article 10 is valid for information and opinions expressed not only by the majority of consistent groupings, but also those expressed by small groupings or an individual, even if such expression shocks the majority. Tolerance for an individual's point of view is an important component of a democratic political system.

Being part to the United Nations Organisation and adhering to the Council of Europe, as well as to other international organisations, Republic of Moldova committed to observe international standards of human rights and fundamental freedoms protection. Additionally, Moldova expressed its full attachment to the values of democracy, peace and justice, and through them, to the observance of fundamental rights and freedoms of citizens.

In this respect, the ombudsmen have summed the Audiovisual Coordinating Council, as the guarantor and representative of the public interest in the area of audiovisual and authority responsible for implementation and observance of national legislation, as well as international treaties in the area of audiovisual to which the Republic of Moldova is a party to, to ensure strengthening of all necessary guarantees to observe the freedom of expression, as provided for by article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as the case-law of the European Court of Human Rights, and the right to information of all citizens, supporting diversity and dialogue and mitigating for the potential of the mass media to promote dialogue, mutual understanding and reconciliation, as well as correct information of citizens.

Pursuant to the Decree of the President of the Republic of Moldova no. 536-V from 28 September 2010, the Parliament of the Republic of Moldova of XVIII legislature was dissolved and parliamentary elections established fro 28 November 2010. In this respect, on 7 October 2010 a meeting between the ombudsman and the members of the Central Electoral Commission took place.[61] The discussions were held on issues identified by the Centre for Human Rights in the area of enforcement of the right to vote, in particular: the way this right shall be enforced for marginalised groups (people with disabilities, persons placed in psycho-neurological institutions who have been declared incapable as a result of final court decisions); were there enough ballots printed in Braille alphabet; were there taken measures to ensure translation into the gesture language during electoral debates to ensure the participation of persons with hearing impairments; how many proposals to amend electoral legislation were issued to the Government and Parliament during the reporting period; have there been implemented civil education programmes for marginalised groups; issues identified to ensure the right to vote for the citizens on the left bank of Nistru river, as well as solutions to resolve their situation.

The mentioned issues have been tackled in the previous annual report of the Centre for Human Rights and the ombudsmen have formulated recommendations to remedy the signalled deficiencies.[62] Regretfully, those issues have not registered significant progress during 2010.

According to CEC, the voter who is not able to independently fill in the ballot has the right to invite another person in the voting booth, with the exception of members of the voting bureau section, representatives of electoral competitors and persons authorised to assist during electoral activities.

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[61] http://www.ombudsman.md/md/newslst/1211/1/4888/.
[62] Report on the observance of human rights in the Republic of Moldova in 2009, www.ombudsman.md/md/anuale.

In this respect the ombudsmen reiterate that the Constitution and the international treaties the Republic of Moldova is a party to guarantee the free expression of will of the citizen by means of secret vote.

On the other hand, the lack of adaptation of the infrastructure to the needs of the persons with physical impairments is also an impediment for the enjoyment of the right to vote by these people. Thus, the state must take necessary measures to ensure their access, on an equal basis with others to the physical environment, transport and other infrastructure to which the general public has access to allow persons with disabilities enjoy an independent life and full participation in all aspects of life.[63]

Also in the 2009 Annual Report the ombudsmen have mentioned that a solution to eliminate any inequality between persons with eyesight disabilities and other persons is to print ballots in Braille alphabet. That would allow the blind persons vote without an attendant and ensure their constitutional right to vote.[64]

The Central Electoral Commission informed that the implementation of voting through ballots in Braille language may not be implemented at the moment, because it is difficult and costly. However, CEC considers necessary legislative regulation of this possibility.

The ombudsmen welcome the intention of the Central Electoral Commission to remedy this deficiency. Thus, to ensure the possibility for persons with eyesight impairments to fully enjoy their political rights and benefit from those rights under equal terms with other citizens of the Republic of Moldova and pursuant to articles 16 and 38 of the Constitution of the Republic of Moldova, Law no. 821-XII from 24 December 1991 on social protection of persons with disabilities, the United Nations Convention on the rights of people with disabilities, ratified by means of Law no. 166-XVIII from 9 July 2010 and published in the Official Monitor at 23 July 2010, as well as with articles 18, 22 letter a) and 26 (1) letters a), b) and j) of the Electoral Code no. 1381-XIII from 21 November 1997, CEC approved Decision no. 3854 from 19 November 2010 on the testing of the direct and secret voting for persons with eyesight disabilities at the early parliamentary elections from 28 November 2010 in voting section no. 151.[65]

It must not be ignored that when ratifying the UN Convention on the rights of persons with disabilities Republic of Moldova committed to undertake adequate measures to ensure persons with disabilities their political rights and the opportunity to enjoy those rights under equal terms with other citizens, including the right to vote and to be elected, including by ensuring the voting procedure, adequate premises and accessible and easy to comprehend and

[63] Ibidem
[64] Ibidem
[65] http://www.cec.md/index.php?pag=legislatie&ids=hotarire&id=4339&y=2010&start=120&l=.

use materials; protection of the rights of persons with disabilities to secret ballot in public elections and referendums, without intimidation, and to candidate in elections, to be elected and hold public positions at all levels of government etc.

In the light of the above mentioned and while considering the issues tackled by certain marginalised groups of citizens with respect to the existent impediments to the full enjoyment of the constitutional right to vote, particularly the lack of translation of electoral debate shows into gestural language, which impede persons with hearing impairments to freely form their opinion with respect to a certain candidate, the ombudsmen called the Audiovisual Coordinating Council, as the representative and guarantor of the public interest in the area of audiovisual, to examine the possibility of issuing a decision in this respect. The decision had to cover the public and private broadcasters and had to contain solutions to remedy the situation and ensure gestural translation of public debate shows.[66]

Consequently, during the session from 29 October 2010, the ACC adopted Decision no. 131 regarding the appraisal of the ombudsman on the gestural language in local debates, published in the Official Monitor no. 227-230 (3760-3763) from 19 November 2010, were the public television station "Moldova 1" was recommended to ensure gestural interpretation of the main electoral debates during the electoral campaign for the early parliamentary elections from 28 November 2010 and ensure the observance of the constitutional rights and freedoms of the persons with disabilities, the access to information and freedom of opinion.[67]

There has been an increase of the participation rate at the early parliamentary elections from 28 November 2010 compared to the previous four ballots. Thus, the voting offices formed outside the country in other settlements than the ones where the diplomatic and consular offices of the Republic of Moldova are situated have registered 3 cases when the number of voters greatly exceeded the capacity of the voting office, as provided for by the legislation in force (Italy: Rome – 3061, Padova – 3202; Russian Federation, Moscow – 3147).[68]

Additionally, the voting office in Paris, France registered a higher number of voters (2525) than the reserved ballots (according to data presented by the Ministry of Foreign Affairs and European Integration) for the respective voting office – 2000. The Central Electoral Commission acknowledges a precedent during elections and considers that the electoral offices

[66] http://www.ombudsman.md/md/newslst/1211/1/4914/.
[67] „Official Journal" no. 227-230 (3760-3763) from 19 November 2010
[68] Report on the results of the parliamentary elections from 28 November 2010, approved by the Central Electoral Commission Decision no. 3951 from 6 December 2010

of the respective voting sections have acted in „extreme necessity" when decided to allow citizens to vote on A4 size papers.[69]

Pursuant to the minutes of the voting sections in Paris, Rome, Padova and Moscow a number of 956 voters voted on A4 size ballots, whilst 27 ballots have been declared invalid. Additionally, the Central Electoral Commission acknowledged that the exceptional voting procedure used in some offices outside the country due to the lack of ballots of the size and contents legally approved, the electoral bodies have acted in accordance with the constitutional provisions, which ensures each citizen the right to vote, and thus have observed the spirit of the Constitution. Taking into account the need to apply the specific law, which is article 57, paragraph 1 of the Electoral Code, CEC was forced to declare the invalidity of 929 votes expressed on A4 size ballots.[70]

The Centre for Human Rights has been contacted by citizens of the Republic of Moldova currently resident in France who invoked the violation of the constitutional right to vote when the Central Electoral Commission adopted on 6 December the Decision which accepted the exclusion from the total calculations of the 929 voters who voted on A4 size ballots.

Pursuant to the data offered by the petitioners, they have used the constitutional right to vote on 28 November 2010 at the voting section no. 1/316 from Paris (France). Due to insufficient number of ballots, the section distributed A4 size papers with the title of voting ballot, which have been subsequently considered invalid (according to CEC Decision from 6 December 2010).

Consequently, the citizens have invoked the breach of a fundamental right, guaranteed by article 38 of the Constitution of the Republic of Moldova and requested inclusion of their votes into the calculations of voters who participated at the early parliamentary elections from 28 November 2010.

Pursuant to the provisions of the Constitution of the Republic of Moldova (article 4 paragraph 2) and the Decision of the Constitutional Court no. 55 from 14 October 1999 "on the interpretation of certain provisions of article 4 of the Constitution of the Republic of Moldova" the ECHR is an integral part to the internal legal system and thus must be directly applied in any other law of the Republic of Moldova, except that ECHR has priority over any internal law.

The text of the Convention may not however be interpreted separately from its case-law. Thus, the decisions of the Court are mandatory precedents and have binding force.

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[69] Ibidem
[70] Ibidem

The ombudsmen consider that the appropriate resolution of the issue tackled by the citizens of the Republic of Moldova with respect to the use of the right to vote implies active and honest involvement of targeted public authorities and is an advisable alternative to avoid international jurisdiction litigation.

Also, the ombudsmen consider that the existent gaps must be a subject of serious concern for the Government, the observance of the right to vote being one of the priorities for the competent authorities.

Taking into account the fact that the activity of the ombudsmen is directed to ensure the respect of constitutional rights and freedoms by central and local public authorities, institutions, decision makers of all levels and that the management of elections abroad for our citizens is in the hands of the Central Electoral Commission and the Ministry of Foreign Affairs and European Integration, the ombudsmen have contacted the responsible authorities asking to exclude any possibilities of interference/violation of the citizens' constitutional right to vote. The ombudsmen have also asked for the development of a mechanism of ensuring and facilitating the enjoyment of the right to vote by the citizens of the Republic of Moldova which are resident abroad.

According to the answer of the Central Electoral Commission, the management of voting sections takes place on the basis of prior registration of citizens who are resident abroad. During the early parliamentary elections from 28 November 2010 only 1488 citizens located abroad have requested prior registration, even if the Central Electoral Commission extended the timeframe from 15 to 25 days (paragraph 11 of the Regulations on the prior registration of the citizens of the Republic of Moldova resident abroad, adopted by means of CEC Decision no. 3354 from 20 July 2010). The Central Electoral Commission notes that, in cooperation with public authorities involved in this process, it established the management of voting sections abroad in a number as large as possible, irrespective of the fact that the rate of prior registration requests from citizens located abroad was very small.

Similarly, CEC mentions that pursuant to article 49 paragraph (2) and (3) of the Electoral Code, the voting ballots are printed on thick paper at the very least 3 days before the day of the elections in an amount correspondent to the number of voters. The Central Electoral Commission sends the voting ballots to the electoral bureaus of the voting sections created outside the Republic of Moldova with at least 3 days before the day of elections, starting from the estimative number of voters generated on the basis of information presented by the Ministry of Foreign Affairs and European Integration and that gathered by the Central Electoral Commission, but not more than 3000 voting ballots per voting section.

Both the Central Electoral Commission and the Ministry of Foreign Affairs and European Integration have stated that voting on A4 size papers created an unknown precedent in the

history of elections, whilst the basis for evaluating the necessary number of voting ballots was the gathered experience.

The CEC has also pointed that when presenting to the Constitutional Court the minutes and the report on the results of early parliamentary elections from 28 November 2010, the Central Electoral Commission notified the Court of the above mentioned issue and were to initiate proposals to the Parliament of the Republic of Moldova to operate the respective amendments and exclude any such scenarios in the future.

Observance of the right to vote and to be elected in the Autonomous Territorial Unit Gagauzia

The representatives of the Centre for Human Rights in ATU Gagauzia have monitored the observance of the right to vote in the respective region and have the documented the following findings:

The district electoral council no. 36 was formed 50 days before the elections as prescribed by article 27 of the Electoral Code of the Republic of Moldova. Pursuant to article 27 paragraph 4 of the Electoral Code, the district electoral council was formed of nine members, three representing the Gagauzia's People's Council, two – the Appeal Chamber and five – the representatives of political parties present in the Parliament at the day of elections.

Pursuant to article 29 paragraph 11 of the Electoral Code of the Republic of Moldova, voting sections bureaus have been formed. Subsequently, one third of the confirmed members of the bureau have requested their exclusion from it, with no appropriate notification. This suggests that both local councils and regional office of political parties do not hold the approval of nominees from bureau candidates. The professional background of certain members of the bureau (especially the ones from the political parties) is substantially lacking behind.

Moreover, whilst article 29, paragraph 11 of the Electoral Code of the Republic of Moldova provides for that the members of the electoral bureau of voting sections may not be councillors from local councils nor members of parties, frequent breaches of these rules have been reported. They have been attributed to LDPM, LP, OMA, local council Chirsova etc. The CPRM also registered around 2-3 cases of inclusion of their members in the structure of the bureau.

Pursuant to article 39 paragraph 1 of the Electoral Code the lists of voters are prepared by the town halls in two copies for each voting section and contain all citizens who hold voting rights when the lists have been prepared and are resident in the district of the section. After that the lists are verified, signed by the mayor and brought to the public's knowledge at least 20 days before the day of the elections. This compartment also registered a series of inconsistencies.

The State Informational Resources Centre "Registru" prepared and distributed through local authorities the extracts from the electronic registry of voters, so that the town halls could present high quality lists.

However, deficiencies have been registered. Thus, during the referendum the electronic data base of the Gagauzia ATU had records of 129 thousand citizens, whilst the lists prepared by the town halls contained only 114 thousand voters. At the parliamentary elections the number was estimated at 108 176 voters. The elections of the Gagauzia's Bashcan, which took place only two weeks after the parliamentary elections, on 12 December 2010, the proved number of voters was 106 thousand.

Meanwhile, the low quality of voters' lists prepared by the town halls must be mentioned. The lists of voters registered in the Comrat municipality have generated a large number of complaints from voters and ballot candidates: wrong identification data, wrong data with respect to residence. At the day of the elections the district electoral council received three complaints with respect to the voters' lists in Comrat. That has generated the creation of a committee formed of members of the local council, who confirmed after reviews that certain breaches have been admitted. It has been further determined that the district electoral council does not have any legal authority to sue in court the local authorities for the low quality work delivered with respect to the management of voting sections and development of voters' lists.

Additionally, it has been determined that the persons with disabilities who have asked to vote at home at the day of the elections and who have presented certificates confirming their state of disability have been refused on the reason of lack of medical certificate. Thus, the district electoral council registered 6 complaints from voters with disabilities. Pursuant to the reports of the electoral bureaus 969 votes have been expressed at home, this representing 0.89% from the number of voters in Gagauzia and 1.68% from the persons who voted on that day. Indeed, only 8.57% from the total number of persons with disabilities registered in Gagauzia ATU made use of their right to vote.

The recommendations of the ombudsmen

1. *Unconditional observance of all electoral norms and standards, to ensure a free, fair and accessible electoral process to all citizens who hold a right to vote.*
2. *Exclusion of any actions/omissions which breach the Constitution, the Electoral Code and international treaties to which the Republic of Moldova is a party to.*
3. *Ensuring access to persons with disabilities on an equal basis with other to the physical infrastructure, transport and other facilities accessible to the public at large.*
4. *Printing of voting ballots in Braille language.*

5. *Ensuring the translation of TV shows reserved for electoral debates into the gestural language.*
6. *Development of measures directed to ensure and facilitate the enjoyment of the right to vote by the citizens of the Republic of Moldova who are residing outside the country.*
7. *Identification of the real number of citizens of the Republic of Moldova residing outside the country.*
8. *Carrying out information and electoral education campaigns to ensure the increased participation of the population, including the one from the transnistrian region.*
9. *Amendment of the electoral legislation to increase responsibility of all parties involved in the granting the right to vote.*

1.5. Freedom of assembly

„Prohibition of a meeting is a breach of the freedom of assembly and it may not be justified unless if meets the conditions provided for by article 11 paragraph 2 of the Convention". ***Case Religious against Racism and Fascism vs. United Kingdom***

The ombudsmen have reiterated on numerous occasions that the freedom of assembly is guaranteed to all persons, irrespective of race, nationality, ethnical origin, language, religion, gender, opinion, political adherence, wealth, social origin or on any other grounds.[71]

Freedom of assembly is enshrined in the Constitution of the Republic of Moldova, being recognised as a fundamental right. Thus, article 40 states that "meetings, demonstrations, manifestations, processions or any other assembly are free and may be organised and carried only peacefully, without any arms".

On the other hand, the enjoyment of the freedom of assembly is often closely linked with other freedom – freedom of expression. Both are considered by the European Commission for Human Rights to be essential for the democratic process. However, when both rights are invoked, the Strasbourg bodies consider that article 10 must be considered *lex specialis* and the freedom of expression should not be separately analysed.[72] In Decision *Ezelin vs. France* the European Court of Human Rights even advanced to recognising that the freedom of expression can be exteriorised solely through gestures or even through silence of participants.[73]

Pursuant to article 32 paragraph 1 of the Constitution of the Republic of Moldova each citizen enjoys the freedom of thought, opinion and freedom of expression in public by means of words, image or any other possible means.

According to the international standards the freedom of peaceful assembly and the freedom of expression are inherent to all persons, not only to those who represent the majority. Therefore, it is accepted that an assembly might disturb certain persons or groups of persons in terms of presented ideas of presented requests. These requests may be contrary to the position of the majority of the society and may be a reason to prohibit the peaceful assembly. If there are concerns for the security of the participants, the authorities must take protection measures or suggest alternatives to it, so that the manifestation takes place as much as possible within the required form.

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[71] Report on the observance of human rights in the Republic of Moldova in years 2008 and 2009, www.ombudsman.md/md/anuale

[72] Case *Ezelin vs. France* from 26 April 1991

[73] Ibidem

The efforts to modernise the national legislative and institutional framework were substantially directed to implementing the international standards, including in the area of freedom of assembly.

Undoubtedly, Republic of Moldova registered significant progress when adopted the Law on assembly no. 26 from 22 February 2008. Although at the level of regulation the above mentioned law is very progressive, being adjusted to the best practices in the area of freedom of assembly, the ombudsmen have identified discrepancies in the enforcement of the Law by responsible authorities. This finding was tackled in the previous Reports of the Centre for Human Rights.[74]

Thus, in 2010 cases of unjustified breach of the constitutional right to assembly by means of its limitation have been registered. From the ombudsmen's point of view the main problem is the quality of interaction between the involved parties when granting the enjoyment of the freedom of assembly.

Pursuant to the events mediatised in June 2010 from the perspective of freedom of assembly, the ombudsmen have found a diversity of interpretations by the involved parties of the provisions of the Law of the Republic of Moldova on assembly no. 26 from 22 February 2008. That reveals the lack of certain practices and customs based on observance of the freedom of assembly, in particular the limitation during the respective period of certain peaceful meetings such as cycling contests[75] and marching[76] in terms of hours required in advance by the organisers.[77]

On 3 May 2010 the Moldovan Cycling Federation notifies the Chisinau municipality of the organisation on 13 June 2010 between 10:00 and 17:00 of certain sport contests in the Grand National Assembly Place on the Stefan cel Mare Boulevard.

Subsequently, on 5 May 2010, the Communist Party of the Republic of Moldova notifies the Chisinau municipality city hall of the organisation on 12 and 13 June 2010 between 10:00 and 15:00 of a marching formed of four columns of participants, with a subsequent organisation of a meeting in the Grand National Assembly Place.

On 7 May 2010, the General Mayor issues Decision no. 393-d "on the organisation of a meeting in the Chisinau municipality", which was followed by Decision no.486-d from 1 June

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[74] Report on the observance of human rights in the Republic of Moldova in years 2008 and 2009, www.ombudsman.md/md/anuale
[75] Cycling Federation from the Republic of Moldova
[76] Party of Communists from the Republic of Moldova
[77] Press release „Limitation of the right to assembly", http://www.ombudsman.md/md/newslst/1211/1/4697/

2010 „repealing Decision of the General Mayor no.393-d from 7 May 2010 „on the organisation of a meeting in the Chisinau municipality".

Thus, according to Decision no. 486-d and "taking into account application no. 1133-647 from 26 May 2010 by means of which the Government of the Republic of Moldova announces certain official activities related to the commemoration of 69 years from the beginning of the deportations in the Republic of Moldova on 13 June 2010, between 9:00 and 21:00 in the Grand General Assembly Place, pursuant to article 5 paragraph (3) of the Law of the Republic of Moldova no. 26 from 22 February 2008" it has been decided that the Social and Inter-ethnical Relations Directorate shall prepare the draft of a new Decision for the Party of Communists of the Republic of Moldova covering only 12 June, instead of the initially requested days, whilst for 13 June 2010 the above mentioned party and the Moldovan Cycling Federation shall choose another place to organised the required meetings.

The provisions or article 14 paragraph (3) of the Law of the Republic of Moldova on assembly no. 26 from 22 February 2008 expressly states that the local public administration authorities, if considers necessary, may recommend the organisers change the conditions of organisation of the declared meetings in terms of hour, place and form of meeting. The final decision to change the hour, place or form of meeting is up to the organiser.

In spite of the above mentioned, the local public administration authority repealed its previous decision where it authorised the organisation of the meetings in the place, hour and form required by the organisers, amending the conditions of their organisation (place) pursuant to the provisions of article 5 paragraph (3) of the Law of the Republic of Moldova on assembly, which provides for that in case of official activities or of repair works, the local public administration authority, pursuant to the request of the interested parties, may temporarily restrict certain places which are normally unrestricted to all persons.

Pursuant to article 4 of the Law of the Republic of Moldova on assembly no. 26 from 22 February 2008, this takes place while observing the principles of proportionality, non-discrimination and presumption in favour of the meetings and legality, according to which justifications for prohibition of meetings or limitation of any form of the freedom of assembly may serve only legal provisions, without the ability of the authorities to debate on the opportunity of a meeting.

The former European Commission for Human Rights stated that the limitation of the of the form of manifestation in a meeting is a breach of the freedom of assembly and it cannot be justified except if meets the requirements of article 11 paragraph 2 of the Convention, i.e. its enjoyment may not be subject to other restrictions than those which, provided by law, are necessary measures in a democratic society for national security, public safety, public order and

prevention of crimes, protection of health of morality or for the protection of right and freedoms of other persons.

The principle of protection, firstly presented by the former Commission in a case involving the United Kingdom – *Christians against Racism and Fascism vs. United Kingdom*, was further developed in the Austrian case *Platform Arzte fur das Leben vs. Austria* and was strongly confirmed by the Court in the same case, thus imposing on the states the obligation that their own authorities respect the commitments guaranteed by article 11 of the Convention.

Indeed, this provision protects all forms of assembly – be it public or private – and irrespective of their purpose, under one condition that the former be compatible with the objectives of the Convention.

Pursuant to the provisions of the Constitution of the Republic of Moldova[78], as well as to the provisions of the Decision of the Constitutional Court no. 55 from 14 October 1999 "on the interpretation of certain provisions of article 4 of the Constitution of the Republic of Moldova" ECHR is an integral part of the national legal system and therefore must be directly applied as any other national law of the Republic of Moldova, under one condition that the ECHR has priority over the rest of the internal laws which are contrary to the former. Indeed, when ratifying the ECHR, the Republic of Moldova committed to guarantee the rights and freedoms contained therein for all persons under its jurisdiction.[79]

The Information Resource Centre „GenderDoc-M" notified the Chisinau municipality city hall on 23 March 2010 on the intention to organise in the Grand National Assembly Place a peaceful meeting on 2 May 2010 – public support action to adopt the draft Law on the prevention and fight against discrimination – by means of presentation of a prior application with the purpose to allow sufficient time for the local public administration to take the necessary measures to ensure a secure manifestation.

Consequently, on 20 April 2010 the Chisinau municipality city hall registered the prior application of the National Christian Movement which requested the authorisation of a counter-manifestation for the same date and the same place.

In the light of the above mentioned it is to be underlined that according to article 4 of the Law of the Republic of Moldova no. 26 from 22 February 2008 on assembly, the latter is applicable with the observance of the main principles: proportionality, non-discrimination, legality and presumption in favour of the meeting.

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[78] Article 4 paragraph (2) from the Constitution of the Republic of Moldova
[79] Article 1 from the European Convention for the protection of Human Rights and Fundamental Freedoms

Article 11 paragraph 1 of the Law on assembly expressly stipulates that if more than one applicant requested organisation of a meeting in the same place and in the same time, the local public authority organises a session, with the participation of all applicants to find an appropriate solution to organise all the meetings.

If following the discussions between the empowered body and the organisers of the meetings it becomes clear that simultaneous organisation of meetings in the requested place and with the foreseen number of participants is not possible, the responsible body proposes the organisers to modify the hour, place or form of the meetings. This proposal is made orally during the session for the organisers present the session and is sent in written from in not more than 24 hours after the conclusion of the session to those who have not participated at the discussions.[80]

If after the discussions mentioned in article 11 paragraph (3) none of the applicants accepts to change the hour, place or form of the meeting, priority is given to the organiser who first issued the prior application.[81]

Contrary to the legal provisions, the Chisinau municipality city hall has unreasonably prolonged the decision to authorise the peaceful meeting of the Information Resource Centre „GenderDoc-M", offering priority to the prior application from 20 April 2010 presented by the National Christian Movement and authorising the meeting against the LGBT community (counter-manifestation) at the same date and place in the Grand National Assembly Place.

Moreover, on 23 April 2010 the Chisinau municipality city hall issued a court application to prohibit the meeting by the Information Resource Centre „GenderDoc-M" scheduled for 2 May in the GNAP and change the place of its organisation, justifying its claim on article 6 (the organisers of the meeting) and article 14 (Amendment of the conditions of organisation and prohibition of meetings) of the Law of the Republic of Moldova on assembly.

Pursuant to article 14, paragraph (3) of the above mentioned Law, if it considers necessary for the purposes of peaceful organisation of a meeting, the local public authority may recommend the organisers amend the conditions of the organisation of the meeting with respect to hour, place or form of manifestation. The final decision on the amendment of the hour, place or form of meeting is up to the organiser.

If there is concluding proof that the meeting is to take place with the breach of article 8 (Prohibited meetings) the local public administration authority may initiate a judiciary procedure, by means of which request prohibition of the meeting or, if applicable, the

[80] Article 11, paragraph (3) from the Law no. 26 from 22 February 2008 on assembly
[81] Article 11, paragraph (4) from the Law no. 26 from 22 February 2008 on assembly

amendment of the hour, place or form of manifestation. The court claim does not suspend the right to organise the meeting.[82]

As a result the local public administration authority shall in such case be obliged pursuant to article 20 paragraph 1 of the Law no. 26 to offer conditions to peacefully organise the meeting, nominate a responsible person to legally organise the meeting and communicate the organisers and the police his/her name and contact details.

While referring to the ECtHR decision in case *Platform „Arzte fur das Leben" vs. Austria*, the Court decided that the right to counter manifestation may not impede the right to manifestation. In this respect, article 11 imposes a positive obligation to the states parties to protect and ensure security, especially if it covers the right to protection against the actions of opponents during a reunion, whilst the freedom of assembly or manifestation may not be effectively reduced due to fears of brutalities from persons with opposite ideas and the fact the national law offers a recourse against the ones who disturb a meeting or manifestation is not sufficient.

The former European Commission for Human Rights stated in case *Christians against Racism and Fascism vs. United Kingdom* the principle according to which "even if there is a real risk that a demonstration shall lead to incidents generated by events gone out of control of the organisers, this demonstration is not, solely on this very reason, out the scope of article 11". Similarly, on the same case the Commission acknowledged that the freedom to peaceful meetings includes demonstrations and the authorities who have allowed the demonstration must ensure the security of the participants from any eventual opponents.

In this respect Recommendation CM/Rec(2010)5, adopted on 31 March 2010 by the Committee of Ministers of the Council of Europe addressed to the member states on the measures to fight discrimination on grounds of sexual orientation and gender identity is of relevance.

Thus, the Committee of Ministers encourages and recommends the member states of the Council of Europe to ensure, pursuant to article 10 of the Convention, the adoption of adequate measures at national, regional and local level to ensure the right to peaceful meetings, pursuant to article 11 of the Convention, irrespective of sexual orientation. Additionally, the Committee recommends the states take appropriate measures to prevent restrictions of the effective enjoyment of the freedom of expression and peaceful assembly which result from abusive use of legal or administrative provisions, for instance, on grounds of public health, public morality and public order.

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[82] Article 14, paragraph (4) from the Law no. 26 from 22 February 2008 on assembly

Prohibition of any form of discrimination on grounds of sexual orientation is well consolidated in the case law of the European Court of Human Rights, which during the examination of certain cases (case *Plattform Arzte fur Das Leben vs. Austria, 1985*; *Lustig-Prean and Beckett vs. United Kingdom, and Smith and Grady vs. United Kingdom, 1999*) estimated that the participants must be able to organise a demonstration without fear of physical violence from the ones who oppose their ideas, otherwise being obstructed from expressing their views. Indeed, in a democracy the right to counter manifestation may not extend to the limit of affecting the right to manifest.

Meanwhile, the ombudsmen reiterate that the omissions of the authorities with respect to the observance of the fundamental rights of citizens may become a subject of perspective trials against the Republic of Moldova in front of the European Court of Human Rights, there being invoked the breach of article 11 – freedom of assembly and association and article 14 – non-discrimination, of the European Convention and does not exclude the conviction of the state on the international level. The discrimination of one category of citizens affects the image of the Republic of Moldova in the context of progress of democratic reforms and observance of undertaken commitments.

The recommendations of the ombudsmen

1. *Amendment of article 40 of the Constitution of the Republic of Moldova to adjust it to the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms by means of inclusion of restrictions to the enjoyment of the freedom of assembly, the obligations and the responsibilities the enjoyment of this freedom entails.*
2. *Continuing education of participants involved in granting the freedom of assembly – local public administration authorities, law enforcement agencies and organisers of meetings.*
3. *Implementation of awareness rising campaigns to increase the level of understanding of the right and obligations of the "participants", regulated by the Law on assembly and the international standards in discussion.*

1.***6. Freedom of conscience***

„Each person's religion, including the option not to have a religion at all, is strictly personal matter". **Recommendation 1720 (2005) of the Parliamentary Assembly of the Council of Europe on education and religion**

The Constitution of the Republic of Moldova guarantees in article 31 the freedom of religion and enounces the principle of autonomy of beliefs from the state. Article 41 of the Constitution provides for that citizens may freely associate in parties and other socio-political organisations.

This constitutional principle was taken over and extended by the Law of the Republic of Moldova on political parties no. 294 from 21 December 2007, which states in article 1 that the political parties are freely created associations, with a status of legal personality, by citizens of the Republic of Moldova who hold the right to vote, which by means of common activities and on the basis of free participation, contribute to the development, expression and accomplishment of their political will. Being democratic institutions and promoters of the rule of law, the parties promote political pluralism, contribute to the formation of the public opinion, participate at elections through the presentation and support of their candidates and form public authorities, stimulate the participation of citizens in elections, participate through their representatives in equal governing, participate in other activities as provided by law.

On the other hand the Law of the Republic of Moldova on beliefs and their components no. 125 from 11 May 2007, which regulates the area of freedom of conscience and religion, defines the religious belief as a religious structure, which holds legal personality, which is active on the territory of the Republic of Moldova according to the doctrinal, canonical, moral, disciplinary rules and historical and intrinsic customs, formed by persons under the jurisdiction of the Republic of Moldova, who commonly manifest religious beliefs, respecting the established customs, rituals and ceremonials.

Additionally, the Law on beliefs and their components defines the religious activity managed by a belief as an activity oriented towards covering the spiritual needs of the believers (spreading the belief's teachings, religious education, orientation of religious services, organising activities of blessing and promotion, training and continuing education of members of religious beliefs), as well as other activity directed to ensure the organisational and material practice of the belief (editing, dissemination of materials with religious content, production, distribution and dissemination of the religious objects, manufacture of religious robes etc.).

Moreover, article 15 of the mentioned Law regulates the relations between the state and the religious beliefs, stating that all beliefs are autonomous, whilst the state and its institutions

may have cooperation relations with any religious belief and may conclude, if relevant, cooperation agreements or memorandums with any religious belief or with its components.

During the update and revision of the national legal framework, the legislator has always in mind the international principles and standards, incorporating them implicitly and explicitly in legislation, starting from the Constitution.

Indeed, by means of Decision of the Parliament of the Republic of Moldova no. 707 from 10 September 1991 on the 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 of the Parliamentary Assembly in guaranteeing and protecting the human rights and fundamental freedoms was recognised.

In this respect, Recommendation 1804 (2007) of the Parliamentary Assembly of the Council of Europe on the state, religion, secularism and human rights recognises that religious beliefs are, in fact, an integral part of the society and therefore should be considered institutions formed by and with the participation of citizens and who enjoy the freedom of religion, and also as organisations which part of the civil society holding every necessary potential to provide indicators on the aspects of ethical and civic life, which ultimately have an important role in the national community, be it religious or secular.

In the light of the above mentioned the ombudsmen consider that the strengthening of the dialogue between the religious communities and the civil society must find itself in a constant approach which would allow the creation of conditions for a climate of tolerance and mutual respect.

Additionally, the Assembly reaffirms that one of the common values of Europe, overstepping the national differences, is the separation of the church from the state. This is a principle generally accepted and predominant in the policies and institutions of the democratic countries.

The Assembly has mentioned for example in its Recommendation 1720 (2005) on education and religion that "each person's religion, including the option not have any, is a strictly personal matter".

The Recommendation states that the Governments should take into account the special capacity of the religious communities to promote peace, cooperation, tolerance, solidarity, intercultural dialogue and dissemination of the values confirmed by the Council of Europe.

Following the above mentioned, the ombudsmen reiterate to the religious community the principles of independence of politics from religion, and recommend to public authorities to guarantee the former the enjoyment of the fundamental freedom of religion and association pursuant to the provisions of article 9 and 11 of the European Convention for the Protection of

Human Rights and Fundamental Freedoms, and articles 18 and 20 of the Universal Declaration of Human Rights.

On 4 June 2010 the Central Electoral Commission issued a Decision to register the Initiative Group to organise the republican legislative referendum on the teaching of subject "the Basics of Orthodoxy" in the secondary educational institutions of the Republic of Moldova and establishment of the period for collection of signatures of supporters of the republican legislative referendum starting with 14 June until 14 September 2010.[83]

The right to education is considered by the case law of the European Court of Human Rights one of the founding pillars of democracy. The states hold a large margin of discretion in organising their educational system, development of teaching programmes and branches; however they have to respect the philosophical or religious beliefs of the parents.

Article 2 of the Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms states that „nobody can be denied the right to education and the state, while managing its functions in the area of education and teaching, shall respect the right of the parents to ensure this education and this teaching according to their religious and philosophical beliefs".

This right lies with the positive obligation of the states to ensure a public education service, and on the other, the obligation of the states to respect the philosophical and religious beliefs of the parents related to the education of their children, the latter being interpreted by the Court as an image of educational pluralism necessary to any democracy.

The state must observe the educational part of the philosophical and religious opinions of each person and this obligation is imposed both to the public and private education, any form of indoctrination being prohibited.[84]

In the Belgian linguistic case (decision of the European Court of Human Rights from 23 July 1968) the Court had the occasion to form the notion of right to training, definition which later was divided into teaching and education: „the education of children is the sum of processes in society where adults try of offer the younger ones their beliefs, customs and other values, whilst teaching and training is mostly related to the passing of knowledge and intellectual formation".[85]

Title 2 of Protocol 1 allows, pursuant to this definition of the Court, taking into consideration of an extensive concept of application of this right guaranteed by the Convention.

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[83] http://www.cec.md/index.php?pag=legislatie&ids=hotarire&id=3710&start=680&l=.
[84] European Committee for Human Rights, decision from 5 February 1990, in case *Graeme vs. United Kingdom*
[85] Case *Campbell and Cosans vs. United Kingdom* from 25 February 1982

Additionally, the Court reiterates that the provisions of article 2 of the Protocol must be interpreted not only in the light of the above mentioned, but also in compliance with articles 8, 9 and 10 of the Convention.[86]

The Court has also decided in case *Young, James and Webster vs. United Kingdom* from 13 August 1981that, even though the individual interests may sometimes be subordinated to the ones of the group, this does not mean that the opinions of the majority must simply always prevail: a balance must be reached which shall ensure the equal and fair treatment of minorities and avoid any abuse of the dominant position.

The fact that a religion is officially recognised as a state religion must not generate discrimination between the followers and non-followers or followers of other religions. In this respect article 9 of the Convention shall be invoked with article 14. Thus, bearing the risk of breaching article 14, the followers of a state Church may not enjoy any specific advantage compared to the atheists or followers of other religions. This principle generates consequences in education: when a religious teaching is imposed by law, especially when there is an official religion, there must by teaching of other religions, even a total dispensation from these teachings for atheists.[87]

However, the establishment and planning of the study programme is in principle in the hands of the states parties. Firstly, this implies issued of convenience on which the Court is not competent to decide, the solutions being different based on the law in each particular state and point in time.[88] Having this discretion, the Court decided in the same case that the second sentence of article 2 prohibits the state to follow the aim of indoctrination, which can be seen as breaching the religious and philosophical beliefs of the parents, a limit which cannot be overstepped.

The inclusion of the right to education in article 35 of the Constitution of the Republic of Moldova is accompanied by provisions which oblige the state to ensure as prescribed by law the freedom of religious education. According to article 35, paragraph 8 of the Constitution "the state education is secular", i.e. without any religious content.

The area of freedom of conscience and religion, guaranteed by the Constitution of the Republic of Moldova and the international treaties in the area of human rights to which the Republic of Moldova is a party, are regulated by the Law of the Republic of Moldova on religious beliefs and their components no. 125 from 11 May 1997.

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[86] Case *Kjeldsen, Busk Madsen and Pedersen vs. Denmark* from 7 December 1976
[87] J.Robert „Liberte de conscience, pluralisme et tolerance in Liberte de conscience", Conseil de l'Europe 1993, p.28.
[88] Case *Kjeldsen, Busk Madsen and Pedersen vs. Denmark* from 7 December 1976

Pursuant to article 1 paragraph 2 of the above-mentioned Law, the provisions of the Constitution and of the laws related to the freedom of conscience and religion shall be interpreted and applied in accordance with the Universal Declaration of Human Rights, the international treaties to which the Republic of Moldova is a party. If the international treaties to which the Republic of Moldova is a party provide for other rules than the ones of the present law, the provisions of the international treaties shall prevail.

On the other hand, article 32, paragraphs 7 and 8 of the Law of the Republic of Moldova on religious beliefs and their components provides for that the religious and moral education in state schools of all levels is optional and discretionary, except in cases provided for in the cooperation agreements or conventions between the state and religious beliefs. The agreements between the state and the religious beliefs shall provide for the right of the children to be exempted from religion classes, based on the request of parents of legal tutors.

In turn, the Law of the Republic of Moldova on the rights of the child no. 338 from 15 December 1994, which establishes the legal status of the child as an independent subject, provides for among others the observance of the physical and spiritual health of the child, formation of his/her civic conscience based on national and general human values, provides for in article 8 paragraph 4 that no child shall be constrained to follow one opinion or the other, to adhere to a religion contrary to his/her own beliefs. The freedom of conscience of the child is guaranteed by the state, it must be manifested in the spirit of religious tolerance and mutual respect.

Paragraph 5 of the same article states that the parents or legal representatives have the right to educate the child based on their own beliefs.

Indeed, the Law on education no. 547 from 21 July 1995, which establishes the state policy in the area of education and regulates the management and functioning of the educational system, provides for in article 4 that the educational policy of the state is based on the principles of humanisation, accessibility, adaptation, creativity and diversity. Education is democratic and human, open and flexible, formative and promotes development and is based on the values of the national and universal culture. The state education is secular, opposes discrimination based on party ideology, politics, race, nationality.

Undoubtedly, the freedom of religion in the context of mandatory education is an important and sensitive subject for children. It is significant that the information be offered while respecting the rights of the child in his/her relations with any religious teaching from the public schools and institutions, same as any limitation of this freedom.

From the ombudsmen's point of view this imperative implies inclusion of disciplines in the educational curricula which promote tolerance, perceive the notions of "prejudice",

“stereotype”, “crimes based on hatred”, “racial and inter-ethnical hatred”, “anti-Semitism”, “xenophobia” and “discrimination”.

As Republic of Moldova is a party to the Convention on the Rights of the Child, the Convention against discrimination in education, other conventions in the area or children’s rights, which directly or implicitly contain provisions related to the principle of non-discrimination, freedom of thought, opinion and religion, as well as the right to education, the ombudsmen encourage public authorities, representatives of religious beliefs and citizens establish a constructive dialogue to identify certain acceptable solutions for all.

In this respect, starting from the idea that philosophy is a way of thinking and investigation, a general concept on the world and life, formed by a series of notions and ideas which tends to know and understand the sense of existence from the most general aspects, the ombudsmen uphold the idea that the optional teaching of the history of religion as a form of philosophical thinking shall directly contribute to the intellectual grow and increase of the general culture of the generations, as well as of the morality in a society.

Pursuant to article 22 of the Law of the Republic of Moldova on religious beliefs and their components no. 125 from 11 May 2007 the registry of religious beliefs and of their components is kept by the Ministry of Justice. In the first half of 2010 the Ministry of Justice issued a decision of refusal of registration no. 1 from 8 February 2010 with respect to the refusal to register the “Islam. Preach and orientation in Moldova”, pursuant to article 19, paragraph 7 of the Law no. 125-XVI from 11 may 2007 on religious beliefs and their components.

Pursuant to the data offered by the Ministry of Justice, the documents presented by the applicant to register the religious community “Islam, Preach and orientation in Moldova”, have not fulfilled the following legal requirements: the organisational structure from the statute of the religious community have been unclear and have not respected the legislation in force (in particular paragraphs 4.3, 7.1, 7.1, 7.2, 7.3 from the Statute); the list of founders of the religious community and their signatures contained inconclusive data (for example, corrections and pieces of paper with new data on the data presented by some founders); contradictory provisions in the Statute on the nomination of the members of the Council, when those become vacant; inconsistencies between data on the social seat of the religious community presented in paragraph 1.4 of the Statute, as well as documents presented for registration; inconsistency with article 27 of the Law no. 125-XVI from 11 May 2007; the document on the basic religion principles have not been clearly identified in the list of presented documents; the identity documents of the founders of the community were expired.

After the implementation of the new Law on religious beliefs and their components started certain deficiencies have been identified as follows: the restrictive time limit for

registration (15 days) due to which the applicant does not have the possibility to adjust the presented documents to the legal requirements and the recommendations of the Ministry of Justice; the existence of bureaucratic procedures during registration. In this respect the Ministry of Justice has already created the State Registry of non-commercial organisations, which can be accessed on the website of the Ministry of Justice.

The ombudsmen plead in favour of strengthening the dialogue between the authorities and the representatives of the Muslim religion with respect to the registration of the Islamic belief in Moldova, reiterating the case *Maşaev vs. Moldova*, where the Court stated that the authorities must ensure the right to expression of religion adherence for Muslim believers and persons who follow other religions, creation of religious institutions, organisations and associations.

The recommendations of ombudsmen

1. *Implementation of efficient measures to prevent discrimination of religious groups.*
2. *Strengthening the dialogue with the religious communities and the civil society to identify issues which they confront and creation of a climate of tolerance and mutual respect.*
3. *Ensuring the freedom of confessions and association for Muslim believers and persons following other religions and the possibility to create religious institutions, organisations and communities pursuant to the international recommendations and standards.*
4. *Inclusion into the educational curricula of the subjects oriented on promotion of tolerance, perception of notions of "prejudice", "stereotype", "crimes based on hatred", "racial and inter-ethnical hatred", "anti-Semitism", "xenophobia" and "discrimination".*

1.7. Right to education

„The States Parties undertake to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education". **Article 4 of the Convention against discrimination in education**

The right to education is enshrined in the International Covenant on Social, Economic and Cultural Rights[89], in the Convention for the Protection of Human Rights and Fundamental Freedoms[90], in the Constitution of the Republic of Moldova[91] and in the Law on education[92] no. 547 from 21 July 1995.

The observance of the right to education imposes the state an obligation of result, empowering it to acts even contrary to the will of the parents to ensure the enjoyment of the right in case of minors.

In turn, the right to training was defined by the Strasbourg Court as a relative right. Due to this it creates a right and not a freedom, which generates to correspondent obligations: the obligation of the state to create educational institutions offering real access to pupils, as well as the obligation of the parent, tutor or other legal representative to matriculate minors under care in an institution accredited by the state, either public or private. From this perspective, the Court established that the state has the obligation to decide on the curricula and the way teaching is delivered, the level to which education is mandatory and the fact that education of a certain person depends on his/her capacities.

In the Republic of Moldova the right to education, ensured by general mandatory education, high school, professional and superior education, confronts diverse deficiencies – starting from insufficient financing and ending with the incapacity of the state to ensure high school graduates a minimum level of abilities. The state's effort to ensure the best conditions in the educational systems has failed due to the inconsistency in the reform of the educational system inherited from the soviet period.

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[89] Article 13 of the International Covenant on Economic, Social and Cultural Rights: The States parties to the present Covenant recognise the right inherent to any person to education.

[90] Protocol 1, paragraph 2 of the First Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms: No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

[91] Article 35 from the Constitution of the Republic of Moldova: the right to education is guaranteed by means of general mandatory education, high school and professional education, higher education, as well as other forms of training and education.

[92] Article 6 of the Law on education: the right to education is guaranteed, irrespective of nationality, gender, social origin and state, political or religious adherence, criminal records.

Particularly, the impossibility to fully enjoy the right to education is generated by a series of factors: limitation of the educational process due to implication in agricultural works; lack of free transport for pupils to and from the educational institutions in rural communities for distances more than 3 km; illiteracy of children from different social groups; overcrowded gymnasium and high school classes, especially in the Chisinau municipality; insufficient qualified teachers and prevailing teachers with pensioning age in rural areas; insufficient methodical, didactical, technical means in the educational system; inappropriate financing of the educational system contrary to its needs; inequality of opportunity in higher education, secondary professional education, masters degrees, PhD degrees; deficient normative framework and its lack of compliance with the provisions of the international treaties to which the Republic of Moldova is a party to.

When ratifying the International Covenant on Social, Economic and Cultural Rights the Republic of Moldova committed to recognise the right which is inherent to any person. In this respect the state recognised that higher education is to be accessible to all under equal terms, depending on the capacity of each person, using the appropriate means and, more importantly, through gradual implementation of gratuitousness.[93] The states parties to the Convention against discrimination in education have additionally committed to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education and, moreover, make accessible higher education to all, depending on the capacities of each person, under equal terms.[94]

Complying with the commitments taken on the international level, the Republic of Moldova ensures at constitutional[95] and legislative level[96] equal opportunities to access high school, secondary professional and higher education, based on merit, depending on abilities and capacities, whilst the provisions of article 16 of the Constitution guarantees equality of all citizens of the Republic of Moldova before the law and public authorities.

During the review of certain complaints received by the Centre for Human Rights, normative deficiencies have been identified which lead to breaching the above mentioned

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[93] Article 13 paragraph 2 litter c) from the International Covenant on Social, Economic and Cultural Rights

[94] Article 4 letter a from the Convention against discrimination in education, in force for the Republic of Moldova from 17 June 1993

[95] Article 35 paragraph (7) from the Constitution: the high school, professional and higher state education is equally accessible to all based on merit.

[96] Article 6 of the Law on education no. 547 from 21 July 1995: (1) The right to education is guaranteed, irrespective of nationality, gender, social origin and state, political or religious adherence, criminal records (2) The state ensures equal opportunities to access state high schools, professional, secondary specialised and higher educational institutions, based on skills and capacities.

principles, creating unjustified restrictions of age for persons who wish to pursue higher education[97], a master's degree[98] or a PhD degree.[99]

Pursuant to the recommendations of the ombudsmen, the Ministry of Education reviewed the internal departmental decision which regulates the organisation of matriculation in higher education institutions and developed a new set of regulations which does not provide for restrictions based on age for persons who wish to enrol in the matriculation competition for higher education.[100] However, the age limitation for master's degree studies at the Academy of Public Administration within the Presidency of the Republic of Moldova and the PhD degree studies covered by the state budget remains until now one of the conditions of matriculation to higher education. In this respect, the ombudsmen recommend the revision of the Governmental Decision on the functioning of the Academy of Public Administration within the Presidency of the Republic of Moldova no. 962 from 5 August 2003 and the Regulations on the organisation of doctorate and post-doctorate studies, adopted by Governmental Decision no. 173 from 18 February 2008.

Meanwhile, the new version of the Regulations on the organisation of matriculation for higher licence education (cycle I) in higher educational institutions in the Republic of Moldova, adopted by Order of the Minister of Education no. 630 from 7 July 2010 maintains other criteria of differentiation for matriculation, including quotas financed by the state budget, reserved for candidates with a certain social status or of their families, ethnical origin, family structure, type of graduated institution or place of residence (rural/urban). The candidates from the mentioned categories may also participate in the general matriculation competition.

Pursuant to certain circumstances, the families of certain categories of citizens may well be justified to allege facilities of material, financial or other nature, however in no case educational privileges, where the only selection criteria should be the level of proficiency of the candidates. Thus, this situation continues to generate diminished rights for competitors holding a superior proficiency and inhibits the spirit of healthy competition.

In the ombudsmen's point of view the state must ensure the accessible nature of higher education for all, depending on each person's capacities, based on full equality and recommends the revision of the normative framework in force.

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[97] Article 25 of the Regulations of management of matriculation into the higher educational institutions in the Republic of Moldova, approved by means of Decision of the Ministry of Education, Youth and Sports Council no. 6 from 27 April 2006: „The full participation courses are available only for persons with an age of up to 35 years."
[98] The Governmental Decision on ensuring the functionality of the Academy of Public Administration within the Presidency of the Republic of Moldova no. 962 from 5 August 2003
[99] The Regulations on the organisation of doctorate and post-doctorate studies, adopted by means of Government Decision no. 173 from 18 February 2008
[100] The Regulations on the management of matriculation into the first cycle in the higher educational institutions in the Republic of Moldova, adopted by means of Order of the Ministry of Education no. 630 from 7 July 2010

During the preceding year a special group of petitioners – detainees in penitentiaries – are invoking with a higher degree of frequency the issue of their training under specific detention conditions, tackling the subject from a different perspective, through the glass of national legislation[101] and international treaties to which the Republic of Moldova is a party to.

According to the survey of the Centre for Human Rights there is no mechanism of management of coordinated training of convicts in the Republic of Moldova. If the provisions of article 241 of the Enforcement Code[102] is implemented in the majority of penitentiaries in the Republic of Moldova, than there are concerns with respect to the implementation of article 240, paragraph 3 of the Enforcement Code[103] and article 416 from the Statute of Enforcement of Sentences by convicts[104] in the part which relates to the conditions for higher education.

The Department of Penitentiary Institutions repeatedly called a series of higher education institutions to organise the training of convicts within the penitentiary institutions. However, they have not been met with a response due to the lack of distance learning programmes, books in electronic format and teaching personnel.

The Law on education no. 547 from 21 July 1995 establishes the principles of the educational policy in the Republic of Moldova, stating that education is conceptually a single system based on diversity of educational structures, forms, contents and technologies. The national educational system is based on state educational standards, which form the objective evaluation criterion of the proficiency level of graduates, irrespective of the type and form of education. Along with traditional training forms the educational process can be organised using distance learning or individual education.[105] At the same time, the Law on education offers vast possibilities to implement educational programmes for adults.

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[101] Article 6 of the law on education no. 547 from 21 July 1995: (1) The right to education is guaranteed, irrespective of nationality, gender, social origin and state, political or religious adherence, criminal records (2) The state ensures equal opportunities to access state high schools, professional, secondary specialised and higher educational institutions, based on skills and capacities.

[102] Art. 241 of the Enforcement Code adopted by means of Law no. 443 from 24 December 2004: (1) There is mandatory professional training of convicts in penitentiaries; (2) Creation of conditions and development of professional training programmes for convicts is managed as provided by law by the Ministry of Justice, in cooperation with the Ministry of Education; (3) the Diplomas, certificates and other documents which demonstrate mastering of a skill, professional qualification or requalification during enforcement of a sentence, are recognised as provided by law by the Ministry of Education and the Ministry of Economy.

[103] Article 240 paragraph (3) of the Enforcement Code: When requested by the convict, the administration of the penitentiary and the local public administration authority creates conditions for secondary professional education or higher education.

[104] Article 416 of the statute of enforcement of sentences by convicts, approved by means of Government Decision no. 583 from 26 May 2006: the administration of the penitentiary, with the participation of local public administration authorities, when requested by the convict and on his expense, shall created conditions for secondary professional and higher education.

[105] Article 13 paragraph (3) of the Law on education no. 547 from 21 July 1995: Education can be organised as day time education, distance learning, individual study.

The Ministry of Education – the specialised central public administration body which promotes the state policy in the field of education – which develops and implements strategies of development and quality assurance in the area of education, must fully commit to its mission and perform the basic functions as provided by the normative acts in force, and organise the educational process in the penitentiary system, while ensuring the access of convicts to higher education.

The educational system has a primary role in the creation of conditions for sustainable human development and formation of a society based on knowledge. The quality of education determines to a large extent the quality of life and creates opportunities for each citizen to fully benefit from his/her own capabilities.

The quality of the educational process greatly depends on the capacity of the educational system to supply qualified teaching personnel. While the national educational system faces a dangerous level of insufficiency of teaching personnel, the inclusion of a list of advantages for the young people who decide to get employed in the educational institutions in rural areas is considered by the Ministry of Education[106] a merit of the authorities directed to extend the access and improve the quality of studies.

Indeed, while operating amendments to the Law on education in 2005 a series of advantages have been given to the graduates of higher and secondary specialised educational institutions in the first three years of activity who accept employment on request in the educational institutions in rural areas.[107] The implementation of these provisions was assured by the Governmental Decision no. 923 from 24 September 2001 on the employment of graduates of higher and secondary specialised state educational institutions with the respective amendments and addendums, Governmental Decision no. 542 from 3 May 2002 on the support of students and pupils of higher and secondary specialised state educational institutions with a teaching specialisation and young professionals who work in the educational area, Governmental Decision no. 1171 from 8 November 2005 on the approval of the Regulations of the Support

[106] The consolidated strategy of development of education for years 2011-2015, approved by Order of the Ministry of Education no. 849 from 29 November 2010, page 12, http://www.edu.gov.md/files/unsorted/Strategia

[107] Article 53, paragraph (9) of the Law on education no. 547 from 21 July 1995: the graduates of higher and secondary specialised educational institutions who accept employment as per repartition in educational institutions in rural areas receive during the first 3 years of activity: a) free housing, offered by the local public administration authority for the period of activity in the respective settlement. If the local public administration authority cannot offer the young professional appropriate housing, he shall be covered the rent expenditures; b) a single allowance of 30 thousand MDL for young professionals graduates of higher educational institutions, which is paid as follows: 7 thousand MDL during a month from employment, 10 thousand MDL after one year of activity, 13 thousand MDL after 3 years of activity; 24 thousand MDL for young professionals graduates of secondary specialised educational institutions, which is paid as follows: 6 thousand MDL during one month since employment, 8 thousand MDL after one year of employment, 10 thousand MDL after the 3 years of employment; c) monthly compensation of the cost of 30KW of electricity and an yearly allowance of 1 cubic meter of wood and a tone of coal.

Fund for young professionals in rural areas and Governmental Decision no. 1259 from 12 November 2008 on offering free housing to young professionals with higher and graduate studies, employed on request in public institutions in rural communities.

After an analysis of the mechanism of awards the ombudsmen have made the following sad finding: the mentioned normative acts present different conditions of support for young professionals, graduates of higher educational institutions, and they depend on the type of selected education (daily presence/distance learning, studies covered by the budget/paid by the graduate, state/private education). Thus, the allowances provided for by article 53 paragraph 9 of the Law on education are available only for the graduates of the higher and secondary specialised state educational institutions, matriculated on the basis of state scholarship, on daily presence form, who have signed contracts on training and subsequent employment after graduation in accordance with the needs of the state. The young professionals, graduates of educational institutions who studied without a state scholarship, with a daily presence or distance learning are deprived of the possibility to sign contracts on subsequent employment after graduation in accordance with the needs of the state and therefore are out of the support schemes from the former.

According to the information provided for to the ombudsmen by the Ministry of Justice and District Directorates for Education with respect to employment of graduates of higher and secondary specialised institutions with teaching specialisation, a large number of graduates nominated for employment have not reported to their jobs. This difference is alarming: out of total 1384 graduates nominated for employment during the academic year 2009-2010 only 693 persons have reported to their jobs, which are eligible for allowances. Vacancies are filled in from the number of graduates who paid for their studies for daily presence or distance learning courses and who have not signed contracts of subsequent employment with educational institutions.

In the ombudsmen's point of view the allowances and advantages given to only one category of young professionals is contrary to the principle of equal treatment, enshrined in article 16 of the Constitution and does not comply with the requirements of article 50 paragraph 2 and 5 of the Constitution.[108] In this respect, while aiming at the participation of young people in the economic life and observance of the right to spiritual and physical development, to professional training and employment, financial support and housing, the ombudsmen have proposed the Government review the legal framework on employment of graduates to ensure that

[108] Article 50 of the Constitution of the Republic of Moldova: (2) Children and young persons enjoy special assistance while using their rights; (5) Public authorities ensure existence of conditions for free participation of young persons in the social, economic, cultural and sports life of the country.

allowances are offered to all, irrespective of the chosen type of education. Indeed, a viable mechanism of human resources protection in the educational system would have a direct impact on the quality of education generally in the entire system.

The ombudsmen have been informed of the refusal to matriculate unvaccinated children into educational institutions. The refusal is justified on basis of legal provision according to which "matriculation of children in classes, educational and leisure institutions is subject to their systematic vaccination".[109]

Starting from the mandatory nature of the general education and the obligation of the parent to take care of the child's health, the ombudsmen consider the legal impediments in the enjoyment of the right to education unjustified.

Without developing in this chapter the complex nature of mandatory vaccination in the Republic of Moldova[110] in the context of the Universal Declaration of Human Rights and international treaties to which the state is a party to, the ombudsmen reiterate the provisions of article 54 of the Constitution according to which "there cannot be adopted Law in the Republic of Moldova which would suppress of diminish the human and citizens' fundamental rights and freedoms " and insist on the need to review the Law on state public health surveillance to ensure access to education for all children.

Although enjoys regulation within the Constitution and certain organic law, being defined as "national priority", the right to education in the Republic of Moldova does not contribute at present to the creation of a more cultivated society or of a more strict system of moral values, which would allow a development of the society. Infrastructure issues are often ignored, whilst the attempts to improve the methods and level of teaching are changed with the change of the minister and performance is encouraged only at the level of electoral slogan.

In conclusion, the right to education must be genuinely protected and at a level as close as possible to the citizen, and not only at the level of regulation or on sporadic basis such as the cases brought before the European Court of Human Rights. The protection of this rights must not be understood as a social caprice, the long term benefits being first of all substantial for the state (technological development and economic prosperity, but also a high level of social development, driven by the level of education of the population) and for the person who enjoyed the right.

The improvement of the educational system in the Republic of Moldova directed to ensure sustainable human development by means of equal and non-discriminatory access to high

[109] Article 52 of the Law on state monitoring of public health no. 10 from 3 February 2009
[110] Government Decision on the approval of the National Programme of vaccination for years 2011-2015, no.1192 from 23 December 2010

quality education at all levels of teaching could be assured through the implementation of the Consolidated Strategy of education development for years 2011-2015 and the Consolidated Action Plan in the educational area (2011-2015). The success of this project depends on the constructive approach which would take into account that education must truly be treated as national priority, through political will and openness of decision makers or certain categories of population to the planned changes, involvement of the communities and mass media in the promotion of the Strategy, overstepping budget limitations.

The recommendations of the ombudsmen

1. *Analysis and revision of the legislative framework to ensure accessibility for all to education in all of its forms, under equal terms in accordance with the provisions of the Constitution, international treaties to which the Republic of Moldova is a party to.*
2. *Revision of the Law on state health surveillance no. 10 from 3 February 2009 to ensure access to all children to education.*
3. *Implementation of distance learning.*
4. *Revision of the mechanism of awards of allowances and advantages to graduates of higher and secondary specialised educational institutions, who are employed by educational institutions in the rural areas in the first 3 years of employment.*
5. *Enforcement of the viable protection mechanism of human resources in the educational system.*

1.8. Right to healthcare

„Health is the most precious treasure and the easiest to lose, however the worst protected". **Emil Augier, French poet and playwright**

The legislation which regulates healthcare is based on the Constitutional norm which states in article 36 "the Rights to Healthcare" that: (1) „*The right to healthcare is free".* This is the desideratum, which is the cornerstone of the entire framework which regulates the area. The states commits directly and unconditionally, without doubt, through constitutional norm to protect the health of its citizens. The respective norm defines the entire system of healthcare, whilst its spirit should be reflected and detailed in all the subsequent normative acts.

Seen from a series of views, the right to healthcare implies: improvement and strengthening of the public health, ensure life security, prevention and prophylaxis of illness, promotion of a healthy life, ensuring access to high quality health services and medicine, taking necessary measures to ensure decrease of newborn and infantile mortality, healthy development of children, improvement of all aspects of environment and industrial hygiene, prophylaxis and treatment of epidemic disease, creation of conditions to ensure all persons with medical services and medical aid in case of disease etc.

In the last years the state policy in the area of healthcare has progressively evaluated. The National Healthcare Policy (Governmental Decision no. 866 from 6 August 2007) and the Healthcare System Development Strategy for years 2008-2017 (Governmental Decision no. 1471 from 24 December 2007) have been adopted; the National Healthy Life Promotion Action Plan for years 2007-2015 (Governmental Decision no. 658 from 12 June 2007), National Programme Against viral hepatitis B, C and D for years 2007-2011 (Governmental Decision no. 1143 from 19 October 2007), the National Programme for transfusion security and insurance with blood products for years 2007-2011 (Governmental Decision no. 637 from 7 July 2007), the National Programme for mental health for years 2007-2011 (Governmental Decision no. 353 from 30 March 2007) have been approved. The legal delimitation of the primary medical aid service from the hospital medical service was ensured and the strengthening of the first aid medical institutions infrastructure has been accomplished.

Thus, the efforts of the Government to prioritise the directions of healthcare development are welcomed, established by means of long term political decision to strengthen the public health and reduce the inequalities between different social groups and regions of the country.

The degree of access to services is an element of equality and social solidarity and reflects the right which the citizen who pays his taxes to the provider is enjoying (the mandatory

medical assistance insurance premiums). It is however important the extent to which the services offered are of high quality, not just their merely reach to the beneficiary.

Presently, on the main vectors of development of the healthcare system in the Republic of Moldova is the continuous delivery and improvement of the quality and security of medical and pharmaceutical services, these being also the objectives of the national Health Policy and the Healthcare System Development Strategy for years 2008-2017. The quality of medical services equally refers to the patient's satisfaction, professional audit and improvement of the efficiency and reduction of costs. These indicators are differently approached by each category of involved participants: patients, professionals and the administration of sanitary and medical institutions.

One of the strains available to promote the principles of continuous improvement of the quality of medical services, by means of which the state can evaluate the level of quality of services, is the procedure of accreditation, which is a process where the service provider demonstrates its own functional, organisational and administrative capacities to deliver services, subject to observance of the accreditation standards in force. In this respect, the Ministry of Health created the National Health Evaluation and Accreditation Council to implement the provisions of the Law on health evaluation and accreditation no. 552 from 18 October 2001.[111] This represents one of the most important mechanisms where the state monitors the quality of services delivered to the population by medical, sanitary and pharmaceutical entities. The procedure of health evaluation is mandatory for all medical, sanitary and pharmaceutical enterprises in the country, irrespective of the form of property, legal form and administrative subordination, and takes place once in 5 years. In July 2007 the first evaluation and accreditation stage of the medical and sanitary institutions was finalised, the vast majority passing the second stage of the evaluation process. On 1 September 2010, 100% of the medical and sanitary republican public institutions, 100% of the municipal primary medical assistance institutions, 79,4% of the raional hospitals (not accredited – Raion Hospitals Comrat, Taraclia, Vulcăneşti, Glodeni, Călăraşi, Hânceşti), 90,0% of the municipal hospitals (not accredited – municipal clinical hospital no. 4), 97,1% of the raional primary medical assistance institutions (not accredited – the family doctors centre Vulcăneşti), 66,7% of the raional medical and sanitary dental institutions (not accredited – Teleneşti, Taraclia, Vulcăneşti, Ceadîr-Lunga), 97,7% of the Public Health Centres (not accredited – Edineț, MAI, ÎS „Calea Ferată a Moldovei"), 56,7% of the institutions financed by the state budget or from extra budgetary sources. Some medical and sanitary institutions have been partially accredited because some of the subordinated units have not fully complied with the standards in force. 14% of the public medical and sanitary

[111] Government Decision on the National Health Evaluation and Accreditation Council no. 526 from 29 April 2002

institutions and 51% of the private medical and sanitary institutions were not prepared by the management to pass the accreditation process.

Thus, the continuing development of the system of quality assurance and control of the medical services, focused on the technical and material equipping of institutions and the level of availability of high quality medical equipment, the placement conditions and food offered to patients, the technologies of diagnosis and treatment used by the institutions, the level of qualification of the medical personnel, the punctuality and responsiveness of the personnel when providing services, the security of the caring environment, observance of the rights of patients – all shall extent de access of the citizens of the Republic of Moldova to high quality healthcare, medical and pharmaceutical services.

The observance of the rights of the patient represents a fundamental derivate of the right to life and of the right to healthcare, which include social rights related to accessibility, equality and quality while receiving medical assistance etc., which are provided for in the Declaration on the observance of the rights of patients in Europe (the World Health Organisation, Amsterdam, 1994) and a series of national legislative acts.[112] The implementation of the Law on the rights and duties of the patients is ensured by means of the Order of the Ministry of Health no. 303 from 6 May 2010 „on access to information on personal medical data and the list of medical interventions which require informed consent".

The real state of affairs in the area of healthcare is yet different from the objectives established in the strategic documents. The resolution of deficiencies appears to be left aside when those issues are internally identified and debated upon.

Thus, during the session of the Ministry of Health Council from 24 September 2010 the subject related to the *quality of medical services in the context of the results of the evaluation and accreditation of medical and sanitary institutions* was discussed. The evaluation of medical and sanitary institutions has revealed that medical personnel is well informed in the legislation in force with respect to the rights of the patient and similarly applies certain principles of medical ethics provided for by the standards, such as the right to information, confidentiality, consent etc. and due to this reason they observe them partially. The observance of the rights of the patient is in the best case scenario limited to the signature of the "informed consent" template, frequently signed by the patient in the placement section, whilst in other cases by the medical personnel involved in medical healthcare.

[112] Law on the rights and responsibilities of the patient no. 263 from 27 October 2005, Law on healthcare no. 411 from 28 March 1995, Law on medical practice no. 264 from 27 October 2005

The right of the patient to information is ensured by the authorities of the healthcare system of all levels, by medical and sanitary, and pharmaceutical organisations and by the responsible doctor and other experts in the area.[113] During stay in the medical and sanitary institution the patient is informed of the identity, statute and professional experience of the medical experts, who are directly responsible of the patient and offer care, and are obliged to wear a badge with the name, specialisation and held function. The evaluation and accreditation process of the medical and sanitary institutions revealed that this right of the patient is fully observed only during the evaluation of the institution, subsequently only some medical employees wear a badge. Inside clinical hospitals the patient is not informed of the professional status of the resident doctors, the students of the university or medical colleges, which sometimes create certain uncertainties for the patients.

The confidentiality and intimacy are practically not respected in all medical services and are breached in all the stages of the services provision. According to the statements of the providers and patients, the leadership of medical and sanitary institutions does not promote, nor does it undertake any checks to ensure the observance of professional ethics standards and observance of the right of the patient to intimacy and confidentiality. The examination of the patient or performing the procedure with open doors or in the room where other patients are presents are some of the examples of breach of intimacy which have been identified during the evaluations. The patients are not asked if they agree to pass a certain procedure in the presence of students or residents and sometimes are even obliged to do so.

The petitions received by the administration of the medical and sanitary institutions and bodies of the central public administration, already evaluated by experts, demonstrate the rights of patients to free medical assistance as provided by law, lack of respect and human treatment from the medical service provider, breach of medical procedures (placement of patients, chirurgical and conservative treatment, investigations, diagnosis, inadequate treatment etc.).

The complaints on cases of decease, inadequate treatment, deficiencies in the activity of the medical and sanitary public institutions and inadequate behaviour of certain medical employees, breach of the sanitary, hygienic and anti-epidemic schedules are fully or partially confirmed.

The life of patients is in danger due to factors of risk present in the medical and sanitary institutions: lack of covers in the canalisation openings, lack of electric switches and presence of bear electric wires, circulation of unauthorised transport on the territory of the institutions, lack or incapacity of the internal fire hydrants, blocked reserve doors, insufficient cleaning of the

[113] Article 11 of the Law on the rights and responsibilities of the patient no. 263 from 27 October 2005

territory of the hospitals, storage of oxygen tubes in forbidden places as per rules in force (the raional Edinet hospital, the hospital of the Ministry of Interior, the Institute of Scientific Researches in the area of Mother and Child Protection).

An eminent danger for patients is the lack of an autonomous source of electricity in case of electric power drain, which would be most adequate for the functioning and maintenance of electrical life support medical equipment.

The unsatisfactory equipment and infrastructure of the institutions is a feature of many institutions – pealed walls, destroyed linoleum, WCs in bad condition, some institutions even without WCs, sanitation etc. The patients continue to bring underwear, bed covers, genecology gloves etc. Some of the providers (with the exception of the private ones) consider this to be normal. In some public medical and sanitary institutions bed covers are still offered but in a very used or dirty. The most majority of hospitals, as per sanitary norms in force, are not sufficiently ensured with bed covers, underwear and tableware for patients. Similarly, the minimum space requirements per bed are not observed. The sanitary, hygienic and anti-epidemic schedule ensured by means of humid cleaning and other hygienic measures is not followed in all institutions. Insufficiency of minimum space requirements, even of bacteriological lamps, their prolonged usage, and overused medical equipment, lack of infrastructure repair and upkeep services for medical equipment is an inherent characteristic of the medical and sanitary institutions. Due to scarcity of funds and bad management, many buildings of medical units are deteriorating, generating less and less comfort to the placed patients. No public medical or sanitary institution is ensured with hot water the entire year, whilst kitchens and washing facilities in some institutions need major repairs.

Each year there are reports of patients from the list of medical employees, who are victims of medical errors, amongst which diseases associated to medical care. Regretfully, some of those errors generate even the decease of patients. In the first 6 months of 2010 alone there have been registered 411 cases of infection associated to medical care, compared to 369 in the same period of 2009. Many of those could be avoided if the medical personnel would not underestimate the role of personal hygiene, disinfection, waste management, danger of stitches and other epidermal injuries when receiving and transmitting nosocomial diseases. Regretfully, the medical personnel has insufficient knowledge of the post exposure prophylaxis measures, equipping the anti-HIV medical kit, wearing protection equipment (gloves, protection glasses etc.) and, thus do not follow them.[114]

[114] The Council of the Ministry of Health, Informative memorandum on the quality of medical services in the context of evaluation and accreditation of medical and sanitary institutions, September 2010, http://www.ms.gov.md/_files/6811-Nota

Whilst having the same source of information, but also based on personal investigations (preventive visits within the National Torture Prevention Mechanism and the complaints registered at the Centre for Human Rights) the ombudsmen find the defective implementation of the Law on health and safety at work no. 186 from 10 July 2008 not only in the part relevant to the obligation of the employers to take all necessary measures to protect the health and safety of their employees, but also the part related to the obligation of the employees to manage their activities without exposing themselves to risk of accidents or professional diseases.[115] Indeed, pursuant to the statistical data about 2 to 4% of the medical personnel with stitches catch viral hepatitis. The structure of professional morbidity for medical personnel the following prevail: VHB – 7.3%, VHC – 3.3%, tuberculosis – 5.5% etc.

The sufficient number of employees with necessary training at the needed place and time represents the key to success for a medical or sanitary institution. The low level of employee coverage cannot ensure high quality medical services. For example, the following are the amounts of coverage of needs of family doctors: in the Centres of Family Doctors (hereinafter CFD) Cantemir – 57.6%, CFD Rezina – 63.2%, CFD Nisporeni – 68.7%, CFD Făleşti – 68.9%; RS Criuleni – 77.6%, RS Cahul – 78.3%; the consultative departments of the raional hospitals Nisporeni – 55.3%, Glodeni – 65.3%, Cantemir – 67.3% etc. The area of medical personnel with secondary studies is even more alarming: in CFD Hânceşti – 12.9, CFD Nisporeni – 13.0, CFD Cimişlia – 14.1% of the medical nurses at each 10.000 people are employed. Naturally, the low level of employment of medical personnel negatively affects the accessibility of medical services for the population.

The inhabitants of the certain raions are left without some of the specialised services due to the lack of doctors – cardiologists, endocrinologists, infectious diseases experts.

Thus, the minimal involvement of the local public administration in finalising the process of decentralisation through implementation of mechanisms of financial contribution at local level to improve the regional medical institutions, inefficiency of policies of training, motivation and employment of young professionals generates lack of medical personnel, especially in the rural areas and limits the access of citizens to high quality medical and sanitary services.

The main issues the health sector is confronting is the insufficiency of medical equipment, the unsatisfactory state of affairs of the buildings reserved for healthcare, lack of necessary infrastructure, insufficient medication, low quality of healthcare services, insufficient motivation of young professionals.

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[115] The Report on the observance of human rights in the Republic of Moldova in 2010, Observance of the right to employment and labour protection

In 2004 the mandatory health insurance mechanism was put in place based on Law on mandatory health insurance no. 1585 from 27 February 1998. This system has reconstructed in essence the healthcare system and cardinally changed the relation between the medical and sanitary institutions and their "founders", whichever they are, or other administration bodies (other than the founders), because the relations of dependence between the institution and the body who has the competence to influence its activity has been put from another angle.

The mandatory healthcare insurance represents the main system of healthcare for the population in works on the basis of certain principles: unity, equality, solidarity, obligation, contribution, repartition, autonomy.[116]

The World Health Organisation qualified the healthcare insurance system in the Republic of Moldova to be one of the best and recommended it for implementation in all 3rd countries.[117] This system however suffers from deficiencies.

Even if it is affirmed that the system ensured access of the population to medical services, the majority of persons who complain to the ombudsmen affirm that their right to healthcare is not observed. The complaints of citizens focus on the fact that the measures taken are not sufficient or qualitative, to ensure the observance of the right to healthcare, whilst the healthcare insurance system does not cover the needs of all categories of citizens.

According to the statistical data of the Centre for Human Rights, in 2010 the institution received 45 written complaints with the subject of healthcare. Some of the petitions were not in competence of the ombudsmen, others did not have proof of the allegations of breach of rights; however the majority have tackled the real problems the citizens encounter while in contact with medical and sanitary institutions.

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[116] According to article 5 of the Law on mandatory health insurance, the system of mandatory health insurance is organised and functions on the basis of the following principles:
a) *principle of unity*, according to which the state organises and guarantees the system of mandatory healthcare insurance based on the same legal provisions
b) *principle of equality*, according to which all participants in the mandatory health insurance system (payers of mandatory health insurance premiums, medical services providers and beneficiaries) have non-discriminatory treatment with respect to their rights and obligations provided for by law
c) *principle of solidarity*, according to which the payers of mandatory health insurance premiums pay the respective contributions depending on their income, whilst ensured persons benefit from medical insurance based on their needs.
d) *principle of compulsiveness*, according to which physical and legal entities pursuant to the law have the obligation to participate in the mandatory health insurance system, whilst medical insurance rights are enjoyed once correlated to the obligations of payment.
e) *principle of contribution*, according to which the medical insurance funds are comprised of the premiums paid by the payers as provided by law.
f) *principle of repartition*, according to which the mandatory health insurance funds are distributed for payment of obligations of the mandatory health insurance system as provided by law
g) *principle of autonomy*, according to which the system of mandatory health insurance is independently managed, pursuant to the law, whilst the medical services providers work on the principles of self-sustainability and non-profit.

[117] The activity of the National Health Insurance Company in 2009, http://www.cnam.md

The petitions underlined the low quality of medical services, irresponsible attitude of the healthcare employees, high costs of the insurance policy and even its useless nature, "queues" formed at the medical institutions, lack of attention and respect for patients, the small amount of medical services included in the Single Programme of mandatory healthcare insurance compared to the cost of the insurance policy, inequalities existent in the system.

Even though the mandatory healthcare insurance mechanism is constantly improving, there are still problems with the access of patients to medical services.

From the start of implementation of the medical healthcare system until now the amount of the mandatory insurance premiums has considerably increased from 664.8 MDL in 2005 to 2478 MDL in 2010. Thus, the victims of higher costs for insurance policies are persons with small incomes. The number of those who purchase and insurance policy on own initiative is small, usually being determined by the need to be hospitalised to avoid paying for placement. The phenomenon of going to the doctor in critical stages only is widespread in the country.

The penalty for delay in payment of the mandatory healthcare insurance premiums is equal to 0.1% of the amount of debts for each day of delay and is transferred to the National Healthcare Insurance Company. Meanwhile, it should be mentioned that if the principle of mandatory participation – one of the mandatory healthcare insurance system – is applied, the legislator provided for misdemeanour liability for the refusal to pay the mandatory healthcare insurance premiums.[118] If a physical entity does not pay the fine within a 30 day period, the court may decide to double the fine and deprive the person of a certain practice for 6 months to one year, unpaid labour in favour of the community, misdemeanour arrest. The Government adopted Regulation on the control of payment of mandatory healthcare insurance premiums by means of Decision no. 1015 from 5 September 2006 to identify physical entities which have not paid the insurance premiums provided for by law. Comparing the measures undertaken by the state directed to the gather funds for mandatory healthcare insurance system and the amount of mandatory healthcare insurance premiums to the income of the population of the difficult situation of many families, especially in the rural areas, the ombudsmen consider that the current system of mandatory healthcare insurance does not correspond to the principles of social equality and does not favours the most vulnerable social groups.

A major problem invoked by the citizens is the fact that the mandatory healthcare insurance system does not pay the necessary attention to the home-based medical care for persons who cannot independently reach the institutions, especially persons suffering from

[118] Article 266 of the Misdemeanours Code: Failure to pay the mandatory health insurance premiums within the time limits is sanctioned with a fine between 25 and 55 conventional units.

diabetes and confined to bed, the elderly or who have limited vital organism capacities – eyesight. It is acknowledged that diabetes continues to be a first priority issue for public health, which due to its consequences (damage to circulatory system, heart's nerves, kidneys, eyes) which provokes frequent disability at an age which normally allows work. This disease speeds up the wearing out and degradation of body organs and the essential functions of the organism, triggering from 2 to 4 times higher coronary diseases (angina, myocardial attack), cerebral vascular accidents, circulatory problems with extremities, diabetic nephropathy which can lead to chronic renal failure, diabetic retinopathy which affects the eyesight, neuropathy with pain or lass of sensibility of extremities. The diabetes is not curable, but can be contained under an orderly, balanced life, with an adequate diet and an appropriate treatment.

Centralised supply from the state budget of anti-diabetic treatment with insulin, oral hypoglycaemic products and special sanitary equipment generates reduced number of cases of acute diabetic ketoacidosis, case of diabetic coma, disability and premature death of diabetes patients.

Therefore, when the daily administration of insulin is vital to continue treatment, the patients of diabetes whose state of health do not allow them to reach the medical facilities or administer the medicine by themselves, not having been included in the list of home medical care[119] remain outside medical assistance. In this respect the petition of citizen T., resident in Dâşcova village, Orhei raion, person with 1st level disability gravity, confined to bed, blind, who claims refusal of the medical personnel to offer her home medical assistance for two years. The preliminary investigation of this case allowed the ombudsmen conclude on the deficiencies in the system with respect to the tackled subject – from inefficient management of centres of family doctors until delegation of functions to other services and medical and sanitary institutions. The issue lies with the agenda of the ombudsmen who proposed for 2011 to monitor the level of implementation of duties related to healthcare by centres of family doctors.

According to the data of the Ministry of Health, the number of persons with diabetes is in continuing raise, yearly with 7506 adults and 41 children registered to have insulin dependent diabetes. Taking into account that these patients need during their entire life 2 or more doses of insulin daily, during the recommended hours and within recommended doses, as prescribed by the doctor, the Ministry of Health considers inappropriate the regulation of non-conditional obligation of the medical personnel to reach the patient's home if diabetes is present to administer it within the Single Programme of Mandatory Medical Insurance.

[119] Chapter IV, Section 6 "Domicile healthcare", paragraph 32 of the Single Programme of mandatory healthcare insurance

In the ombudsmen's point of view, the existent regulations for "home supervision of the persons with chronic diseases" does not offer sufficient guarantees to ensure access to medical assistance to insulin dependent diabetes patients. In this respect, implementation of a system of institutionalised medical services at the level of district (settlement), which would ensure medical assistance and treatment of patients suffering from chronic diseases, the elderly and children (treatment with injections, measuring of arterial blood pressure, measuring of glycaemia) with the participation of pensioners from the sanitary system would be welcome.

After an analysis of the above-mentioned the aim of the mandatory health insurance system remains unattained: to offer the citizens of the Republic of Moldova equal opportunities to access appropriate and high quality medical care. Thus, the improvement and modernisation of the concept of mandatory healthcare insurance needs improvement so that each person could enjoy the rights to healthcare, guaranteed by the Constitution.

Indeed, the process of reformation of the healthcare system has been known by all states in the former soviet group and who became or wish to become members of the European Union. Each of the respective countries has gathered rich experience, both positive and negative, which needs to be studied with care and taken into consideration during the process of reformation of the healthcare system in the Republic of Moldova. The efficient and adequate use of this positive experience may contribute to the speed up of the reformation (decentralisation) and improvement of the healthcare system.

The healthcare reform must base itself on explicit and developed legal framework if the objectives and aims are to be attained, which expressly define the role and competences of the state (central public bodies), local communities (local public administration) and private sector, as well as the delivery, financial coverage and regulation of services in this area.

1.9. Respect for right to employment and labour protection

„Each person has the right to employment, free choice of labour, equal and satisfactory employment conditions, as well as protection against unemployment". **Universal Declaration of Human Rights, article 23**

The observance of social rights, which would fully ensure each person a decent life and free development, remains one of the most difficult problems for the Republic of Moldova. Even if there is desire in the country to promote sustainable economic growth, until present a significant increase of population's wellbeing has not been registered.

The living conditions – level of employment, population's income, working conditions – are some of the most important performance indicators which reflect the level of observance of a decent life.

The right to employment and labour protection is enshrined in article 43 of the Constitution by means of inclusion of certain principles, according to which each person has the right to work, free choice of labour, equal and satisfactory conditions of employment, as well as protection against unemployment.

The current situation of the labour market remains difficult, it being generated by the global economic crises, which lead to the reduction of employment, job cuts, thus increasing the number of unemployed. The issues of labour market are also determined by mutually influenced factors, such as economic growth, relatively small pay, which in most do not cover the essential need of people etc., and which in turn support out of country labour migration, perceived by the population as the only option to access a decent life, and sometimes, even to survival.

Today it is very important that all reforms be in accordance with the international treaties to ensure that the fundamental right to employment is not jeopardised and available.

The unemployment level in 2010 registered a country value of 6.5%. There are still significant disparities between the unemployment level in the urban areas (8.6%) and the rural ones (4.7%). Thus, the total number of registered unemployed at the National Labour Force Agency at 31 December 2010 constituted 81.5 thousand persons (2.9 % higher than in 2009), each tenth person being fired by enterprises. Over 11% of the registered unemployed enjoy unemployment aid, with an average amount of 876.7 MDL in December 2010. Pursuant to statistical data, a vacancy announced by enterprises had around 15 unemployed.

During the reference period a moderate growth of vacancies has been registered, which is 30.2 thousand registered vacancies from the beginning of the year, compared to 25.7 thousand in 2009. Meanwhile, the number of unemployed who have been offered a job is decreasing, constituting 14.7 thousand persons (compared to 17001 places in 2009).

Thus, the most stringent issues on the labour force market are the following: the insufficient and unattractive level of pay of the active population; high unemployment; unfavourable demographic developments which registers decrease and population ageing, intensified by labour force migration.

Among the vulnerable social groups mostly affected by unemployment are youngsters, certain socially vulnerable categories, such as persons with disabilities, persons without a permanent residence, persons freed from detention facilities or from social rehabilitation institutions, persons who live in rural areas.

The resolution of these issues needs involvement of resources and efforts from the Government to search for solution both on short and long term perspective.

The ombudsmen's point of view is that the measures taken by the authorities to resolve the insufficiency and fluctuations of labour force must cover three high priority areas:

- General economic development of the country
- Improvement of life conditions for the active population, including decent pay
- Support of the small business through reduction of taxation, waiving for various taxes for certain amounts of time, as well as reduction of number of controls from competent bodies.

Employment growth, especially for the young was set as priority in a series of national policies: the National Development Strategy for 2008-2011, the National Labour Force Employment Strategy for 2007-2015, the national Youth Strategy (2009-2013). Specific actions related to facilitate the involvement of the young people in entrepreneurial activity to facilitate job creation in rural areas[120], sustainable economic development of the Republic of Moldova by strengthening the entrepreneurial abilities for migrant workers and beneficiaries of remittances[121] have been undertaken in the reporting period, whilst their impact shall be sensed in the long term perspective. Presently an unemployment growth is registered among young people, this being also shown by the National Statistics Bureau: the unemployment prevalence amount young people (15-24 years) was 18.8%, whilst for the age group of 25-24 years this indicator was of 7.3%.[122]

The delay in payment retribution is one of the issues invoked by the citizens in their complaints to the ombudsmen both during office opening hours and field interviews.

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[120] Government Decision on the National Economic Empowerment of Young People for years 2008-2013, no. 664 from 3 June 2008

[121] Government Decision on the Pilot Programme to attract remittances in economy „PARE 1+1" for years 2010-2012 no. 972 from 18 October 2010

[122] http://www.statistica.md/public/files/publicatii_electronice/Raport_trimestrial/Raport_2010.pdf.

The review of a series of complaints having this subject allows concluding on the existence of difficulties in paying pending retribution. On one hand, the bodies empowered with monitoring functions take measures with respect to employers who have retribution debts by prescribing fines, arrest of bank accounts, suspension of the activity of the enterprise, measures which in many cases do not resolve the issue, on the contrary generate even more difficulties. A relevant example may be the situation at the State Enterprise "Food Products Processing Unit in Balti". While the bank accounts have been arrested due to pending state budget debts, including taxes, the enterprise cannot take any actions, including pay the salary.

Pursuant to the Labour Code, the salaries are paid first by the employer, before other payments, including in case of insolvency of the unit. The ombudsmen receive more and more complaints from citizens invoking non-enforcement of court decisions of payment of salary debts, in many cases the debtor being the enterprise undergoing insolvency.

Meanwhile, the data from the statistical report of activity of the first court of instance in civil cases indicates on a significantly large number of cases of delayed pay of retribution (991) which have been registered in 2010.

Indeed, Republic of Moldova was convicted in a series of cases at the European Court of Human Rights for non-enforcement of court decisions on delayed non-payment of retribution. The Court stated that the applications on job reinstatement, as well as payment of retribution are of "crucial importance" for applicants and those should be resolved "as fast as possible". Pursuant to the circumstances of the case *Bulava vs. Moldova*, the timeframe of 7 months and 16 days to enforce a court decision on payment of retribution was not considered reasonable. Therefore, the Court considered article 6 of the Convention and Article 1 of Protocol 1 to the Convention being breached.

While the pay is the most important income source, which is 44.9% of the total available income,[123] any delay in payment may negatively influence the living conditions of the citizens.

Another important element worth special attention of the authorities is the cost of the labour force – equitable pay.

The preliminary statistical data show that the average monthly salary in the national economy was 2972.2 MDL in 2010, with 8.2% higher than in 2009. Meanwhile, this growth did not positively influence the wellbeing of the population where the available income of the population in the 3rd quarter of 2010 have registered an increase of 3.9% compared to the raise of prices[124], whilst expenses grew with 12%.

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[123] Social and economic development of the Republic of Moldova in 2010, www.statistica.md

[124] The Report on the observance of human rights in the Republic of Moldova in 2010, Right to social assistance and protection

On the other hand, the big difference between the monthly salary per economic activity, form of property, regional placement is obvious, which, in total influence the general picture in the country.

In this respect more efforts from the state are necessary to protection the citizen by means of development of efficient mechanisms and real measures to protect the employees.

In this respect, the ombudsmen recommend a study on the opportunity of the Republic of Moldova to adhere to paragraphs 1 and 2 of article 4 of the Revised European Social Charter.[125]

The ombudsmen express their concern with respect to indications of breach of the right to employment, especially by the central and local public authorities. The breach of the legislation in force pertinent to dismissal, as well as unjustified delay in reinstatements has been invoked in many of the complaints of the citizens.

Such practices are inadmissible in the light of the constitutional provisions, the contents of the international treaties ratified by the Republic of Moldova, which recognise the protection of the right to free choice of employment, fair and satisfactory labour conditions. Particularly, the state committed to recognise the provisions of article 24 of the Revised European Social Charter[126] which states the observance of effective enjoyment of the right to protection in case of dismissal, which provides for the right of the employees no to be dismissed without a justified reason, linked with their capacity or behaviour, or functional requirements of the enterprise, institution or duty station.

The adoption of the law on health and safety at work no. 186 from 10 July 2008 is in line with the commitments of the Republic of Moldova to ratify Convention no. 155 (1981) of the International Labour Organisation on safety and safety of workers and labour environment, directed to create a national legal framework in compliance with the provisions of the Convention.

Having as main objective the creation of measures to promote the improvement of health and safety at work, the law provides the main principles of prevention of professional risks, protection of health and safety of workers, elimination of unforeseen risk factors, information, consultation, training of workers and their representatives, as well as main directions for the implementation of these principles. Obviously, the expected impact shall be attained only with

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[125] The Revised Social Charter from 3 May 1996, article 4. Right to fair remuneration:
With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:
1) to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;
2) to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases

[126] The Revised Social Charter from 3 May 1996, partially ratified by the Republic of Moldova by means of Law no. 484 from 28 September 2001

the development of efficient mechanisms and monitoring of the implementation of the provisions of the Law in discussion.

The approval of the minimal security and health requirements at work[127] is an achievement of the transposition of the Directive of the Council of European Communities from 30 November 1989.[128] It must be continued at the level of enforcement by employers and monitoring from the part of the authorities.

Among the most frequent breaches in the area of health and safety at work are the following: lack of a security and health protection structure at the level of enterprise; employment of personnel without professional training and health and safety at work induction trainings; labour exposed to extensive risk factors, use of old, outdated and dangerous technologies; lack of protection equipment; violation of health and safety at work instructions by the employee.

Late communication or no communication at all, directed to hidden the accidents which have taken place at the duty station generate difficulties for inspectors to objectively research the cases.

In this respect, condition of persons who do not have legal employment relationships and have been involved in work accidents is particularly difficult. In the ombudsmen's point of view one of the factors which generates the approval and continuation of illegal employment relations is the insufficient information of employees on the consequences of such employment (conditions, procedure of formation of social advantages in case of work accidents).

The ombudsmen recommend intensifying the activity of the Labour Inspection and tradue unions in this area by means of insisting on training of labour participants in health and safety at work, as well as provision of consultations on the legal framework related to employment relations.

The breach of the working time represents a problem frequently invoked by citizens during interviews at the Centre for Human Rights. On the other hand, employees are obliged to accept the conditions imposed by the employer to maintain their job when there is little probability to find another one.

In other cases, the employers avoid initiating the dismissal procedure. The enterprise makes recourse to obliging employees to sign applications of unpaid leave; in other cases employees take their unpaid leave without even signing the leave request. Thus, they are left

[127] Government Decision on the approval of the minimal health and safety requirements at work no. 353 from 5 May 2010

[128] Directive of the Council of European Communities 89/654/EEC from 30 November 1989 on the minimal health and safety requirements at work, the Official Journal of European Communities L 393, 1989

without any sources of existence, as well as the possibility to benefit from the services of the National Labour Employment Agency.

For example, the municipal enterprise "Moldcarton" S.A. has on paper 286 employees, out of which only 3 are actually employed; 5 represent the administration council, 39 are on maternity leave, 39 – on annual paid leave, 108 – unpaid leave (based on their own written request).[129]

Although the national legislation ensures equality of opportunity between women and men in employment[130], there are discriminatory actions based on gender from some employers[131], especially in the private sector. Creation of unbearable employment conditions by the employer in the light of pregnancy, refusal to pay allowances during medical and maternity leave – these are some of the issues invoked by the petitioners to the ombudsmen. The ombudsmen firmly condemn any such action, considering them inadmissible in a state based on the rule of law, in the context of commitments to ensure the enjoyment of human rights under full equality.

The recommendations of the ombudsmen

1. *Development of a study on the opportunity of ratification by the Republic of Moldova of article 4, paragraphs 1 and 2 of the Revised European Social Charter.*
2. *Development of efficient mechanisms and take real actions to protect employees.*
3. *Improvement of the activity of the Labour Inspection and trade unions to train the labour participants in the area of health and safety at work, offer advice on the legal framework pertinent to employment relations.*

[129] Information presented by the Labour Inspection after a monitoring of the "Moldcarton" S.A., Chisinau municipality

[130] Chapter III, Law on equal opportunities for women and men no. 5 from 9 February 2006

[131] Petition no.03-1182/10

1.10.The right to private property and its protection

„The right to property is that real right based on which the right holder, physical or legal entity, is empowered to poses, use and dispose of a good under exclusive and absolute terms, by means of own initiative and in own interest, but in the limits provided for by law". **Roman Civil Code**

As one of the most important fundamental human rights, property was and remains in the visor of the international community, whilst the general principles on property are reflected in a series of international treaties.[132] Thus, property became an inseparable element of the state, whilst for its protection provisions have been included in the Constitution.[133]

When offering protection by means of Constitutional provision, the state is limited to use his public authority when holds private property, and participates on equal terms with other right holders. The Constitution provides for an important principle when ensuring the right to property: „Nobody can be deprived of property except in public interest, with a fair and prior compensation".[134]

Year 2010 registered the same typical breaches known to previous years, especially the breach of the right to property of previously deported and politically repressed persons and, subsequently, rehabilitated, deposit account holders at the Banca de Economii (Savings Bank), breach of the right to dispose of property etc.

The state property privatisation process, initiated in 1991, had a massive character, during the respective period 45 investment funds and 10 trust companies being created which collected the patrimonial bonds from citizens, investing them in joint stock companies.

On one hand, the process determined essential changes in the area of development of private property and entrepreneurship, created conditions for a much more efficient activity of enterprises in the new free market conditions. On the other hand, the subsequent activity of investment fund and enterprises squashed the citizens' expectations, having high hopes that shall obtain dividends and other economic advantages. In this respect, the ombudsmen are contacted by citizens, former employees of state enterprises, who claim that the administration of the enterprise kept them uninformed of the rights of stocks holders, on the nominal value of the held stocks, obtained results, as well as the current situation of the enterprise. This situation created conditions to abusively use/overtake the nominal values of stocks from holders and use them in personal interest.

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[132] Universal Declaration of Human Rights, article 17, Additional Protocol no. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, article 1

[133] The Constitution of the Republic of Moldova, article 9, Fundamental property principles, article 46, the right to private property and its protection, article 127, property

[134] The Constitution of the Republic of Moldova, article 46 paragraph 2

The main aim of the privatisation process resides in the fundamental change of property relations, as well as subsequent improvement of use of resources and the production capacities.

On these developments the privatisation phenomenon generated a new approach to the concept of private property in the Republic of Moldova. Thus, the area of application of the property rights contains a series of economically viable goods, including movable property and real estate, tangible and intangible goods. In decision *Bramelid and Malmstrom vs. Sweden* (1982), the European Commission for Human Rights examined the complex nature of the stocks which are certificates which offer the holder property rights over a society, along with associated rights, which in turn creates an indirect debt claim on the goods of the company. In conclusion, the Commission stated that "undoubtedly, the stocks represent an economic value and are considered goods".

Even if the law enforcement agencies examine a series of cases with the involvement of enterprise managers from the view of alleged crimes, the stocks owners situation remain uncertain, who expect until now on damages for the actions of the management when these persons shall be penalised.

Although the problem of former deposit account holders is under the scrutiny of the legislative body for a long period, the attempts[135] to improve the mechanism of restitution of confiscated, nationalised or otherwise taken property from these people, its efficiency is not exactly the one expected by the persons who have suffered from the hell of deportations. Thus, in 2006 the improvement of the mechanism of restitution of property or payment of damages to persons exposed to repressions was attempted by means of adoption of certain amendments to the Law on rehabilitation of victims of political repressions no. 1225 from 8 December1992[136]. It reflects the tendency of the state to reinstate into property right the victims of political repressions of the dictatorial regime and commit to implement the universal principles of inadmissibility to dispossess a person of its property. In spite of the taken measures, it is regretfully acknowledged that the current mechanism of property restitution or payment of damages is imperfect and creates a series of impediments to the victims of political repressions or their inheritors in their enjoyment of the right to property. Neither 2010 was an exception from the rule from the perspective of complaints from persons exposed to political repressions received by the ombudsmen.

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[135] Law no. 186 from 29 July 2006 on the amendment and completion of the Law on rehabilitation of political repressions victims, no. 115 from 8 December 1992, Law on amendment and completion of certain legislative acts no. 90 from 4 December 2009, Law on the amendment and completion of certain legislative acts no. 108 from 17 December 2009

[136] Articles 12 and 12^1 from the Law on the rehabilitation of political repression victims, no. 1225 from 8 December 1992

Indeed, this issue is in the ambit of the ombudsmen's activity that have paid attention in their reports[137] presented to the Parliament on the urgent nature of the problem, supporting the revision of certain main and important aspects of the legislation in force to ensure satisfactory compensation to the victims of repressions. Moreover, from the ombudsmen's point of view this major issue for the Republic of Moldova, seen from the perspective of integration into the European Union, could generate serious problems for the state in its aspirations to the European democratic values.[138]

Another series of issues identified by ombudsmen in previous reports,[139] but which have not found a solution until present, relate to the current mechanism of indexation of bank deposits of citizens at the Banca de Economcii (Savings Bank)[140], which does not ensure all persons who had bank deposits an equal treatment.

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, as provided for by article 2 of the cited Law.[141] In this respect, although pursuant to article 1 of the mentioned Law the state recognises the obligation to payment for all citizens of the Republic of Moldova who had bank deposits in the Banca de Economii (Savings Bank), by means of article 9[142] the holders of deposits in the branches of the Banca de Economii (Savings Bank) on the left side of the Nistru river are limited in this right.

In this respect, the ombudsmen reiterate the need to review the Law on indexation of bank deposits of citizens at the Banca de Economii (Savings Bank).

The alleged involvement of the state into the right to property by imposing restrictions on the right to dispose of the goods was invoked by citizens in their complaints to the

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[137] www.ombudsman.md. Report on the observance of human rights in the Republic of Moldova in 2009. Report on the observance of human rights in the Republic of Moldova in 2008. Report on the observance of human rights in the Republic of Moldova in 2007.

[138] Resolution of the Parliamentary Assembly of the Council of Europe no. 1481 (2006) "the need to internationally condemn the crimes of the totalitarian regimes"

[139] www.ombudsman.md. Report on the observance of human rights in the Republic of Moldova in 2009. Report on the observance of human rights in the Republic of Moldova in 2007.

[140] Law on the recalculation of savings of citizens at the Banca de Economii no. 1530 from 12 December 2002

[141] Law on the recalculation of savings of citizens at the Banca de Economii no. 1530 from 12 December 2002, art. 2: the savings of the citizens of the Republic of Moldova at the Banca de Economii, both in force and those renewed on 29 July 1994, taking into account their amounts on the date of 2 January 1992.

[142] The law on recalculation of savings of citizens at the Banca de Economii no. 1530 from 12 December 2002, art. 9: Recalculation and payment of savings of citizens of the Republic of Moldova in the branches of the Banca de Economii in the left side of Nistru River shall be examined after the resettlement of the financial and budgetary relations with these regions with the state budget of the Republic of Moldova.

ombudsmen[143] when discussing the Government's Decision no. 569 from 26 December 1995 when in the part of return of 3 living buildings to the "Sf. Haralambie" church, which have been built by the church community and subsequently nationalised. In this respect, the owners of buildings, illegally obtained, are limited in their right to fully dispose of their goods for a long period of time (starting with 1995), because this Decision prohibits any registrations in the cadastre office, sell, change or donation, lease etc. of the respective buildings, whilst the competent authorities do not take the necessary and efficient measures.

Therefore, an active and honest involvement of the central and local public administration authorities is needed, to ensure the observance of the general principles on private property and avoidance of this subject being examined in an institution with international jurisdiction.

Indeed, the European Court of Human Rights has underlined in one of its major decisions[144], adopted on the basis of article 1 Protocol 1 that although from the legal point of view the owners kept their property title, in practice their possibility to enjoy the right to property was substantially limited. Therefore, the Court found an immixture into the right of the petitioners to property.

The recommendations of the ombudsmen

1. *Increase the activity of the governmental committee responsible for the victims of political repressions.*
2. *Revision of the normative framework regulating the rehabilitation of persons exposed to political repressions and development of an efficient and fair mechanism of restitution of confiscated, nationalised or otherwise taken property from these people.*
3. *Revision of the Law on indexation of bank deposits of citizens at the Banca de Economii no. 1530 from 12 December 2002, to ensure equal treatment of all persons who had bank deposits.*
4. *Efficient involvement of central and local public administration authorities to ensure the observance of general principles on private property.*

[143] Petition no. 03-1236/10.
[144] *Sporrong and Lonntroth vs. Sweden* (1982)

1.11.Right to social assistance and protection

*„ Recognising the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions, the States Parties will take appropriate steps to ensure the realization of this right". **Article 11 from the International Covenant of Economic, Social and Cultural Rights***

Social assistance and protection has as aim formation not only of a prospering society, but also deeply inclusive for all citizens, it being referred also to persons who, due to subjective or objective reasons, find themselves marginalised. Indeed, social protection must constitute the fundamental element of the state's policies, the main mechanism by means of which the society interferes to prevent, limit of eliminate negative effects of the events considered "social risks". Thus, the state shall not neglect the persons who have fulfilled their obligations towards the state or who are incapable to fulfil them due to reasons independent of their will.

Implementation of international commitments

When ratifying the International Covenant on Economic, Social and Cultural Rights, the Republic of Moldova committed to progressively ensure by all adequate means the rights provided for the in the Covenant, using the maximum of its available resources.

The observance of the economic and social rights means, along with the adoption of an adequate normative framework, the implementation of efficient actions to implement its provisions and the use of a viable mechanism.

Pursuant to the invitation of the UN Committee on Economic, Social and Cultural Rights, the Centre for Human Rights presented at Geneva the information relevant to the implementation of the provisions of this Covenant during the pre-session of the working group of this Committee, during 25-28 May 2010. In this report the ombudsmen reflected the situation in the Republic of Moldova pertinent to the observance of rights provided for in the International Covenant on Economic, Social and Cultural Rights, identifying the most urgent issues, the legislative gaps, which need urgent intervention.[145] The report used the information gathered and sorted on the basis of the complaints of citizens, ex officio interventions and investigations initiated by the ombudsmen, materials presented by the central and local public authorities, as well as information gathered from other sources, including those from electronic and written press, reports and surveys made public by the civil society and international organisations. The working group of the UN Committee for Economic, Social and Cultural Rights presented

[145] www.ombudsman.md , thematic reports, information on the observance of rights provided for by the International Covenant on Economic, Social and Cultural Rights in the Republic of Moldova

clarification requests for the Republic of Moldova on which the state must offer answers during the session of the Committee from 2-20 May 2011, when presenting the second report on the actions taken and registered progress in the observance of the rights present in this Covenant.

The information was presented to the Government and the Parliamentary Standing Committee for Human Rights and Inter-ethnical Relations with the purpose to take into account the recommendations of the ombudsmen when developing state policies aimed to efficient implementation of the provisions of this Covenant. While welcoming the fact that the Government has taken into account the deficiencies and the recommendations presented in this report, the ombudsmen encourage the authorities consolidate their efforts to resolve in the shortest timeframes the most stringent issues.

One of the most stringent problems remains the observance of the right to a decent life.[146] Decent existence is mainly ensured by the person's and his/her family labour, the state being obliged to take measures of economic development and appropriate social protection.
Lately, the ombudsmen have been frequently contacted by citizens who express their disapproval of the lack of decent life conditions, which would ensure their health and prosperity, when the prices for goods and services are rising.

Thus, out of the total number of complaints (177) addressed to the ombudsmen with the subject of social assistance and protection, in 2009 around 23.7% tackled the issue of decent life, whilst in 2010 – 25% (out of 172 complaints).

The decrease of the number of employees, increase of unemployment and pay debts have conditioned the raise of the social differentiation in the society and decrease of life levels and quality, especially in the case of socially vulnerable categories: families with many children and young couples with reduced income, pensioners and persons with disabilities.

The maintenance of the housing infrastructure is presently a real burden for consumers of utilities. The raise of prices to energy resources and utilities generate sharp reduction of citizens' solvency.

During 2010 the prices to food products have increased compared to December 2009 in average with 7.1%, including milk and milk products – with 10.8 % (cheese – with 16.4 %), sugar – cu 9.8 %, fresh vegetables – cu 9.0% and fresh fruit – cu 7.5% (including: apples – with 30.7%).

The industrial products have registered an increase of prices of 7.7%, fuel – with 25.1%. The prices for services offered to the population have increased with 9.7%.

[146] Article 47 paragraph (1) of the Constitution of the Republic of Moldova

Considerable raise of prices have been registered for services offered to the population related to supply of natural gas through centralised networks – with 26.2 %, centralised heating systems – with 25.3%, electricity for personal use – with 20.4%.[147]

The effects of price raise are felt by citizens, especially if those are not correlated to salary increases, with payment of certain social allowances.

In this respect, it is of outmost importance that the central public authorities identify mechanisms to support the population, especially the socially vulnerable categories, to overcome this crisis situation.

The low income levels, as well as the high rate of expenditures for utilities for personal households, rise of prices for primary goods and services adversely affect the life standards and this generates even more poverty.

Even worse is the situation of persons who do not have the possibility to pay for utilities and other services, including housing management services etc., when there is misdemeanour liability if utilities and other household services are not paid (fine or unpaid work).[148]

Surely, the general price increases in the Republic of Moldova are generated by the international developments of prices for energy resources. Whilst Republic of Moldova imports such resources, it cannot avoid the impact of import prices on the national economy.

Meanwhile, the ombudsmen consider that the structural deficiencies, such as the inefficient participation of the state authorities created for market surveillance and consumer protection, as well as excessive use of anti-trust practices negatively influences the price developments.

In this respect, it is extremely important to improve the efficiency of state policies of promotion of competition to limit and eliminate anticompetitive behaviour of the enterprises, public authorities, as well as to manage the monitoring of enforcement of legislation on protection of competition, activity currently within the competence of the National Agency for the Protection of Competition.

Meanwhile, the Government must take measures to find a social compromise between sacrifices and benefits, so that the burden of prices raises is not on the population and not harm the ones who expect support.

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[147] National Bureau of Statistics, Social and economic development of the Republic of Moldova in 2010, www.statistica.md

[148] The Misdemeanours Code of the Republic of Moldova no. 218 from 24 October 2008, article 180, paragraph (6), Failure to pay for 6 consecutive months for utilities, rent and other services is sanctioned with a fine from 10 to 50 conventional units, applied to a physical entity or up to 30 hours of community work, with a fine from 100 to 300 conventional units applied to the legal entity, owner of non-living spaces, or unpaid community work from 30 to 60 hours.

In this respect, during the cold months of 2010 social allowances have been offered to vulnerable persons and families.[149] Surely those allowances are welcome, however not sufficient to resolve the problems which citizens face, moreover that during this period the expenses are increasing. Therefore, the development of an instituted allowance system from the state must be created for the respective period of the year.

Another issue tackled by the citizens relates to the recalculation of all types of income of the population.

Law no. 824 from 24 December 1991 on the recalculation of population income establishes the main principles of recalculation of citizens' income, taking into account the changes of prices for goods and services.[150]

Aimed at the enforcement of the Law no. 824 from 24 December 1991 and ensuring social protection of the population, as a result of the raise of prices for primary goods and services, in 1995 the Regulations of the recalculation of population income have been adopted.[151] Subsequently, by means of Government Decision no. 122 from 1 March 1996 on the recalculation of population income the recalculation of population income has been established, including the salaries in the budgetary organisations and institutions, starting with 1 November 1995 with 7.8%, whilst from 1 December 1995 – with 6%.

Starting with 2003 by means of Governmental Decisions the recalculation quota is yearly adopted for social insurance payment and certain state social allowances only; however no recalculation of citizens' income in form of salaries is applied.

The ombudsmen recommend the Government review the mechanisms of recalculation/compensation of the population's income due to the change of prices for goods and services, including monitoring of enforcement of Law no.824 from 24 December 1991.

On the other hand, the ombudsmen consider that only by means of adjustment of the minimal salary, minimal pension allowance and other social payments to the calculated minimum existence index per country the state guarantees offered to citizens to obtain a minimum income and exclusion of cases of discrimination of certain categories of population shall be possible.

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[149] Law on the social allowances during the cold period of the year 2010 no. 15 from 26 February 2010

[150] Article 5 of the Law on recalculation of income of population no. 824 from 27 December 1991 provides for that reason to recalculate is the increase of more than 5% of the price indicator for goods and services. The recalculation of the income of the population takes place each month depending on the pace of increase of prices for goods and services.

[151] Decision of the Government of the Republic of Moldova on the recalculation of income of population no. 153 from 3 March 1995

The lack of legislative framework to determine the minimum existence index is one of the issues reiterated by the ombudsmen in their previous reports presented to the Parliament.[152] Therefore, the ombudsmen consider imperative the adoption of a legislative framework to determine and use the minimum existence, the amount of which must be used when calculating the minimum salary, pension and social allowances. The very existence of this minimum would constitute and indicator to evaluate the life standards of citizens and would allow the development and enforcement of social policies, thus guaranteeing an income adjusted to this minimum.

The current minimum salary per country of 600 MDL[153] is an unreal one. Indeed, according to the National Statistics Bureau in the 3rd quarter of 2010 the minimum existence amount for an active person was 1377.2 MDL.

Meanwhile, if reported to the average amount of the pension set for 1 October 2010 of 809.4 MDL to the average amount of the existence minimum for pensioners of 1120.4 MDL, it becomes clear that it is possible to cover the minimum of existence for this category of population only at the level of 72.2%.

If reported to the minimum amount of pension for age limit of 594.62 MDL, the 1st level of disability pension of 423.02 MDL, set at 1 April 2010, the minimum of existence is less than 53% and 37.7% accordingly.

Thus, a continuous unfavourable treatment of pensioners and social allowances beneficiaries is being attested.

The current legal framework which regulates housing for citizens is evasive. The Law that regulates housing for citizens is obsolete and does not answer to the current needs.[154]

The state took measures to offer advantages[155] for employment of young professionals in the rural areas, which are however not significant. The framework of conditions includes are very small number of beneficiaries. Meanwhile, the establishment of the obligation to offer housing on the local public authorities makes the enforcement of the law even more difficult.

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[152] The minimum of subsistence is calculated on the basis of the Government Decision on the approval of the Regulations on the procedure of calculation of the minimum of subsistence no. 902 from 28 August 2000
[153] Government Decision on the establishment of the amount of minimum country salary no. 15 from 19.01.2009
[154] The Housing Code of the Republic of Moldova no.2718 from 03.06.1983
[155] Article 53, paragraph 9 of the Law on education no. 547 from 21.07.1995, Government Decision no. 1171from 8 November on the approval of the Regulations on the fund to support the young teaching professionals in rural areas, article 11 of the Law on healthcare no. 411 from 28 March 1995, Government Decision no. 1259 from 12 November 2008 on free housing for young professionals graduates of higher education institutions nominated for employment in public (budgetary) institutions in villages

The pension scheme

The current situation in the pension scheme, which currently is fairly complex and vague, offering different conditions for establishment of amounts of pensions for different categories of employees, continues to remain a sensible area for citizens. Indeed, the life quality of pensioners significantly depends on the way the authorities treat this issue, due to social, economic, demographic factors which influence the pension scheme. Due to these reasoning, difficulties underlined by citizens in 2010 do not substantially differ from the ones invoked in the previous years. They mainly deal with the small amount of pensions and social allowances, the method of calculation/review of pensions, method of calculation of period of contribution, prolonged examination of applications and review of pensions for pensioners which are still employed after the pension is calculated.

The legislation obliges the regional social insurance body to issue a decision on the observance of the right to pension or reject the application within 15 days since the day of application with all necessary papers attached[156], however the applications of petitioners signal delayed examination of applications, thus the person being deprived of any source of subsistence until effective pay of pension takes place.

The ombudsmen have recommended the social insurance bodies manifest diligence when implementing their mandate, especially when examining the applications for pensions and their calculation, and take all the necessary measures to substantially improve the provisions of public services to the benefit of the citizen.

On the other hand, while ensuring a maximum transparency in their activity and limiting the number of complaints on the procedures to establish the amount of pensions, the ombudsmen recommend the public servants offer the necessary consultations to the applicants on the decisions with respect to the calculation and offering the pensions, including the information on the procedure of their determination.

Another problem identified by the ombudsmen, that did not find an adequate solution in 2010, is the inconsistencies between the rules which regulate the pensions for certain categories of persons. Thus, the lack of enforcement mechanisms for article 27 of the Law on theatres, circuses and concert organisations no. 1421 from 31 October 2002[157] creates impediments in the

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[156] Law on state social pensions no. 156 from 14 October 1998, paragraph. (3) article 31**,** Offering the right to pension or rejection of the application for pension is taken by means of decision of the regional body of social insurance and signed by its chairman within 15 days from the date of the application with all the necessary supporting documents

[157] Article 27 paragraph (2) of the Law on theatres, circuses and concert organisations no. 1421 from 31 October 2002 Certain categories of the artistic personnel (ballerinas, artists of professional dancing groups, instrumental performers, solos, vocalists, coral performers, circus artists) with an employment of over 20 years enjoy the right to

enjoyment of the right to social assistance and protection for persons who fall within the ambit of the above-mentioned norm. Although the Government was obliged to adopt the necessary acts to implement the provision, until present there are no regulations on the procedure of payment of this type of pensions.

The ombudsmen have drawn to the attention of the Government on many occasions on the need to urgently adopt the enforcement mechanism for Law no. 1421. The Ministry of Labour, Social Protection and Family informed the ombudsmen on their initiatives, stating that already in 2004 there had been draft laws prepared to adjust the provisions covering the pensioning of the artistic and creative personnel.[158]

Consequently, the ombudsmen recommend urgent resolution of this problem. If unsolved, this issue may become reason for conviction of the Republic of Moldova by international bodies for "failure to implement all the reasonable measures to ensure the enforcement of court decisions". The ombudsmen have been contacted by citizens with reference to this subject due to failure to implement a court decision on the establishment and payment of pension pursuant to article 27 of the Law no. 1421.

Because the current amounts of pensions do not ensure decent life for the elderly, a large number of pensioners are still employed. Thus, in 2010 the complaints from employed pensioners continued and it covered the national legal framework on the social insurance pensions in the part of recalculation of pensions. In spite of the fact that these people pay, after the pension has been calculated, contributions to the social insurance budget, they cannot benefit from a subsequent pension recalculation.[159]

The review of a series of complaint from citizens has identified another difficulty which leads to breach of the right to social assistance and protection – failure by the employer to pay the social insurance contributions, which subsequently generate impediments for employees to enjoy their right to social assistance and protection, especially when confirming the necessary experience to received pension, benefit from unemployment allowances if the enterprise is going bankrupt, reduction of employees etc.

The legislation[160] provides for that the failure to pay the social insurance contributions by the employer does not affect the payment of the allowances to the ensured subjects, however this does not impede the employees of the Labour Employment Agencies to refuse payment of

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state pension paid from the state budget until the age limit reached for pensioning established by the legislation in force

[158] Report on the observance of human rights in the Republic of Moldova in 2009, www.ombudsman.md.

[159] Report on the observance of human rights in the Republic of Moldova in 2009, 2008, 2007, www.ombudsman.md

[160] Article 29 of the Law on social insurance system no. 489 from 08.07.1999, prohibition of the limitation of the rights payable to the ensured persons

unemployment allowances, making reference to article 30 of the Law on employment and social protection of persons seeking employment no. 102 from 13 March 2003.[161] Meanwhile, the servants from the bodies which calculate and pay the pensions, when establishing the necessary experience to obtain the right to pension support their refusal making reference to the Law no. 156 from 14 October 1998.[162] And all this takes place while the National Social Insurance Agency is the only body which confirms the misdemeanours in the area of payment and transfer of salaries without paying the social insurance contributions.[163] This remains one of the investigation issues for the ombudsmen.

Meanwhile, the ombudsmen consider that the mentioned authorities, such as the Ministry of Labour, Social Protection and Family should examine the presented circumstances to adjust the legislation in force and exclude vicious practices of these institutions and eliminate any breach of the right to social assistance and protection in such cases. On the other hand the National Social Insurance Agency is asked to use the maximum of its competences to reduce the number of cases of breach of human rights.

Persons who left the country for employment abroad are excluded from list of potential beneficiaries of pensions in the Republic of Moldova because they do not pay the social insurance contributions or shall contribute during short periods of time only, after their return in the country, if employment shall be available, and later on become pensioners according to national legislation. Some former soviet republics have signed with Moldova bilateral agreements which offer the citizens the right to pension.[164]

In this respect, social assistance actions are necessary for categories of persons who have left the country. Because many of the citizens who work abroad shall not have the right to pension in the Republic of Moldova, the state shall have to ensure a decent life, thus risking generate serious social unfairness in the coming years.

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[161] The Law on employment and social protection of persons seeking employment no. 102 from 13 March 2003, article 30, Beneficiaries of unemployment allowance (1) Unemployed persons enjoy unemployment allowance if fulfil the following cumulative conditions: b) have worked and have an employment record in the state social insurance system of at least 6 months in the last 24 months before registration

[162] The Law on state social pension no.156 from 14 September 1998, article 1. Main definitions: employment record - – combined periods of activity when the social insurance premiums have been paid

[163] The Code of Misdemeanours of the Republic of Moldova no. 218 from 24 October 2008, article 296. Receipt and payment of labour retribution means without transfer of social insurance premiums

[164] Agreement between the Government of the Republic of Moldova the Government of the Russian Federation on the guarantees to citizens in the area of pensions from 10 February 1995; Agreement between the Government of the Republic of Moldova and the Government of Uzbekistan on the guarantees to citizens in the area of pensions from 30 March 1995; Agreement between the Government of the Republic of Moldova and the Government of Ukraine on guarantees to citizens in the area of pensions from 29 August 1995; Agreement between the Government of the Republic of Moldova and the Government of Azerbaijan on guarantees of citizens in the area of pensions from 27 November 1997; Agreement between the Government of the Republic of Moldova and the Government of Belarus on guarantees to citizens in the area of pensions from 12 September 1995.

The fact that actions have been taken in 2010 to coordinate the systems of social insurance by means of conclusion of bilateral agreements in the area of social assistance with some states, where usually the citizens of the Republic of Moldova are mainly located (Portugal, Romania, Luxemburg, first round of negotiations with Poland and Estonia have taken place) is highly welcome.[165]

Meanwhile, the ombudsmen have been contacted by the persons locally displaced on the territory of the Republic of Moldova invoking difficulties in enjoying their right to pension. Thus, complaints have been received by citizens of the Russian Federation which are resident on the territory of the Republic of Moldova with respect to significant decrease of the amount of pension established and paid by the Russian Federation in the context of the bilateral agreement signed with the Russian Federation[166], after subsequent calculation of the pension in accordance with the legislation of the Republic of Moldova. There are serious deficiencies in setting the pension when the calculation basis is the average monthly salary calculated to a worker of the same profession and qualification, engaged in a similar activity in the Republic of Moldova, if such a profession is not existent in the Republic of Moldova.[167] The mentioned agreement is based on the principle of territoriality, without taking into account the principles of proportionality, this being one of the reasons which generates such situations.

Pursuant to the information presented by the Ministry of Labour, Social Protection and Family, the negotiations with the competent authorities of the Russian Federation have been initiated already in 2008, there being a draft agreement sent in the area of social insurance, based on the principles of proportionality, however until present no mutually agreed solution being found.

Therefore, the ombudsmen encourage the competent Moldovan authorities reinitiate the negotiations with the Russian Federation on the respective draft agreement.

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[165] Law on ratification of the Agreement between the Republic of Moldova and Portugal in the area of social security no. 188 from 15 July 2010; Law on ratification of the Agreement between the Republic of Moldova and Romania on social security no. 235 from 24 September 2010.

[166] Agreement between the Government of the Republic of Moldova and the Government of Russian Federation on guarantees to citizens in the area of pensions from 10 February 1995, article 7: If the legislation of the state of domicile of the pensioner does not provide for pension on the same grounds, the pension continues to be paid by the state from where the citizen moved until the right to pension appears pursuant to the legislation of the new state of residence.

[167] Government Decision on the approval of the Regulations on the calculation of state social insurance pensions no. 328 from 19 March 2008. Paragraph 63: For persons who have moved from another state to the Republic of Moldova with which the Republic of Moldova has concluded agreements in the area of pensions and who have not been active after residing in Moldova and have not accumulate the minimum employment record to calculate the income to establish the pension, the basic amount for pension is the average monthly salary of a worker with the same profession and qualification, involved in an activity in the Republic of Moldova, based on salary premiums, regulated by the state in force at the moment the pension is calculated (according to the date of the Ministry of Economy and Commerce).

Participants at the Cernobil disaster subsequent activities

Persons who have suffered after the Cernobil disaster enjoy special social protection from the state.[168] The Government of the Republic of Moldova adopted the Action Plan commemorating 25 years since the disaster at the Cernobil nuclear power plant.[169] Thus, enforcing the provisions of the Law no. 909 from 30 January 1992 on the social protection of persons who suffered from the Cernobil disaster represents on the of the actions in this plan. In this respect, the ombudsmen support the idea that the responsible authorities[170] should consolidate efforts so that all persons that fall within the ambit of this law could enjoy the rights and allowances provided for in this law. The ombudsmen have depicted a series of impediments in the enforcement of the mentioned legal framework after examining complaints from persons who have participated at the elimination of the consequences of the Cernobil disaster.

A relevant example is the case of husbands G., who haven't benefited from social protection for years as participants at the elimination of the consequences of the Cernobil disaster. Even if they have obtained recognition of the document confirming their participation at the elimination of the consequence of the Cernobil disaster, which was issued in Ukraine, by means of final and irrevocable court decision (18 February 2009), they have encountered difficulties in the enforcement of this court decision.[171] The ombudsmen have acknowledged unreasoned the delay in enforcing the court decision, considering that the servants of the vitality confirmation bodies and the bailiffs have not followed in good faith their duties. The optimal solution was found only after the involvement of the ombudsmen.

On the other hand, the ombudsmen recommend the Ministry of Health, Ministry of Labour, Social Protection and Family adjust their internal provisions to the requirements of article 3 of the Law no. 909 from 30 January 1992 when empowering the competent body to establish the causality between disability and the Cernobil disaster.[172] These very deficiencies have generated abusive interpretation by responsible authorities, generating delays in resolution of the issue.

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[168] Law on the social protection of citizens who suffered from the Cernobil disaster no. 909 from 30 January 1992

[169] Government Decision on the commemoration of 25 years since the disaster which took place at the Cernobil atomic power plant no. 1047 from 8 November 2010

[170] Ministry of Labour, Social Protection and Family, Ministry of Health, Ministry of Finance, Ministry of Defence, in cooperation with the local public administration authorities, the National Social Insurance Agency

[171] The Comrat Vitality determination Council was obliged to urgently undergo the review of vitality to establish the causality between disability and the Cernobil disaster.

[172] Article 3 of the Law on social protection of persons who suffered from the Cernobil disaster no. 909 from 30 January 1992: The causality between the sickness and disability, mentioned in article 6 paragraph 1 of the present law with the Cernobil atomic power plant disaster is established by the vital capacities evaluation. Order of the Ministry of Health no. 87 from 29 March 2005 provides for that the causality is established by the decision of the Interdepartmental Council of Experts within the Ministry of Health.

Another aspect identified in complaints confirms difficulties in the implementation of the system of allowances to certain categories of persons who have gotten sick and suffered after the Cernobil disaster. Situations have been attested where the national Social Insurance Agency refused or delayed the payment of the state allowance, single allowance etc. to the citizen who is entitled to receive them, on the ground that he/she is not a beneficiary of pension in the Republic of Moldova, irrespective of the international agreements signed by the Republic of Moldova.[173]

From the perspective of the presented cases, the ombudsmen sustain that because of the failure to fulfil functional competences of the authorities asked to solve a certain issue, the Republic of Moldova risks to be convicted by the European Court of Human Rights.

Meanwhile, the ombudsmen positively evaluate the actions of the Government to improve the mechanism of social support from the state to ensure with housing certain categories of citizens, including those who suffered from the Cernobil disaster.[174] Unjustified delay in offering preferential loans by financial institutions – the previous mechanism of support of certain categories of persons,[175] was one of the issues tackled in the complaints received by the ombudsmen.

The procedure of calculation of the temporary labour incapacity allowance, which is based on the Government Decision no. 108 from 3 February 2005[176], needs a revision to comply with the provisions of the Law no. 289 from 22 July 2004.[177] This Decision imposes a limitation in calculating the ensured average monthly income to determine the amounts of allowances.[178] Law no. 289 does not provide for such a limitation,[179] but empowers the Government with the power to prescribe the procedures for these social allowances (article 5 paragraph 3), but in no circumstance change the calculation basis. In this respect the ombudsmen consider that the Government has overstepped its mandate and intervened in an area which needs legal regulation,

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[173] After the Republic of Moldova ratified the Agreement between the CIS Member States on social protection of persons who were exposed to radiation due to the Cernobil disaster and other radioactive disasters and catastrophes, as well as due to nuclear experiment, signed at Moscow on 9 September 1994, each state party acknowledged and it is directly responsible for the social protection and healthcare of its citizens who have suffered from radiation exposure

[174] Government Decision no. 836 from 13 September 2010 on the allowances offered to construct and buy housing or refurbish housing for certain categories of citizens

[175] Government Decision on preferential loans to certain categories of citizens no. 1146 from 15 October 2004 repealed by Government Decision no. 836 from 13 September 2010

[176] Government Decision on the approval of the Regulations on the procedure of establishment, calculation and payment of temporary labour incapacity allowances and other social insurance allowances no. 108 from 3 February 2005

[177] Law on temporary labour incapacity allowances and other social insurance allowances no. 289 from 22 July 2004

[178] Paragraph 23, part 2 of the Regulations adopted by Governmental Decision no. 108 from 3 February 2005 provides for that the average ensured monthly income, taken into account while calculating the allowances may not overset 3 country average monthly salaries.

[179] Article 7, paragraph (1) from the Law no. 289 from 22 July 2004 provides for that the basic calculation indicator for social insurance allowances is the average monthly income in the last 6 months before the ensured case has taken place, income from which social insurance premiums have been calculated.

breaching article 6 of the Constitution when it established primary legal norms, general and mandatory, which can be adopted only by means of Law and by the Parliament. Moreover, the respective situation is considered unfair and breaches the constitutional principles of fairness and fair fiscal burden adjustment.

The ombudsmen have contacted the Government with this issue, suggesting amendments to paragraph 23(2) of the mentioned Regulations to ensure all participant of the public system – tax payers and beneficiaries – a non-discriminatory treatment with respect to their rights and duties provided for by law.

Regretfully, the suggestion of the ombudsmen did not find any reaction from the Government.

The recommendations of the ombudsmen

1. *Improve the state policy promotion activities in the area of protection of competition to limit and eliminate the anticompetitive behaviour of enterprises, public authorities, as well as manage the monitoring over the enforcement of the legislation on protection of competition.*
2. *Development of a permanent system of allowances or partial subsidies from the state during the cold period of the year.*
3. *Adopt a legal framework to determine and use the minimum of existence, the amount of which to be taken into account when calculating the minimum salary, pension and social allowances.*
4. *Review the recalculation/compensation mechanisms for income of the population due to changes in prices for goods and services, including the monitoring of enforcement of Law no. 824 from 24 December 1991.*
5. *Review the current legal framework on housing*
6. *Improve the information mechanism for citizens on the decisions related to establishment and disbursement of pensions*
7. *Timely development of the enforcement mechanisms for the legislation in force on social assistance and protection*
8. *Improvement of the current special social protection for persons who suffered from the Cernobil disaster.*

1.12. Protection of persons with disabilities

„To be together is a start, to remain together is a progress, to act together is a success".
Henry Ford

The Constitution recognised that "it recognises that human dignity, human rights and freedoms represent supreme values and are guaranteed",[180] whilst the respect and protection of each person is a primary duty of the state.[181]

While recognising the fact that disability results from the interaction between persons with disabilities and the barriers of attitude and environment which impede their full and efficient participation in social life under equal terms with other citizens, the General Assembly of the United Nations Organisation adopted on 13 December 2006 the Convention for the protection of Persons with Disabilities and the option Protocol (open for signature from 30 March 2007). After the adoption of the convention an impressive number of states demonstrated their commitment to observe the rights of persons with disabilities by signing the respective convention, among which the Republic of Moldova.

The ombudsmen welcome the ratification on 9 July 2010 of the UN Convention on the rights of persons with disabilities,[182] evaluating year 2010 as a crucial one for the entire society of the Republic of Moldova, especially for the persons with disabilities.

The commitments require consolidated efforts of all the members of the society, real actions from authorities for the Convention's provisions not to remain only on paper.

In essence, the Convention does not establish new rights, but offers more details of the positive obligations of the state to ensure and promote the rights of persons with disabilities.

From the ombudsmen's perspective, the most important step to be taken now is the creation of real and viable mechanisms to implement the commitments taken by the Republic of Moldova, in the context of observance of the international standards in the area of rights of persons with disabilities.

Visible efforts have been registered in 2010: the approval of the Strategy on social inclusion of persons with disabilities (2010-2013),[183] which represents the strategic planning of attainment of coordinated and necessary actions to reform the system of social protection of

[180] Article 1, Constitution of the Republic of Moldova
[181] Article 16, Constitution of the Republic of Moldova
[182] Law on the ratification of the United Nations Organisation Convention on the rights of Persons with Disabilities no. 166 from 9 July 2010, „Official Journal", no.126-128/428 from 23 July 2010
[183] Law on the approval of the Strategy of Social Inclusion of persons with disabilities (2010-2013) no. 169 from 9 July 2010

persons with disabilities; development of the draft Law on social inclusion of persons with disabilities.

During the same period legislative amendments have been made to offer the persons who take care of child with disability from birth of first level of gravity who is confined to bed the right to benefit from the mandatory medical insurance policy.[184] Previously, these persons could benefit from the policy only until the age of 18 of the child under care. The issue has been tackled on numerous occasions by the ombudsmen, who have insisted on the need to make the respective amendments.

In spite of those, the Government of the Republic of Moldova has still many issues to solve to effectively ensure the rights of persons with disabilities.

The principle of non-discrimination on grounds of disability represents the key element of the Convention on the rights of persons with disabilities. The national legal framework, including the Constitution of the Republic of Moldova do not expressly provide for the exclusion of any form of discrimination on grounds of disability. Indeed, article 16 paragraph 2 of the Constitution contains an exhaustive list of grounds on which discrimination may take place.

The ombudsmen consider necessary the inclusion of this principle in the national framework or its amendment to include a non-exhaustive list of grounds. This position was expressed by the ombudsmen for two consecutive years.[185]

The legal framework in force uses different and obsolete notions, which generate discriminatory approach with respect to persons with disabilities. In article 51 the Constitution declares the rights of "handicapped persons" to social protection from the entire society. From the ombudsmen's point of view the unification of notions used in policy documents and legislative acts pertinent to disability, including article 51 of the Constitution "handicapped persons" needs to be made to comply with international standards.

Starting from this constitutional desiderate, persons with disabilities must benefit from special social protection from the state. There are however a series of difficulties these people confront, and they need to be eliminated: insufficient social protection, national legal framework incompliant with the international standards in the area of protection of persons with disabilities, procedure of establishment of disability, low employment and reduced motivation to employ persons with disabilities, limited access of the persons with disabilities to social infrastructure as

[184] By means of Law no. 186 from 15 July 2010, the expression "up to 18 years old" was excluded from article 4 paragraph 1 of the Law on mandatory medical insurance no. 1585 from 27 February 1998.

[185] Report on the observance of human rights in the Republic of Moldova in 2009, www.ombudsman.md

a result of the inadequate environment, limited access to information, society's indifference to the problems of persons with disabilities.

The law on social protection of persons with disabilities no. 821 from 24 December 1992, which is an expression of the national standards in the area of human rights protection for persons with disabilities, provides for the observance of a large spectrum of social rights of persons with disabilities, but without efficient enforcement mechanisms and financial coverage, which in turn gives the law a formal nature.

The state's policies in the area must cover creation of favourable conditions to create equal opportunities for affirmation and full integration of the persons with disabilities at all levels of community life: social, professional, educational, cultural, sports etc. Equality, participation, involvement, accessible nature and social partnership are concepts which together contribute to the attainment of the integration process.

The accessible nature of the social infrastructure

The adaptation of the physical infrastructure to the needs of the persons with disabilities is one of the vulnerable issues which impede equal opportunities for persons with disabilities. The social and economic situation is determined by the access to basic public services. The state has the obligation to take the necessary measures to ensure access of persons with disabilities, under equal terms with other citizens, to the physical environment, transportation, including information and communication technologies and systems, and other facilities and services accessible to the public at large, both in urban and rural communities. The efficient implementation of these actions shall undoubtedly contribute to ensuring an independent life and participation of person with disabilities as provided for by article 9 of the Convention on the Rights of Persons with Disabilities. This desideratum of the Convention underlined the identification and elimination of obstacles and barriers which impede the access of persons with special needs to social infrastructure. The access without limitation or restrictions to the physical environment is one of the essential factors which ensure persons with special needs the observance of the fundamental human rights and freedoms. This aspect was one of the ombudsmen's agenda priorities in 2010. The Centre for Human Rights undertook a monitoring of the situation relevant to the adaptation of the habitual environment to the needs of persons with disabilities, hoping that by tackling this issue the actions of the authorities directed to improve the state of affairs in this field in all public institutions shall improve.[186]

[186] Thematic Report „Access of persons with special needs to social infrastructure: reality and necessity", www.ombudsman.md

Special attention was drawn on the monitoring of the access of persons with special needs to the buildings and offices where the local public authorities, enforcement agencies, courts of law, central public administration authorities, as well as other institutions open to the public are hosted. The results of the monitoring are indeed alarming. In spite of the fact that the national legislation obliges the public authorities ensure the adaptation of the physical infrastructure to the needs of persons with disabilities, there is presently a very small number of public institutions which are fully adapted to the needs of these people. The list of authorities worth mentioning for their effort to adapt the buildings to an access as much as possible for these categories of people includes the Confederation of the Trade Unions from Moldova and the National Bank. Meanwhile, the accumulated information indicate on the fact that, if an central level (the ministries, central administrative authorities) have been mostly adapted their habitual environment to the needs of persons with disabilities, at the local level the state of affairs is far from satisfactory. Out of the 45 monitored buildings of the local public administration authorities only 20 have been equipped with special means.

Thus, 46% of the monitored institutions have adapted their buildings / offices to the needs of persons with special needs, whilst 54% still remain inaccessible. Out of the 35 enforcement agencies, 14 (most of the police commissariats) have adaptation means in place, whilst 21 (most of them prosecutors' offices) do not offer access for persons with disabilities. The unlimited access to the courts of law in the country is unsatisfactory: out of the 30 monitored institutions, only 11 have taken steps to ensure access.

The access is worsened when the courts of law are at the upper floors and the lack of lifts in these institutions generate serious difficulties and impediments in the enjoyment of the fundamental rights of the persons with disabilities, first of all, free access to justice.

Even if some buildings are equipped with access slopes at the entrance, in most of the cases they do not comply with the real needs and do not ensure unlimited access in buildings (angles too big, small doors, slippery covers, etc.). In its most the access of persons with locomotive disabilities is limited to access of the first floor of the buildings.

The access to housing environment, especially the old buildings is complicated as well. If most of the new buildings have access slopes for persons with disabilities, than the old buildings lack them. Thus, persons in wheelchairs quit exiting the house if unaccompanied.

The review of a complaint from a person with locomotive disabilities with regard to lack of access to the housing environment where the person lives allowed the identification of the problems invoked by authorities, both objectively justified – lack of necessary financial resources, technical specifications o the buildings do not allow special equipment to be installed

– and subjectively justified – the level of awareness of this issue by the decision makers and their will to get involved in the resolution of the problem.

In the case of the petitioner, the entrance stairs are too narrow, whilst instalment of special equipment was rather difficult, without creating inconveniences to other inhabitants. Due to the insistence of the ombudsmen, who have formulated suggestions to resolve this problem, the local public authority[187] found the appropriate solution and installed a folding device.[188] However, an important number of persons confined to wheelchairs wait for their problems be resolved by authorities.

The insufficiency of financial resources was the main problem invoked by the competent authority when examining the possibility to install this equipment, which was the most suitable solution for this particular case. Moreover, the authorities invoked that the respective expenditures were not planned in the annual budget of the institution.

The ombudsmen reiterate that the existence of economically driven difficulties is not excuse for a state for failing to deliver on its commitments and identify optimal solutions to ensure the observance of fundamental human rights. The ombudsmen consider it impetuous that all housing buildings managers identify persons with locomotive disabilities and check if their access to their apartments is ensured, as well as find solutions to extend access. Additionally, the ombudsmen recommend an evaluation by each authority of the necessary costs to ensure access of persons with special needs and place those expenses in the annual draft budget.

Even worse is the situation of the persons with special needs when accessing public transport. There are practically no public transport means fully adapted to the needs of persons with disabilities. For example, the Chisinau municipality trolleybuses (252 in total) have been cleared of the bars at the behind doors, whilst the other 66 trolleybuses and 100 buses cannot have their bars taken out because of the initial planning from the factory. The fact that the new 102 trolleybuses planned for purchase in 2011 shall ensure unlimited access for persons with disabilities is most welcome.[189] In Cahul city out of the 46 transport units none is adapted to the needs of persons with disabilities. A similar situation is registered in other settlements of the country.

In this respect, the ombudsmen recommend the local public authorities take into account the adaptation criterion when initiating public procurement procedure for new transport units.

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[187] Ciocana district administrative office, Chişinău municipality
[188] Petition no. 03-1098/09
[189] Data presented by the General Public Transport and Communications Directorate, Chişinău municipality

Persons with locomotive disabilities benefit from an annual compensation of 400 MDL[190] to cover their expenditures related to the use of transport. Having persistent serious difficulties of accessing public transport, this amount is derisory, as the transport expenditures are much higher.

The ombudsmen have received complaints from persons suffering from locomotive disabilities who expressed their disapproval of the elimination of the advantage of supplying these people with transport means, as provided by article 36 of the Law on social protection of persons with disabilities no. 821 from 24 December 1991.[191] Taking into account the suggestions of persons who confront directly the problems of transportation, the ombudsmen have contacted the Ministry of Labour, Social Protection and Family to examine their recommendations when formulating the policies in the area, which cover certain viable advantages to persons with locative disabilities. The Ministry stated that these suggestions shall be taken into consideration when developing amendments to the legislative framework to adjust to the international standards.

A group of persons with locomotive deficiencies confront an even greater difficulty: lack of wheelchairs. This was one of the problems identified within the public debates organised by the Centre for Human Rights in four regions of the country.[192] According to the information presented by the Social Assistance Directorates from 18 raions of the country, including the Chisinau and Balti municipalities, around 28% of the persons with disabilities who need wheelchairs are not supplied with such equipment.[193]

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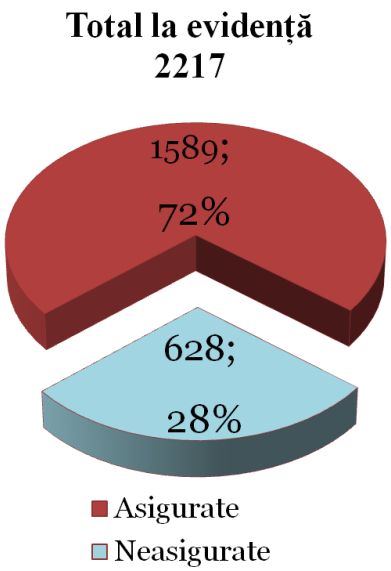
[190] Government Decision on the compensation of transport expenditures for persons with locomotive disabilities no. 1268 from 21 November 2007

[191] Law on the amendment of certain legislative acts no. 934 from 14 April 2000

[192] 2 July 2010 – Chisinau municipality, 8 October 2010, Comrat, 3 November 2010 – Cahul, 4 November 2010 – Balti municipality

[193] Article 36 of the Law on social protection of persons with disabilities no. 821 from 24 December 1991: persons with disabilities receive social assistance in the form of payments (pensions, allowances, single payments), supply with technical and other means, including wheelchairs and orthopaedic equipment, special printing materials, hearing amplifiers and signalling equipment, as well as receipt of medical services delivered at home.

Settlement	Not ensured	Total
Chişinău municipality	169	342
Bălți muncipality	8	120
Sângerei	80	250
Făleşti	18	137
Floreşti	38	91
Râşcani	29	36
Glodeni	18	80
Ocnița	13	20
Briceni	32	217
Edineț	31	35
Soroca	17	60
Drochia	4	18
Cahul	71	194
Taraclia	27	48
Vulcăneşti	15	114
Leova	20	220
Cantemir	18	65
Găgăuzia ATU	20	170
Total	628	2217



The current methodology of establishment of disability is based on the medical model, which does not encourage the social inclusion of these people.[194] Therefore, the ombudsmen support the need to review this methodology by determining the employment capacity of the persons of labour active persons so that this desideratum is not discriminatory and complies with the international standards in the area. On the other hand, it is very important that the responsible

[194] Government Decision on the medical vitality test no. 688 from 20 July 2006

authorities pay special attention to the development of medical and social early intervention services to prevent disability.

A painful and frequently stressed issue is the limited access of persons with disabilities to the labour market. The current social policy provides for measures of employment of persons with disabilities; however the mechanisms and forms of professional reorientation and rehabilitation services remain insufficient. This problem affects a considerable amount of people – persons with disabilities with 1st and 2nd level of gravity. As on the 1 January 2011 the National Social Insurance Agency registered 103914 beneficiaries of disability pensions of 1st and 2nd levels of gravity.[195]

The existence of legal provisions which do not encourage social inclusion of this category of persons is one of the serious barriers to enjoy the services of labour employment agencies. Thus, in most of the cases the labour employment agencies justify their refusal of registration for these persons on article 2, letter b) of the Law on labour employment and social protection of persons seeking employment no. 102 from 13 March 2003, which provides for that for a person to be considered unemployed certain requirements must be cumulatively met.[196] Additionally, the agencies require additional documents to the ones provided for by the legislation from persons with disabilities (certificates from the Medical Vitality Test Commission to demonstrate labour capacity)[197]. Therefore, only the persons with disability of a 3rd level of gravity can hope for a job. The others, who suffer from locomotive or eyesight disabilities, are not considered capable to work. These persons are dependent of the state's capacity to offer financial support, which is an average pension of 600 MDL.

The ombudsmen have contacted the Ministry of Labour, Social Protection and Family and suggested the examination of the possibility to initiate a process of amendment of the legislation in force, which currently limit the access of persons with disabilities to the labour market. In this respect, the ombudsmen ask the responsible authorities take the necessary steps to promote the professional integration of the persons with disabilities. Their full integration shall

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[195] Data on beneficiaries of pensions and state social allocations, registered at the National Social Insurance Agency, as of 1 January 2011, www.cnas.md

[196] Article 2, litter b) from the Law on labour employment and social protection of persons seeking employment no. 102 from 13 March 2003 provides for that the person must be capable, by virtue of his/her physical and psychological capacities to provide labour

[197] Paragraph 3 of the Governmental Decision on the approval of the procedures on the access to labour employment measures no. 862 from 14 July 2003 provides for that the registration of the unemployed takes place by means of filling in a personal data sheet and presentation of the following documents: a) identity document; b) education and qualification certificates; c) workbook (in case of persons who have been previously employed) or other documents which certify the fact that the respective person is not employed; d) certificate which confirms the lack of fund earning activity, as prescribed by paragraph 3 of the Decision.

be possible if new labour markets shall be open to them, having professionals ready to guide, and jobs shall be created adapted to their needs.

The enforcement of professional integration of persons with disabilities must become one of the main objectives to be promoted by the state's policies. The reasonable adaptation must be made taking into account the needs of persons with disabilities and the needs of the employers, thus creating equal opportunities on the labour market.

The recommendations of the ombudsmen

1. *Amendment of article 51 of the Constitution to change the definition of "handicapped person" with "person with disabilities", as well as unification of notions used in the policy documents and legislative acts pertinent to disability*
2. *Inclusion of the principle of non-discrimination on grounds of disability in the national legal framework or it amendment, so that a non-exhaustive list of grounds is placed instead*
3. *Evaluation of the adaptation level of all institutions and public services to the needs of persons with disabilities*
4. *Evaluation of necessary expenditures to ensure access of persons with special needs by each particular authority and their placement into the draft annual budget*
5. *Procurement of transport means adapted to the needs of persons with disabilities*

1.13. Right to life and physical and mental integrity

1.13.1.The concept of torture and inhuman or degrading treatment or punishment

The torture phenomenon is imputable according to certain international documents, such as the Universal Declaration of Human Rights from 10 December 1948 (article 5), the International Covenant on Civil and Political Rights from 16 December 1966 (article 7), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment from 26 November 1987 and the European Convention for Human Rights from 2 November 1950. Surely, the main instrument to prevent and fight torture is the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which entered in force on 26 July 1987.[198] This Convention defines in article 1 the definition of torture which *„means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity".*

The above mentioned text was fully transposed in the Criminal Code in article 309[1]. Thus, the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment was implemented by means of a national law, which contains the specific incrimination and punishment conditions. From the ombudsmen's point of view the question if "an appropriate penalty was provided for the nature of these crimes" in the Republic of Moldova is still open. Indeed, the penalties for crimes provided for by article 309[1] of the Criminal Code usually do not offer an appropriate punishment.

The difference between torture and other forms of maltreatment is defined by the difference of *intensity* of the caused pain. The subjective elements of this criterion based on gender, age and state of health of the victim are relevant when evaluating the intensity of a particular treatment. The actions which objectively cause sufficient intensity of pain shall be

[198] UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, http://www2.ohchr.org/english/law/cat.htm.

considered torture, irrespective of the fact that the victim is male or female, or if he/she is in good physical shape.[199]

Torture is considered to be the *intentional* form of maltreatment for which a certain training and effort is necessary to act. ECHR considered intentional treatment as torture: "the Palestinian hanging" (*case Aksoy vs. Turkey*), considerable number of beatings and other forms of torture (*case Dikme vs. Turkey*), forced feeding which exposed the applicant to extreme physical pain and humiliation (*case Ciorap vs. Moldova*), rape of a detainee by a state official (*case Aydin vs. Turkey)*, exposure to electrical shocks, treatment with hot and cold water, beatings in the head and threat to maltreat children (*case Akkoc vs. Turkey*), use of „falaka" – beating the soles (*case Corsacov vs. Moldova*[200]) etc.

All these regulations illustrate a sustainable justification of the incrimination imposed by the local legislator for acts of maltreatment. The other notions such as „inhuman and degrading treatment" have broader definitions only in the case-law of the European Court of Human Rights in the light of article 3 of the Convention for the protection of human rights and fundamental freedoms. Pursuant to the statements of the Court *"article 3 contains one of the most fundamental values of a democratic society: nobody can be exposed to torture, nor inhuman or degrading treatment or punishment*".[201] As the Convention is part of the legal framework, its enforcement is mandatory for the national courts of law and all national public authorities. They have to give priority to the Convention over any national law which is contrary to it. With respect to the respective components, the serious nature of intensity of pain or physical suffering is also considerable, but less serious than the cases of torture. The level of seriousness can be shown by pain suffering caused due to recourse to physical force (beating in the face with a baton), which was not caused by the victim's behaviour,[202] obligation of the masculine detainee to undress in the presence of an enforcement agent of an opposite gender,[203] inadequate medical treatment for the detainee,[204] the cumulative effect of inadequate conditions, lack of full medical assistance, exposure to cigarette smoke, inadequate food.[205]

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[199] Decision of the Plenum of the Supreme Court of Justice of the Republic of Moldova "on certain aspects of the application by the courts of law of the provisions of article 3 of the European Convention for Human Rights" no. 8 from 30 October 2009, Supreme Court of Justice of the Republic of Moldova Bulletin, 2010, no. 2, page 4
[200] Consult *Corsacov vs. Moldova*, ECHR Decision from 4 April 2006, application no. 18944/02
[201] European Convention for Human Rights, http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf
[202] Consult *Mrozowski vs. Poland*, ECHR Decision from 12 May 2009, application no. 9258/04
[203] Consult *Valasinas vs. Lithuania*, ECHR Decision from 21 July 2001, application no. 44558/98
[204] Consult *Şarban vs. Moldova*, ECHR Decision from 4 October 2005, application no. 3456/05
[205] Consult *Ostrovar vs. Moldova*, ECHR Decision from 13 October 2005, application no. 35207/03

Even if such sampling, which is far from exhaustive, suggests that besides the gravity factor there are other key criterions which specify and differentiate the elements of prohibition of torture.

The specific "inhuman" element of the prohibition makes reference to the uncivilised consequences of the physical and mental sufferings, which result from the respective treatment. Thus, a treatment may be estimated inhuman when was willingly applied for hours and caused either corporal damage, or deep physical and mental sufferings. Many of the inhuman treatment are generated in custody, where the victim is exposed to intense maltreatment, but which however are not sufficiently intense to be qualified as torture. The "degrading" element is linked to the very specific feelings associated to the humiliating effects of certain forms of maltreatment. This type of treatment causes victims the feelings of fear, anxiety and inferiority, capable to humiliate them. The treatment was also described to have been involving behaviour capable to confront the physical and moral resistance of the victim or determine the victim to act contrary to his/her will or conscience. Additionally, contrary to torture, the breach of the inhuman and degrading treatment prohibition does not necessarily require intent to cause sufferings.

Therefore, not all forms of maltreatment fall within the ambit of article 3 of the Convention. The Strasbourg Court has reiterated on numerous occasions that maltreatment must reach a minimum level of gravity to fall within the ambit of this article. In one of the leading cases on article 3 of the ECHR, *Ireland vs. United Kingdom* from 18 January 1978, the Court stated that the evaluation of the minimum level of gravity is relevant: it entails all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in certain cases, the gender, age and the victim's state of health. This statement was further on reiterated on each occasion in the case of the law of the Court. In case *Soering vs. United Kingdom* [206] the Court added that the seriousness "depends on all the circumstances of the case, as well as the nature and the context of the treatment or punishment, the way and method of enforcement, as well as on factors previously mentioned.

Therefore, article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms contains an absolute guarantee of rights it protects. No derogation from this position is available even in cases of war of public danger which threatens the nation's existence.[207] While taking the historical context of the adoption of ECHR, this rationale may not be trivialised and prohibit only the most serious forms of maltreatment.

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[206] Consult case *Soering vs. United Kingdom*, http://eji.org/eji/files/Soering%20v.%20United%20Kingdom.pdf

[207] Article 15 (1) from the European Convention for the Protection of Human Rights (Rome, 4 November 1950) – In time of war or other public emergency threatening the life of the nation any High Contracting Party may take

Pursuant to article 34 of the Convention, "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

While the Republic of Moldova ratified the Convention for the Protection of Human Rights and Fundamental Freedoms by means of Parliament Decision on 12 September 1997, the state guarantees to its citizens the right to recourse to the European Court, pursuant to the provisions of the Convention. Thus, during the period 1 November 1998 – 1 November 2010 the European Court of Human Rights issued a total of 174 decisions on the Republic of Moldova. Among the issues signalled by the ECHR primarily are the inadequate detention conditions in the penitentiary institutions, police commissariats (article 3 of the Convention), maltreatment and torture during preventive detention (article 3 of the Convention), insufficient motivation for custody and preventive detention (article 5 from the Convention). In this respect it should be mentioned that during the reporting period 48 decisions on article 3 violations and 46 decisions on article 5 violations have been issued by the Court.

1.13.2.Zero tolerance of maltreatment through the ambit of the Optional Protocol to the UN Convention against torture and other cruel, inhuman or degrading treatment or punishment

Maltreatment is truly close to the last boundary of behaviour improper to human nature. The ratification of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment has moved forward the Republic of Moldova in promoting the principle of *zero tolerance of maltreatment.* The direct competences of the ombudsman in the area of prevention of torture and other cruel, inhuman or degrading treatment or punishment have offered the institution the possibility to monitor the progress in the last two years (the primary implementation of the national torture prevention mechanism in the Republic of Moldova took place in 2008).

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 of the United Nations General Assembly. The Optional Protocol was signed by the Republic

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measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law

of Moldova on 16 September 2005 and was ratified on 30 March 2006. It entered in force on 24 July 2006.

Pursuant to article 1 of the Optional Protocol[208], its area of intervention is the establishment of a system of regular visits undertaken by international and national independent bodies to the places where persons are deprived of their liberty, aimed to prevent torture and inhuman or degrading treatment or punishment.

The transparency and the independent control of the public administration are the components of any system based on principles of democracy and the rule of law. This is particularly true in the case of monitoring the state's competence to deprive persons of their liberty. The monitoring of the treatment and conditions of detention of persons deprived of their freedom through unplanned and periodic visits is one of the most efficient means to prevent torture and maltreatment.

Thus, the objective of the Optional Protocol is to create a system of monitoring. The idea of an external and independent monitoring of detention places knew important progress in the last years. Presently, the concept according to which the best way to protect against torture and maltreatment is for the detention places to be as transparent as possible is highly spread, with the possibility of the members of the National Torture Prevention Mechanism to have permanent access to these places. This progress is reflected even by the adoption of such a document aimed to create a mechanism to manage visits in the detention places.

Today the strict formula of the National Prevention Mechanisms is not identified, although the majority of the European signatory states have opted in favour of the National Human Rights Protection Institutions. The reason is that these institutions are based on the Principles on the status of national institutions for the protection of human rights, known as the Paris Principles, which impose the existence of a large mandate, functional independence and pluralism. Therefore, the states parties have the freedom to select the type of the body which suits best in the context of the country.

Aimed to comply with articles 3 and 17 of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment of Punishment[209] the Parliament of the Republic of Moldova adopted on 26 July 2007 Law no. 200 on the

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[208] The Report on the Activity of the National Torture Prevention Mechanism for 2009

[209] 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.

amendments o the law on ombudsmen no. 1349 from 17 October 1997[210], thus attributing the mandate of the National Torture Prevention Mechanism to the ombudsmen[211].

For the Republic of Moldova the empowerment of the ombudsman with the respective mandate was an admissible alternative, taking into account the fact that the ombudsman fully complies with the criteria of the Optional Protocol for the National Prevention Mechanism:

- Functional independence (the ombudsmen are appointed by the Parliament for a mandate of five years, hold immunity, are separate from the executive and judiciary powers)
- Professional abilities and knowledge necessary to fulfil the mandate, as well as the large competences to inspect places of detention.

Also, taking into account the need to involve the civil society in the national processes of elimination of torture, the Centre for Human Rights created a Consultative Council, which offers consultancy and assistance in the course of the ombudsmen's mandate as the National Torture Prevention Mechanism and holds direct competences in the monitoring of the torture phenomenon and other cruel, inhuman or degrading treatment of punishment.

Pursuant to paragraph 8 of the Regulations on the organisation and functioning of the Consultative Council, the mandate of the member of the Council is of three years. The candidates for member of Consultative Council must have high moral standing, as well as meet a series of abilities which would not allow any doubt as to the title of member of the Consultative Council. While independently managing the mandate of torture prevention, the member of the Consultative Council has the right to[212]:

- Have free access to institutions, organisations and enterprises, irrespective of form of property, associations, police commissariats and place of detention within, in penitentiaries, preventive detention isolators, military units, placement centres for immigrants or asylum seekers, in institutions which provide social, medical and psychical assistance, in special boarding schools for children with behaviour deviations and other similar institutions
- To request and received from central and local public authorities, decision makers of all levels information, document and materials necessary to observe his/her mandate
- Have unlimited access to any information on the treatment and detention conditions for persons deprived of their freedom

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[210] Law on the amendment and completion of the Law no. 1349 from 17 October 1997 on ombudsmen no. 200 from 26 July 2007, „Official Journal", no.136-140/581 from 31 august 2007

[211] Report on the observance of human rights in the Republic of Moldova in 2009

[212] Articles 23², 24 letters b-d, f, g) from the Law on ombudsmen no. 1349 from 17 October 1997, „Official Journal", no. 82-83/671 from 11 December 1997

- Receive explanations from decision makers of all levels on issues to be examined during the monitoring
- Have unlimited meetings and personal discussions without witnesses, and if needed, using the services of an interpreter, with the person in the mentioned places, as well as with any other person who according to his/her opinion could offer the necessary information
- When managing preventive visits involve independent experts from various fields, including lawyers, doctors, psychologists, representatives of NGOs.

The Consultative Council must be mandatorily composed of representatives of the civil society.

1.13.3.Realities and perspectives of the National Torture Preventive Mechanism in the Republic of Moldova

After the hearings of the second Periodic Report of the Republic of Moldova at Geneva[213] during the sessions from 11 and 12 November 2009 the Committee against Torture formulated a series of final observations which in paragraph 13 are directly linked to the need to clarify the legal provisions which regulate the activity of the National Prevention Mechanism, the mandate and the statute of the Consultative Council, as well as their members and the financial independence.

Summoning the members of the Consultative Council is dictated by the need to maintain the activities of regular monitoring of the treatment towards persons in detention, custody and preventive arrest institutions, in medical and social institutions for persons with mental disabilities. Thus, the management of the mechanism identifies the activity of monitoring and control as one of the necessary resources of organisational management of a National Torture Prevention Mechanism.

During the sessions the ombudsman and the members of the Consultative Council decide on the frequency of monitoring visits, the need to involve experts during visits, reports drafted after the visits, development of recommendations to improve the treatment of persons in custody, detention conditions and prevention of torture, examine the answers received from the authorities or decision makers, on the discontinuation of the empowerments of the members of the

[213] www.dejure.md/library_upld/d630.doc

Consultative Council, as well as on any other issues related to the good management of the National Torture Prevention Mechanism.[214]

According to functional competences, some of the employees of the Centre for Human Rights are specially appointed to manage activities in the area of the ombudsman's competence as preventive mechanism. There is a wide spread practice to manage visits with the participation of the members of the Consultative Council and less known with the autonomous initiative of the members of the Consultative Council.

The financial autonomy is a fundamental criterion without which the National Torture Prevention Mechanisms may not be independent during the decision making process. The National Torture Prevention Mechanism must be financially independent to be able to fulfil is basic mandate. The Paris principles underline the need for an adequate financing, which would allow maintenance of personnel and premises and be independent from the Government and not to be exposed to a financial audit.[215]

Regretfully, the implementation of the National Torture Prevention Mechanism in the Republic of Moldova was not supported by a corresponding increase of financial resources, which in turn limits the activities of the new entity. This issue was also underlined in the Report of the European Commission against Torture, after the visit during 27-31 July 2009[216], in the Recommendations of the UN Committee for Human Rights adopted after the review of the second periodic Report presented by the Republic of Moldova during 13-14 October 2009.[217]

Additionally, the financial burden to cover the necessary expenses to manage preventive visits, including the retribution of experts appointed to participate at the preventive and/or monitoring visits was left on the Centre for Human Rights.[218]

Even in such conditions, the ombudsmen has concluded agreements of provision of services with the Consultative Council to improve the efficiency of the National Torture Prevention Mechanism as provided for in the *Final Observations* of the Committee against

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[214] Paragraph 22 of the Regulations of the organisation of the Consultative Council, adopted by means of Order of the Director for Human Rights from 31 January 2008, based on the endorsement of the Parliament's Standing Committee for Human Rights CDO-4 no.11 from 25 January 2008

[215] Principle 2 from the Principles on the status and functioning of the national human rights 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

[216] The Committee recommends adoption without delay of measures to ensure that the National Torture Prevention Mechanism is fully and unrestrictedly fulfilling its mandate, taking into account the recommendations, observations and orientations adopted by the UN Prevention Subcommittee, aimed to strengthen the capacities and the mandate of the National Prevention Mechanism

[217] Paragraph 10, letter a): The State party must strengthen the National Torture Prevention Mechanism and support its independence, especially by means of increase of financial resources allocated to it.

[218] Article 39 of the Parliament Decision on the approval of the Regulations of the Centre for Human Rights, its structure, status and functions and its financing no. 57 from 20 March 2009, „Official Journal" no. 81/276 from 25 April 2008; Article 35 of the Regulation of organisation and functioning of the Consultative Council

Torture, adopted at its session on 19 November after the analysis of the second Periodic Report of the Republic of Moldova. In this respect the budget of the Centre for Human Rights for 2010 allocated supplementary financial means to pay the experts included in the preventive visits at the places where there are or could be persons in custody (provisions of paragraph 39 of the Regulations of the Centre adopted by means of Decision of the Parliament of the Republic of Moldova no. 57 from 20 March 2008). Their retribution shall inevitably constitute a strong element to ensure the financial independence of the representatives of the National Torture Prevention Mechanism.

There are servants within the Centre for Human Rights who are responsible for the implementation of the contents of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, however the current structure of the institution does not provide for a separate and appropriately equipped unit. A working group was thus created to develop a new law on ombudsmen, which would include a new formula for the structure and amendment of the pay scale for employees, all directed to improve the efficiency of the National Mechanism and the review the conceptual structure of the Centre. This shall allow a separate unit with well defined competences in accordance with the requirements of the international instruments in the area.

The concept of reformation of the Centre for Human Rights was supported by the Report of the consultant of the General Directorate for Human Rights and Legal Affairs of the Council of Europe Mark Antoni Nowicki, developed after the meetings with the Moldovan ombudsmen during 2-4 July 2010. From the European consultant's perspective the current structure of the ombudsman institution must be substantially amended and simplified in certain parts. With respect to the financial aspect he mentioned in his recommendations the capacity of the ombudsman to pay experts coming from outside, including by means of international donors' community.

The issue of financing and current structure of the Centre for Human Rights was tackled in the Report on the functional review of the Centre, prepared by a UNDP expert, Allar Joks, after his visit between 30 November and 18 December 2009. The expert mentioned that adequate financing is one of the most important institutional guarantees. The UN Committee for Human Rights, the Committee against Torture, the Committee for the rights of Children and the Subcommittee of Accreditation within the International Commission of Coordination of National Human Rights Institutions have made it clear that inadequate financing does not allow the Centre for Human Rights manage its mandate accordingly. From the structural point of view, Allar Joks mentioned the need to restructure the institution so that the National Torture Prevention Mechanism is included as a separate specialised unit.

The efficient functioning of the National Torture Prevention Mechanism implies periodic preventive visits, including by the employees of the regional offices of the Centre for Human Rights, to places where persons in custody are or may be held. The functional capacities of the regional offices of the institution in Cahul, Balti and Comrat may not be used at full capacity because they do not have transport means and necessary equipment. In line with the respective financial needs and the need to ensure structural integrity of the National Torture Prevention Mechanism, the Centre for Human Rights presented to the Ministry of Finance on 27 July 2010 a memorandum by means of which it supported the absolute need for supplementary financial means for 2011. The negotiation of the presented conditions and other aspects of the absolute need for supplementary financial means for 2011 were discussed on 10 August 2010 at the premises of the Ministry of Finance. If the Centre for Human Rights could benefit from additional financial resources, with the involvement of the regional offices from Cahul, Comrat and Balti, more visits would be possible to accomplish. Under these circumstances it would be possible to fully comply with the commitments under article 18, paragraph 3 and article 19, letter a) of the Optional Protocol to the Convention against Torture and other Inhuman or Degrading Treatment or Punishment. Thus, the expenditure plan proposed remains to be analysed by the competent authorities to be included in the state budget for 2011.

The successful attainment of all objectives which the ombudsman institution committed to on the torture prevention sector, including training of law enforcement agents, establishment of cooperation relations with international organisations and potential donors, strengthening the capacities of the National Prevention Mechanism, elimination of torture etc., requires existence of available financial means, creation of adequate working conditions for the institution's personnel, adequate equipment, pay corresponding to the statute of the Centre for Human Right, which has a distinct place among the public institutions.[219]

With respect to the capacities of reaction of the Centre for Human Rights there is constant indication of the deficiencies of the infrastructure of the institution if compared to the requirements of the Principles on national institutions which promote and protect human rights (the Paris Principles), according to which the national institution needs to have sufficient financial means. Additionally, pursuant to the Paris Principles, the allocation of the financial resources (personnel, premises, transportation etc.) must take place in a way that does not diminish the independence of the institution and it must not be under direct subordination of the Government, the activity of which is being monitored in the first place.

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[219] Annex no. 1 to the Law on the public function and the status of the public servant no. 158 from 4 July 2008, „Official Journal" no. 230-232/840 from 23 December 2008

In this respect, the *Final Observations* of the above mentioned international organisations with respect to the Centre for Human Rights through the glass of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment which should be taken on board by the Republic of Moldova are of significant relevance.

1.13.4.Partnerships in the attainment of the National Torture Prevention Mechanism

The Centre for Human Rights created a Consultative Council, which includes representatives of the civil society. Starting with November 2008 a new practice was placed, according to which the members of the Consultative Council received full independence in selecting detention places which they wished to visits and they were empowered to organise visits without the participation of the ombudsman.

Before the nomination of Anatolie Munteanu as ombudsman, the preventive visits were possible only with the participation of his predecessor. Moreover, while analyzing the internal organization of the National Torture Prevention Mechanism, there is a great degree of transparency in the selection of the members of the Consultative Council, this being welcome by the nongovernmental organizations in the field of human rights.

When the first nominees of the Consultative Council have been appointed preference was given to the nongovernmental organisations, betting first of all, on their experience in the monitoring of the detention places, as well as the trustful relations they may have established with the detainees. Also, the representatives of the civil society are seen as an important chain for informational purposes as they hold some of the competences of the ombudsmen. This allows the National Torture Prevention Mechanism to plan its monitoring visits, but also react in due course by means of preventive visits.

Some circumstances determined by the daily activity of some members of the Consultative Council made impossible their participation at the working sessions, as well as the scheduled visits, thus negatively influencing the frequency of the visits. Meanwhile, an indicator which reveals the plenitude of the torture and maltreatment prevention and elimination activities is the observance of the agreed deadlines for the presentation of the reports, and not least, their quality.

From the endorsement of the first composition of the Consultative Council, during 2008 and 2009 five persons have presented resignation letters by means of which they have requested discontinuation of their mandate due to involvement in other activities and incapacity to deliver on their commitments. The Centre for Human Rights announced on 16 October 2009 a competition for the vacancies of members of the Consultative Council to replenish the vacant

posts and the competition was prolonged until 13 November 2009 due to lack of the required minimum. During 11 months of 2010, due to complex political processes, the replenishment of the vacant posts was not possible.

The ombudsman has high hopes that the mutually beneficial cooperation relations in the area of human rights protection shall advance. Thus, in the context of interaction with the public authorities, on 25 May 2010 a cooperation memorandum was signed between the Centre for Human Rights and the Ministry of Interior. The Agreement supported the extension of contacts and establishment of cooperation relations while developing amendments to adjust the national legislative framework to the international standards in the human rights area.

Additionally, during 2010 the restrictions applied towards the members of the National Torture Prevention Mechanism are not systemic anymore. Thus, based on the Cooperation Memorandum between the National Ombudsman Institution and the Ministry of Interior all the police commissariats have been equipped with informative boards on the structure, tasks and the status of the National Torture Prevention Mechanism, the rights and obligations of the persons in custody/detention who have been exposed to maltreatment or other abuses from police agents. The activity was implemented under the auspices of the project "Support to strengthening the National Torture Prevention Mechanism in line with the provisions of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment", implemented by the United Nations Development Programme in Moldova, in partnership with the Centre for Human Rights.

Certainly, the state of affairs needs consolidated effort to change the attitude of the state representatives towards the torture phenomenon, as well as increase the pace of the reactions to the recommendations of the ombudsman.

Meanwhile, this Memorandum has strengthened the efforts of prevention and prophylaxis of torture and other cruel, inhuman or degrading treatment or punishment. It is important that now the Memorandum facilitates the exchange of information based on the finding and revealing of breaches, especially of the right to life and physical and mental integrity, of the individual freedom and security of the person.

In the context of action taken at national level to prevent torture the Department of Penitentiary Institutions is also an important partner in the attainment of an efficient cooperation to observe human rights and fundamental freedoms. In this respect while ensuring a favourable environment to implement the criminal enforcement legislation in the penitentiary institutions it is worth mentioning the periodic delivery by some institutions (Penitentiaries no. 3, 5, 10, 16 and 18) of the special communiqués on confirmation of certain exceptional situations. Daily the

electronic mail of the Centre for Human Rights receives reports on the situation in the penitentiary institutions for the last 24 hours.

Along with the cooperation, a constructive dialogue has been ensured with the responsible ministries. The ombudsman regularly presented the necessary information to formulate the national positions on the recommendations and reports of a series of international organisations. This compartment contains updated commentaries and additional information offered to the Ministry of Foreign Affairs and European Integration of the Republic of Moldova on the registered progress in the implementation of the recommendations of the Special Rapporteur on Torture, Manfred Nowak, formulated after the visit to the Republic of Moldova in July 2008. Those were to be included in the Report presented to the Council for Human Rights in March 2011.

In the same context, the Centre for Human Rights presented to the Ministry of Justice vast updated data on the creation and management of a functional torture prevention mechanism in the detention places for further inclusion into the Periodic Report of the Republic of Moldova on the implementation of the International Covenant on Civil and Political Rights.[220]

The ombudsmen have also presented the suggestions and proposal for the national Report on the implementation of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.[221]

Until present the state instruments have been already formed, expressed through the persuasive and coercion forces when enforcing the observance of human rights. The process of establishment of a range of competences for the civil society is due by means of which the principle of transparency of detention institutions shall be insured. In this respect the Law on the civil control on the observance of human rights in the institutions which detain persons, no. 235-XVI from 13 November 2008, was adopted. To implement this legislative act on 13 April 2009 the Government adopted Decision no. 286 on the approval of the Regulations on the organisation and functioning of the monitoring committee on the observance of human rights in the institutions which detain persons. These documents strengthen the civil control over the institutions which are obliged to ensure a policy of observance and enforcement of the fundamental freedoms in accordance with the international and national instruments.

The adoption of the Law no. 235 and the approval of the Regulations on the organisation and functioning of the monitoring committee on the observance of human rights in the institutions which detain persons pursued the creation of a favourable framework for the creation

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[220] http://www2.ohchr.org/english/law/ccpr.htm
[221] http://www.un.org/documents/ga/res/39/a39r046.htm

of an independent system of enforcement of observance of human rights in the institutions where freedom is limited (penitentiaries, psycho-neurological facilities, special institutions of the police commissariats etc.) by the civil society, to prevent inhuman or degrading treatment and to observe the legislation in force. The continuous enforcement of this monitoring requires an efficient mechanism, with the participation of all decision makers in the human rights area.

The Law on the civil control over the observance of human rights in the institutions which detain persons has entered in force in February 2009 and pursuant to article 8 paragraphs 5 and 7 of the Law no. 235 from 13 November 2008, the monitoring committees must present reports after visits and annual concluding reports to the Centre for Human Rights. In spite of this, the information related to the organization of the monitoring committees and the reports prepared on the results of the visits have not been delivered by all second level public administration authorities as that is requested by law, whilst the received information is incomplete or contrary to the legal requirements.

Another aspect identified in the data received by some raion councils relates to the profile of the persons selected to represent the monitoring committees, some of them being incompatible with the requirements of article 3 paragraph 6 of the Law on the civil control on the observance of human rights in the institutions which detain persons.

The implementation of these legislative and normative acts shall be possible when the creation of the monitoring committees is done exclusively by representatives of the civil society. Pursuant to article 3 paragraph 6 of the of the Law on the civil monitoring of the observance of human rights in the institutions which detain persons members of the committees cannot be the persons who hold public functions, are public servants, judges, employees of the national defence bodies, state security and public order, lawyers, notaries and mediators. The inclusion of state employees in the composition of the committees may be interpreted as an immixture of the state institutions in the process of formation of these entities. From the ombudsman's point of view this provision must be enforced with maximum diligence to create a favourable environment for the functioning of the monitoring committees. Additionally, the public authorities have been informed of the fact that the selection of the candidates for the monitoring committees must take place with the observance of the gender balance and representation of ethnical groups and minorities.

The cooperation with the civil society is absolutely necessary in the context of integration of the Republic of Moldova into the European Union. It can be firmly stated that the intensity of the links with the civil society is expresses the level of monitoring and evolution of a state and the society in general. The participation of the civil society in this process shall be directly linked

to the role of this element of the civil society in the overall process of monitoring of the detention places.

Thus, on 25 July 2010 at the regional Cahul office the Centre for Human Rights has organised under the auspices of the project "Support in strengthening the National Torture Prevention Mechanism in accordance with the provisions of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment", a workshop with the subject „The torture and maltreatment phenomenon seen by public authorities". Issues have been discussed at the workshop, which deal with the direct involvement of public authorities in the prevention of maltreatment, including by means of creating necessary conditions to establish the civil control, as provided for by the legislation.

Taking into account the competences of the State Chancellery in the area of organisation and monitoring of enforcement of normative acts, this authority was asked to send to the Centre for Human Rights general data on the state of affairs in the area of enforcement of the Law no. 235 from 13 November 2008.[222] The information speaks of the defective enforcement of the Law on the civil control on the observance of human rights in the institutions which detain persons.

Certain deficiencies which these committees confront were discussed during the workshop at Causeni, on 3 December 2010. In this respect, the example of the monitoring Committee for detention places created in Leova raion is relevant. From its creation until present the Committee could not function due to lack of financial resources necessary for an efficient and continuous activity. This situation is valid for other regions where such Committees were formed.

In line with the above mentioned and the tasks of these committees, the ombudsman considers appropriate the involvement of the authorities to enforce the added value of the local public administration and the civil society in human rights protection and improve the activity of the national torture prevention mechanism.

On the international arena the cooperation in the area of torture prevention with other ombudsmen offices in European states is worth mentioning. Thus, during 9-15 May 2010 in Chisinau the cooperation project between the ombudsmen of Poland, Republic of Moldova and the French Republic Mediator was initiated with the objective "Partnership for Human Rights". The project is implemented within the Eastern Europe Ombudsmen Partnership Programme, members of the European Union, during 2009-2013, with the support of the Ministry of Foreign Affairs of Poland within the framework of "External Aid 2010".

[222] Law on the civil control over the observance of human rights in institutions which detain persons no. 235-XVI from 13 November 2008, "Official Journal", no.226-229/826 from 19 December 2008

In this respect, the Centre for Human Rights in partnership with the Ombudsman Office in Poland organised between 10 and 14 May a training seminar with the employees of the institution, where issues directly linked to the activity of the National Preventive Mechanisms of the both states have been talked.

Pursuant to the seminar organised in Chisinau, between 14 and 20 November 2010 a study visits was organised to Warsaw, Poland, which focused on the aspects of efficient organisation and management of the National Torture Prevention Mechanism and where the ombudsmen and personnel of the Centre for Human Rights have been involved.

Additionally, the launch of the project "European NPM Network" is worth mentioning, where the representatives of the Ombudsman Office from Moldova have actively participated. The general objective is to strengthen torture prevention at national level in all member states of the Council of Europe. The project is focused on four main areas of activity:

- Creation of a network of National Torture Prevention Mechanisms in Europe to promote sharing of experience, critical approach and creative thinking on the activity of these Mechanisms
- Promotion of cooperation between SPT, CPT and NPMs
- Creation of the National Torture Prevention Mechanism in accordance with the CPT, SPT standards etc.
- Promote the ratification of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

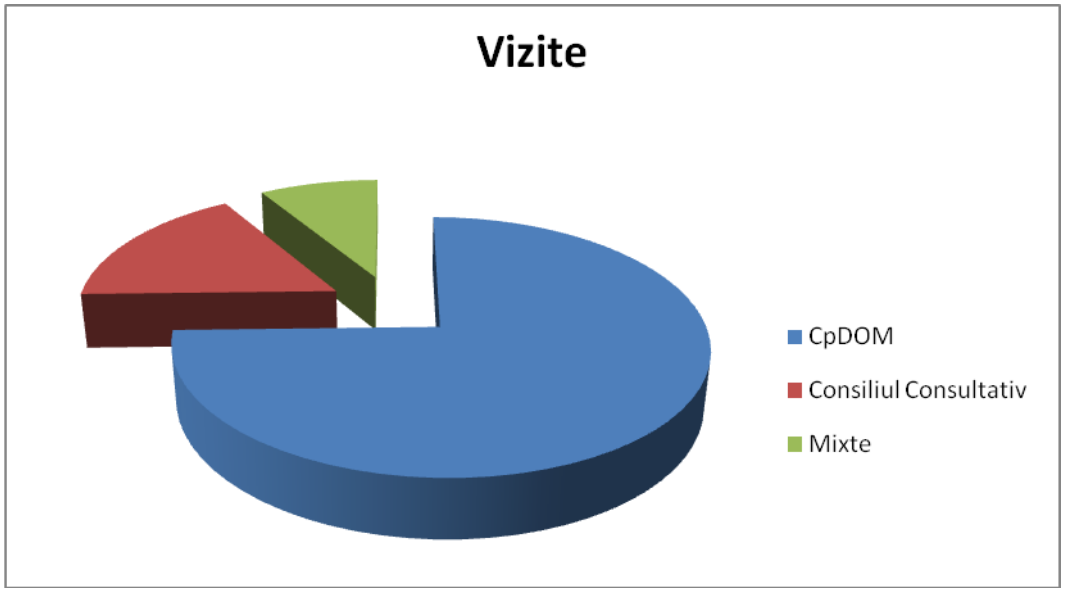
Thus, the persons who are directly involved in the National Torture Prevention Mechanism have participated at four workshops, thus confirming their will to get involved in the future in such actions and to create a European Network of National Torture Prevention Mechanisms, which would facilitate the sharing of data and experience.

1.13.5.Visits undertaken under the National Torture Preventive Mechanism in 2010

During 2010 under the National Torture Preventive Mechanism there have been 126 undertaken preventive and/or monitoring visits, out of which:

- 94 have been undertaken by the ombudsmen together with the employees of the Centre for Human Rights of the Republic of Moldova
- 21 have been undertaken by the ombudsmen together with the members of the Consultative Council;
- 11 have been undertaken by the members of the Consultative Council.

The above mentioned data is presented in the chart below as follows:



Additionally, disaggregated by visited institutions:

Table 1 – The dynamics of visited institutions

No.	**The category of visited institutions**	**2008**	**2009**	**2010**
1	Institutions subordinated to the Ministry of Interior	27	73	83
2	Institutions subordinated to the Ministry of Justice	13	41	38
3	Institutions subordinated to the Ministry of Health	2	6	2
4	Institutions subordinated to the Ministry of Labour, Social Protection and Family	1	3	1
5	Others		2	2
6	Total	43	125	126

The above mentioned data is presented in the chart below as follows:

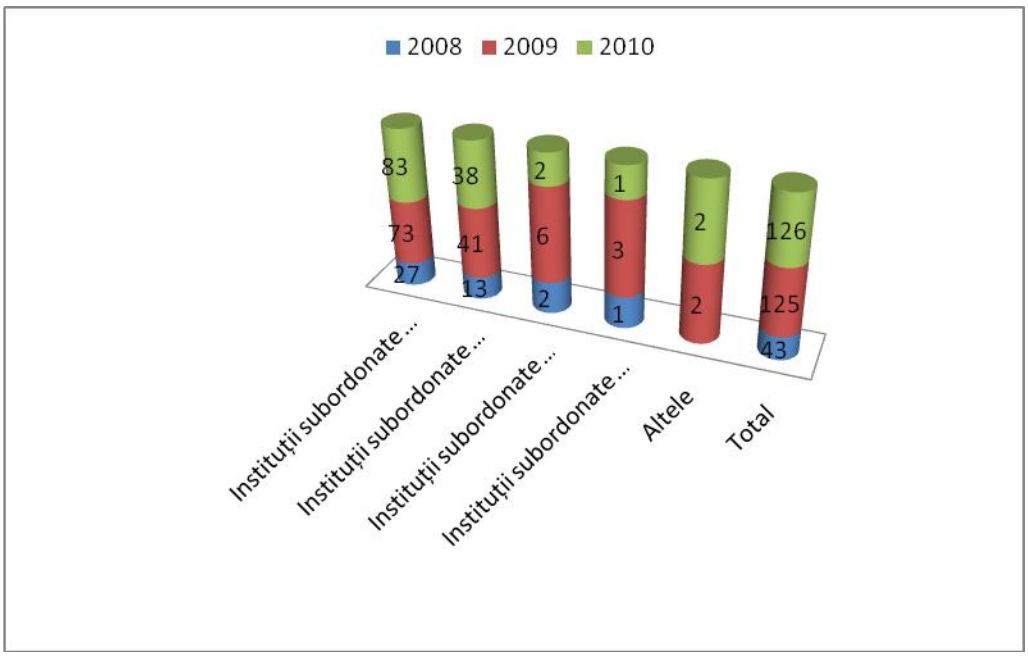


Figure 1 – the dynamics of undertaken visits at institutions

With respect to the reactions of the ombudsman as the National Torture Prevention Mechanism, it can be presented as follows:

Table 2 – Reactions of the National Torture Prevention Mechanism

N/o	**Type of act**	**2008**	**2009**	**2010**
1.	Notifications (article 27 of the Law on ombudsmen)	2	11	34
2.	Requests (article 28 paragraph 1 letter b) of the Law on ombudsmen)	2	17	17

This data is presented in the chart below as follows:

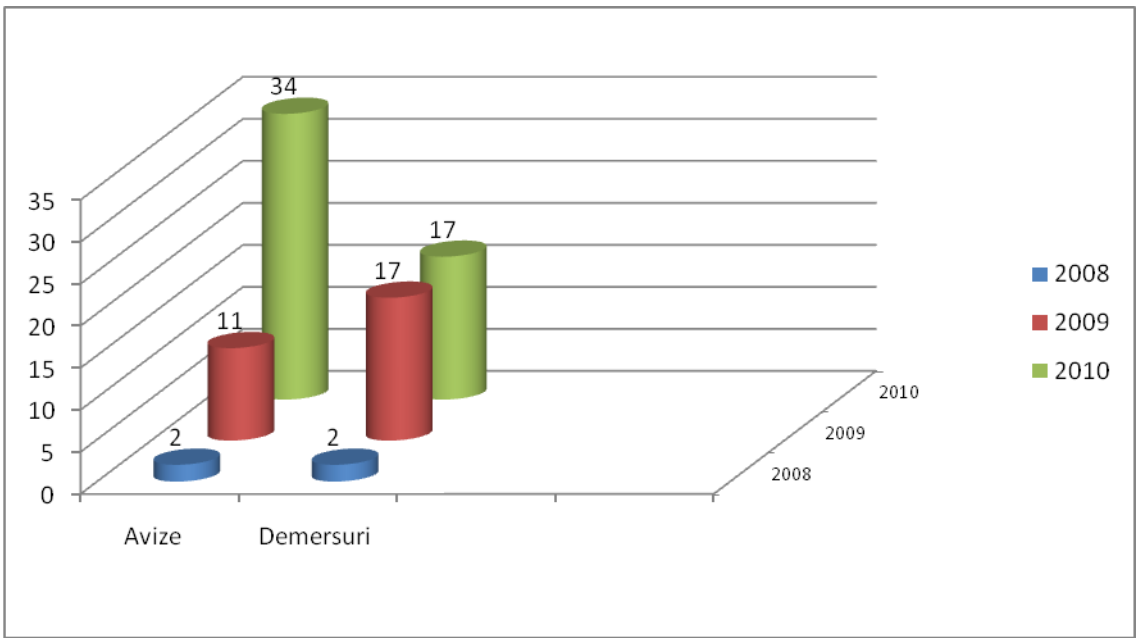


Figure 2 – The dynamics of the NTPM reactions

Visits undertaken to the institutions subordinated to the Ministry of Justice

The need for reforms

The penitentiary system must ensure mechanisms to protect from any possible limitations, identify, promote and apply accordingly a series of internal regulations to enforce the legislation which protects human rights with the purpose to discourage and penalise abuses.

A tendency has been registered to organize and manage penitentiaries, directed to ensure necessary conditions for implementing the various levels of detention sanctions, manage educational and social reintegration activities, labour and other lucrative activities, accommodation, food, adequate medical assistance, individual and collective hygiene, as well as implementation of all security measures as prescribed by the legal provisions for each category of persons in detention.

The absolutely necessary substantial reform of the penitentiary system includes improvement of the detention conditions, with particular emphasis on re-education and re-socialisation and - last but not least - change of mentality. All of it requires political will, radical changes in the professional training of employees and, certainly, substantial funds.

The change of accents in the management of the penitentiary system is imperative, starting from ensuring physical detention (isolation) of the detainee and ending with his reintegration into the society.

In 2010 full scale monitoring visits have been undertaken in the penitentiaries no. 3, Leova, no 18, Branesti, Orhei, followed by repeated visits. This allowed the monitoring of the measures taken by the authorities after the recommendations formulated by the ombudsman.

Mortality is in itself an evaluation criterion of the state of affairs in the penitentiaries of the country, especially with respect to medical assistance.

Table 3 – Number of cases of decease of detainees as a result of a disease

Name of disease	2005	2006	2007	2008	2009	2010
Tuberculosis	17	8	17	9	7	10
HIV/TB	8	4	8	6	4	3
AIDS	1	1		2	3	
Cancer	9	1	2		1	7
Neurological diseases	1	1		2		1
Diseases of the cardiovascular system	16	16	8	13	11	15
Breathing diseases	3	1	3	1		
Digestive diseases	3	5	6	2	3	1
Diabetes	1		1	1		
Cirrhosis	2	5	5		3	1
Traumas, intoxications	7	6	5	4	3	1
Suicides	4	3	2	5	6	5
Others	2	1		3		
Total deceased	**74**	**52**	**57**	**48**	**41**	**44**

Source: the Department of Penitentiary Institutions (DIP)

Compared to the previous year the number of hunger strikes has increased considerably: from 473 until 1074 in 2010. Additionally, during 2010 there have been 541 cases of self-mutilation.

In fact, the detainees express their disapproval of the actions of the administration of the penitentiaries, the criminal investigation body, as well as the disapproval of the decisions of the courts of law, issued against them in the criminal cases.

In this respect, granting rights, advantages and creation of a civilised detention, combined with the strict compliance of obligations, interdictions and restrictions imposed by the statute of enforcement of penalties by convicts, would reduce their desire to recourse to such actions. Because the majority of the detainees are interested to have their sentences served in the best possible conditions and leave the penitentiary.

The rights of convicts are more and more affirming on the European level, the majority of human rights trials, initiated at the European Court of Human Rights, being resolved in favour of

the convicted persons due to the non-application or 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 the Concept is to create decent detention conditions and fulfil the international provisions, reformation of the process of education of the convicted, their re-education, specialisation and reorientation of human resources for activities in the new conditions.

One of its important aspects is the need to implement the provisions of article 175 paragraph 9 and article 318 of the Enforcement Code by means of constructing 8 arrest houses in different regions of the country.

The limitation of the impact of the penitentiary environment on the detainee (behaviour, awareness, tendencies etc.) must be a rule for the penitentiary system and not an exception available solely through the effort of certain public servants.

From the ombudsman's point of view the issues can be accordingly interpreted if concept reforms are managed. The tackling of the problems of the penitentiary system at the current level and intensity shall not improve the situation.

The allowance offered to the person when leaving the penitentiary is undoubtedly necessary and very important as perspective (in its entirety) for the ones "returned" to the society. However the output and the method of its interpretation lead to the conclusion to its irrational nature. The state covers the upkeep and temporary support expenses for former convicts and neglects the burden of re-education and reintegration of the offender.

From the point of view of the ombudsman the offering employment opportunities may be the very change of concept mentioned above in its important multilateral level: awareness, re-integration into society and income.

Detention condition

In 2010 the activity of the National Torture Prevention Mechanism started its activity on 17 February with a monitoring visit in the penitentiary institution no. 3, Leova. Additionally, the monitoring of the observance by the administration of the institutions of the recommendations send as a result of previous visits has been planned. The visit was organised also in the context of receipt by the ombudsmen of complaints from certain convicts who went on hunger strike as a result of the actions/inactions of the representatives of the administration and the inadequate detention conditions.

The observance of the minimal housing space (4 sqm) in the institution's buildings remains one of the inconvenient problems and became a system deficiency of the penitentiaries all over the country. Thus, it has been established that the housing of the dormitories is not proportional to the number of detainees who live in these rooms.

Pursuant to the data offered by the representatives of the special service at the day of visit there were 315 detainees. Thus, dividing the area of the dormitories to the number of persons held there, a breach of the provisions of article 225 of the Enforcement Code of the Republic of Moldova was acknowledged.

In this respect, the members of the working group insist during all their visits on the need to rationally distribute the detainees in all the living spaces the institution has and thus observe the requirements on their separation on categories.

Pursuant to the Report of the Government of the Republic of Moldova following the visit undertaken by the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment of Punishment from 10-12 June 2001, approved on 9 November 2001, the Committee acknowledges the remarkable efforts of the penitentiaries' administrations, which are welcome and supported. After the respective visit the Committee reminded in the more recent similar activities from 14-24 September 2007 and 27-31 January 2009[223] on the need of presence of certain fundamental life conditions, which should in any circumstances, even in a serious economic state of affairs, be ensured by the state to the persons under its care.

The same situation was attested in the visit to the Penitentiary no. 13, Chisinau municipality on 9 September 2010, in some of the cells the housing spaces being disproportionate to the number of detainees. At the time of the visit in cell 38 there were eight persons, whilst it had a total area of 24 sqm. This situation was repeatedly acknowledged during the visits of the employees of the Centre for Human Rights to the criminal investigation isolator from the Chisinau municipality. Such a state of affairs was registered as well in the visit from 19 May 2010 to the Penitentiary no. 7, Rusca, where in one of the cells of building no. 2, with an area of 15,5 sqm there were six persons, whilst in Penitentiary no. 4 from Cricova at the date of the visit on 27 April 2010 in the housing building no. 7 there were over 20 persons in a single room of 65 sqm.

Overcrowding is a subject of direct relevance for the mandate of the ombudsman as the National Torture Prevention Mechanism, who repeatedly acknowledged the overcrowded penitentiaries in the country. All the services and the activities in a prison may be negatively influences if it accommodates more detainees than the maximum amount for which it has been

[223] http://www.cpt.coe.int/en/states/mda.htm

created, whilst the quality of life is significantly hampered. Moreover, the level of agglomeration in a prison or in one of its parts may be inhuman or degrading from the physiological point of view.[224]

With respect to Penitentiary no. 3, Leova, the accommodation rules and the basic needs coverage is well behind minimum requirements. After the review of the disciplinary isolators, quarantine and the rooms reserved for persons held pursuant to the provisions of article 206 of the Enforcement Code of the Republic of Moldova, a low temperature was registered in the cells. After the interviewing of the responsible employees it has been found out that currently the heating system does not allow uniform heating of all of the penitentiary's rooms. Additionally, pursuant to the activity report of the Penitentiary no. 3, Leova, presented to the Department of Penitentiary Institutions, the list of organisational measures taken during the year contains repair works of the heating system and the connexion of the disciplinary isolator to the central heating system. Thus, the visit from 17 February 2010 determined the working group to surprisingly acknowledge the abnormally low temperature in the disciplinary isolator. The very low temperature below 18º C, specified in article 466 of the Status of enforcement of sentences by convicts was the source of hunger strike initiated by convicts, who have also contacted the ombudsman. In spite of this, the only issue included in the list of objectives to be accomplished in 2010 with respect to the normal functioning of the heating system was the replacement of the central boiler exhaust pipe.

Pursuant to this finding the ombudsman repeatedly expressed its concern with respect to such state of affairs, where the organisational measures are not that dependant on the financial situation. Indeed, nothing and never shall exonerate the state from its responsibilities for which there is commitment taken when adhering to international treaties, including the risk to be convicted by the ECtHR.

Thus, there have been also depicted inconsistencies in the process of ensuring detainees with spaces which would comply with the minimal treatment conditions and the recommendations of the international organisations. The sanitary and hygienic conditions of the housing buildings must be improved, some of the walls being covered with mould. During the visit the detainees have mentioned the lack of blankets and mattresses, which, pursuant to article 470 of the Status of enforcement of sentences by convicts, must be provided by the administration. The artificial light from the living spaces is not sufficient to read or work, which

[224] Selections from the Second General Report [CPT/Inf (92) 3]

breaches the set of minimal detention requirements for detainees (Resolution adopted by the UN on 30 August 1955).[225]

In 2010 the ombudsman continued to process the information coming through the means of special communiqués. Pursuant to this data during the year there have been 77 registered cases in penitentiary no. 3, Leova of declared hunger strike, out of which in 43 cases the detainees have not agreed with the actions / inactions of the penitentiary's institution. Additionally, there have been 35 cases of self-mutilation out of which 16 were due to the disagreement with the actions/inactions of the administration. The penitentiary no. 3 in Leova registered the highest number of hunger strikes during 2010, those being 77 cases in total. The administration of the penitentiary institution received on numerous occasions recommendations to have better oriented relations between the personnel and the detainees.

In this respect and in the interests of the reform of the penitentiary system it would be necessary to that the professional training of the personnel be significantly strengthened, the frequency being unfortunately frequently only formally treated, sometimes even ignorant, a fact which is reflected in the daily activity of the penitentiary's personnel. Thus, according to the Recommendation no. R (2006)2 of the Committee of Ministers of the Council of Europe[226], pursuant to which the principles of the European Rules for Penitentiaries have been adopted, the Committee referred to the crucial role of the organisation of professional training courses and initial training courses with respect to the general and special duties of the personnel of penitentiaries.

Another aspect depicted by the ombudsman during the visit to the respective penitentiary was the way the scheduling of convicts' trials at the Leova District Court with respect to their applications. With respect to the enforcement of the sentence, there have been certain organisational elements depicted which, from the point of view of the ombudsman, generate inconveniences in the process of escorting the convicts.

Thus, pursuant to the decisions of 12 court rulings registered in the commissariat's secretariat, issued by one of the investigating magistrates and examined during the visit by the ombudsman, the detainees who were supposed to be scheduled due to the review of their complaints are transferred according to an itinerary: first the detainee is scheduled from Penitentiary no. 3 from Leova to Penitentiary no. 5 from Cahul, subsequently he is escorted from the Penitentiary institution no. 5 to the provisional detention isolator of the Leova Police Commissariat. The enforcement of these rulings is on the shoulders of the Department of

[225] www.dejure.md/library_upld/d218.doc
[226] https://wcd.coe.int/wcd/ViewDoc.jsp?id=955747

Penitentiary Institutions and the administration of the penitentiaries involved in this process. The stage of conclusion of the transfer is however on the subunits of the Ministry of Interior, who escort the detainee to the trials room.

From the perspective of the application of the less punitive criminal law in case of irrevocable penalties as prescribed by article 10/1 of the Criminal Code of the Republic of Moldova and the perspective changes of the chapter related to the review of these cases by the courts of law, the ombudsman recommended the authorities the initiation of organisational changes by means of creating an escort department in each penitentiary, which shall ensure the escort of detainees within the city. In this respect the ombudsman considers that the initiative shall considerably improve the process of rational use of administrative resources and as an outcome shall have a positive impact on all the parties involved in this process.

The improvement of the detention conditions in the penitentiary system of the country is one of the priorities of the ombudsmen as a National Torture Prevention Mechanism and one of the main concerns of the Department of Penitentiary Institutions.

During the undertaken visits discussions are held both with the detainees and the personnel of the penitentiaries, whilst the findings and recommendations of the ombudsmen are often sent to the respective penitentiaries' administration and, in certain cases, to the upper authorities.

Thus, as a result of the recommendations being sent to the Ministry of Justice, the Penitentiary no. 3 in Leova, there have been essential changes made in the detention conditions, which have been tackled in the latter monitoring visit from 8 September 2010. The heating system was refurbished, with heating radiators being installed in the cells which ensure heating of the cells during winter. The disciplinary isolator was equipped with new lavatories to ensure the continuous supply with water for the detainees in cells, as well as to offer the detainees the possibility to maintain their personal hygiene. Cover refurbishment was managed in housing spaces and the walls have been painted and presently have an esthetical look. Current repairs have been managed for lighting systems in the penitentiary. There have been more lamps installed, aimed to ensure the light in the respective rooms. A positive evolution was registered with respect to ensuring the convicts with new mattresses and blankets. Generally speaking, after the intervention of the ombudsman to the responsible minister the situation has radically changed.

With respect to the feeding of the convicts it must be mentioned that the provisions of the domestic law are compliant with the provisions of international standards.[227] The feeding of convicts takes place from the state budget resources, with the observance of the minimal standards approved by the Government. The convicts are ensured with food three times per day, at scheduled hours and free of charge. The pregnant convicted women, the women who breastfeed, the minors, the convicts who are working under hard and harmful conditions, as well as seek convicts, as prescribed by the doctor, and persons with disabilities of 1st and 2nd level of gravity receive a supplementary food ratio. At the same time, the law prohibits as constraint measure limitation of the quantity, quality and caloric value of the food given to convicts. The convict is ensured with permanent access to drinkable water.[228]

To implement these measures the Government adopted the Decision on the minimal daily feeding ratios and personal hygiene belongings for convicts, no. 609 from 29 May 2006, there having been established special food ratios for certain categories of convicts.[229]

Although during 2010 the feeding of the convicts has improved, this problem continued to be tackled during the monitoring visits organised in the penitentiary institutions. Such complaints have been registered in its most in the penitentiary institution no. 17 from Rezina.

During the visit managed at the penitentiary institution no. 17 from Rezina when discussing with the convicts they affirmed that the food is of a very low quality and is offered in insufficient quantities, it is one and the same each day and is prepared under conditions below minimal hygienic requirements.

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[227] Paragraph 22 from the Recommendation of the Committee of Ministers of the member states related to the European Rules on Penitentiaries REC(2006)2, adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies, https://wcd.coe.int/ViewDoc.jsp?id=955747: Prisoners shall be provided with a nutritious 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 of Standard Minimum Rules for the Treatment of Prisoners and the recommendations pertinent to their application, 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.

[228] Article 228 of the Enforcement Code no. 442 from 24.12.2004, "Official Journal" no. 34-35/112 from 3 March 2005

[229] 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.

The placement of the kitchen as well as the hygienic condition of the boilers where the food is prepared is another deeply alarming issue for the ombudsman. During the discussion with the convicts they had complained on the quality of food and constant absence of meat. Thus, the members of the monitoring group have been informed by the employees of the penitentiary that the detainees are ensured with meat or fish on a daily basis and that the penitentiary's menu contains meat. The lack of meat was registered after checking the food boilers, a fact additionally confirmed by the complaints of the convicts. This took place even with the institution's warehouse having meat. The fact dictates on the breach of the provisions of the Government Decision no. 609 from 29 May 2006, which provides for that each convict must consume 85 grams of meat or fish. The competent authorities has however hesitated commenting on the quality of work of the responsible personnel (in its disciplinary aspect), which leads to reasonable doubt on the objectivity and efficiency of the reactions to the recommendations of the ombudsman.

Pursuant to the Order of the Ministry of Justice no. 512 from 26 December 2007 on the approval of the Regulations on the organisation of the nutrition of convicts in penitentiaries, the chief of canteen must ensure the monitoring of the observance of the quantities of products in boilers, the technology of food preparation, the food quantity, quality and safety.[230]

Thus, the lack of meat products and, eventually, the negligence of the administration may constitute a deficiency in the process of food supply. In the *Ostrovar vs. Moldova case* the Republic of Moldova was convicted for the violation of article 3 of the ECHR on the ground of inadequate quantity and quality of the food offered to the applicant.

With reference to the above mentioned incident the Department of Penitentiary Institutions informed the ombudsman on the fact that the ensuring with meat and fish takes place based on the currently available possibilities. In the meantime, the contacted authorities have mentioned that, irrespective of the difficult financial situation, during 2010 the detainees of the Penitentiary no. 17 in Rezina have been ensured with meat products in an amount of 75% of the prescribed ratio and with fish products in an amount of 80% of the prescribed ratio. In this respect, the Ministry of Justice informed of the expenses covered during 2010. Thus, for 2010 there have been allocated 24.05 million MDL to feed the convicts, whilst the needs for the same period presented to the Ministry of Finance in the draft Law on budget where of 29.5 million

[230] Order of the Minister of Justice no. 512 from 26 December 2007 on the approval of the Regulations on the management of nutrition of convicts in penitentiaries: „The products are placed into the boiler only in the presence of the duty officer from the penitentiary and in line with the amount provided in the boiler preparation checklist. In case lacks or supplements of products are found, the duty officer in the penitentiary is obliged to report this case to the deputy chief on logistics (the chief on logistics) and the chief of the penitentiary to further take the necessary measures".

MDL. For the feeding of one detainee, there have been allocated 10.24 MDL per day during 2010, whilst the need being of 12.35 MDL. Under such circumstances, the grounds for justifications on the impossibility to ensure detainees with meat and fish coming from the administrations of penitentiary institutions were frequently based on the lack of funds.

As a result of the recommendations sent to authorities to ensure with food the detainees as prescribed by law, the Ministry of Justice, jointly with the Department of Penitentiary Institutions gave assurances that they take all the efforts to ensure organisational measures and comply with the recommendations proposed by the ombudsman.

In this respect, based on the data offered by the ministry, in case of lack of certain food products, their substitution with others takes place based on the Order of the Ministry of Justice no. 100 from 7 March 2007, which in turn does not diminish the quality and the caloric value of the food. If there is no meat of fish products, the menu is complemented with pork or cow meat tins. During 2009-2011, additionally to the minimal nutrition for convicts, the cereals compartment was supplemented with rice, buckwheat, beans, peas etc.

The Ministry of Finance received reasoned requirements on the amount of 29409.2 thousand MDL to be included into the draft Law on budget for 2011 at the chapter "nutrition of the special contingent", including 20409.2 thousand MDL to be covered by the state budget and 9000.0 thousand MDL to be covered from the funds gathered by the Ministry of Justice from the apostille services, to avoid breach of the convicts nutrition legislation.

Thus, it must be mentioned that the difficult economic situation is an argument frequently presented as justification of the breach of human rights in the 3rd countries. The Court mentioned in a series of cases that the lack of resources may not justify in principles the detention conditions in prisons, which do not comply with the requirements of article 3 of the ECHR. In this respect, the economic condition of a country may explain many of the cases of breach of article 3 of the ECHR, but cannot in any way justify them. The case law of the European Court of Human Rights does not apply taking into account the economic situation of a country when deciding acceptable the breaches of human rights.

The discussions with the administration of the penitentiaries under scrutiny (Penitentiary no. 3, Leova, Penitentiary no. 18, Branesti) have revealed that it is impossible that the detainees be ensured with food as provided by the variety of products provided for by the Government Decision no. 609 from 29 May 2006.

With reference to the spaces where the food is prepared, it must be mentioned that the inadequate sanitary state of affairs in the kitchen at the moment of the visit to the Penitentiary no. 4 from Cricova from 27 April 2010, acknowledged by the members of the monitoring group, have not needed any confirmation from the experts in the field, it being too obvious. At the same

time, the members of the working group have visited the canteen of the institution. The administration of the penitentiary ensured that the nutrition ratios comply with the Government Decision no. 609 from 29 May 2006 on minimal daily nutrition ratios and personal sanitary and hygiene belongings of convicts. The convicts have declared during the discussions that the food is of poor quality and small quantity; it is one and the same every day and is prepared under inadequate hygiene conditions. Meanwhile, there has been also positive feedback from the convicts on the quality of food. From the ombudsman's point of view, the poor nutritional value and the low food quality, as well as the breach of the food hygiene rules are genuine preconditions for digestive diseases in the case of convicts.

In these circumstances the ombudsman has concluded on the insufficient and inefficient observance of the duties by the medical service, whose personnel is obliged to regularly verify the sanitary and hygienic state of the penitentiary's buildings and, if necessary, present the chief of the penitentiary a report with recommendations to improve the situation.[231] At the time of the visit the table of food repartition (the menu) from the canteen was not present on the information board of the institution's canteen. The table must indicate the calories and the products served during the day. Additionally, the canteen room designated for the preparation of hot food was lacking the table of food repartition. According to paragraph 32 of the Order no. 512 from 26 December 2007 on the approval of the Regulations on the organisation of the nutrition of convicts in penitentiaries, the food repartition tables are developed by the chief of the Logistics Service of the penitentiary along with the chief of the medical unit and the chief of the canteen. The food repartition tables are signed by the deputy chief on logistics of the penitentiary (the chief of the logistics service) and by the chief of the medical unit. Additionally, the food repartition tables are approved by the chief of the penitentiary.

Also, the representatives of the administration have declared that some of the convicts do not have their food taken in the canteen, but after the distribution of food they go to their cells to serve it. The convicts have the right and the possibility to receive packages with supplies, parcels and banderols and keep food products, with the exception of those which require thermal preparation before being consumed and alcoholic beverages in limited amounts.

Thus, it has been found that the canteen is in a disastrous state, which did not allow the preparation of food under adequate sanitary conditions. The ventilation was absent - the installation is no longer functional. As means of washing the dirty dishes were several big baths,

[231] Article 252 of the Enforcement Code no. 442 from 24 December 2004, "Official Journal" no. 34-35/112 from 3 March 2005

which at the time of visit were in a unsatisfactory hygienic condition, whilst the floor was all with water.

The room reserved for hot food preparation was also lacking hygiene. The food was prepared in high capacity boilers and was distributed by means of a crooked aluminium pan, having a long wooden handle. The floor was excessively wet. Additionally, the necessary gear was absent. In the vegetables section there were two big baths installed, which were substantially worn out. Pursuant to paragraph 20 of the Order no. 152 the evacuation of waste waters takes place exclusively through the closed sewage, a provision not observed, as after the cleaning of vegetables the water is thrown directly into the evacuation channel.

With respect to the presented facts the ombudsman intervened with the recommendation to supplement these gaps and has been subsequently informed of the development of expenses estimation by the institution's administration to arrange repairs in the food preparation sections and in other compartments of the canteen. Additionally, the authorities have informed of the equipment of the respective rooms with the necessary gear to manage cleaning and distribution of food.

Under these circumstances the lack of limitations on packages with supplies, parcels and banderols for convicts, and the possibility to keep food products, with the exception of the ones which require prior thermal preparation before consumption and alcoholic beverages seem to be beneficial.[232] However, the monitoring visits have revealed that some of the convicts are neglected by their family or friends, other come from families too poor to send them such packages. The ombudsman is expressing his concern with the cases – although rare, but which continue to exist – where the administration of penitentiary, aiming at demonstrating their superiority over the convict, hands over with delay the packages to detainees.

With respect to the sanitary conditions, the lighting and ventilation, these issues persist in the majority of the living spaces of the penitentiaries of the Republic of Moldova, with the exception of the penitentiary institutions no. 1 in Taraclia city and no. 7 in Rusca village, Hincesti.

The Republic of Moldova has inherited old penitentiaries, with degraded buildings, of the camp type, as required by the soviet standards. These types of penitentiaries do not comply with the requirements in the national and international rules in the field, whilst the reduced financing possibilities of the state do not allow for their reconstruction or renovation.

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[232] Article 218 of the Enforcement Code no. 442 from 24 December 2004, "Official Journal" no. 34-35/112 from 3 March 2005; article 87, 163 letter a) from the Status of enforcement of sentences by convicts, approved by means of Governmental Decision no. 583 from 26 May 2006, „Official Journal", no.91-94/676 from 16 July 2006

The penitentiary institutions, with the exception of the ones with criminal investigation isolator such as the Penitentiary no. 1 from Taraclia, the instalment of convicts takes place in high capacity bedrooms, which do not fully possess the infrastructure the convicts could use every day: sleeping space, day time space and sanitary installations. The convicts are placed in extremely compact, dark, humid spaces, without ventilation and which are full of cigarette smoke. In some penitentiaries the beds in two levels significantly impede natural light in the living spaces.

In some institutions under scrutiny, particularly the penitentiary institutions no. 6 from Soros, no. 3 from Leova and no. 18 from Branesti, the hosting of convicts takes place in large dormitories which contain all or most of the daily used infrastructure by convicts, such as: the sleeping area, the day time area and the sanitary equipment. The ombudsman has constantly formulated objections with respect to the principle on which these living conditions are based in closed prisons. These objections are even bigger when the convicts are hosted in very compact spaces and which are not cleaned. Undoubtedly, the financial factors determine until now the existence of collective detention spaces instead of individual cells. However, there are little arguments in favour of the system where tens of convicts live and sleep together in the same dormitory.

The risk of intimidation and violence is high. Thus, such arrangements facilitate the development of subcultures. These practices may make the effective control of the administration be extremely difficult, even impossible. Especially, in the case of certain riots, there is not possible to eliminate the external interventions that imply considerable use of force. Using such methods as appropriate housing of each detainee, based on the case by case evaluation of the risks and needs also becomes almost impossible. All these issues are severely felt when the number of detainees oversteps a reasonable quota. Moreover, in such a situation the excessive use of common installations, such as washing basins and toilets and insufficient ventilation for such a large number of persons often leads to deplorable detention conditions. The ombudsman underlines that the fact that the switch from large dormitories to smaller housing spaces must be ensured with other measures which would guarantee that the detainees are outside their cell during a reasonable part of the day and are busy with different motivating activities.

Sometimes, during the visits there is an acknowledgment of existence of equipment placed in front of the windows, which impede the access of the detainees to the natural light and stop the fresh air from entering the dormitories. The ombudsman totally accepts that in the case of some detainees there is a need for special security measures designed to prevent the risks of formation of certain networks and / or of criminal activities. However, such measures must be an

exception and not a rule. This entails the examination by the competent authorities of each case and determination if the special security measures are indeed justified for that particular case. Moreover, even if such requirements are imposed, they should never impose on the respective convicts the privation of natural light and fresh air. These are essential elements of life, which all people are entailed to have access to. Moreover, the lack of these elements generates favourable conditions for diseases, especially of the tuberculosis.

Thus, during the visit to the Penitentiary no. 2 from Lipcani on 29 October 2010, the living space designated for minors there have been found windows which do not allow the access of natural light. The ombudsman recognises that the creation of decent living conditions in a penitentiary may cost substantially and that, in its most, the improvement of the living conditions is mainly impeded by the lack of funds. However, the elimination of equipment which covers the windows of living spaced designated for convicts (and instalment, in exceptional cases where those are necessary, of other security equipment with an adequate form) should not imply high expenses and, at the same time, should have beneficial effects for the persons under consideration.

During the visit from 13 July 2010 at the Penitentiary no. 6 from Soroca, namely sectors 7 and 8, the windows of the living spaces had metal shutters installed on them, excluding thus the access of natural light into the cell. Additionally, the living spaces had no light bulbs, whilst the disciplinary isolator cells had small windows, which do not comply with international standards. These limitations are incompatible with the requirements of the Committee against Torture, with the provisions of Recommendation no. R(2006)2 adopted by the Committee of Ministers of the Council of Europe on European Penitentiary Rules, Resolution no. 663 C of the UN Economic and Social Council on the set of minimal rules for treating detainees, UN General Assembly Resolution 43/173 on the principles of protection of persons under any forms of detention. The ombudsman has contacted the authorities to eliminate these gaps, informing of the fact that pursuant to international and regional detention standards, everywhere where detainees are asked to work and live, the windows must be sufficiently large to allow the convicts read and write without affecting their eyesight, benefiting from natural light under normal conditions. The same requirements are with respect to artificial light. The windows must be designed to allow entrance of fresh air in the cell.

The Department of Penitentiary Institutions communicated that the disciplinary isolator from the Penitentiary no. 6 in Soros is damaged and its activity was stopped to observe the detention conditions. Even under such circumstances during the next visits the respective building was hosting persons. In this respect, the ombudsman expresses his concern with respect to the uncertainty and ambiguity between the declared actions and the further findings.

An even more serious situation was found in the case of quarantine cells, transit cells and the cells of the disciplinary isolators in penitentiaries. Immediately after registration 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 determine his state of health and labour capacity and prescribe individual treatment if necessary[233].

In the penitentiary institution no. 3 from Leova the quarantine cell has excessive humidity and abundant cigarette smoke. In fact, the detention conditions in the quarantine have drawn the attention of the members of the international delegations who have inspected the penitentiaries from the Republic of Moldova.[234]

During 2010 the ombudsman received complaints from several detainees, who have affirmed that they are sometimes threatened with maltreatment if do not agree with the actions / inactions of the administration. Some of the convicts declared that the relations between the personnel and the convicts are formal and distant, the personnel has an arbitrary attitude and consider verbal communication a secondary element of their work.

However, the fact in the Penitentiary no. 4 from Cricova during the visit from 27 April 2010, 36 convicts were isolated due to the existence of security issues (difficulties with other convicts), demonstrates that there is a degree of tension between them. Pursuant to article 206 of the Enforcement Code and article 129-135 of the Statute of enforcement of sentences by convicts if personal security danger arises for the convict he has the right to file in to any of the decision makers in the penitentiary an application to ensure his personal security. In such cases the administration of the penitentiary is obliged to take immediate steps to ensure the personal security of the detainees, otherwise shall bear the full responsibility for the life and health of the convict. When isolating the convicts on personal security reasons the cells used in penitentiary no. 4 from the group of disciplinary isolator cells, those were in an unsatisfactory condition at the time of the visit. The duration of the isolation of the convict on security reasons cannot exceed 30 days, however it can be prolonged with the consent of the prosecutor who monitors the observance of laws in the respective penitentiary institution.

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[233] Article 200 paragraph (6) of the Enforcement Code no. 442 from 24 December 2004, "Official Journal" no. 34-35/112 from 3 March 2005

[234] 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.

With respect to the above mentioned penitentiary the ombudsman established during the preventive visit from 27 April 2010 the incompliance of the detention conditions in the disciplinary isolator of the institution with the legal provisions in the field. Thus, the activity of cell no. 3 was stopped on the reason that it is not compliant with the lighting and ventilation requirements.

However, it is still remarkable that certain convicts have mentioned the beneficial changes of the behaviour of the employees of the penitentiary system.

In the cells of the disciplinary isolator there are people with respect to whom there disciplinary sanctions applied based on the decision of the administration such as incarceration, as well as the ones temporarily held until the coming of the chief of the penitentiary. Along with them, due to lack of other spaces, the respective cells also hosts persons isolated by the administration of the penitentiary due to the existence of danger for the personal security of the convicts.

During the visit from 29 September 2010 at the Penitentiary no. 13 from the Chisinau municipality the ombudsman identified inconsistencies of cell no. 47 with the national and international standards in the area, which at the moment of the visit was used as pound. Thus, the walls of the cell were dirty, the floor was cold, made out of concrete, and there was extensive humidity. The respective cell and many others in this penitentiary are in the basement of the institution, the level of humidity is very high, which in turn generates low temperatures. Another identified deficiency is the impossibility of convicts to have their natural physiologic needs satisfied under decent and sanitary conditions, as provided by article 226, paragraph 1 of the Enforcement Code of the Republic of Moldova. Thus, the toilets are placed in the immediate vicinity of the sleeping beds. Also, the detainees are not ensured at all times with drinkable water and do not have the possibility to maintain their daily hygiene. The tap which ensures drinkable water is over the toilet, the water pouring directly into the toilet and serving at the disposal of waste waters.

Such a situation was registered during the preventive visit in the Penitentiary no. 11 from Balti municipality, organised on 20 August 2010. It has been determined that these cells are very small, have a sanitation access point in a corner, which, at the same time is a genuine source of infection. In the cell, the upper part of the toilet there is a tap, which is at the same time used as sewage disposal facility and as source of washing water. Not always this part is separated from the rest of the cell, which does not allow the convicts benefit from the necessary privacy.

The cumulative effect of these conditions may be extremely negative for the convicts. In the penitentiary institution no.8 from Bender the cells of the isolator have not been exposed to

repair works for a long period of time. Moreover, the convicts in these cells cannot serve diner due to inadequate hygiene with no available tableware.

In some of the cells the windows with direct access to natural light are absent, these being covered by other equipment and constructions, in others the windows are covered with drilled metal plates. In this respect during 2010 the member of the Consultative Council Mr. Veaceslav Ursu has undertaken two monitoring visits within the National Torture Prevention Mechanism in the penitentiaries of the Bender municipality: on 11 may 2010 in penitentiary no. 12 and on 12 July 2010 in penitentiary no. 8. During the visits managed in the two penitentiary institutions the same issues have been identified as in the case of the majority of penitentiaries in the country: the detention spaces and the housing are overused and need capital repair works to created detention conditions compliant with the national and international standards.

The summary of the visit to the penitentiary no. 12 contains a list of deficiencies on observance of detention conditions. Thus, the worst detention conditions have been found in the cells situated on the last floor of the living building. Due to the damaged and overused roof and as a result of intensive fallouts the water penetrates into the interior. The sewage which is used to evacuate fallout water goes into the toilet of the living building and during intense fallouts the room where the toilet is located is filled in with water. Due to these sewage pipes in the living buildings there is unpleasant smell at all times and there is a permanent source of infection. After the intervention of the ombudsman this issue was resolved.

There have been found similar issues in the penitentiary institution no.8, the housing buildings are overused and capital repair works are needed in the living areas. At the same time the administration of the penitentiary constantly takes measures to observe the detention conditions.

The discussions with the detainees from the penitentiaries in the country have revealed that often the explanation of the rights and duties of the convicts during their stay in the quarantine is limited to signing of certain papers where the pertinent information is present, but without explaining the essence. And all this takes place in spite of the fact that the period of their stay in quarantine is of 15 days, they should be informed in the state language or another language they comprehend the provisions of the Criminal Code, pertinent data to the enforcement of the sentence as provided by the Enforcement Code and the internal Regulations of the penitentiary, the duties and prohibitions, the use of security measures, which may endanger the life or health of convicts, cases when force, the special means and firearms can be used. Meanwhile, all the visited penitentiaries confirm lack of exhaustive data on the information boards installed in the living buildings, where the updated information pertinent to the internal rules and the rights and duties of convicts were to be placed.

With respect to the bathrooms, it has been found during the visits that their state is fluctuant. In some of penitentiaries the bathroom is maintained at an adequate level irrespective of the limited financial resources (penitentiary no. 11, Balti municipality), in others there have been capital repair works undertaken (penitentiary no. 2, Lipcani, compartment for minors), repair works undertaken as a result of the intervention of the ombudsman (penitentiary no. 3, Leova, penitentiary no. 18, Branesti village, Orhei raion).

Although the Government Decision on the approval of minimal daily nutrition of convicts and personal hygiene means no. 609 from 29 May 2006 provides for quotas of soap for hygiene purposes, this chapter continues to remain deficient in 2010. While examining the detention conditions, there have been deficiencies identified which need scrutinised approach.

The ombudsman received a complaint from detainee I.H., who is held at the Penitentiary no. 1 from Taraclia. In the contents of the complaint the applicant made reference to the fact that at the moment of his placement in this institution he was hosted in a cell where convicts who smoke serve their sentence. Additionally, he invoked the fact that he never smoked and living with such colleagues is impossible. The petitioner declared that the respective cell has 40.9 sqm with 17 convicts in it. Therefore, the convict indicated on the fact that he filed in an application to the administration of the penitentiary to be transferred into another cell with non-smokers, but was refused.

All the circumstances presented in the complaint reported to the position of the European Court for Human Rights with respect to the separation of the convicts who smoke from non-smokers may be criticised in relation to international law and the case law of the Court, issued on the basis of article 3 of the ECHR. Such a state of affairs has been confirmed during many of the discussions with other convicts. Thus, a relevant case in this respect is the decision on *Ostrovar vs. Moldova* from 13 September 2005.[235] In such circumstances where some decision makers do not hurry to comply with the requirements put forward to the Government, it is

[235] Case *Ostrovar vs. Moldova*, application no.35207/03, ECtHR Decision from 13 September 2005, „The applicant submitted that he orally requested to be transferred to a non-smoking cell, but there were no non-smoking cells in the prison. Smoking inside the cells was not prohibited by the internal regulations of the prison, and because of lack of alternative smoking facilities, the inmates had to smoke inside the cells. The applicant suffered from asthma and the prison administration was aware of this since he had been arrested and brought to prison immediately after undergoing asthma treatment in hospital, where he was arrested. Because of the exposure to cigarette smoke the applicant suffered many asthma attacks, which usually happened two or three times a day. The Court further notes that the Government do not deny that the applicant was kept in a cell with prisoners who were permitted to smoke in the cell. At the same time it is an undisputed fact that the applicant was suffering from asthma and that the prison authorities were aware of his condition but did not take any steps to separate him from smokers. In its decision on admissibility of 22 March 2005 the Court held, in respect of the Government's contention that the applicant should have requested a transfer to a non-smoking cell, that that remedy was not effective. Accordingly, the Court considers that the Government did not fulfil their obligation to safeguard the applicant's health and instead allowed him to be exposed to cigarette smoke, which was dangerous in view of his medical condition, particularly, since the applicant was kept in the cell twenty-three hours a day."

difficult to ascertain how consistent must be the observation to generate reactions from the responsible servant.

In this respect an analogy was made with the decision in *Florea vs. Romania* from 14 October 2010. The applicant was detained in a cell with around 120 convicts, out of which around 90% being smokers. The Romanian Government invoked the fact that the applicant has not used all the internal remedies at his disposal. The Court demonstrated the opposite, explaining that the applicant has repeatedly contacted the administration of the institution. Consequently, the Court rejected the exception formulated the Governmental representative of the Government, when it did not evaluate how the detention conditions could have been effectively resolved by means of using the invoked recourses.

Thus, the Court reminds in its decisions that the states must ensure that any convict benefits from respect of human dignity, is not exposed to dangers of higher intensity other than the inevitable suffering level, inherent to detention and that his health is not compromised. The Court has also showed that higher protection should be given to vulnerable groups. Additionally, in this decision the Court shows that there is no single point of view at the level of member states of the Council of Europe on the protection against passive smoking in penitentiaries. This lack of harmonised attitude underlined by the Court was largely developed in the *Aparicio Benito vs. Spain case* from 3 November 2006. Some of the member states have established by means of normative acts that convicts who smoke and non-smokers be separately placed or altogether. Additionally it has been acknowledged that some of the contracting parties have limited spaced where smoking is allowed, whilst others have established certain prohibitions in this respect, thus it being for the state to adopt a legal framework in this area.

As a result of the intervention of the ombudsman the Department of Penitentiary Institutions has initiated the process of evaluation of convicts based on the presented criteria and of the possibility to amend some of the normative acts, which would adjust the current framework to the international standards.

Torture and maltreatment

In the context of actions undertaken at national level in the area of torture prevention the Ministry of Justice represents a significant partner in the implementation of an efficient cooperation in the area of observance of human rights and fundamental freedoms. Meanwhile, while attaining the aim to ensure the formation of a vital favourable environment in the detention institutions and proper enforcement of the criminal legislation, it is worth mentioning the systemic delivery of special releases on certain exceptional cases by some of the institutions (Penitentiaries no. 1, 3, 5, 10, 13 and 16). Daily, the email of the Centre for Human Rights

receives the report on the current situation in the penitentiary in the last 24 hours. This report includes the relevant data from all the penitentiaries of the country.

Thus, during 2010 the Centre for Human Rights received 30 applications where the convicts invoked maltreatment. Out of those, 14 have been redirected to the competent bodies and 17 have been examined with the involvement of the prosecutors.

With respect to the special communiqués developed and sent to the ombudsman as provided by article 232 paragraph 3 of the Enforcement Code[236], the ombudsman has demonstrated in practice the genuine importance of the information presented to manage the torture prevention activities (for instance, the initiation of criminal investigation based on the complaints of citizen C.S. in penitentiary no. 13 of the Chisinau municipality has not been made yet, including criminal investigation actions on the respective case).

In this respect, the Department of Penitentiary Institutions was contacted to take the necessary measures under its competence and authority so that the information on the use of maltreatment is delivered by all penitentiaries. Indeed, now certain breaches of the provisions by certain employees of the Department of the Penitentiary institutions are left unpunished (the administration of the penitentiary no. 13 of the Chisinau municipality, refusal to inform the ombudsman on the registration of body injuries on convict L.A.).

In fact, on 25 May 2010 the ombudsmen have received the complaint from convict L.A. who was held at the penitentiary no. 13 of the Chisinau municipality. In the contents of the compliant the petitioner invoked him being maltreated by the employees of the penitentiary no. 13 from the Chisinau municipality.

According to the statements, on 21 May 2010 approximately between 14:00 and 15:00 the representatives of the administration of the mentioned institution have undertaken a search in the cell where the complainant was held. During the respective actions the petitioner was hit against the wall and strangled by his neck. After this incident, a group of emergency intervention employees was called which bent his arms and subsequently moved him into an office of the institution. According to the allegations presented in the complaint, he was stretched on the table and hit with a rubber baton by a number of employees of the institution, one of them being the

[236] The doctor who undertakes the medical examination is obliged to appraise the prosecutor and the ombudsman in case if the convicted person has been exposed to torture, cruel, inhuman or degrading treatment or punishment, as well as the obligation to make a note to the medical file on the findings and the declarations of the convicted person on the former. In such cases the convicted person has the right to ask for an examination, on his own expense, at the detention place, by a doctor from the outside of the penitentiary system, indicated by him or by a forensic doctor. The findings of the doctor from outside of the penitentiary system are signed in the medical file of the convicted person, whilst the forensic examination document is annexed to the medical file after the convicted person consulted its contents and confirmed it with his signature. Law of the Republic of Moldova no. 443 from 24.12.2004 on the approval of the Enforcement Code of the Republic of Moldova, "Official Journal" no. 34-35/112 from 3 march 2005

representative of the Security Service – V.C. Subsequently, the convict was exposed to a medical examination by the chief doctor of the penitentiary institution no. 13, Mr. E.G.

In this respect the doctor who registered the injuries issued the notification to the ombudsman regarding the respective incident.

In this respect deficiencies have been registered with the enforcement of article 232 paragraph 3 of the Enforcement Code, which took place in form of lack of action from the doctor who performed the medical examination to inform the ombudsman on the case when it has been confirmed that the person was exposed to torture, cruel, inhuman or degrading treatment or punishment. From the ombudsman's point of view, these cases should not be confused with the cases when persons are maltreated arbitrary, without a reason. The use of special means and physical force do not exclude the possibility of institution's employees overstepping the limits prescribed for these cases, which can be in turn interpreted against them, resulting from the principle of "beyond a reasonable doubt".[237] The documentation of these exceptional situations does not release the medical personnel from the duties prescribed by law.

Pursuant to the Law on the amendments to certain legislative acts no. 13 from 14 February 2008, besides the issues raised above, article 232 of the Enforcement Code has stipulated the obligation of the doctor to note in the medical file the findings and the declarations of the convict with the respect to the former. Thus, pursuant to the declarations of the petitioner, in spite of the fact that he asked for a medical examination, as well provision of adequate medical care, the personnel of the medical service did not fully comply with the provisions of the respective article.

Moreover, the medical employee is to be exempted from the burden of confirming torture. Indeed, the competences of the doctor are much too modest for that. Meanwhile, his conclusions formulated pursuant to the Istanbul Protocol and properly communicated to the prosecutor would certainly serve as key for efficient investigations in line with article 3 of the ECHR. *Here the Centre for Human Rights formulates a new proposal on the conceptual reform of the penitentiary system – the medical service in the penitentiaries should become a separate independent unit within the Ministry of Health.*

The same omission from the doctors has been found on other occasion in the same institution, on 31 May 2010. Thus, a number of 21 detainees have been exposed to physical violence and special means, the communiqué being sent to the Department of Penitentiary Institutions and the municipal Prosecutor's Office. With respect to medical certificates drafted after the alleged

[237] It is a principle frequently used in the case law of the Convention and is an evaluation standard used in the case law of the Court which comes from the common law system. The summary of the case law of the ECtHR in the cases against Moldova, Chisinau 2010, page 31

maltreatment, it has been confirmed that they do not include the personal data collection, medical history, establishment of objective data, diagnosis and recommendations. In this respect, while referring to the standards of examination of maltreated persons, the Istanbul Protocol from 1999 (recommended by the UN General Assembly Resolution no. 55/89 from 4 December 2000)[238], namely paragraphs 83-84, 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. 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.

In the context of the above mentioned and pursuant to article 28, paragraph 1, letter b) from the Law on ombudsmen no. 1349 from 17 October 1997, the ombudsman intervened with the Department of Penitentiary Institutions to check the possibility of initiating a disciplinary procedure with respect to the defective application by the medical personnel of the provisions of article 232, paragraph 3 of the Enforcement Code. On 13 July 2010 the Department of Penitentiary Institutions refused the initiation of a disciplinary procedure, motivating it with the incompatibility of the chief of the medical service of Penitentiary no. 13 from the Chisinau municipality with the capacity of expert indicated in the Istanbul Protocol.

The personnel of the prison shall have to occasionally use force to control the convicts and, in exceptional cases, could make recourse to physical constraint means. Obviously, these are the cases of high risk with respect to possible maltreatment against convicts and need special guarantees.

A detainee against whom force was used has to have the right to be immediately examined and, if necessary, treated by a doctor. This examination must be made outside of the detainee's interrogation, preferably in the absence of any other personnel than the doctor, whilst the results of the examination (including any relevant declaration of the convict and the conclusions of the doctor) must be officially registered and offered to the detainee. In these rare cases, where the use of physical constraint means is necessary, the detainee must be constantly

[238] http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf.

under proper surveillance. Moreover, the constraint methods must be dismissed as soon as possible. They should never be used as punishment, including for a long period of time. Finally, a registry with data on each case of use of force against convicts should be kept, which practically exists in every monitored penitentiary.

In this respect, another aspect frequently invoked in the complaints to the ombudsmen is the unjustified use by the employees of the penitentiary system of special means and physical force.

The Centre for Human Rights received complaints from convicts G.V. and S.S., both held at the Penitentiary no. 6 in Soroca. They have invoked the breach of the constitutional right to life and physical integrity. They have referred in detail to the fact that the employees of the penitentiary have organised a check during which the furniture, electrical appliances and tableware have been damaged, after which the petitioners have been escorted to the disciplinary isolator and beaten on the sole reason that have requested the administration of the penitentiary wear gloves during the ransack. In this respect the participation of the prosecutors was requested to check the circumstances of the case. Pursuant to the investigations it has been found that during ransack the convicts have opposed the procedure after which physical force was used on them pursuant to article 223 of the Enforcement Code. With respect to this case the prosecutors have issued an order of non-initiation, motivating it with the fact that during the use of force the duty limits have not been breached.

In this respect a relevant case to evaluate the use of physical force and excessive use of physical constraint measures on the victim by the law enforcement agents is the case *Victor Savițchi vs. Moldova (application no. 81/04, 17 June 2008)*. The Court found in this case that the use of physical force by the law enforcement agents who detained the applicant was not justified and abusive with respect to the circumstances and the behaviour of the detained person, has degraded human dignity and in principle represents a breach of the right guaranteed by article 3 of the ECHR.

The aspects mentioned by the Court in this decision can be compared to the ones reported in the case of P.V., detained in Penitentiary no. 16, at Pruncul. According to the memorandum received by the Centre for Human Rights, convict P.V., who was held at the Phthisiology unit no. 3 of the Penitentiary no. 16, at Pruncul tried on 9 November 2010 to hide a prohibited object. When requested by the law enforcement agents to hand over the prohibited object and stop the illegal actions, he did not react accordingly, had an aggressive behaviour and resisted to the body search. Pursuant to article 242 of the Enforcement Code the convict P.V. has been exposed to physical force. After the examination from the duty doctor, the following injuries have been registered: bruising in the region of cubital joint on the right, scratches on the right ear. Thus,

taking into account the nature of the injuries established by the petitioner, there was the possibility that the balance of forces was not equal. In such circumstances, taking into account the principle of "beyond a reasonable doubt", the ombudsman intervened at the Buiucani district Prosecutors' Office of the Chisinau municipality with an application to initiate criminal investigation on the respective case. Same as in the case described above, the Buiucani district Prosecutors' Office of the Chisinau municipality issued the order of non-initiation of criminal investigation.

Identical cases have been examined on numerous occasions, the involvement of the competent bodies being requested. The ombudsman is of the opinion that the justice employees should treat such cases with extreme caution, if necessary calm the spirits, or, if relevant, identify an alternative to the use of physical force.

The transfer of "inconvenient" convicts represents another practice of which the ombudsman is worried of. During 2010 the Centre for Human Rights received 21 applications referring to such cases, when, from the petitioner's point of view, the transfer to another institution is used to exercise indirect pressure on him.

In this respect the below example is relevant. The Centre for Human Rights was contacted by detainee T.S., who invoked the disapproval of the detention conditions and medical care in Penitentiary no. 3 in Leova and the transfer to the respective institution to the Penitentiary no. 9 in Pruncul. After the visit to the Penitentiary no. 3 in Leova, breaches of the provisions of the Enforcement Code have been registered, with a subsequent call for action from the Ministry of Justice with a list of recommendations. In the meantime new applications from convict T.S. have reached the Centre, who accuses the authorities of persecution for bringing information to the outside institutions.

The decision to transfer T.S. to the penitentiary institution no. 9 at 18 February 2010, adopted immediately after the visit of the ombudsman to the institution no. 3 on 17 February 2010 during which the employees of the Centre for Human Rights had a meeting with the convict, risks to be interpreted as a deliberate cause of anxiety and inferiority to the convict, there being known of the security issues he had in the Penitentiary no. 9 in Pruncul. In this respect the ombudsman communicated the administration of the Department of Penitentiary Institution of the provisions of article 23/1 paragraph 2 of the Law on ombudsmen according to which the prohibition of ordering, using, allowing or tolerating any type of sanction is provided for, as well as injury of any other kind for a person or organisation as a result of communication of any information, true or false to the ombudsman, the members of the consultative council and other persons who accompany him in the course of his duties of prevention of torture or other cruel, inhuman or degrading treatment of punishment.

Pursuant to the legal provisions and the reasons invoked by the respective convict, the Department of Penitentiary Institutions was contacted to arrange a control and confirm or infirm the existence of the reason of the convict's transfer to Penitentiary no. 9 in Pruncul and thus exclude any other bad faith attempts or reckoning with the convict from the employees of the respective authority. Both the Department of Penitentiary Institutions and the Ministry of Justice have reiterated the need to transfer him due to security reasons and have ensured that he has been isolated in the Penitentiary no. 9 as provided by article 206 of the Enforcement Code of the Republic of Moldova.

Certain convicts are extremely difficult and their transfer to another institution may be sometimes necessary. In this case, the continuous transfer of one convict from one institution to the other may have adverse effects on the physical and psychological condition. Moreover, such a convict may have difficulties in maintaining close contacts with his family and lawyer.

The general effect of successive transfers on the detainee may be in certain circumstances considered as inhuman and degrading treatment.

Often the ombudsman receives answers from the Department of Penitentiary Institutions, where the servants responsible for apparently unreasoned transfers, make reference to the general need to ensure the security of convicts and other security reasons, which already became a template of argumentation of the respective cases. Taking into account the contents of a series of applications from convicts received by the ombudsman on their transfer, the biased nature of the authorities to limit themselves to the one and the same insurance of security has been observed. The reason does not seem to be credible and sufficient in all cases to be accepted as circumstance that would allow breach of guarantees offered by the Convention. This phenomenon perpetuates the creation of a negative practice, contrary to the international treaties and needs revision as soon as possible. Otherwise, the increase of number of cases of defective application of legal provisions may in reality create a real and imminent danger of breach of fundamental rights and interests of convicts, which in turn may generate new applications and convictions of the Republic of Moldova at the ECtHR.

Finally, the ombudsman makes special emphasis on the importance of the training of the law enforcement agents (which should be included in the human rights education as provided by article 10 of the United Nations Convention against torture and other cruel, inhuman or degrading treatment or punishment). Meanwhile, it is absolutely necessary to encourage the personnel to have attitudes which would reflect the important social and moral qualities in the course of their duties. In this respect, the ombudsman constantly mentions in his recommendations on the need to improve the personal achievements of the employees for the benefit of the convicts under their care but also in the interest of their professional vocation.

Pursuant to article 48 of the Standard Minimum Rules for the Treatment of Prisoners, adopted by the UN on 31 July 1957, all the employees of the penitentiary must behave on all occasions and fulfil their duties so that their example can better influence the convicts and impose respect. In this respect and in the context of the reform of the penitentiary system, it is necessary that the professional training of the employees be strongly amplified. Meanwhile, the implementation of the new re-education methodologies for convicts is also important, which would also generate the creation of certain relations with the administration, based on principles of tolerance and understanding. It can be stated that there is no better guarantee against the maltreatment of a person deprived of her liberty than a police officer or a penitentiary employee trained accordingly. Qualified officers shall have the capacity to successfully implement their responsibilities without the recourse to maltreatment and assume the requirements of the fundamental guarantees for convicts.

The interpersonal communication capacities must be a major factor in the process of recruitment of the personnel responsible for the enforcement of laws. During training special importance should be give to the development of interpersonal communication abilities, based on the respect for human dignity. These capacities shall allow a justice officer clarify a case which otherwise can degenerate into violence and generally shall contribute to the limitation of tensions and improvement of the quality of life in the detention facilities for the benefit of all parties involved in the process.

Medical services

The constant lack of specialised medical services is the problem with the Moldovan penitentiary system is facing, whist the solutions are left to the care of the Department of Penitentiary Institutions. However, from the ombudsman's point of view, not only this institution bears responsibility for the observance of the right to healthcare as a constitutional right[239].

In this respect, the list of vacant positions in the medical services of the penitentiary institutions valid at 26 December 2010 is relevant:

The Department of Penitentiary Institutions

1. Chief, Medical Directorate

2. Deputy Chief and chief of the curative section and the medical and military committee Medical directorate

3. Specialist, curative section and the medical and military committee, medical directorate

[239] Government Decision on the approval of the Regulations on the organisation and functioning of the Ministry of Health, the structure and limit employee cluster of the central administrative unit no. 777 from 27 November 2009

4. Specialist, statist feldsher, organisational and preventive medicine section, medical directorate

5. Main specialist, psychiatrist, narcologist, curative section and medical and military committee

Medical Directorate

Penitentiary no.1 – Taraclia:

1. Psychiatrist, medical service

2. Pharmacist - 0.5 (civil employee)

Penitentiary no.2 – Lipcani:

1. Chief Doctor, medical service

2. Psychiatrist – 1 (civil employee)

Penitentiary no.3 – Leova

1. Chief, medical service

2. Specialist, psychiatrist, narcologist

3. Feldsher, medical service

4. Radiologist – 0.5 (civil employee)

Penitentiary no.4 – Cricova

1. Chief, medical service

2. Specialist therapist, medical service

Penitentiary no.5 – Cahul

1. Chief, doctor, medical service

2. Feldsher, medical service

3. Dentist – 0.5 (civil employee)

Penitentiary no.6 – Soroca

1. Specialist therapist, medical service

Penitentiary no.7 – Rusca

1. Specialist, psychiatrist, narcologist

Penitentiary no.8 – Bender

1. Specialist, therapist, medical service

Penitentiary no.9 – Pruncul

The medical personnel is fully employed

Penitentiary nr.10 – Goian

1. Specialist, therapist, medical service

2. Feldsher, medical service

3. Psychiatrist, narcologist - 1 (civil employee)

4. Dentist -1 (civil employee)

5. Pharmacist -0.5 (civil employee)

Penitentiary no.11 – Bălți

The medical personnel is fully employed

Penitentiary no.12 – Bender

1. Specialist, therapist, medical service
2. Specialist, psychiatrist, narcologist, medical service
3. Pharmacist -1 (civil employee)

Penitentiary no.13 – Chişinău

1. Specialist phthisiologist, medical service
2. Specialist, psychiatrist - narcologist, medical service
3. Nurse – 4 (civil employee)
4. Radiologist - 1 (civil employee)
5. Feldsher -1 (civil employee)
6. Dermatologist, venerologist – 1 (civil employee)

Penitentiary no.15 – Cricova

1. Specialist, therapist, medical service

Penitentiary no.16 – Pruncul

1. Deputy Chief for curative activity
2. Specialist in infection disease, section contagious diseases
3. Specialist, phthisiologist, section contagious diseases
4. Chief, psychology and neurology section
5. Specialist, psychiatrist, psychology and neurology section
6. Specialist, neuropathologist, psychology and neurology section
7. Chief, radiology section
8. Specialist, phthisiologist, Phthisiology section no.1
9. Specialist, phthisiologist, Phthisiology section no.2
10. Specialist, phthisiologist, Phthisiology section no.3
11. Duty nurse, internal diseases section (civil employee)
12. Nurse, surgeries, surgery section (civil employee)
13. Anaesthesiology nurse, intensive therapy section (civil employee)
14. Functional diagnosis practice and endoscopy nurse (civil employee)
15. Pharmacist, general medicine section (civil employee)
16. Nurse for current treatment, phthisiology section – 3 (civil employee)
17. Statist, general medicine section (civil employee)

Penitentiary no.17 – Rezina:

1. Chief, medical service

2. Chief, phthisiology section no.1

3. Chief, phthisiology section no.2

4. Specialist, phthisiologist - 3,5

5. Specialist, therapist, medical service

6. Feldsher, medical service

7. Chief Nurse –1 (civil employee)

8. Feldsher, bacteriologist - 0.5 (civil employee)

9 .Gynaecologist – 0.25 (civil employee)

10. Nurse for current treatment – 1(civil employee)

Penitentiary no.18 – Brăneşti

1. Feldsher, medical service

Directorate of security, supervision and escort troops

The medical personnel is fully employed

Department for special missions

1. Feldsher -1

Training Centre

The medical personnel is fully employed

With respect to the medical assistance in the penitentiary, it is offered by the qualified personnel, free of charge every time it is necessary. Each penitentiary must have a general doctor, a dentist and a psychiatrist. The convicts have access free of charge to medical treatment and to medicine.[240]

In reality, the adequate implementation of the provisions mentioned above remains problematic, first, because of the fact that qualified doctors are absent in the penitentiaries. During the visits it has been determined that many of the positions of psychiatrist, pharmacist, feldsher and other personnel categories in the penitentiary institutions are vacant.

During the process of monitoring of medical services in the penitentiary institutions, the ombudsman researched along with general medical services access standards the system of medical examination of detainees in the penitentiary units and its efficiency.

Meanwhile, the medical service of the penitentiary is obliged to regularly verify the sanitary and hygienic state of the rooms in the penitentiary. It has been determined that the doctors from penitentiaries are too reluctant to present conclusions on the results of inspections and recommendations on the measures to be taken to eliminate the gaps. In most of the cases the

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[240] Article 249 of the Enforcement Code no.443 from 24 December 2004, „Official Journal", no.34-35/112 from 3 March 2005; Section 41 from the Status of enforcement of sentences by convicts, approved by means of Governmental Decision no. 583 from 26 May 2006, „Official Journal", no. 91-94/676 from 26 May 2006

doctors invoke lack of complaints from the convicts.[241] In this respect penitentiary institutions no. 4 from Cricova and 18 from Branesti can be mentioned.

The medical Directorate of the Department of Penitentiary Institutions has taken during 2010 the following actions to provide medical assistance and qualified treatment to convicts:

- The Pharmacy of the Department of Penitentiary Institutions concluded contract with pharmaceutical companies of purchase of medicine, radiological film, para-pharmaceutical products in an amount of 1,477,134 MDL; as humanitarian aid there have been purchased good equal to 2,310,388 MDL, the penitentiary institutions received medicine from state budget resources – 1,831,647 MDL and from extra-budgetary resources –2,330,249 MDL.
- Pursuant to the provisions of the Prophylaxis Action Plan and monitoring of tuberculosis in penitentiaries, in 2010 in compliance with the DOTS Strategy there have been 225 convicts exposed to treatment, and in accordance with the DOTS Plus Strategy – 60 convicts. In 2010 255 persons have been registered with evolutionary TB, compared to 268 in the similar period of 2009, whilst 38 convicts refused anti-TB treatment.
- During 2010, pursuant to the conclusion of contracts with eight public medical and sanitary institutions of the Ministry of Health amounting to 508 thousand MDL, there have been examined and investigated 105 sick convicts, 99 convicts have been consulted and 10 of them exposed to surgeries by experts of the Ministry of Health. Additionally, two births have been taken and one patient received chemotherapy at the Oncology Institute. At the Pruncul penitentiary Hospital at the surgical diseases section there have been managed two surgeries by the experts of the Republican Clinical Hospital and was paid from the signed contract.
- During 12 months of 2010 the Committee for Evaluation of Vitality received 157 person who have been attributed the following levels of gravity of disability:
    - 1st level - 6 persons (including 4 without a time limit)
    - 2nd level – 50 persons (including 7 without a time limit)
    - 3rd level – 52 persons (including 16 without a time limit)
    - rejected – 10 persons and one person was rehabilitated.
- Presently, the treatment of substitution with methadone continues for persons who a drug dependant, which is currently extended to seven penitentiaries (no.6 Soroca, no.7 Rusca,

[241] Article 232 para.(2) of the Enforcement Code no.443 from 24 December 2004, „Official Journal", no.34-35/112 from 3 March 2005: The chief of the penitentiary is obliged to read the report and the recommendations of the doctor and of the medical service and urgently take the necessary actions. If the chief of the penitentiary considers that the implementation of the recommendations within the penitentiary is not possible or that those are inacceptable, he presents the Department of Penitentiary Institutions a report and attaches the report of the doctor or of the medical service.

no.11 Bălți, no.15 Cricova, no.13 Chişinău, no.16 Pruncul, no.18 Brăneşti), there being 259 convicts in total included in the treatment scheme (today there are 49 convicts treated).

- In the process of delivery of medical assistance in penitentiaries a mobile group was created, which is comprised of eight experts (surgeon, psychiatrist, oculist, otolaryngologist, dermatovenerologist, infection doctor, therapist, neurologist) from Penitentiary no.16 in Pruncul and no.13 from Chisinau to examine and select patients which need treatment, with their subsequent transfer into the penitentiary's hospital, as well as prescribing ambulatory treatment. Such visits during April, May and June have taken place in penitentiaries no. 1 in Taraclia, no. 3 in Leova, no. 4 in Cricova, no. in Soroca, no.7 in Rusca, no.15 in Cricova, no.17 in Rezina, no.18 in Brăneşti. Overall, 1077 convicts received medical assistance.

The lack of qualified medical personnel creates impediments covering the need of convicts for full medical controls. In this respect the conclusions of the Committee against Torture need to be mentioned, formulated after the visit to the Republic of Moldova on 16 February 2006, where the detention conditions have been criticised as a result of the breach of the right to medical assistance of the convicts. The Committee pointed at the lack of any efficient guarantees against maltreatment, which can subsequently expose the Republic of Moldova to new convictions. With respect to medical assistance after the visits of the ombudsman to the Penitentiary no.3 in Leova from 12 May 2009 and 17 February 2010 and during the monitoring visit from 8 September 2010 the constant lack of equipment and necessary gear in the dentist's cabinet were confirmed, the ones at the day of visit having a very advanced level of wear and being almost unusable. Therefore, the convicts of this penitentiary cannot benefit from adequate services of a dentist.

Such a state of affairs is intolerable and breaches the provisions of article 230 and 231 of the Enforcement Code, Section 41 of the Statute of enforcement of sentences by convicts and the Regulations on the provision of medical assistance to persons detained in penitentiaries, adopted by means of Order of the Minister no.478 from 15 December 2006.

The same condition was registered during the visit to the Penitentiary no. 18 in Brăneşti on 25 August 2010. With respect to medical assistance after the visit of the ombudsman from 25 November 2009 the same constant lack of equipment and necessary gear in the dentist's cabinet were found, even if in both cases it has been recommended to the competent authorities to ensure provision of medical dentist services as provided by the law. The chief of the medical service declared that at the time of the visit there were in fact modern equipment, but it had to be installed by the experts of the donor charity organisation.

Additionally, the lack of psychiatric service was acknowledged for the diagnosis of the cases which require the treatment of abnormal mental conditions. At the moment of the visit

from 17 February 2010 to the Penitentiary no. 3 in Leova there were 23 convicts who were put under psychiatric monitoring. After finding this condition, the ombudsman communicated the responsible authority the imminent risk of conviction of the Republic of Moldova by the ECtHR reasoned by the lack of psychiatric assistance guaranteed by the state as prescribed by the Law on mental health[242] and thus using a degrading or inhuman treatment pursuant to article 3 of the ECHR.

Meanwhile, Recommendation 2006 (2) of the Council of Europe of European Penitentiary Rules, as well as the rules of the European Committee against Torture have clear, explicit and imperative provisions on the delivery of medical assistance to convicts, including the one of a dentist and psychiatrist.

Within this framework, pursuant to the case-law of the European Court for Human Rights is not favourable for the image of the Republic of Moldova on the international arena, the omission to provide adequate medical assistance to convicts representing an imminent risk of being interpreted as inhuman treatment.

The Republic of Moldova was repeatedly convicted for breaching article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms *(Paladi vs. Moldova, Ţurcan vs. Moldova, Istratii and others vs. Moldova etc.)*. The convicts were based on the omission of the state to provide adequate medical assistance to persons in detention. After it has been established that daily there are about ten convicts who ask for medical dental assistance the lack of adequate equipment and lack of medical dental assistance constitutes a circumstance which would eventually constitute a source of increased number of convictions on this chapter.

The preventive visits to the institutions subordinated to the Ministry of Interior

General considerations

The police of the Republic of Moldova is an armed body of the public authority, under the subordination of the Ministry of Interior, called to protect, based on the strict observance of the laws, the life, health and freedom of citizens, the interests of the society and of the state against the criminal attempts and other illegal attacks.[243]

In the course of their duty the police employees are empowered by law to use procedural constraint measures on persons suspected of having committed offences or administrative misdemeanours, in the result of which certain freedoms being limited (the right to individual liberty, the right to personal security etc.). During 2010 the special institutions subordinated to

[242] Law on mental health, no. 1402-XIII from 16 December 1997
[243] 416/18 December 1990. Law on police *//Veştile 12/321, 30 December 1990.*

the Ministry of Interior have arrested 6926 persons on whom procedural constraint measures have been applied (arrest in criminal procedure or preliminary arrest): on 7078 persons in 2009 and 549 arrested or punished with administrative arrest, in comparison with 5183 in 2009.

Within the National Torture Prevention Mechanism during 2010 there have been 83 monitoring visits organised to the institutions subordinated to the Ministry of Interior. The visits to the police commissariats are different from the visits to prisons, due to the fact that the persons detained by the police agents can feel more vulnerable in discussions with the members of the visiting groups. Other differences relate to the detention conditions, which are not envisaged for long term detention, thus being limited.[244]

The activity of the provisional detention isolators within the Police Commissariats continues to be regulated by the *Order of the Minister of Interior on the organisation and management of security, escort and detention activities of the persons detained and arrested in the provisional detention isolators no. 5 from 5 January 2004.* Pursuant to paragraph 1.1 of annex no. 2 of this Order the status and detention conditions for arrested, suspected and charged persons is regulated. Today the Order is obsolete and needs essential changes.

Thus, as presented above, the Order was adopted to enforce the Law on the Republic of Moldova on the preventive arrest no. 1226 from 27 June 1997 (abolished on 1 July 2005) and the Criminal Procedure Code to observe the rights of the detained and arrested persons in the preventive detention isolators.

Pursuant to the provisions of the Enforcement Code, the persons who have been preventively detained[245] or who have been exposed to misdemeanour arrest[246] are to be detained in penitentiaries. Thus, the detention in separate rooms in penitentiaries for persons exposed to administrative arrest is welcome, because most of the persons arrested in the course of the events from 7 April 2009 and exposed to maltreatment have served their administrative sentence in the police commissariats' isolators.

However, the detention of persons in police commissariats exposed to short term administrative arrests until their transfer to penitentiaries remains an issue of concern.

Under these conditions, the normative framework remains unclear with respect to the issue of constitutionality of the status of the respective detention facilities, which are present in all the district police commissariats. The activity of 11 isolators has been ceased in 2010 due to

[244] Printing press „Vicandis-Lux", Monitoring of detention places, Geneva, Practical Guide, APT, Geneva, 2004
[245] Persons exposed to preventive arrest are held in penitentiaries – art.303 paragraph (1) Enforcement Code, „Official Journal", no.34-35/112 from 3 March 2005
[246] The enforcement of the sanction of misdemeanour arrest is ensured by the penitentiaries – art.313 paragraph (3) Enforcement Code, „Official Journal", no.34-35/112 from 3 March 2005

the fact that the detention conditions did not comply with the national and international standards in the field.

One of the most difficult deficiencies of the activity of the Ministry of Interior with respect to the functionality of the National Torture Prevention Mechanism is the understanding and / or defective enforcement by some agents of the Ministry of Interior of the functional capacities of the Law on ombudsmen, which includes limitation of unconditional access to detention places in police commissariats or other units of the Ministry.

There have been cases registered in 2010 at the General Police Commissariat of the Chisinau municipality during the visit from 4 August 2010, the access of the employees of the Centre for Human Rights being possible only after the intervention of the ombudsman.

Another case of obstruction of the members of the Consultative Council took place during the visit to the Riscani district police commissariat. This fact revealed the insufficient awareness of the employees of the police commissariat about the legal provisions pertinent to the activity of the National Torture Prevention Mechanism. The members of the working group were prevented from accessing the isolator's cells and the entry registries kept by the respective Police commissariat. Thus, when asked to offer access to the cells of the isolator and to consult the contents of the registries of the provisional detention isolators and of the police commissariat generally, the agent on call restricted the access of the members of the Consultative Council, making reference to the fact that he needs to have the permission of the commissar. The access was restricted irrespective of the fact that at the start of the visit the members of the Consultative Council discussed with the commissar about the aims of the visit and have presented their IDs which confirm their status of members of the Consultative Council. The visit was permitted after 20 minutes, during which the presence of a controller was expected, who appeared to be a lawyer within the Riscani district Police Commissariat, who from the point of view of the officer on call, was authorised to allow access.

Another case of restricted monitoring visit is the limitation of the access of the chief of the Centre for Human Rights branch in Comrat who on 16 April 2010, based on the proxy no. 01-12/212 from 10 July 2009, issued by the ombudsman pursuant to the provisions of paragraph 45 of the Regulations of the Centre for Human Rights adopted by means of Parliament Decision no. 57 from 20 March 2008, organised a preventive visit to the Comrat district police commissariat. During the visit the access of the chief of the branch to the special unit of the commissariat was restricted, the police agent of the duty office invoking that he received indications from the commissar to inform him of any visit. Subsequently, the commissar mentioned that the prior reporting on each visit has security reasoning. The ombudsman

encourages and insists that all commissars ensure the security of the units which they manage, but believes that the reporting procedure may not serve as reason to postpone or restrict the visit.

Pursuant to the provisions of article 23^2 of the Law on ombudsmen no. 1349 from 17 October 1997, the members of the Consultative Council have received the empowerments of ombudsmen to attain their mandate. The situation is similar in the case of the employees of the Centre for Human Rights and of their representative, when they hold a proxy issued by an ombudsman, a provided by articles 28 and 29 of the Law and article 45 of the Regulations of the Centre for Human Rights, adopted by means of Parliament Decision no. 57 from 20 March 2008. The police commissariats received the national and international documents with regulate the mandate of the National Torture Prevention Mechanism precisely to inform them on its mandate.

The existence of restrictions and delayed access into the police commissariats was brought to the knowledge of the leadership of the Ministry of Interior on numerous occasions by the ombudsman, the former limiting its interventions to issuing an internal document to the units of the MoI, along with a full version of the Law of the Republic of Moldova on ombudsmen no.1349 from 17 October 1997, as well as discussions with the persons responsible for the obstructions. The studying of the contents of the Law on ombudsmen by the police commissariats' employees during professional training classes is most welcome.

According to the findings, in the majority of cases the preventive detention isolators are situated as before in the basements of the buildings of the police commissariats. Therefore, they shall never be capable of offering detention conditions adapted to the detention of persons placed under provisional detention.

The case is even worse for the detention places within the police commissariats of the Chisinau municipality, the district police commissariats, where the activity of the provisional detention isolators has been stopped. This is also the case of police offices in the municipalities, cities and rural settlements. These spaces are designed for the detention of persons for a period of up to 3 hours. However, during the visits there have been cases when the persons have been detained there for more than 24 hours. Thus, Z.N, resident of Razeni village, Ialoveni district was arrested in the night of 21 June 2010 by the police agents within the Ialoveni district police commissariat, where he was detained for more than 24 hours.

Only the legal coverage of the activity of the provisional detention isolators and adoption of clear and exhaustive rules of placement, transferral of detained and arrested persons and of certain transparent rules of criminal investigation would allow elimination of maltreatment of persons detained or arrested on the reason of being suspected of offences.

Similarly, the spaces where the isolators are placed should be built separately, having their own transparent regulations of circulation of arrested people in and out of these institutions.

Meanwhile, the implementation of the reform of the institutions which detain arrested persons, as well as the ones on which preventive arrest is applied is currently delaying. The construction of the eight arrest houses was included in the Concept of reform of the penitentiary system and the Action Plan for years 2004-2020, approved by means of Government Decision no. 1624 from 31 December 2003. However, until present this actions was not implemented, one of the main causes being the fact that the buildings which are to be built require additional expenses for which there is no financial coverage from the state budget.

During the preventive visits organised under the National Torture Preventive Mechanism the entry registries of persons who enter the police commissariats have been verified. Thus, it has been established that not always the periods of stay of visitors in the commissariats are registered, which implies a presumption of abuse from certain persons. In this respect, the chief of the institutions who accepted breaches have received recommendations to register the time of stay of any person in the police commissariats or in the police offices, to further motivate their stay in police custody – persons preventively arrested or detained, as well as witnesses and other persons who are called on to come to the police.

Steps taken to improve the detention conditions

Unlike the first two years of activity of the National Torture Prevention Mechanism in the Republic of Moldova, starting with the second half of 2010 the detention conditions in the provisional detention isolators within the police Commissariats have registered substantial improvements, most of them being aligned to the international standards in the field.

The Ministry of Interior has 39 provisional detention isolators. Due to the inconsistencies between the technical regulations and the recognised detention standards, during 2010 the activity of the provisional detention isolators within the Ialoveni Donduseni, Străşeni, Criuleni, Ştefan-Vodă, Glodeni, Ceadîr-Lunga, Dubăsari şi Călăraşi police commissariats remained ceased. Meanwhile, during 2010, as a result of the recommendations of the ombudsman, the activity of provisional detention isolators of the General Directorate Special Services of the Ministry of Interior and of the Leova Police Commissariat has been ceased.

The repair works of the isolators initiated after the adoption of Government Decision no. 511 from 22 June 2010, by means of which 2.200.000 MDL have been allocated to repair 30 isolators located within the police commissariats.

Thus, before the initiation of the repair works, the majority of the visited police commissariats visited in the first half of 2010 had the same condition as in the previous years.

In 2010 a vast majority of the isolators continued to remain in the basement of the police commissariats. This makes it impossible until now the entrance of natural light into the cells. The number of provisional detention isolators placed in the basement of the police commissariats remains at the number of 30. Here the provisional detention isolators within the Special Services Directorate of the Ministry of Interior, the Balti, Soros police commissariats and other can be mentioned. The respective isolators continue to confront the problem of artificial lighting in the cells.

In others, such as the provisional detention isolator of the police commissariats in Anenii Noi, Leova, Orhei, Comrat and Nisporeni districts although with windows, very small and covered with metal bars, doubled by dense metal grid, which considerably limits the access of natural light in the cells. With respect to the initiated repair works, the members of the working group have recommended the monitored institutions to eliminate all the objects placed on the windows, which impede the access of natural light into the cells.

Pursuant to the national regulations and international standards in the field,[247] the identified inconsistencies could generate negative consequences for the image of the Republic of Moldova on the international arena.

Pursuant to the regulations which provide for standards for detention conditions all the detention places where the detainees are obliged to work or live, the windows have to be sufficiently large to allow them to read or write without affecting their eyesight, benefiting from natural light under normal conditions. These requirements also relate to the artificial light. Meanwhile, the windows must allow the entrance of fresh air in the cell.

During the repair works in the provisional detention isolators within the Ocnita, Telenesti and Causeni police commissariats the area of the windows have been changed, which now allows entrance of sufficient natural light into the cells. Additionally, sanitation was installed separately from the cells, which allows maintenance of personal hygiene for convicts, as well as intimacy during natural physiological needs. The majority of the police commissariats have got rid of the old wooden platforms which were used for the rest of the detainees, there being now separate beds with blankets and mattresses.

[247] Rules of the European Committee on 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 the European Rules in 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 standard minimal rules for treating detainees, http://www2.ohchr.org/english/law/treatmentprisoners.htm

The General Police Commissariat in the Chisinau municipality, already repaired in 2009 had the sanitary blocks from the isolator's sells inconsistent with the sanitary and hygienic norms, there being bad smell and insects such as fleas and bugs.

During 2010 the isolators with Asiatic WC continued to function, where the taps are placed above the toilet and where the sanitary conditions represented a source of infection. Such cases have been registered with the Comrat police commissariat, the General Directorate Special Services of the MoI, the detained person being obliged to have their physiological needs satisfied in barrels or buckets with covers and stay in conditions of unbearable smell.

At the same time, the mentioned standards require that the sanitation installations and the facilities to allow access to each of the detainee to have his physiological needs satisfied every time this is necessary in clean and decent conditions. The detention rooms and, especially, those designed for detained during night must comply with the hygiene requirements, taking into account the climate conditions, especially the necessary air quantities, minimal surface, lighting, heating and ventilation.[248]

The undertaken visits have also revealed that persons detained in provisional detention isolators under the subordination of the Ministry of Interior had the possibility to take a shower once a week. In most of the police commissariats there are electrical boilers to heat up the water. Meanwhile, at the Telenesti and Floresti police commissariats the detainees had the possibility to take a shower only outside the building, there being barrels heated up with wood. Additionally, these cabins were in the immediate vicinity of the toilets, which have a dangerous sanitary condition.

The detainees do not have access to objects necessary for personal hygiene and health. They can however wear personal clothing. It has been determined that the majority of the detainees are obliged to use their own bedding, brought by their relatives, because the administration of the detention places does not offer one. Additionally, most of the times the bedding and the mattresses in the police commissariats are absent or in a very dirty and deteriorated state (Orhei, Comrat, Ocnița commissariats etc.)

A positive aspect identified in the case of the provisional detention isolators is the adequate arrangement of courts for walks: there have been no complaints from the convicts in detention on the refusal to be taken outside for a walk.

[248] The Rules of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment, Council of Europe, CPT/INF/E(2002) 1

The visits organised at the Special Services Directorate of the MoI and the Nisporeni police commissariat have revealed that the sleeping places were simple platforms covered with wood. A similar situation was attested in the Orhei, Anenii Noi and Ocnita police commissariats.

Another deficiency identified during the visits is the general insanitary state of the visited cells. It is first the breach by the employees who work at the provisional detention facilities of the provisions of paragraph 2.8.7 of the Order no. 5 from 6 January 2004, which provide for the obligation of the special institutions which ensure the custody of detainees to supervise the maintenance of order and sanitation in all the rooms of the provisional detention isolators, in the corridors and the courtyards reserved for walks. Thus, the invoking of insufficient financing from the state is in many cases only an excuse for the inadequate detention conditions. The institution of ombudsmen has also reiterated the need to have an honest and professional observance of the duties by the administration of the responsible institutions while ensuring adequate conditions of detention.

With respect to the inadequate detention conditions from the provisional detention isolators of the mentioned Police Commissariats, the ombudsman presented the leadership appraisals with recommendations to improve the treatment offered to the persons deprived of their liberty.

As a result the Orhei and Ocnita police commissariats have taken away the metal protection tables, the natural illumination and ventilation has improved, separating walls have been built to isolate the toilet from the rest of the living space of the cell, separate beds have been installed for each detained person, the necessary area being observed for each detainee, lavatories and sanitation units have been installed and video surveillance equipment was put in place inside and around the isolator.

Pursuant to the recommendations of the ombudsmen pertinent to the detention conditions identified as degrading and inhuman, during 2010 the activity of provisional detention isolators within the Leova police commissariat and the General Directorate Special Services of the MoI has been stopped. Additionally, pursuant to the recommendation of the ombudsman, the decision makers from the Telenesti district police commissariat have stopped the activity of the isolator's cells until the repair works inside them are finalised. Meanwhile, the majority of the isolators in repairs have not received persons and have been escorted to the nearest criminal investigation isolators.

In the context of the state of affairs determined during the monitoring visits it is worth mentioning that the continuous existence of inadequate detention conditions in the units of the Ministry of Interior continues to remain one of the main reasons of conviction of the Republic of Moldova at the European Court of Human Rights. Actually, the state of affairs registered in 2010

in most of its part complies with the situation described and evaluated by the European Court of Human Rights in the case *Becciev vs. Moldova* from 4 October 2005. In this decision the applicant's allegations were that the detention for 37 days in the provisional detention isolator of the Special Services Directorate of the MoI was a breach of the right guaranteed by article 3 of the Convention. In this case the Court found the breach of article 3 of the Convention on the reason that the provisional detention isolator did not offer the detainees with sufficient food, the applicant did not have fresh air walks, the window of the cell where he was held was covered with metal plates which impeded the entrance of the natural light, the light in the cell was on at all times and the detainees were forced to sleep on wooden platforms without blankets, mattresses and pillows. The visit from April 2010 to the Special Services Directorate of the MoI has acknowledged similar conditions with the ones for which the Republic of Moldova was convicted.

In two other cases *Popovici vs. Moldova*[249] and *Stepuleac vs. Moldova*[250], the Republic of Moldova was convicted for breach of article 3 of the Convention under the same omissions.

A similar situation was found in the case *Malai vs. Moldova*.[251] The applicant invoked inadequate conditions at the provisional detention isolator at the Orhei police commissariat, who stated that he initially was placed in a cell without not bed, chair, toilet or washbasin, this being used for detentions of up to three hours only. Subsequently, he was placed in cell no. 9 of the isolator, which did not have any windows or ventilation, whilst the light was on at all times, and so weak it was hardly possible to distinguish the faces of other detainees. The cell had a length of about seven meters and a width of about 3 meters, where six persons were held. The room did not have a toilet, however in a room corner there was a bucket not separated from the rest of cell. There was no washbasin and the detainees had to keep water in plastic bottles, which the detainees were allowed to fill them up from time to time outside the cell. There were no beds, just a thick lait, a little higher than the floor where four people could sleep. The applicant did not receive any bedding. Additionally, due to the overcrowded cell the detainee claimed that he slept only an hour per day. The body of the applicant was covered with bites of insects, subsequently some have transformed into injuries. The applicant sent the Court photos by which he showed the bites on his body. The food was insufficient and of poor quality. The detainees received food once per day in dirty tableware, due to which the applicant had always felt hunger. The relatives were not allowed to bring food because he did not recognise his guilt. The applicant was not allowed to contact his relative and the outside world due to absence of paper, pens and

[249] Case *Popovici vs. Moldova*, application no. 289/04 and 41194/04, ECtHR decision from 27 November 2007
[250] Case *Stepuleac vs. Moldova*, application no. 8207/06, ECtHR decision from 6 November 2007
[251] Case *Malai vs. Moldova*, application no. 7101/06, ECtHR decision from 13 November 2008

envelopes. There was no radio or TV in the room and due to lack of natural light the applicant did not know which part of day was. During the visit from June 2010 to the Orhei police commissariat it has been found that the detention conditions have not registered substantial changes compared to the ones invoked by the Court when convicting Republic of Moldova for violation of article 3 of the ECHR.

The Centre for Human Rights acknowledged that while ensuring conditions in provisional detention isolators which cannot be qualified as inhuman and degrading, along with the certain repair works which allowed adequate detention conditions, an adequate attitude is necessary from the decision makers within the regional police commissariats and proper observance of duties as prescribed by the legislation in force. *Thus, during the visit organised by the Cahul branch office of the Centre for Human Rights in December 2010 to the Cahul district commissariat it has been determined that the repair works in four cells have been finalised. The unrepaired cells held two persons, M.E. and L.V. Because of the broken window and a film put instead, the temperature in the cells was low. The explanation of the responsible employees with respect to the placement of detainees according to which the placement of detainees in repaired cells was not possible due to the need to finalised the works of instalment of tables and chairs, is not plausible from the ombudsmen's perspective, and shows inadequate observance of duties.*

With reference to his case and 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 maltreatment

Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms provides for that nobody shall be exposed to torture, or inhuman or degrading treatment of punishment. The specific element of article 3 of the Convention resides in it "absolute" nature. Although a series of norms have been adopted which prohibit torture, its use by the state agents still continues. Torture represents a major concern of the society, because it destroys the physical and emotional state of persons on whom it is used.

In 2010 the Centre for Human Rights received 422 complaints on breach of constitutional right to life, physical and moral integrity, liberty of the person and personal security provided for by articles 24 and 25 of the Constitution of the Republic of Moldova. Out of these, 33 complaints relate the allegations of maltreatment from the police agents during arrest or criminal investigation activities. Twenty one complaints have been redirected to the prosecutors' office, whilst 11 cases have been further researched on the invoked circumstances and facts with the participation of the prosecutors. Additionally, following the visits organised within the National Torture Prevention Mechanism, certain facts have been registered which may generate reasonable doubts as to the used of maltreatment within the police commissariats. An important factor of complaints collection on the use of maltreatment by the law enforcement agents for 2010 is the activity of the Hot Line on Torture Prevention, a project financed by the European Union and co-financed by the United Nations Development Programme, which commenced its activity at the beginning of July 2009. Thus, out of the 791 calls, 35 represent cases of maltreatment which have been subsequently examined by the CHR.

After the investigation of the facts invoked in the complaints and special communiqués of the Department of Penitentiary Institutions, the ombudsmen have issued six requests on the possibility to initiate criminal prosecution for use of maltreatment by the policemen. As a result of the undertaken activity, the prosecutors have initiated four criminal prosecution files, on the basis of the offences provided for in articles 309^1 and 328 Criminal Code, whilst in the case of 14 requests and applications the initiation of criminal prosecution was refused. Meanwhile, in two cases the ordinances of refusal to initiate criminal prosecution or stop criminal prosecution have been abolished by the prosecutors, there being ordered supplementary review of the circumstances of the case. The analysis of the complaints and the mentioned statistical data reveal that usually the allegation of maltreatment is made by the relatives of the maltreated persons, in some case even investigated after the special communiqués of the penitentiary institutions, after the transfer of the detainees in the criminal prosecution isolators.

Meanwhile, the majority of the complaints where maltreatment is invoked have been examined by the prosecutors' bodies – whose role pursuant to the law is to protect the general interests of the society, the rule of law, the rights and freedoms of citizens, to lead and manage criminal prosecution, present the state accusation in the courts of law, as provided by law.[252] In the context of the events after the parliamentary elections from 5 April 2009 and due to the mass use of maltreatment in 2010 a new structure was created within the Prosecutors' Office called the Division against Torture. The main functions of this division relate to the efficient investigation of the maltreatment of persons by the law enforcement agents (Parliament Decision no. 77 from 4 May 2010, "Official Journal" no. 78-80 from 21 May 2010). The statistical data of the General Prosecutor's Office show that during 2010 219 complaints of the citizens on the use of maltreatment by state agents have been examined. From the presented information it has been established that in 2010 the courts of law examined 41 criminal cases against 61 persons for offences committed by article 328 of the Criminal Code (abuse of power or overstepping job duties); 23 criminal cases against 25 persons for abuse of power against military personnel – article 368, 370 Criminal Code. At the same time, the court of law have received 25 files against 42 persons for the offence provided for by article 309^1 of the Criminal Code – torture, there being already five conviction sentences issued on 6 persons, the imprisonment being conditionally suspended.

During the visits to the institutions subordinated to the Ministry of Justice a large group of convicts have invoked the use of violence during detention in the police commissariats. Violence is particularly known by its psychological pressure to which the detained persons are exposed in the first hours during interrogations and in the absence of a lawyer, having the following explanations:

- Are committed with the purpose to obtain declarations, testimonies, obtaining evidence using illegal means
- Are committed with the purpose to show superiority in front of the victims of their actions and neglect general behaviour rules, as well as the possibility to abuse power for "educational" purposes
- Are committed in the process of abusive use of job duties without knowing the legislation.[253]

[252] Artcile 1from the Law on prosecutors no. 294-XVI from 25 December 2008, „Official Journal", no.55-56/155 from 17 March 2009
[253] Annual Report on the activity of the National Torture Prevention Mechanism for year 2009

In most of the cases the maltreated persons communicate to the employees of the Centre for Human Rights from Moldova the fact of maltreatment after which they are transferred to the criminal investigation isolators subordinated to the Ministry of Justice.

Thus, citizen Z.N. was arrested by the agents of the Ialoveni police commissariat on 19 June 2010 at 21:00, being suspected of committing a sexual offence against a minor. After brought to the police station, was preliminary questioned by the policemen who arrested him, being beaten by all of them in turn with fists and with a rubber baton in the head. In the same evening he was brought by other two police officers at the premises of the raional Ialoveni police commissariat and between 23:00 and 9:00 in the morning while being questioned by the police he was beaten with fists and a board in the head and in the region of the chest and threatened to declare the truth and not tell lies. The questioning took place without the presence of the defender. The next day he was transferred to the general police commissariat of the Chisinau municipality, where he was held until the 23rd of June. After the doctor issued a series of recommendations he was sent for examination at the Urgency Hospital of the Chisinau municipality to determine the state of health, which by means of visitor's certificate no. 30695 established the medical diagnosis for Z.N. – contusion of the soft tissues of the face. The same diagnosis – contusion of the soft tissues of the bilateral paraorbital region – was established by the medical service of the penitentiary institution no. 13 of the Chisinau municipality at the time of placement of the Z.N. at the 23 June 2010.

In this respect the Ialoveni district prosecutors' office was contacted, which by means of ordinance from 2 August 2010 has decided on non-initiation of criminal investigation, there being no elements of offence identified.

During the visits organised by the ombudsmen the persons under police custody avoid, as usual, to acknowledge the use on them of maltreatment. *In spite of this, during the visit from 17 February 2010 of the ombudsman to the Leova police commissariat, a group of detainees, who happened to be resident of Iargara village, Leova region, have declared that have been maltreated by the employees of the riflemen troops. Thus, pursuant to the allegations of the arrested persons during the night from 9 to 10 February 2010, being arrested by the riflemen troops of the Iargara village, have been beaten with different objects on various parts of bodies obliged them to confess the fact of committing a theft. On 19 February 2010 the ombudsman contacted the Prosecutor General Office and requested the initiation of investigation of cases of maltreatment that have taken place against citizens T.I., S.A., M.N., S.O. and A.T. and E.T. This event was considered sufficiently serious to initiate criminal prosecution based on article 309[1] of the Criminal Code (torture). On 24 September 2010 the criminal investigation was stopped there being no offence identified in the actions of the riflemen squad.*

With respect to the use of maltreatment the ombudsmen received complaints from the citizens, their relatives who have suffered from the abuses of the police agents.

After the visits and the interventions of the ombudsman and taking into account the case-law of the European Court of Human Rights on this issue, the conclusion is that the bodies competent to investigate cases of use of violence by the police agents still accept omissions in their activity.

Thus, during the visit from 16 April 2010 to the general police commissariat of the Chisinau municipality citizen M.E. was found with visible signs of injuries who declared on 5 March 2010 that was maltreated by three police agents of the Centru district police commissariat, him being beaten several times with the purpose to oblige him to confess his participation at a theft. During interrogations M.E. was not assisted by a lawyer appointed by him or part of the state legal aid, being threatened by the police agents with death if he makes testimonies against them. After contacting the Prosecutor's General Office, on 12 May 2010 it has been decided not to initiate criminal investigation, with the withdrawal of the complaint and with no elements of crime there being identified.

Another case which demonstrates that policemen while on duty ignore the legal provisions related to their duties and abuse of them is the case of citizen Z.L., resident of the Soldanesti raion, who informed the ombudsmen that on 3 June 2010 around 13^{00} hours his brother B.G. and his minor sun B. I. have been arrested by the police agents and escorted and held at the Soldanesti commissariat until 24^{00} hours. During their stay they have been exposed to interrogations from the internal affairs agents, without being assisted by an attorney appointed by them or by the state legal aid. Additionally, B.I., while being a minor (16 years old) was interrogated in the absence of the social assistant, contrary to the provisions of article 479 paragraph 2 of the Criminal Procedure Code. During interrogation, as it results of the allegations of the applicant, the minor was beaten, intimidated and forced to confess that he committed a murder, and as a result would receive a less harsh penalty. In this respect, the policemen have promised that if he recognises his guilt, they would help him pass his exams. In this respect citizen Z.L. communicated the Hot Line operators on the arrest of a minor in the region, who was also maltreated by the police. According to the presented data, additionally a house search was made of the alleged victim, without a valid warrant, contrary to article 125 paragraph 3 of the Criminal Procedure Code. When called to react on this case the Soldanesti district prosecutors' office refused on 8 September 2010 to initiate criminal investigation. In this respect the prosecutors have requested initiation of disciplinary measures against the police agents for breaches of the criminal procedure, as well as the disciplinary Statutes of the interior affairs bodies, adopted by means of Government Decision no. 2 from 4 January 1996.

Another case investigated by the ombudsmen relates to the petition of a mother of a minor, arrested by the police agents on the night of 29 January 2010 at 20:00.

Citizen I.A., resident of Chisinau municipality issued a complaint by means of which she declared that her 17 years old minor sun E.P. was arrested on 29 January 2010 at 20:00 by two police agents and during the arrest while escorted to the Centru police commissariat was beaten by the police agents at his feet, head and below the ribs. Ms. I.A. was informed of the arrest of her sun at 23:00 and forced to sign minutes of an administrative misdemeanour provided for by article 85 of the Misdemeanour Code (position of drugs in small quantities for personal use without the prescription of the doctor). It must be noted that the administrative procedure took place with numerous breaches, with no informing of rights to the arrested minor, him being interrogated in the absence of a social worker, without the description of the corpus delicti, which served as basis for the minutes and without their subsequent conservation. The Centru district Prosecutors' office initiated criminal investigation on the basis of articles 327 and 328 of the Criminal Code.

The ombudsman insists on the vulnerability of persons detained in the provisional detention isolators within the police commissariats where the police agents have unlimited access during the day and night. This is another argument in favour of the transferring the provisional detention isolators from the subordination of the Ministry of Interior to the Ministry of Justice.

From this perspective, the implementation of the activity found in the Concept of reform of the penitentiary system and the Action Plan for years 2004-2020, adopted by means of Government Decision no. 1624 from 31 December 2003, namely the construction of the eight arrest houses became a stringent need.

Another deficiency identified during the visits is the inadequate management of entries in the registries of the arrested persons and visitors, some of them lacking chronological order.

Thus, during the visits from 22 September 2010 the Ciocana district police commissariat, although having a registry, was not making any entries into it, whilst at the Buiucani district police commissariat the entries were viciously made, with no indication of effective time of stay in the institution. During the visit to the Falesti raion police commissariat from 21 July 2010 defective entries have been found in the registry of arrested persons. Additionally, during the visit from 13 May 2010 to the Riscani raion police commissariat the registry of visitors was verified and it was determined that the entries have been only partially made, with frequent entries stating only the hour of entry of the visitor without no hour of leave. Such example is the case of citizen A. summoned to policeman S. at 7:55; citizen C called by the commissar at 8:17; citizen B, who entered to the policeman U. at 8:00. In none of the cases the hour of exit from the

offices of the police agents was indicated. These examples demonstrate the need to regulate and have a uniform practice of entries and monitoring of periods of stay of citizens at the law enforcement bodies' premises, which would avoid in the future abuses of the freedom and security of persons.

A striking example of breach of the constitution right to life and physical and mental integrity is the case of citizen D.L.

He declared that on 8 January 2010 at 4:00 he was arrested by the police agents of the Soroca police commissariat, escorted to the premises, where he was placed in a cell of preventive detention and maltreated. After the examination from a forensic doctor on 11 January 2010 there have been injuries found on his body, which could have been most probably generated within the circumstances mentioned by the victim. After the investigation of allegations on certain acts of maltreatment, it has been established that the entry into the registry of persons brought to the premises of the police commissariat with respect to citizen D.L. reflected his stay between 4:10 and 6:50 of the day of 8 January 2010, whilst the reason of him being placed into the commissariat was an information of him committing a misdemeanour registered in the registry no. 2 related to crimes and incidents, date 8 January 2010, 6:10. Because initially the Soroca district Prosecutors' Office refused on 10 February 2010 to initiate criminal investigation the ombudsman has determined after the investigation of the cases presence of injuries caused to citizen D.L. during his stay in the custody of the state authorities. The ombudsman requested the Prosecutor's General Office to interfere which manifested into an annulment of the ordinance not to initiate criminal investigation and prosecution was at the end initiated.

With respect to the case described above there is no final decision, there still being criminal investigation measures taken.

The state has the obligation to present a plausible explanation on the way the injuries have been cause, and if the state avoids it, there could be a case of breach of article 3 ECHR. This obligation derives from the provisions of article 10 paragraph (3^1) of the Criminal Procedure Code, pursuant to which the burden of proof of non-use of torture or other cruel, inhuman or degrading treatment or punishment is on the authority which had the custody over the person deprived of her freedom, detained based on the decision of a state body or with its tacit agreement or consent – amendment included at the initiative of the CHR.. Thus, a similar case was the case of *Buzilov vs. Moldova,* when the prosecutors' bodies have proved the fact of lack of maltreatment by means of testimonies of policemen, refusing to initiate criminal investigation on the reason of lack of elements of an offence. The Court explained that during the process of measuring proof, the standard of evident is "beyond a reasonable doubt", which

implied that when the events in a case are totally or in most of their part known only by the authorities, as it is the case of persons in custody, there shall be strong presumptions of facts relate to the body injuries appeared during detention. Thus, the burden of proof of non-application of maltreatment is on the authorities, which must present satisfactory and convincing explanations (during the process).

But as previously mentioned, the maltreatment of persons in detention, as well as the lack of any effective investigations on case of complaints from maltreated persons, are serious violations and omissions in the light of article 3 of the Convention. The fact was acknowledged in the cases examined by the European Court of Human Rights, which resulted in the conviction of the Republic of Moldova.

The European Court reminds in a quasi permanent formulation that article 3 contains one of the fundamental values of the democratic societies. Even under most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment of punishment. Article 3 does not provide any restrictions, does not accept any derogations, even in case of public threat, which endangers 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.

In 2010 the first level courts have issued six decisions on seven police agents based on article 309/1 of the Criminal Code of the Republic of Moldova. Among these, five sentences on six police agents were of conviction and one decision was of termination of prosecution pursuant to article 55 of the Criminal Code due to subsequent administrative liability. The police agents have been sentenced to prison with the use of article 90 of the Criminal Code of the Republic of

Moldova, which provides for the conditional suspension of the enforcement of the punishment. Additionally, as complementary punishment was prohibition to hold certain positions or have a certain activity within the Ministry of Interior. With respect to the convictions based on article 328 of the Criminal Code of the Republic of Moldova, during the reference period there have been 16 sentences issued on 19 police agents, out of which 11 sentences on 12 persons were of conviction, whilst two sentences on three persons were of acquittal. Only with respect to one of the 12 police agents, incarceration was provided for in a penitentiary, the rest having a sentence conditionally suspended on the basis of article 90 of the Criminal Code of the Republic of Moldova. The complementary sanction of privation of the right to hold certain positions and have a certain activity within the Ministry of Interior was applied on 15 persons. Such soft penalties for the representatives of the state authorities guilty of use of torture and other maltreatment allow such cases to take place until present.

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 the circumstances require it.[254]

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.

[254] Report on the activity of the National Torture Prevention Mechanism for year 2009

Medical services

The medical examinations chapter of the persons placed under police custody remains at the level of year 2009. The Comrat police commissariat, the preventive detention isolator of the Stefan Voda police commissariat, the Ialoveni and General Directorate Special Services of the MoI, and starting with 2010 the preventive detention isolators of the Calarasi and Ceadir Lunga police commissariats have vacant positions of feldsher.

Meanwhile, within the provisional detention isolators of the Nisporeni, Cimislia, Basarabeasca, Cahul and Tighina Police Commissariats the feldshers 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 continues to 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 feldsher and in the presence of the duty agent on their state of health and exposed to sanitarian disinfection.

The problems identified by the ombudsman, including in the Report on the activity of the National Torture Prevention Mechanism for year 2009 remained without a proper reaction from the authorities, at least during 2010, although the case-law of the European Court of Human Rights already knows a similar case relevant for the Republic of Moldova.

In the *Colibaba vs. Moldova*[255] 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.

[255] 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.

Taking into account the previously provided recommendations, a positive dynamics has been registered with respect to the provision of medical assistance to persons placed under police custody. Thus, after the review of the medical registries of the feldshers and the personal files it has been established that a detailed entrance of data has been included pertinent to the arrested persons starting with the data of arrest and ending with the data of transfer to the custody of other state bodies or liberation. In this respect the behaviour of the general police commissariat is worth mentioning, which implies refusal to place persons with evident body injuries until their exact location and gravity is established by a medical service. This actually complies with the recommendations of the Court and the Committee against Torture which affirms that burden of proof on non-use of maltreatment is on the agents in whose custody the detainee is.

Visits organised in institutions subordinated to other central public authorities

In 2010 the ombudsmen have organised two preventive visits to the psychiatric institutions to prevent maltreatment on persons placed in these institutions. Monitoring must be implemented after a special training of the employees who manage it, there being at the same time needed special skills to develop a good report.

The types of psychiatric hospitals where persons are placed without their consent are the following:

1. Sections in psychiatric hospitals where persons are placed without their consent for psychiatric treatment as a result of certain civil proceedings.

2. Section of psychiatry where persons who have committed offences without discernment and who have been exposed to medical constraint measures – forced medical treatment.

3. Social institutions where persons with mental health problems are placed, who cannot take care of themselves due to physical disabilities or age (psycho-neurological hospitals).

Indeed, the monitoring of the psychiatric institutions represents a new area of intervention, which requires knowledge and involvement of experts from various areas to prevent maltreatment on patients placed in these institutions. In this respect, between 7 and 9 December 2010 in Chisinau took place a training seminar, supported by the members of civil society involved in mental health issues, focused on the methodology of monitoring of psychiatric institutions. The international experts in the field of mental health under the auspices of the Mental Disability Advocacy Centre from Hungary have informed the participants on the methods of monitoring of psychiatric institutions. Similarly, during the seminar there have been two visits organised at the Republican Psychiatry Hospital from the Chisinau municipality, where the participants have been trained on how the accommodation conditions of patients, the observance of rights of placed persons, the methods of treatment are analysed, as well as how to tackle the deficiencies in these institutions.

In the area of mental health there are a series of challenges present in the psychiatric institutions. From the point of view of the international experts, the mentally sick persons need to be treated with the observance of their personality, taking into account the diseases they suffer from.

In 2011 the ombudsmen have planned to monitor the observance of human rights in the psychiatric institutions and psycho-neurological hospitals and study the particularities of their activity.

Meanwhile, during 2010 preventive visits have been organised to military institutions. On 17 September 2010, within the National Torture Prevention Mechanism, a working group comprised of the employees of the Centre for Human Rights from Moldova have organised a preventive visit to the Garrison of the Chisinau municipality Command within the Armed Forces of the Republic of Moldova, situated on Maria Cebotari street no. 6. The aim of the visit was to monitor the detention conditions in this institution and the reaction of the national authorities to the recommendations of the international organisations.

The recommendations of the ombudsman have been formulated in the context of the recommendations of the European Committee for the prevention of Torture and other Inhuman or Degrading Treatment or Punishment, addressed to the authorities of the Republic of Moldova as a result of the visit from 10-22 June 2001. After this visit on 9 November 2001 the Government of the Republic of Moldova presented an answer to the *Final Observations* of the delegation.[256]

During the monitoring visit to the Military Garrison Command in the Chisinau municipality the delegation of the Committee for the Prevention of Torture has not received any complaints of physical maltreatment from the detained persons. Meanwhile, a proper hygienic and sanitary state

[256] The Report of the Government of the Republic of Moldova pursuant to the visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 10-22 June 2001

of the cells as well as their artificial lighting was found. However, the cells were not ensured with natural light. In this respect, the authorities have been recommended to ensure adequate access to natural light, the lack of windows being on the most essential requirements depicted by the international experts.

On 17 September 2010 the working group formed of the employees of the Centre for Human Rights from Moldova organised a visit to the Military Garrison Command in the Chisinau municipality. At the time of visit the respective institution had five soldiers in detention (military personnel on duty call) who have been exposed to arrest as disciplinary measure (sanction provided for by article 44 of the Law on the approval of the Regulations on military discipline no. 52 from 2 March 2007). Among them four are on duty at the Riflemen Troops of the Ministry of Interior and one in the National Army. The discussions with the arrested soldiers have revealed that no maltreatment was used against them, they had access to food three times a day and have personal hygiene objects.

At the same time the ombudsman has identified the lack of natural light until present, this being one of the subjects actively discussed by the delegation of the Committee for the Prevention of Torture during the visit from 2001. This deficiency is due first of all to the lack of windows in cells, which in turn block the entrance of natural light and makes it difficult for fresh air to enter.

Additionally, the lack of a bathroom, sanitation and washbasins in cells has been identified. Paragraph 13 of the Recommendation of the Committee of Ministers to the member states of the Council of Europe on European Penitentiary Rules, adopted on 11 January 2006, provides for the right of the persons incarcerated on any legal ground to have access to sanitary and hygienic equipment, which would protect their intimacy. Additionally, persons in custody must have the possibility to satisfy their natural needs at the desired time, under decent and sanitary conditions, have adequate washing conditions.[257]

The ombudsman communicated the administration of the Ministry of Defence that this state of affairs may be qualified as inhuman and degrading pursuant to article 3 of the ECHR, because the physical and mental sufferings, generated by the state of anxiety, humiliation and inferiority during the stay under the custody of the state perfectly comply with the case-law of the ECtHR and the lack of any reaction for 9 years is from the ombudsman's point of view a serious omission.

The European Convention for Human Rights, similarly as other instruments, does not offer unanimous definitions for inhuman and degrading treatment. However, these definitions should be extracted by the member states with good will and current understanding of these two notions. Here the authorities should act on basis of the general spirit and sense of the notion of maltreatment to

[257] Selections from the second General Report of the Committee for the Prevention of Torture [CPT/Inf (92)3]

exclude the cases found by the international organisations as thus confirm the direction of European integration of the Republic of Moldova.

Thus, the lack of any prompt reaction and special criteria to eliminate the deficiencies mentioned in the recommendations of the Committee for the Prevention of Torture and of other international organisations may jeopardise the process of adjustment of the Republic of Moldova to European standards and valued as inefficient in the context of observance of positive obligations as state party to a series of conventions which prohibit torture, degrading and inhuman treatment.

Subsequent to the visit, a letter with recommendations was sent to identify financial means to install windows in all the cells where persons are already detained, adaptation of sanitary and hygienic conditions as provided by the requirements in the field, instalment of bathroom installations sufficiently accessible to them to ensure their personal hygiene, but not less than once a week. Also, the requirement to ensure separate placement of beds in cells and management of professional training courses for the duties of the disciplinary unit have been formulated to develop the spirit of denial of torture cases.

The Ministry of Defence informed the ombudsmen that it cannot install the requested windows.

The visit of the Committee for the Prevention of Torture to the institutions where persons can be detained in the regions controlled by the Tiraspol authorities from July 2010

The European Committee for Prevention of Torture organised in the last decade three visits to the transnestrian region of the Republic of Moldova: in November 2000, in February/March 2000, as well as in March 2006. As a result of the latest developments in the transnestrian region related to the abuses of arrest of journalist Ernest Vardanean and of Ilie Cazac and violation of procedural guarantees during the criminal prosecution activities and trial of criminal cases, the members of the Committee for the Prevention of Torture have expressed their interest to visit the penitentiary institutions in the transnestrian region. Whilst in Penitentiary no. 3 of the Tiraspol city in July 2010 the members of the Committee addressed the transnestrian authorities the need to privately discuss with the convicts. Because such an application was rejected, the members of the delegation decided to stop their visit in the transnestrian region. Indeed, the confidential discussions with the persons deprived of their freedom are one of the main elements of the torture prevention mechanisms, used by the Committee for the Prevention of Torture. These events confirm the tendency of obstruction of the visits of the International Torture Prevention Mechanisms, which in turn demonstrate the unwillingness of the Tiraspol authorities to clarify the real situation in the institutions where persons from the region can be detained.

Similarly, during the visit of the Delegation of the European Committee for the Prevention of Torture between 21 and 28 June 2010 Penitentiaries no. 8 and 12 have been monitored, which are under the subordination of the constitutional authorities, however located in the Tighina municipality, which is administered by the transnestrian region. The standing of these to penitentiaries is unclear, because starting with 2003 the local authorities from Tighina have disconnected the institutions from the central water supply system and electricity, whilst in 2005 have been disconnected from the sanitation system. The transnestrian authorities have also jeopardised the supply of the penitentiaries with fuel, wood, water and food, which makes it difficult to ensure the normal functioning and offer decent life conditions.

Another example of jeopardise of functioning of penitentiaries is the arrest on 7 October 2010 of the employees of the Penitentiary no. 8 by militia from the region using the reason of breach of the rules of entrance and stay in the region.

The members of the delegation of the Committee for the Prevention of Torture have recommended the Government of the Republic of Moldova adopt an efficient strategy of negotiation with the authorities of the Tighina city on the normal functioning of the institutions and offer acceptable detention conditions.

In this respect, the ombudsmen have showed availability to call for support the representatives of the regional human rights protection organisations to ensure prevention of torture, as well as maltreatment and inhuman and degrading treatment. Additionally, the regional human rights protection institution is called to ensure the procedural guarantees of the persons in custody.

Due to the fact that the transnestrian region cannot be visited to prevent maltreatment and inhuman and degrading detention, measures are needed to ensure the agreements previously reached as a result of negotiations. Also, the direct involvement of the Unified Control Committee is needed, especially in the Tighina municipality each time serious breaches of human rights are registered.

Conclusions and recommendations

Bodies subordinated to the Ministry of Interior

- *Amendment of the legislation to include mandatory transfer of arrested persons into penitentiaries immediately after the arrest.*
- *Establishment of real punishments for persons who have committed acts of maltreatment, while taking into account the circumstances of the case in order to prevent and diminish the phenomenon in the future.*
- *Equipment of employees of bodies who manage criminal investigation with technical means to identify, collect and pick up evidence of an offence.*

- *Training of the medical personnel from the preventive detention isolators in accordance with the international standards on medical documentation related to the acts of maltreatment, especially the Istanbul Protocol.*
- *Exclusion of cases of prolonged detention of persons preventively arrested in the special institutions of the Ministry of Interior, with the possibility of the return of the person into police custody only when there is no other solution and for the shortest period possible.*
- *Management of interrogations places specially adapted for such procedural acts, ensure the right of the detainee to a lawyer*
- *Ensure the right of the detainee to detailed medical examination under confidentiality conditions when entering and leaving the detention facilities.*
- *Employment of personnel in the vacancies of feldsher in the special institutions of the Ministry of Interior.*

Bodies subordinated to the Ministry of Justice

From the ombudsman's point of view the penitentiary became a complex and multilateral subject instead of being a tool to solve social problems, where not only a series of offences are committed in custody, but also develops the criminal ideology, affecting thus the entire society. The National Torture Prevention Mechanism has identified a series of essential deficiencies which jeopardise the essential nature of the criminal punishment, which is the re-education of the detainee. Within the organised visits almost all the monitored institutions have shown major gaps in implementing social and educational programmes. The ombudsman has constantly communicated the authorities the issue of human development of detainees in penitentiaries and this should be the preoccupation of the responsible servants not less than other issues, such as ensuring detention conditions and elimination of torture. This position was also presented by the delegation of the Committee for the Prevention of Torture during the visits to the Republic of Moldova.[258] Thus, during the monitoring process it has been underlined that detention has anti-socialising effects for convicts. Besides the fact that they shall become "institutionalised", the convicts may be affected by psychological problems (including lack of self-esteem and damaged social capacities). The detention schedules offered for the convicts who enforce their long sentences must follow the aim of compensating these effects in a positive and proactive manner. The convicts should have access to a large variety of motivating activities (labour, preferably

[258] The Report of the Government of the Republic of Moldova pursuant to the visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 10-22 June 2001, adopted on 9 November 2001

which develops professionalism, education, sports, leisure activities, group activities), and a positive effect would be the visits of the relatives and close persons. Additionally, these convicts should benefit from the possibility to choose who to spend their time, which in turn would stimulate their sense of autonomy and personal responsibility. Additionally, the delegation of the European Committee determined that supplementary measures need to be adopted to give reasoning to the incarceration of convicts, more specific, the use of individual treatment programmes and an adapted psychological and social space. These factors are important to help the detainees serve their sentence, whilst the negative effects of institutionalisation on them shall be less evident, if they shall be able to maintain effective contacts with the exterior world.

Under these circumstances the ombudsman considers that if the social and educational programmes currently existent, which are provided for by the legislation in force, shall be treated formally by the personnel of the penitentiaries, this situation may damage the trust of the society in the possibility offering justice to the state bodies and determines the need to reform the currently existent penitentiary system. At this new millennium beginning new objective and tasks are needed for the criminal justice.

- *In this respect, one of the main recommendations related to this area is the increase of the number of employees involved in the process of re-education of convicts (chiefs of regions, social assistants and psychologists).*
- *Implementation of all necessary measures, including allocation of additional financial means to adequately feed the convicts (quality, diversity and quantity), pursuant to the requirements provided for by Government Decision no. 609 from 29 May 2006.*
- *Evaluation of the current state of affairs in the penitentiary institutions in the country to establish and allocate financial means to ensure the necessary repair works.*
- *Remodelling of living spaces by means of division of large dormitories in certain penitentiaries in smaller living spaces.*
- *Employment of medical personnel currently vacant in the penitentiaries (doctors and assistants) to ensure effective care for convicts.*
- *Monitoring of the respect of sanitary and hygienic rules in the penitentiary, level of cleaning, clothes and bedding of convicts.*
- *Ensure the minimum requirement of 4sqm per detainee.*
- *Promote, especially, by the administration of the penitentiaries, certain cooperation relations, which would replace the confrontation relations between*

the convicts and the personnel, as well as would consolidate the order and security in penitentiaries.

- *Development by the empowered structures of the Department of Penitentiary Institutions of efficient and speedy means to organise the forensic medical examination of detained persons.*
- *Creation of the system of enforcement of sentences and legal framework to truly value the notion of reintegration of detainees by means of facilitating their contact with the outside world and eliminate restrictive detention practices.*

1.14. Observance of human rights on the left side of the Nistru river

Freedom of movement

The right to free movement is guaranteed to any citizen of the Republic of Moldova in accordance with article 27 of the Constitution, with the right to establish domicile and residence in any settlement of the country.

The authorities of the Republic of Moldova have never officially recognised the "Tiraspol regime", guaranteeing and protecting constitutional rights of citizens on all of its territory. IN the mean time, the authorities from the left side of the Nistru river, pursuant to agreements reached to peacefully settle the armed conflict, have taken commitments to avoid actions of provocation and tensioning the spirits in the security area.

From the start of the hostilities in 1992 until present the movement of persons between the two sides of the Nistru river took place with difficulties, generated by the fact that the transnestrian authorities offer passage to persons in the controlled area on a discretionary basis. The official delegations which want to reach the region of the left side of the Nistru river are obliged to inform the transnestrian authorities in advance to obtain access permits, even though such an access permit may be annulled any time.

During 2010 the authorities from the left side of the Nistru river have deliverately restricted access to the citizens of the Republic of Moldova on the territory controlled by the Tiraspol authorities. Thus, on 22 June 2010 the Chairman of the Central Electoral Commission (CEC), Mr. Eugen Stirbu, was arrested by the transnestrian authorities at the Cuciurgan border access point on the reason that an arrest warrant was issued on him. After around three hours Eugen Sirbu was transported to Tiraspol where he was informed that he has an open criminal case for alleged breaches of the local elections in 2007 in Corjova village, near Dubasari city, which is under the jurisdiction of Chisinau authorities, but where are also present transnestrian representatives. After the prompt intervention of the representatives of the Government with the support of the OSCE, the Chairman of the CEC was set free. Thus, the arrest of the public servant continued the list of arrests which took place in 2010.

In this respect, on 18 March 2010 the employee of the Fiscal Inspectorate of the Tighina municipality, Ilie Cazac, was arrested and charged of spying activities in favour of the Republic of Moldova, and on 7 April 2010 the journalist Ernest Vardanian was arrested, being charged of high state treason and acts in favour of the Republic of Moldova. The circumstances and the reasons these people have been arrested, as well as the way they have recognised their guilt for the incriminated acts have generated reasonable doubts as to the procedural guarantees and the organisation of a fair trial. In this respect, the statements of the relatives of the arrested persons

and of the civil society from the Republic of Moldova and the transnestrian region demonstrate that there is doubt as to the observance of the right to individual freedom and security of the persons, as well as the right to a fair trial, guaranteed by articles 5 and 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The actions of the transnestrian authorities organised during 2010 have been condemned by the representatives of the Government of the Republic of Moldova, who have sent messages to the transnestrian authority as well as the mediators to the negotiation process to end the activities of tensioning the situation and free the arrested persons. The Moldovan authorities have taken active measures to protect the freedoms of citizens under their "jurisdiction". Indeed, the decisions of the European Court of Human Rights indicate on the positive obligation of the state to protect its citizens, obligation which persists even if the authority is limited on a part of its territory, thus the state having the obligation to take all the adequate measures under its control.[259]

After the arrest of the Chairman of CEC, Eugen Stirbu, the arrest on 7 October 2010 of two employees of Penitentiary no. 8 from the Tighina municipality, the transnestrian authorities have freed them after the intervention of the Government of the Republic of Moldova.

Under these circumstances, the ombudsmen have publicly condemned the actions of the transnestrian authorities and have sent a message to them to show maximum diligence when observing the fundamental rights and the individual liberty and security of the people resident on the territory under their jurisdiction.

The observance of the rights of the child

The limited access of the representatives of the constitutional authorities of the Republic of Moldova as well as of the organisations active in the area of children's rights on the left side of the Nistru river does not allow collection of official statistical data and qualitative studies on the situation of children in this region. The available data, offered by mass-media or by the few organisations which are active in this area, does not represent a global approach to the system of protection of children's rights. From this perspective it is not possible to formulate certain sound conclusions on the observance of children's rights on the left side of the Nistru river.

Thus, from the Chisinau press[260] the ombudsmen have learned about the condition of the children without care who are from the region, who are more and more frequently identified in

[259] *Ilaşcu and Others vs. Moldova and Russia*, application no. 48787, ECtHR 2004-VII & 313.
[260] www.arena.md. The information was offered by the experts of the Swiss Foundation *Terre des Hommes*, in an interview offered to the Tiraspol agency, Novîi Reghion. In the last four year the database of the Foundation has registered 47 children found in Ucraine, 48 – in Rusia and one in Romania, one in Italy and one in Belarus. The age

Russia and Ukraine and their number is increasing in the last years. From the ombudsmen's point of view the presence of the European Union Border Assistance Mission at the border between Moldova and Ukraine on the transnestrian sector would have reduced the risk of fraudulent trespass of border by children and illegal smuggling of children from the country.

In spite of the existent barriers, in a totally apolitical and exclusively children oriented interest who are citizens of the Republic of Moldova, the ombudsman for children has facilitated the resolution of three cases of breach of rights of children in the transnestrian region.

In one case, the ombudsman contributed with identifying IDs issued by the authorities of the Republic of Moldova, because the employees of the Section population registries refused to recognise the decision to institute tutorship on the child, issued by the transnestrian authorities.

In another case, the ombudsman intervened to facilitate the adoption procedure for a child under tutorship from the Chisinau authorities by a family who lives in the transnestrian region and who previously adopted the brother of the minor. While intervening in the resolution of this case the ombudsman acted on the basis of the superior interest of the child and the fact that one of the main criteria in the selection of protection of children without parental care is placement of brothers and sisters together.[261]

The condition of the children in the transnestrian region is a complex issue, due to the mentioned barriers. In spite of this, the ombudsman for the protection of children considers necessary the involvement in resolution of difficulties which these children are facing, and commits to research this issue in more depth in 2011 with the available resources.

The observance of the right to vote in the left side of the Nistru river

The breadth of problems which the citizens of the Republic of Moldova on the left side of the Nistru river are facing has remained equally alarming. Thus, the impossibility to vote continues the general tendencies which are extremely worrying.[262]

Starting with 2005 the Central Electoral Commission, along with the central and local authorities under the jurisdiction of the Republic of Moldova, has taken measures to organise ballots in the Corjova village from the Dubasari district. In spite of these actions, the elections

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of children is from several months to 17 years. The ones from Russian were born there and abandoned in this country, or have left along with the family but have been left without care. Within respect to the children in Ukraine, most of them have an age between 14 and 17 years and have been found in Odessa. The majority of them were in the registries of the transnestrian militia and have trespassed the border illegally on the segment not controlled by the constitutional authorities of the Republic of Moldova.

[261] Article 10 of the Law on the legal status of adoption, no. 99 from 28 May 2010

[262] Report of the Centre for Human Rights on the observance of human rights in the Republic of Moldova in 2008, www.ombudsman.md/md/anuale

starting with 2005 until presents have not taken place, whilst the electorate did not have the possibility to vote.

Based on the information offered by the Central Electoral Commission, the latest elections organised in a democratic fashion took place in the transnestrian region in 2003. Both during the parliamentary elections from 2005 and the local ones on 3 Jun3 2007, as well as the early parliamentary elections from 5 April and 29 Jul7 2009, the constitutional referendum from 5 September 2010 the anti-constitutional forces from Tiraspol have blocked the access to the voting section, thus seriously violating the right to vote of the citizens of the Republic of Moldova in this region.

The Central Electoral Commission decided to open seven voting sections in the nearby settlements to ensure the right to vote for the citizens on the left side of the Nistru river, from the Tighina municipality and some of the settlements of the Causeni district, which are temporarily out of the constitutional control of the Republic of Moldova. This offered the voters for the respective settlements to participate at ballots. Four voting sections have been created for villages Varnita from the Anenii Noi district and Sanatauca from the Floresti district, as well as in the Rezina city only for the voters from the left side of the Nistru river.

Pursuant to the request of the citizens from the transnestrian region, voting was allowed in the Chisinau municipality at the constitutional referendum from 5 September 2010 at the voting section no. 113 from the Directorate of Railroads of Moldova.

However, in spite of the necessary conditions created for the citizens from the left side of the Nistru river to use the right to vote, their participation was reduced, the reason being the fear for the consequences that may follow.

By means of decision no. 3835 from 16 November 2010, CEC has decided that during the early parliamentary elections from 28 November 2010 the citizens of the Republic of Moldova, resident in the regions of the left side of the Nistru river, Tighina municipality and certain settlements in the Causeni district, which are temporarily outside of the sovereign control of the constitutional authorities of the Republic of Moldova, shall be able to vote in one of the 21 voting sections: 3 in Chisinau municipality, 3 in Anenii Noi district, 3 in Causeni district, 9 in Dubasari district, one in Sanatauca village, Floresti district, one in Rezina city, Rezina district, one in Rascaieti village, Stefan Voda district.[263]

The decision provided for that the voters resident in the resident in the regions of the left side of the Nistru river, Tighina municipality and certain settlements in the Causeni district, shall

[263] Report on the results of the parliamentary elections from 28 November 2010, adopted by means of CEC Decision no. 3951 from 6 December 2010

be included in the supplementary list when presenting the ID which demonstrates the place od residence in the respective settlement, whilst the "notes" compartment shall contain "ATU from the left side of the Nistru river". Pursuant to the minutes of the local electoral councils there have been a total of 7704 citizens who participated at this ballot from these settlements.

To ensure the security of the voting process at the voting sections from the settlements of the security area, the Central Electoral Commission asked the national, international observers and the Unified Control Commission to monitor the peaceful electoral process within the mentioned voting sections and asked the Ministry of Interior, based on its competences pursuant to the Electoral Code, to take of the necessary measures to maintain public order in the settlements where the voting sections have their premises.[264]

On 23 November CEC adopted the decision on the voting procedure for the electorate of the Corjova village, Dubasari district, at the early parliamentary elections from 28 November 2010. By means of Decision no. 3/1 from 27 October 2010 of the Dubasari district electoral Council no. 15 the voting section no. 5 was created in the Corjova village in Dubasari district, placed in the Lyceum „Mihai Eminescu". Subsequently, the decision was amended and the premises have been changed to the gymnasium S. Lazo, Corjova village, Dubăsari district.

Taking into account the fact that during the latest years the unconstitutional authorities from Tiraspol have blocked the participation of the voters from this village to the electoral ballots and starting from the need to ensure a free and democratic electoral process, the Central Electoral Commission examined this issue, consulted the opinion of the voters from the respective settlement, as well as of certain state institutions and reached the conclusion that it is necessary to switch the premises of the voting section no. 5 from the Corjova village to the Cocieri village, Dubasari district.[265]

As presented by the Report of the „Promo-LEX" Association on the "Monitoring of early parliamentary elections from 28 November 2010" (final report from 8 February 2011), the opening of voting sections, the electoral campaign and the entire electoral process in the transnestrian region of the Republic of Moldova has taken place with difficulties. The voters from the transnestrian region have been benefitted from equal treatment in terms of access to information and their electoral education. The constitutional authorities continue not to take visible measures at national and international level to ensure minimal conditions to participate in the electoral process for the voters of the transnestrian region.

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[264] Report on the results of the parliamentary elections from 28 November 2010, adopted by means of CEC Decision no. 3951 from 6 December 2010

[265] Ibidem

During the mentioned period, the constitutional authorities, the bodies and the electoral competitors, the civil society and the mass media continues to differentiate the voters in the transnestrian region. However „Promo-LEX" acknowledged certain efforts from the Central Electoral Commission to facilitate the voting process and enjoyment of the right to vote by the electorate from the region by means of supplementation of voting sections (from 11 to 21), where citizens from the region can vote. Also, CEC allowed the voters from the left side of the Nistru river to vote in any of the 21 voting sections. Out of these 21 sections, 17 are mixed and there voters from the respective settlement have also voted, based on the main voting lists. The mixed voting sections do not comply with the criteria established by the electoral legislation and suffer from lack of space, lack of electoral lists of the voters from the region.

The number of voting sections where the voters from the transnestrian region had the possibility to vote has increased in this ballot, however the number of ballot papers printed for this category of voters has been reduced to 13800, compared to 14500 for the parliamentary elections from 5 April 2009 and 14100 for the referendum from 5 September 2010. Pursuant to the data of the Ministry of Informational Technologies of the Republic of Moldova there are over 223000 citizens with a right to vote in the transnestrian region. However, this time the authorities have not developed electoral lists for the voters from the transnestrian region.[266]

At the day of elections the „Promo-LEX" observers have found the following situation in the transnestrian region: at the entrance in the Tighina municipality on the Chisinau-Tighina road, the number of personnel of the transnestrian check-point was doubled. The transnestrian checkpoints the persons were exposed to questions related to participation at the ballot. On the road Varnița-Tighina a traffic jam of about 200 vehicles was created, whilst in the Corjova village around the Lyceum „Mihai Eminescu" around 100 persons have been numbered, who were drunk, with posters with the following inscription: No to elections in transnestria, no to Romanianisation in transnestrian Moldovan republic. A similar situation was found at the premises of the gymnasium in Corjova village.[267]

On the other hand, it has been established that the electoral process for the early parliamentary elections from 28 November 2010 was an opportunity to mention qualitative improvement and a good enforcement of best practices reflected in the amendments to the legislation in force during the electoral period and prior to it. Additionally, the process of amendment of the Electoral Code was a transparent one, implemented by a special parliamentary committee, in partnership with civil society.[268]

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[266] Report of „Promo-LEX" on the "Monitoring of early parliamentary elections from 28 November 2010"
[267] Ibidem
[268] http://www.promolex.md/upload/publications/ro/doc_1297169756.pdf.

In spite of these, the limitation of the human rights and the democratic processes in the transnestrian region imposes conditions to the continuous implementation of the difficult efforts of the constitutional authorities to limit the formers effects.

Healthcare

The economic and political instability in the transnestrian region of the Republic of Moldova and the isolation of this region from the other part of the country has negative effects on the demographic state and the state of health of the population in this region.

From the moment of self-proclamation of the transnestrian republic the central public authorities of the Republic of Moldova did not have access to statistical indicators and epidemiologic data, a fact which led to the isolation and division of healthcare systems. The healthcare system of the Republic of Moldova registered in the last 10 years major changes, due to clear policies and implemented reforms. The institutional and organisational structure of this system was substantially changed in accordance with the new tendencies and international standards, as well as with the recommendations of the donor community in the area of healthcare. In spite of the lack of any official relation between the central public administration of the Republic of Moldova and the transnestrian region, the Ministry of Health of the Republic of Moldova maintains to a certain extent cooperation relations, most of which are informal, with the representatives of the authorities in the healthcare system in the transnestrian region.

The healthcare system in the region there are no important policy documents (such papers have become for a long time a normal feature on the right side of the Nistru river), such as strategies on the development of the healthcare system generally, specific strategies in various fields (for example, primary healthcare, reproductive healthcare etc.), budgetary planning documents on medium term etc. The main cause of continuous growth of population mortality in the transnestrian region is, alike in the Republic of Moldova, the cardiovascular disease and oncologic diseases. Amongst the most severe factors which generate this situation is the relatively big distance between Tiraspol and Chisinau (90 km), which in turn limits the physical access of the citizens from the left side of the Nistru river to the third level medical services.

The fight with HIV/AIDS and tuberculosis in the transnestrian region through models accepted by the Ministry of Health of the Republic of Moldova in accordance with the international standards confronts significant barriers and disadvantages, which take the form of limited access to treatment, hospitalisation of patients in the transnestrian region and delivery of ambulatory treatment in Chisinau. The main factors which determine these issues are: the lack of citizenship of the Republic of Moldova, which imposes legal restrictions for using the entire spectrum of services against HIV/AIDS and tuberculosis free of charge, which are available for the citizens of the Republic of Moldova (hospitalisation without payment of the occupied bed per

day, laboratory tests etc.); limited possibilities of the medical authorities from the transnestrian region to cover the expenses of costly medical services of long duration, combined with the limited possibilities of the patients when the costs of a single treatment frequently oversteps the equivalent of 200 USD; adherence to marginalised population groups, with a low incidence of healthy life; presentation of clinical signs of HIV/AIDS and tuberculosis (fatigue, pneumonia, other opportunist infections). All these make it not only difficult the transportation of the respective persons with public transport means, but also endanger other persons (for instance, with the tuberculosis bacillus).

A major challenge for the improvement of the healthcare system in the transnestrian region is the unwillingness of the authorities in the region to cooperate with the constitutional authorities, as well as the lack of healthcare system reformation initiatives. Under these conditions, the Ministry of Health and Social Protection from the transnestrian region does not have mechanisms of cooperation with partners on the right side of the Nistru river. There is no exchange of data and opinions between the two ministries. Cooperation takes place informally, most frequently at the initiative of Chisinau authorities (for instance, distribution of antivirus products and vaccines for flu AH1N1 in the context of the pandemic flu epidemic). However, from the point of view of many of the employees of the Ministry of Health of the Republic of Moldova, their colleagues on the left side of the Nistru river are very happy when receive support and recognise that would need more involvement from Chisinau authorities in the resolution of existent issues in the healthcare area in the transnestrian region. Unfortunately, the restrictions dictated politics and administrative subordination do not allow the structures from the left side of the Nistru river to openly cooperate with the constitutional authorities from Chisinau.

The cooperation relations with the international organisations involved in the resolution of the transnestrian conflict, including with the participants of the "5+2" regulation format is, from the ombudsmen's point of view, one of the proper solutions for the state to ensure the observance of human rights and fundamental freedoms on the left side of the Nistru river. Meanwhile, the dynamics and the results of the consultations within this format determine the need to develop clear strategies for the future, review and adoption of strategies for sector working groups, adopted by means of Government Decision no. 11178 from 31 October 2007, including by means of creation of the working group on human rights.

The ombudsmen express their belief that a larger tackling of the general relations generate by the transnestrian conflict in line with the tendencies of the international organisations which are partners of the Republic of Moldova would essentially contribute to the observance of fundamental rights on the left side of the Nistru river.

CHAPTER II

The observance of children's rights in the Republic of Moldova

*„Children are the greatest treasure of human kind and the best hope for future". **John Fitzgerald Kennedy***

The child is the tomorrow's capital of the humanity and is protected both on international level and on national level - by the legislation of the Republic of Moldova. Protection is contained in legal provisions which obliges the state to ensure the rights of children, protecting them against circumstances which jeopardise their well being and development.

2.1.1. The superior interest of the child

The Republic of Moldova adhered to the UN Convention on the Rights of the Child by means of Parliament Decision no. 408-XII from 12 December 1990, which entered in force for the country on 25 February 1993. Thus, the state committed to guarantee the children under its jurisdiction the observance of all rights mentioned in the Convention, irrespective of ethnical or social origin, adherence to a certain culture, religion, language, beliefs etc.

The provisions of the Convention have a binding nature for the authorities of the Republic of Moldova. The observance o the Convention by the states parties is managed by means of review by the Committee for the Rights of Children of the reports presented to it. The results of the discussions and analysis of the reports is reflected in a package of recommendations, by means of which the Committee invites the state party to a constructive dialogue with the purpose to improve the condition of children in the respective country.

The Convention on the Rights of Children is based on four main principles. The first two is applied to all persons, whilst the Convention reaffirms them for children. The other two relate only to children.[269]

One of those principles, the third one, is the superior interest of the child and implies that *"in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration"*.

[269] The first principles provides for that: „children are not to be discriminated on any ground, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status". The second principles provides for that: „children have the right to survival and development of the child, in all aspects of life: physical, emotional, cognitive, social and cultural". The fourth principles states that: „ children have the right to express their views freely in all matters affecting them. Their ideas are to be heard and taken seriously".

In this respect, the ombudsman organised a meeting with the representatives of the electoral competitors to get acquainted with their commitments in the area of child protection. A similar initiative was implemented by the Centre of Information and Documentation on the Rights of the Child (CIDRC), which during the latest electoral campaign presented an analysis of the election platform to follow the way the politicians' programmes tackle the rights of children. The provisions of the UN Convention on the rights of the child and the *Final Observations* of the Committee for the Rights of the Child sent to the Republic of Moldova in 2009 have been used as reference material.

The authors of the research consider the efforts of the politicians insufficient to ensure observance of the provisions of the UN Convention on the Rights of the Child and underline the way this category of citizens is being neglected. Children and their rights are not on the agenda of immediate and long term actions of the politicians, whilst the care for the "future of the country" is more at the level of political statements and election advertising video clips of the political competitors.[270]

Meanwhile, it must be mentioned that the Action Programme of the Government of Moldova does not contain high priority actions relate to the protection of the rights of children. There are high hopes that those actions have been included in the chapter of protection of human rights.

2.2. The rights of the child who lives separately from his/her parents

During 2010 there have been problems identified related to the refusal to pay the subsistence allowance. The debtors do not observe their obligations as prescribed by the court of law, accumulating large debts during many years.

Cases when the parent, at whose premises the residence of the child was established, does not have the possibility to adequately cover the needs of the child are quite frequent. In some cases the issue relates to basic expenditures, in others – schooling expenditure, whilst in the most tragic cases the issue relates to expenditures for surgeries or other medical services.

After the analysis of this issue, it has been regretfully acknowledged that because of the improper attitude of the parent responsible to pay the subsistence allowance due to a less amiable divorce, the child is the first one who suffers and indeed his development, which in turn is a breach of his rights. There is a wrong perception according to which only the parent who holds the care for the child is responsible for his education and care. The parents do not pay common

[270] http://www.childrights.md.

efforts to ensure the child an education and care environment which would comply with the concept of *the superior interest of the child.* Thus, the child is used as a weapon in the dispute between the husbands. They do not realise that only the child is the one who has to suffer and that the impact of such actions negatively manifests on the development of the child and does not have in any way a positive effect.

This problem is somehow caused by the way the bailiffs observe their duties. They do not pay enough will and efforts to enforce the decisions of the courts. The ombudsmen hope that with the reforms initiate in this area the situation shall improve from this point of view.

Meanwhile, the empowerments the bailiffs have to enforce their mandate are inefficient to determine the debtor deliver on his obligations. The analysed cases reveal that the prohibition of the debtor to leave the country is not an obstacle to trespass the state border.

In the same context, it must be mentioned that in certain cases the judges issue decisions on the establishment of the minimal subsistence allowance, although the debtor does not have any other properties or sources of income except arable land. Thus, in one of the cases examined by the ombudsman the debtor, the father of the children, accumulated debts of tens of thousands of lei due to non-payment of the subsistence allowance for the four children. Without another source of income besides his land plot he was cultivating, the debtor considered that forfeiture of parental rights shall be the best solution to avoid payment of the subsistence allowance, without taking into account the fact that this procedure does not imply liberation from parental duties, which remain valid even if he is deprived of his parental rights, and pursuant to which he is still obliged to pay the subsistence allowance provided for by the court decision.

An important problem related to the observance of the rights of the child who lives separately from his parents is the establishment and payment of the allowance for tutorship.

The ombudsman found that the local public authorities responsible for the establishment of the tutorship and payment of the allowance try by all means to avoid fulfilling their duties.

In one of the cases examined by the ombudsman the local public authority delayed with almost a year the adoption of a decision on the instatement of a tutorship, with a legislation in force of the Republic of Moldova which provides for the instatement of tutorship by the local public authorities within a month from the receipt of the respective application, based on the written endorsement of the tutorship authority.[271]

The local public authority motivated the delay in adopting the decision to establish a tutorship by the fact that the mother of the child was not dismissed of her parental rights, thus there being no objective reason to establish a tutorship.

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[271] Article 142, paragraph (4) of the Family Code

Along with the petitioner, the decision makers from the local public authority (LPA) have requested the ombudsman an interpretation of article 112 of the Family Code of the Republic of Moldova.

In this respect, the ombudsman explained the public authorities that the interpretation of those acts is official only if it is made by legislative interpretation acts[272] and lies with the exclusive competence of the Parliament[273]. The ombudsman also expressed its view with the respective case.

Thus, the local public authority was informed of the fact that pursuant to article 112 paragraph 1 of the Family Code, the tutorship authorities protect the interests and rights of the child not only in cases of privation of parental rights, but in many others, such as abandonment. From the ombudsmen's point of view the reason to reject the application is not compliant with the legislation in force. The call of the local public administration for assistance to the ombudsman confirms that this child has been abandoned by his mother and, there is justification to decide on establishing a tutorship.

The public authority adopted a decision in this respect on 19 April 2010 by means of which it decided to establish the tutorship starting with 1 April 2010, with a monthly allowance of 500 MDL, although the application of the person was registered on 15 January 2009.

The decision was appealed by the prosecutor. As a result, on 26 May 2010 a new decision was issued with the payment of the monthly allowance of 500 MDL starting with 15 January 2009, in compliance with the provisions of article 142, paragraph (4) of the Family Code.

Another citizen was obliged to make recourse to the court of law each time he would want to have his tutorship allowance paid, due to the fact that the local public authority would not react to the decisions of the District Council on this matter and firmly refused the payment of the tutorship allowance, established by the law for the education and care of an orphan child, motivating that it does not have financial resources in the local budget for these purposes.

Therefore, although the legal provisions do not space for interpretation, the authorities try to delay the adoption of such decisions which are burden for the local budget.

The illegal trespass of the state border by minors continues to remain a valid issue for Moldova. The transnestrian segment of the state border, which is not controlled by the State Border Guard Service of the Republic of Moldova, is used to illegal trespass the border, including illegal smuggling of children out of the country.

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[272] Article 42, paragraph (3) of the Law on legislative acts, no. 780
[273] Article 43, paragraph (2) of the Law on legislative acts, no. 780

The ombudsmen for children examined in 2010 two such cases. In both cases, after the divorce of the parents, the place of residence for children was established at the father's domicile by means of a court decision, whilst by means of another the mother was prohibited to leave the country without the agreement of the father, signed by a notary, as provided by the legislation of the Republic of Moldova.[274]

In spite of the prohibitions issued by the courts of law and the ones existent in the legislation, and knowing of the consequences that may follow, including the provisions of the Criminal Code[275], in both cases the mothers have taken out the children from the country. By means of these actions the children have been given citizenship of the Russian Federation and although their mothers are under criminal prosecution and international prosecution, until present the children have not been returned to their place of residence established by means of a court of law decision. The parents have issued various petitions to the law enforcement agencies of the Russian Federation, have issued application to the Ministry of Justice of the Republic of Moldova to initiate the procedure of recognition of court decisions of the Republic of Moldova in the Russian Federation, as provided by the Treaty between the Republic of Moldova and the Russian Federation on the legal assistance and legal relations in civil, family and criminal matters, signed at Moscow on 25 February 1993. However, the recognition and enforcement procedure for court decisions was rejected by the competent authorities of the Russian Federation.

Certainly, these two cases are not the only ones. That is why the grave nature and scope of the problem is alarming. There is an eminent risk for children from Moldova of becoming victims of human trafficking, because the authorities are incapable to guarantee the rights provided for by the Constitution and international documents to which the country is a party to the children of Moldova, because of the lack of control and security of the East part of the state border.

Additionally, such cases are registered also on the border parts in the genuine control of the Republic of Moldova. A wide spread phenomenon of illegal migration of minors has been signalled in the Cahul district. According to the Cahul District Council for Child Protection this

[274] The provisions of article 1 paragraph 2 of the Law no. 269-XIII from 9 November 1994 on the entrance and exit of the Republic of Moldova states that: „minors have the right to exit and enter the Republic of Moldova only if accompanied by one of their legal representatives or by an person nominated by means of declaration by their legal representatives whose signature is endorsed by a notary. The declaration contains the aim of the trip, its duration and the destination country".

[275] Article 207 of the Criminal Code: Smuggling of the child out of the country on the basis of false papers or by any other illegal means, as well as abandoning the child abroad with other purposes than those mentioned in article 206 lead to punishment of 2 to 6 years of imprisonment.

region has most of the children out of the country without parental care[276], with an age between 14 and 17 years. The main destination country is Italy, especially the city of Padova. Children go to Ukraine without any papers, from there they go to Italy and trespass Hungary. Once at the place of destination children are placed at the temporary placement centre for children in Padova, where they are hosted, learn the Italian language, enjoy the necessary care, have the right to employment for a couple of hours per day, and the earned money are sufficient to help the family who remained in Moldova.

Children do not wish to return and the parents approve their choice, as they have access to a decent life. The same reasons have determined some of the parents to help their children cross the border and the General Prosecutor's Office initiated many proceedings of deprivation from parental right. This fact does not however impede the children to constantly illegally migrate, because once communicating with the ones who reached Italy, they get to know of the life conditions, the possibilities and how could they migrate in person to enjoy these conditions.

Although the National Committee against Traffic of Human Beings qualifies in a letter addressed to the Cahul District Council as alarming, the discussions with the parents demonstrate that their children have chosen to migrate because of the economic and social conditions in the country and not because they are victims of human trafficking. Indeed, the fact that the parents avoid discussing the place of residence of their children of the fear of being returned home confirms this presumption.

2.3. The liability of the family for the child

One of the effects of significant migration of the citizens of the Republic of Moldova was the raise of number of children left without parental care. There are not official statistical data which would confirm the exact number of this category of children. Frequently, children are left in the care of certain close persons to the family, which is not a guarantee that the child shall be ensured and shall benefit from appropriate care.

During 2010 the mass media presented a series of events with the involvement of children whose parents have left the country for employment. Frequently, these children are sexually abused or die in tragic circumstances due to lack of parental supervision. The Centre for Human Rights from Moldova developed documentation on some of the cases which draw the attention of the press.

[276] Approximately 40 children outside the country without parental care

In one of the cases, a girl of only two years old was sexually abused by the paramour of the person who took care of her. The mother of the girl, while employed outside the country, thought that no harm should happen to her daughter because she is in the care of her friend.

The authorities have reacted accordingly, initiating criminal prosecution and deprived the mother of her parental rights, because she showed irresponsibility and neglected the child. The victim received necessary medical and psychological care for rehabilitation, being subsequently placed in a family environment favourable for care and education.

It is regrettable the fact that the intervention was too late and it was not possible to prevent this tragic event. Here the lack of social cohesion is obvious, which does not imply the resolution of problems which her members are facing. Indeed, a strong community would first of all have given a child separated from his parents a secure environment for education and development. Social cohesion is determined by the conscience and the perception of problems by each person in the community. That is why the state's agents present in the respective community are obliged by virtue of their duties to ensure the observance of the rights of children. Moreover, in a small community it becomes less complicated to identity the vulnerable persons who could need the assistance of the district inspector or of the social community worker. Thus, there is no explanation for the fact that this child was not supervised by the competent bodies. So, the problem lies with the negligent attitude of the officers in observing their duties.

The ombudsman for protection of the rights of children recommends examining the possibility to include a legal provision which would offer the right/obligation of the tutorship authorities to decide if the child is to be placed in a family environment during employment of his parents abroad. This would allow prevention of cases of placement of children in a dangerous environment for their development and education.

The family is the cell of the society and the parents are the ones who should protect their rights and legitimate interests. The legislation obliges the observance of social relations which ensure adequate climate for the development of the child by means of the regulations contained in the Family Code, Criminal Code and Code on Misdemeanours. The Criminal Code provides for severe penalties for abuses which someone may be tempted to commit on the child, depending on the gravity of the case and the consequences of the facts on the life of the minor.

The Family Code states that the rights of the parents may not be enforced contrary to the interests of their child. The parents may not jeopardise physical and psychological health of the child and are liable for enforcing their parental rights to the detriment of the child.[277]

[277] Article 62 of the Family Code

There are however cases in the Republic of Moldova when parents inhumanly treat their children. Children are left without supervision in closed spaces, locked or tied up. The children's ombudsmen reacted ex officio with respect to a case described by the mass media when a three year old child from a rural settlement was found by his neighbours in a house locked with a locker from the outside. The child was left without parental care. According to the statements of the neighbours, the child was left several times alone without the care of the grown-ups, and sometimes even chained by the bed. The case of the child was reported to the local authorities, whilst the ombudsman recommended initiation of the procedure of deprivation from parental rights of the parents, because they endangered his life, health and intellectual development. The child was placed in a family type orphanage and the papers to initiate the deprivation from parental rights of the mother sent to the competent authorities. The district prosecutors' office initiated a review pursuant to the provisions of article 274 of the CPC, with a subsequent misdemeanors procedure pursuant to article 63 of the Code on Misdemeanors.

2.4. The right to education

The education in the Republic of Moldova is a national priority.[278] This right is ensured by means of general mandatory education, high school education and professional education, higher education as well as other forms of training and vocation.[279] The general mandatory education is of nine years and the mandatory schooling ends in the year when the pupil turns 16 years old.[280]

The observance of the constitutional right to education continues to be an issue in our country. The involvement of children in various works is one of the impediments in ensuring the right to education. Child labour is not linked to certain crafts or housekeeping related activities and precludes the participation at various practical activities, natural to the age and level of development. Child labour includes one or more of the following elements: labour practices by children below admitted age, dangerous working conditions, which may have immediate or long term consequences for the child's health; the number of working hours exceeds the maximum permitted by law; use of children in illegal activities (beggary, drug trafficking, prostitution, child pornography etc.); use of children in military conflicts; reduced school attendance; abusive treatment of the employer and use of constraint mechanisms.

It is considered that the school has an important role in the prevention and fighting child labour, because the professors are always in contact with the pupils, may quickly identify and diagnose their problems and inform the competent authorities to take action. However, it is

[278] Pursuant to the provisions of article 3 of the Law on education no. 547 from 21 July 1995
[279] Article 35 of the Constitution of the Republic of Moldova
[280] Article 9 of the Law on education no. 547 from 21 July 1995

ultimately the school as intermediary institution by means of which children are involved in illegal labour.

In the Cantemir district, during 17 and 29 September 2010 126 pupils have been taken out of their classes and involved in autumn harvesting. Out of them 109 were minors of up to 15 years (fifth to eighth grades), whilst 17 were minors between 15 and 18 years old (ninth grade).

As a result of the intervention of the ombudsman, the Labour Inspection investigated this case and found a series of breaches in the enforcement of the labour legislation related to employment of persons of an age of up to 15 years[281], as well as violation of the legal provisions on the procedure and employment and termination of employment relationships with persons of an age above 15 years.

Additionally, during the investigations, the Labour Inspection established that the actions of the school administration and the district administration have accepted the breach of special prescription no. 543 from 6 September 2010, issued by the Ministry of Education which establishes the conditions of participation of pupils/students at the autumn harvesting.

Thus, the children's ombudsman contacted the Ministry of Education with respect to the above mentioned case. The answer of the Ministry reveals that there have not been any breaches committed, whilst the provisions of the special prescription no. 543 from 6 September 2010 are in compliance with the provisions of article 46, paragraphs 3 and 4 of the Labour Code.

Pursuant to the provisions of the respective prescription, the harvesting works which do not represent potential risk for the life and health of children, subject to the written consent of the parents, may be practiced by pupils who are at least 15 years old. The maximum duration of autumn harvesting is of two weeks (with subsequent recovery of classes). The pay for pupils / students takes place based on the agreements signed between the administration of the education institutions and the respective entrepreneurs, coordinated with the regional Education, Youth and Sports Directorate / the professional secondary educational institution, secondary specialised institution or higher institution.

At the harvesting works the pupils / student are accompanied by teachers. The managers of the secondary educational institutions, secondary specialised institutions and higher educational institutions bear responsibility for the lives and health of pupils / students during the autumn harvesting works.

With respect to the participation of the pupils from the Cantemir district at the autumn harvesting, the Ministry of Education requested explanations from the District Education, Youth

[281] Breach of provisions of article 46, paragraph 4 of the Labour Code which provides for that: employment of persons younger than 15 years is prohibited.

and Sports Directorate, which in turn led to the clarification that the pupils participated at harvesting works between 2 and 10 days, based on the endorsement of the Chairman of the Cantemir District. Both during the works and subsequently there have been not circumstances detected which could have endangered the life of children and no messages of illegalities have come from the parents, the teachers or pupils.

Therefore, the illegalities identified by the Labour Inspection have not been identified by the Ministry of Education. In its answer to the intimation of the ombudsman the Ministry of Education does not mention anything about the involvement of those 109 pupils below 15 years in harvesting works.

From the point of view of the children's ombudsman the area of activity of schools does not have anything in common with their employment. There can be no arguments which could determine the authorities breach the right to education of children, provided for by the Constitution of the Republic of Moldova[282] and the UN Convention on the Rights of the Child.[283] Consequently, the reasoning presented by the Ministry of Education when asked by the entrepreneurs to involve pupils / students in harvesting works to avoid losses caused by weather conditions does not have any legal support, whilst the special prescription of the Ministry of Education no. 543 from 6 September 2010 does not comply with certain normative acts which have a higher legal power.

The children's ombudsman considers that the problem shall be resolved with the abolishment of this special prescription. Thus, any means which could be used to employ children to the detriment of their right to education shall be abolished.

Additionally, children can enjoy their right to employment during free time, subject to observance by the employer of the labour legislation related to minimal age, employment procedure etc. Such an approach of the subject of child labour would ensure children their right to labour without violation of their right to education. Additionally, the need for labour of the entrepreneurs would not have suffered, especially during the autumn harvest.

Currently, pursuant to the Ordinance no. 146 from 11 April 1996 of the Ministry of Education, aimed at implementing the Concept of physical training in the secondary schools, there are final evaluation tests for the students of the first cycle, gymnasium and lyceum (fourth grade, ninth grade, eleventh grade and twelfth grade).

[282] Article 35 of the Constitution of the Republic of Moldova
[283] Article 28 of the UN Convention on the Rights of the Child

The parents are unsatisfied with the fact that the examinations are above their abilities and to a certain extent are dangerous for them. Meanwhile, the average marks of the children are affected due to the reduced marks at physical training.

Thus, the ombudsman intervened to the Ministry of Education and asked the involvement of this institution to amend the school curricula for the physical training course, so that the participation of pupils at the physical training classes be evaluated as either "accepted" or "rejected", whilst when taking tests, the educational rules take into account the physiological particularities of each child.

In this respect, the Ministry of Education planned to summon a group of experts in this area to examine the issues during the winter vacation of this year. The resolution of this issue shall not be without the participation of the experts in public health, physical training and sports and pupils and parents, as well as managers of educational institutions.

From the point of view of the children's ombudsman such an approach to the respective course is not correct. The aim of this course is to develop a sense of healthy way of life for children, offer pupils a recreation from classes and reduce morbidity among children, which is rather high, as it has been presented in the report for 2009.

Special training is part of the educational system and has as primary aim the education, training, recovery and social integration of infants and pupils with physical, psychological, sensorial, socio-affective, behavioural or related impairments.[284]

With the ratification of the Convention on the Rights of the Child, the Republic of Moldova committed to protect children from any form of discrimination, ensure them social security and conditions for intellectual and physical development.

Irrespective of the fact that the current legal framework does not impede the right to education to children with special needs, they are not always enjoying this right. One of the reasons is the need to place these children in special educational institutions, which implies separation from the family. Due to certain circumstances this is not accepted by the family, because it is considered by the family betrays the child, who shall feel abandoned. In such cases the superior interest of the child is ignored and his right to education impeded.

In a similar case the ombudsman intervened when a child with mental impairments, with a first gravity level of disability did not attend school at the age of 10 years. When examining this situation, it has been determined that due to the special need of the child he had to be placed in a specialised institution. The reason for not attending the school was the refusal of the mother to

[284] Article 33 of the Law on Education no. 547 from 21 July 1995

place him in a specialised institution, because she considered that the child would feel abandoned by his family.

The ombudsman recommended the Social Assistance and Family Protection Division to provide with the necessary social assistance to the child and contribute to his enrolment into an educational institution and monitor his integration into the educational process. Additionally, the attention of the parents was drawn to the fact that pursuant to the legislation[285] parents are obliged to educate and take care of their children. The refusal to matriculate the child into a specialised institution may be qualified as lack of action or improper observance of the obligation to take care, educate and train the child by the parents or the persons who substitute them, which is subject to a fine of 5 to 20 fine units.

Meanwhile, due to the fact that this child suffered various traumas during the explosion of a gas bottle, a request was sent to the Ministry of Health of the Republic of Moldova to offer medical assistance. The ombudsman was informed that presently the child is under the supervision of the doctor and enjoys the necessary treatment, as well as sanatorium attendance tickets for recovery.

From the ombudsman's point of view the tutorship authorities have admitted a breach of the child's rights as a result of the negligent attitude towards the child. The motivation not to act based on the disapproval of the parents to place the child in a specialised institution is not plausible and is a violation of the provisions of the Convention.[286]

The issue of collecting payment in school has been mentioned in the previous report.[287] There it was mentioned that in fact payments collected by the parents are not voluntary as considered by the authorities, but rather that the parents are constrained to pay this taxes to protect their children from isolation, discrimination and low performance at school.

The ombudsman comes back with this subject in the current report because the situation has not improved essentially, on the contrary in 2010 compared to 2009 the Centre for Human Rights was contacted by more parents who have shown their disapproval of the collection of payments in schools.

Thus, with the beginning of the school year there have been recommendations sent to the Ministry of the Education and to all General Directorates for Education, Youth and Sports where the attention was drawn to the provisions of article 35 of the Constitution of the Republic of

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[285] Article 63 of the Code on Misdemeanours of the Republic of Moldova
[286] Article 29 of the UN Convention on the Rights of the Child states that „States Parties agree that the education of the child shall be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential"
[287] http://ombudsman.md/md/anuale/

Moldova, according to which education is free and collection of payment is contrary to the provisions of the Constitution.

The answer of the Ministry states that there are no normative acts which would admit or recommend collection of payment within the educational institution, whilst the charges against the Ministry are groundless, as the state of affairs is constantly monitored with respect to prevention and fight against corruption in the educational institutions.

The Ministry of Education affirms that from time to time there are ordinances, prescriptions and memos issued by means of which "the illegal collection of funds in the educational institutions is prohibited", whilst the teachers and the administrators are warned of the fact that if they get involved in the illegal collection / receipt of funds, they shall be dismissed of their duties and shall bear responsibility pursuant to the provisions of article 324 of the Criminal Code (passive corruption).

Additionally, the leadership of the educational institutions are warned of the impossibility to involve the members of the administration and the teachers in the administration and management of the associations of parents.

Meanwhile, the involvement of the General Prosecutor's Office was requested to verify all the general educational institutions to identify the ones who have made recourse to collection of certain payments; if breaches are to be detected, the amounts are to be returned to the parents and persons guilty of collection of payments face the appropriate charges.

The answer of the Prosecutors' Office mentions that the level of schooling, supply with books etc. are verified. An aspect of the investigations relates to the observance of the provisions of article 35 of the Constitution and article 4 of the Law on Education, including the legality of collection of payments. The results of these investigations were to be generalised and, if necessary, followed by appropriate action from the prosecutors.

Until present the ombudsman has not received any information of the interventions of the prosecutors in this area.

From the ombudsman's point of view these answers are formal and evasive, just to comply with the provisions of the legislation relevant to the ombudsmen's activity. The answers do not contain details on specific actions undertaken by the respective institutions, which, in turn suggests that no fight with the phenomenon is in fact foreseen. The intentions mentioned in the answers are only at the declarative level, whilst the institutions in this area directly responsible for fighting the phenomenon try to camouflage it.

Although at official level the mandatory nature of the taxes paid by parents in the funds of the associations is not acknowledged, the study developed by the Republican Centre for Social Assistance on the "Perception of corruption in the educational field" shows otherwise.

Thus, the perception of the respondents is that the educational structures mostly affected by corruption are the higher education (76,1%) and high school education (63,4%).

The forms of corruption known to the educational system include offering / receipt of money (67,0%), presents (44,%), contributions to the fund of the school class, repairs (8,6%), offering services, favours (8,3%), falsification of documents (7,3%), nepotism (7,1%), additional classes for extra charge, obligation to purchase books which offer benefits to the one who promotes them etc.

The highest risk of corruption in the educational system is present at the baccalaureate exams (informal payments for exams, expensive gifts for teachers, purchase of tests, falsification of marks, out of examination room baccalaureate exams etc.).

The gymnasium and high school educational institutions practice the forms of corruption by means of payments of participation fees by parents to the Parents Associations. At kinder-garden level the parents pay the supervisors so that children benefit from attention and special care. A method of corruption known to all forms of the educational structure is taxes for matriculation in the educational institutions.

One of the cases examined by the ombudsman revealed the resistance of the system to accept children whose parents categorically refuse to comply with the rules imposed by the system and accepted by the majority.

Because a child was educated by a single parent family after matriculation into the fifth grade his mother did not have the possibility to pay the taxes in the first two months of the school year. This is how pressure on the child started, that generated aggressive behaviour, low school performance etc. In December, due to the above mentioned reasons, the child refused to go to classes.

Because there were misunderstandings between the teachers and the mother of the child, the mother received a proposal to train the child at home to avoid the psychological trauma of the child, whilst the tests to be taken within the high school. To pass the examinations the child, along with her mother visited the lyceum based on an established schedule. However, this was neither a viable solution to avoid the exposure to stress and emotional abuse of the child from the teachers, because they were always surprised and unsatisfied with the fact that have to work extra hours for a single child and have acted against the interests of the child. To avoid the emotional abuse the child was exposed to, his mother decided to transfer him to another lyceum from the same district, but he was refused matriculation by the director of the lyceum on unjustified grounds. The Director declared the child's mother that he does not need children whose parent refuse to deliver on their commitments to the educational institution and who enjoy scandals.

The petitioner contacted the Ministry of Education and the General Directorate Education, Youth and Sports of the Chisinau municipality, but the problem has not been resolved. Moreover, the petitioner mentions that she was insulted by the public servants and warned that shall contact the social workers responsible for the rights of children, thus suggesting that the persons guilty of breaching the rights of children are the family members and not the public servants who refuse matriculation of the child to the educational institution.

Recently, as a result of the efforts made by the family, the child was matriculated in another educational institution from another district of the capital. However, shortly after the director called the child's mother and asked her to transfer the child to another institution because he did not cope with the requirements of the respective institution.

The right to education in the rural environment implies for children walking long distances without any transport means, which sometimes exceeds 8km. This valid issue remained in scope of the ombudsman's activities in 2010. The subject was tackled in the 2009 report. Due to this, the ombudsman shall not develop in detail this issue, but shall concentrate on the registered progress in the field.

The legislation provides for that the local public authorities ensure free transport of pupils to and from the educational institutions in rural settlements when the distance exceeds 3 km[288]. There are around 100 settlements in the Republic of Moldova which confront a similar case. The local public authorities are unable to cover the necessary expenditures.

During 2010 the Government of the Republic of Moldova offered 15 transport units to those 130 requests from District Directorates. The ombudsman appreciates the effort the authorities have taken, but it still remains insufficient in relation to the applications issued by the local public authorities. It is a good start to ensure the children from the Republic of Moldova to a fair access to education.

2.5. Protection of children's rights in special educational institutions

Special education is an integral part of the educational system and aims at educating, training, recovering and socially integrating the infants and pupils with psychological, physiological, sensorial, speech, social and affective impairments or related disabilities. Special education is organised in special educational facilities such as boarding schools with extended programme.[289]

[288] Article 45, letter h) of the Law on Education no. 547 from 21 July 1995
[289] Article 33 of the Law on Education no. 547 from 21 July 1995

In accordance with the provisions of the Convention for the Rights of the Child the states parties recognise that a child with mental or physical disabilities must enjoy a full and decent life, conditions which would respect his dignity, promote independence and facilitate active participation in the life of the community. The state parties have recognized the right of the child with disabilities to benefit from special care and shall encourage and ensure, within the available resources, adequate assistance to the condition of the child and the parents who take care of the child.[290]

However, the children from the special educational institutions face various problems. One of them is forced labour. Due to the disability and incapacity to address the competent authorities for protection, these children are vulnerable and limited in enforcing their rights. That is why this category of children is seen as free and faithful labour force, incapable to report acts of abuse against them.

The ombudsman was contacted by means of the "Child's Phone" with respect to labour imposed to children by the teachers of a boarding school for children with mental disabilities. As a result of these actions the right to education, recreation and protection against forced labour have been breached, which are provided by the Constitution of the Republic of Moldova[291], the Law on the rights of the child,[292] the Law on education, and present in the international treaties to which the Republic of Moldova is a party to and committed to observe them once ratified.

The ombudsman recommended the prosecutors and the Ministry of Education initiate a review of the observance of the rights of children to clarify the invoked circumstances. Criminal investigation was initiated after the respective investigations of the case pursuant to the provisions of article 168 of the Criminal Code – forced child labour, whilst the criminal investigation measures are under the scrutiny of the General Prosecutor's Office employees. The representatives of the Ministry of Education have organised a visit to the educational institution, during which discussions took place with children, alleged breaches presented by the ombudsman verified with a final decision to apply a disciplinary warning to the director of the boarding school.

2.6. Right of personal inviolability, protection against physical and psychological violence

The Republic of Moldova adopted on 1 March 2007 the Law on the prevention and fight against domestic violence. The law provided for the legal and institutional framework of the

[290] Article 23 of the UN Convention on the Rights of the Child
[291] Article 35 of the Constitution of the Republic of Moldova
[292] Article 10, 11 of the Law on the rights of the child no. 338-XIII from 15 December 1994

activity of prevention and fight against domestic violence, the authorities and institutions empowered with competence of prevention and fight against domestic violence, the mechanism of notification and resolution of cases of violence.

Thus, the internal affairs bodies, at the level of specialised unit identify, register and report the cases of domestic violence; ensure monitoring of aggressors; notify in case of children who are victims of domestic violence the tutorship authorities; examine the applications and complaints coming from citizens, medical institutions, forensic medicine centres and other institutions related to conflicts in families, acts of violence, threats with death or existence of an imminent danger of them being committed; visit the families whose members are monitored; undertake activities of prevention of repeated acts of violence in families; undertake, in exceptional cases, the administrative arrest of the aggressor, depending on the gravity of the case; make recourse to judicial authorities to obtain the protection warrant in cases of crisis on the basis of the application issued by the victim or notification of the case; ensure enforcement of the protection warrant; in case of acts of violence, explain the victims his/her rights, and if the latter asks, provide help to place in a rehabilitation centre; informs the victim of his/her rights to free legal aid; ensure that aggressors, including those in administrative arrest, have access to rehabilitation services; guarantees the security and public order in the centres of rehabilitation of victims; monitors and manages, along with the social assistants, cases of domestic violence in the designated area; updates the database with information pertinent to the subject.[293]

Meanwhile, the sections / directorates of social assistance and family protection cooperate with the law enforcement bodies, through the employee responsible for the prevention and fight against domestic violence, to identify alleged offenders; place, if necessary, the victim into the rehabilitation centre, offering it the necessary assistance; organises psychological and social counselling of victims to neutralise the consequences of the domestic violence activities by means of in house resources or by means of redirection of the case to the experts of the rehabilitation centres; compensate, if requested by the law enforcement agents, the access of the aggressor to rehabilitation programmes; protects the rights and legitimate interests of the victims, including children.[294]

Although at the level of legislation the procedure provides for a series of sufficiently clear provisions and offer sufficient mechanisms to competent authorities to efficiently act in this area, in practice the situation is not that promising. The law enforcement agencies at the level of specialised structure and the local social assistants do not follow their duties. Frequently, their

[293] Article 8 of the Law on prevention and fight against domestic violence no. 45-XVI from 1 March 2007
[294] Article 8 paragraph 3 of the Law on prevention and fight against domestic violence no. 45-XVI from 1 March 2007

reaction is delayed and inefficient. The district inspectors treat domestic violence as a normal phenomenon, which is only the matter of the family members. Because of this reasoning, the citizens contact higher level officials in hope to find justice.

Thus, the ombudsman was asked to intervene with a resolution of domestic violence case. The father was manifesting an aggressive behaviour towards his family members, threatening with physical violence and abusing them psychically. The worst was the fact that the witness to all of this was the minor child.

The petitioner decided to contact the ombudsman because during four months the authorities responsible for the prevention and fight against domestic violence have avoided any involvement as prescribed by their competences. According to legal provisions[295] among authorities and institutions competent to prevent and fight domestic violence are the sections / directorates of social assistance and protection of family and the bodies of interior affairs.

Although both the local social worker and the district inspector have been contacted, none of them intervened to protection the minor child from the respective family, the victims have not enjoyed any psychical and social counselling whilst the abuser did not follow any rehabilitation programmes.

The justification of the social assistant to the refusal of the request of the family members to initiate the procedure of deprivation of the aggressive father from his parental rights was that the worker did not have the necessary legal knowledge to initiate the procedure.

After the intervention of the ombudsman a prescription to protect the family was issued for one month, whilst the district inspector was disciplinary sanctioned for his omissions. Meanwhile, a request was sent to the Directorate of Social Assistance and Family Protection, however the recommendations of the ombudsman to initiate the procedure of deprivation of parental rights has been ignored. Moreover, the answer of the authorities was an evasive one, without any information on the undertaken actions to observe the rights and superior interests of the child.

The representatives of the authorities responsible for the prevention and fight against domestic violence have admitted by their actions the violation of the 3rd principle of the Convention for the Rights of the Child, namely the superior interest of the child, which in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.[296]

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[295] Article 7 of the Law on the prevention and fight against domestic violence no. 45-XVI from 1 March 2007
[296] Article 3 of the UN Convention on the Rights of the Child

Meanwhile, the provisions of the Convention which provide for that the "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parents, legal guardians or any other person who has the care of the child" have also been breached.[297]

From the perspective of the children's ombudsman this example illustrates the lack of professionalism and necessary knowledge to attain the mandate and the duties, shown both by the social worker and the district inspector.

The children's ombudsman considers that the authorities must initiate a process of evaluation and continuous training of the personnel in its subordination, because the lack of legal knowledge is felt in their daily activity, and the ones who suffer are the citizens, especially children.

While ratifying the Convention on the Rights of Children, the Republic of Moldova committed to make sure that no child is exposed to torture, other cruel, inhuman or degrading treatment or punishment.[298] Meanwhile, 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.[299]

Moldova already has a negative image and a tragic experience after the events from 7 April 2009. In spite of this, the abusive methods are still used by the law enforcement agents to obtain confessions.

By means of the Hot Line "Child's Phone" the ombudsman was contacted with respect to a maltreatment that happened to a child of 16 years of age, who was obliged by the agents of the Ministry of Interior to confess he committed a theft.

The ombudsman requested the involvement of the General Prosecutor's Office to review the facts and intervene in the resolution of this case within its functional competences.[300]

Subsequently, criminal prosecution based on article 309^1 paragraph (3) letter a) of the Criminal Code was initiated on the MoI agent – i.e. abuse of the child. The pace of the

[297] Article 19 of the UN Convention on the Rights of the Child
[298] Article 37 of the UN Convention on the Rights of the Child
[299] Article 40 of the UN Convention on the Rights of the Child
[300] Given by the provisions of the Law no. 294-XVI from 25 December 2008 and by the provisions of the Criminal Procedure Code

investigations has been monitored by the General Prosecutor's Office, with a subsequent conclusion of the investigations and documents sent to the court of law for primary review.

Today it can be firmly affirmed that it is a success story, where as a result of the intervention of the ombudsman, with the participation of the General Prosecutor's Office, a police agents of the MoI was sanctioned for torture.

The ombudsman considers necessary to warn the employees of the Ministry of Interior on absolute prohibition of acts of torture, other cruel, inhuman or degrading treatment or punishment, because protection against them is an absolute right.

While there is a tendency of impunity of similar acts, the ombudsman recommends thorough investigation of all complaints on acts of torture.

According to the information presented by the Ministry of Education, the prevention of cases of physical and / or psychical violence against children, protection of children against any forms of violence, abuse, exploitation and discrimination is a primary concern and is a priority in the action plan of the Ministry of Education. During 2010 the Ministry examined seven cases of use of physical force by teachers against pupils. In five cases disciplinary sanctions have been applied, one of the cases of use of violence was signalled after the expiry of the statute of limitations for the application of the sanction and in one case an application of resignation was issued before the investigations began. Cases of use of violence have been examined by the District/ municipal Directorates of Education, Youth and Sport, as well as by the administrations of the educational institutions. The Ministry of Education used three disciplinary sanctions for breach of functional duties and the provisions of the legislative and normative acts in the area of protection of health and lives of children. The Ministry draw to the attention of the employees of the District / municipal Directorates of Education, Youth and Sport of the need to use disciplinary sanctions of directors employed by order of the Directorate of Education.

Even if the Ministry of Education issues various ordinances by means of which draws to the attention of the managers of educational institutions and teachers the obligation to observe the inviolability of each child, the press presented a series of reports and articles on abuse of children in the school environment by teachers or even by other grown-ups. And these actions take place in the presence of other children. Thus, the Centre for Human Rights examined a series of complaints, and in other cases the ombudsman acted ex officio on physical and / or psychical abuses of children in the school environment.[301] In one of the cases, the teacher of Romanian language and literature had an inadequate behaviour during classes and used violence

[301] During 2010 the ombudsman has acted ex officio in the case of a physical abuse in school and accepted four complaints for thorough review, out of which one on psychic abuse of a child in school and three complaints on physical abuse.

on a child in the presence of his classmates. A disciplinary sanction of last warning was applied on the teacher for inadequate behaviour. Whilst in the case of those three girls who have been sexually molested by the teacher during the plastic arts class there isn't even a dismissal of the latter, even though all evidence was there to demonstrate his guilt.

Such acts that have taken place in schools and directed against children do not comply with the definition of education, which implies an organised process of training and education, by means of which a person reaches a level of physical, intellectual and spiritual virtues, established by the state and obtains the respective certificate of completion of studies.[302] Education should be directed towards developing the personality and the talent of children, preparing the child of an active adult life, development of respect for fundamental human rights and for cultural and national values of the child and of the persons around him.

These actions are also prohibited by the Convention on the Rights of the Child[303], which mentions that No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation. The child has the right to the protection of the law against such interference or attacks.

The ombudsman considers that it is necessary to mandatorily test the candidates for positions of teachers by a psychologist to avoid such incidents in the future.

2.7. Juvenile justice

The initial report of the Republic of Moldova on the implementation of the provisions of the Convention on the Rights of the Child was presented to the Committee for the Rights of the Child in 2001 and was examined in September 2002. The second and the third consolidated Report were presented in 2007 and examined in 2009. In its *Final Observations* on the initial Report of the Republic of Moldova the Geneva Committee showed its concern on the lack of a separate system of juvenile justice and encouraged the authorities ask for assistance from UNICEF. After the examination in 2009 of the second Report of the Republic of Moldova, the Committee expressed its regret that some of its concerns and recommendations related to juvenile justice have not been taken into account or not implemented accordingly. Also, the Committee reiterated its previous recommendations, according to which a system of juvenile justice is to be created in compliance with the provisions of the Convention.

Thus, while ensuring the enforcement of Decision no. 2 from 13 August 2010 of the National Council for Child Protection from Moldova an interdisciplinary working group was created named "Justice reform for children", which complies with the efforts to enforce the

[302] Law on education no. 547 from 21 July 1995
[303] Article 16 of the UN Convention on the Rights of the Child

provisions of the UN Convention on the Rights of the Child, development and improvement of the legislative framework in the area of protection of the rights of children and of the family. The working group's mission is to evaluate the condition of the children who have contacted the justice system (children who are victims, witnesses and offenders) and to develop draft legal amendments in the short and medium term to improve the legal framework, the national policies and practices to prevent their contact and improve the condition of the children within the justice system. The working group shall also contribute to the effective implementation of the rights of children, taking as basis the provisions of EU legislation and international standards, as well as monitoring of the process of implementation of reforms.

In 2010 a raise of the juvenile criminality has been registered,[304] and the majority of the delinquents come from vulnerable families. Meanwhile, it has been felt that no necessary measures to protect the delinquent children, but who fall within the minimal age to trigger criminal liability, have been taken, as well as the lack of specialised centres for their rehabilitation, especially after the close down of the boarding school for children with behavioural deviations from Solonet.

The phenomenon of non-enforcement of certain relevant provisions is also present, which is determined by the lack of funds from the state budget, lack of specially arranged cells in police commissariats reserved for children, lack of psychologists and social workers in the inspectorates for minors, prosecutors' offices and courts of law. Similarly, the problem of uncoordinated system of data collection and analysis about children who have been in contact with the justice system also persists, and the need to specialise the experts who get in contact with the children from the justice system is felt (including educators, psychologists, but also policemen, attorneys, probation councillors). Meanwhile, there is urgent need to revise the criteria of budgeting costs for the amount of necessary services and ensure the observance of rights of children who are in contact with the justice system. The monitoring of the duration of the preventive arrest and analysis of the causes which lead to exceeded time limits under preventive arrest of minors both at the stage of criminal investigation and court trials is missing.

An issue identified during the discussions with the minor detainees from Penitentiary no. 2 from Lipcani city and Penitentiary no. 11 of the Balti city is the low quality of the services of free legal state aid. The attorneys do not get involved in the protection of the rights of the minor suspect, accused, defendant or detainee – during interrogations and criminal trials the attorneys are more at the disposal of the prosecutors. Thus, the provisions of article 40 of the UN

[304] According to the data offered by the Ministry of Interior, the number of offences committed by minors during 2010 was of 1448, more than in 2009 (1195 offences), but less than in 2008 (1629 offences)

Convention on the Rights of the Child, article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, article 26 of the Constitution of the Republic of Moldova, as well as the provisions of the Law no. 198-Xvi from 26 July 2007 on state legal aid.

Under these conditions the need to both specialise the judges, prosecutors, criminal investigation officers, and create special interrogation rooms for minor children, who are to be assisted and / or interrogated by professional educators and psychologists is most urgent. Also, the strengthening of the quality of psychological assistance to children in the judicial system by means of public awareness rising activities and training of experts is needed.

In October 2010 UNICEF published the Report on the "Evaluation of the achievement s in the reformation of the juvenile justice system in Moldova", which presents a series of recommendations, among which are the following:

- Annual publication of data on juvenile justice and offences committed by children. Development of new indicators which shall allow a more complex evaluation of compliance with the commitments taken by the Republic of Moldova within the framework of UN Convention on the Rights of the Child and other European binding rules, and shall offer the necessary information for decision-makers, as well as shall allow impact evaluation of existent policies and new ones or changing the legal applicable standards.
- Research of the reasons of delinquency in Moldova, from the perspective of development of secondary and tertiary preventive programme. The study must concentrate not only on social and economic factors which correlate with reported criminality, but also on the link between various risk factors, protective factors which help children and teenagers in high risk situations to avoid committing crimes, and the risks and the protective factors related to various types of offences. Also, the possibility of researching unreported offences should be examined, which is beneficial to evaluate the policies of law enforcement and ensure that the preventive polices be developed in the best possible form.
- The responsible authorities should undertake prompt administrative and if necessary, criminal action as an answer to the breaches of children's rights by officials, including cases redirected to them by the ombudsman.

The ombudsman draws the attention to the fact that the recommendations of the Committee on Juvenile Justice have been formulated and addressed to the state on numerous occasions, which implies that the authorities have not taken sufficient action to improve the situation in this area.

2.8. Social protection

Pursuant to legal provisions[305], the state ensures a high minimal monthly income guaranteed by the state to disadvantaged families to offer equal possibilities[306] by means of a social allowance established in accordance with the monthly global income of each family and with the need of the former to social assistance. Therefore, social assistance has the aim to contribute to the improvement of the condition of the applicant's family.

Social workers have drawn the attention of the ombudsman within the working meetings on the way the financial resources offered by the state are actually used. The assistants consider that the number of those who really need this support is big, however some of them do not use them in a rationally. Reference was particularly made to the excessive consumption of alcohol by the beneficiaries of social aid.

In this respect, the ombudsman asked the District Directorates of Social Assistance, Family and Child Protection from the country to present data on the number of families from the respective category. Thus, it has been determined that presently there are 7309 low educative families, for which the state budget allocated 13,058,251 MDL as social aid.

Although the destination of these financial means the state is offering should contribute to the improvement of the condition of the disadvantaged family, the unexpected outcome is significant as the presented data confirm it. A parallel with the number of crimes committed with the influence of alcohol brings us to the same conclusion. During 2010 there have been 1372 offences committed under the influence of alcohol.[307] Thus, it can be affirmed that the state sustains on its money alcoholism and violence, essential elements of the concept of a low educative family, additionally creating dependence. Under these circumstances the rights of the child who is exposed of risk of abuse are being breached.

Pursuant to the job description, the social worker is the persons who provides primary social services at the level of community, who has the obligation to integrate in a local team social worker, representatives of the mayoralties, experts who are active in the community[308], as well as mobilise resources from the community to resolve the social problems of the

[305] Article 1, 2 of the Law no. 133 from 13 June 2008 on social aid
[306] *Disadvantaged family* – the family who has an average global monthly income lower than the minimum guaranteed income
[307] Official data of the Ministry of Interior of the Republic of Moldova, http://gardianul.md/?p=1802
[308] District policeman, teachers, medical worker, church etc

beneficiaries of groups of persons in difficulty.[309] Additionally, the job description provides for that the social assistant develops and implements individual assistance plans with the participation of the beneficiary and his family.

Thus, if there are low educative families in the community, the key role in the process of rehabilitation is given to the social assistant and he/she has the right to summon the multidisciplinary team and, using the provisions of the job description, may contribute to overcome the deadlock the beneficiary is in. indeed, the ratio of such activities offered by the social assistant should constitute around 60% of his/her entire interventions.

From the ombudsman's point of view the elimination of the aid to low educative families is not a resolution of the problem. From this perspective, the beneficiaries must be given a second chance, offered by means of high quality social assistance services, as previously mentioned, and by means of community support. Otherwise, the money of the state directed to improve the situation of vulnerable families shall be spent for other purposes, and this shall generate other problems such as abuse and poverty, whilst children shall be collateral victims of difficulties.

[309] Paragraph 2 of the job description of the social assistant, approved by means of Ordinance of the Minister of Social Protection, Family and Child no. 54 from 10 June 2009

CHAPTER III

Information and promotion of human rights in communities

„Knowledge of the rights each one of us has and how to protect them is the best protection of our rights and freedoms".

A special importance of the process of ensuring the respect for dignity of the human being and protection of human rights is awareness of the observance of human rights and fundamental freedoms in compliance with the constitutional provisions and international standards which Republic of Moldova committed to observe.

Rights and fundamental freedoms may be enforced by each person if they know of their existence. Human rights should be understood and enforced in correlation to the responsibilities deriving from them. Thus, the enforcement of each right implied also the existence of a certain responsibility. This is the main condition for the enforcement of the human rights and fundamental freedoms.

Legal education of the citizens is one of the objectives of the ombudsmen – the Centre for Human Rights. The aim is attained through information and promotion activities in the area of human rights, cooperation with local and international partners involved in the human rights promotion: public authorities, public and private institutions and organisations, nongovernmental organisations and international organisations.

With respect to the information and promotion activities in the area of human rights the Centre for Human Rights organised various venues, among which the training in Chisinau with the subject "Partnership for Human Rights", organised within the framework of the Bilateral programme of actions of the ombudsmen from Poland and Republic of Moldova between 10 and 14 May 2010.

„Partnership for Human Rights" is cooperation project of the ombudsmen from Poland, Republic of Moldova and the mediator of the French Republic, which commenced during 9-15 May in Chisinau. The initiative was implemented within the East European Ombudsmen Partnership Programme for years 2009-2013, with the support of the Ministry of Foreign Affairs of Poland within the programme "External Aid 2010".

Within this project in 2009 the College of Europe from Natolin hosted the seminar "Observance of Human Rights and Fundamental Freedoms in the states parties to the Eastern Partnership Programme", where the ombudsmen from Moldova, Poland and France have participated. The ombudsmen have underlined the issues of common intervention: the model of the ombudsman's body, the National Torture Prevention Mechanism, assistance for persons who

have suffered from offences, the Mechanism of Equality and Non-discriminatory Treatment and fight against poverty and social exclusion.

The basic tackled subjects (aspects of the legal framework and the competences of the ombudsman from Poland, the mediator of the French Republic of the ombudsman from the Republic of Moldova, organisation and functioning of the National Torture Prevention Mechanisms in the Republic of Moldova and Poland, assistance offered to persons who suffered from offences, with the presentation of the Polish ombudsman, the principle of equal treatment and non-discrimination, fight against poverty and social exclusion in Poland and the Republic of Moldova), as well as the visits to the penitentiary institution no. 4 from Cricova and the Centre for Rehabilitation of Torture Victims "Memoria" have generated discussion on the large spectrum of problems within the National Torture Prevention Mechanisms, the differences of the penitentiary systems of Poland and Republic of Moldova and suggestions have been formulated on relevant measures to improve the situation.

The second and third stages of the project within the "Partnership for Human Rights" Programme took place between 10 and 16 October 2010 in Tibilisi, Georgia and in November in Poland.

These events have strengthened the belief that this cooperation within the "Partnership for Human Rights" Programme shall certainly contribute to the exchange of best practices to observe and protection human rights and fundamental freedoms, with a subsequent result of cooperation between the national ombudsmen institutions.

A major phenomenon which the Republic of Moldova is confronting is torture. An answer to this condition is the implementation of the National Torture Prevention Mechanism. As chairman of the National Mechanism the ombudsman contributes to the eradication of maltreatment, especially in penitentiaries. In this respect, the Centre for Human Rights has organised in cooperation with the Democratic Institute and the Comrat State University a round table in Comrat on 14 May 2010 with the subject "Eradication of Torture". The ombudsman Anatolie Munteanu, the chairman of the National Torture Prevention Mechanism presented the retrospective of the activity of the National Mechanism and expressed availability to initiate a construction and efficient partnership with all the actors involved in the eradication of torture and other cruel, inhuman or degrading treatment or punishment.

On 26 June – the International Day of Support of Torture Victims the ombudsman organised a workshop with the subject "The torture and maltreatment phenomenon seen by the public authorities", with the participation of the authorities involved in the respective area from the Cahul, Comrat, Ciadir-Lunga, Leova, Taraclia, Vulcanesti and Cantemir.

The workshop included presentation of data on actions of prevention and fight against torture and other forms of maltreatment undertaken by the decision makers in the field. The participants have tackled various subjects related to the specific undertaken actions and the activities planned to be accomplished by the public institutions to prevent and eradicate the torture phenomenon.

The Centre for Human Rights reacts to the challenges which the Moldovan society is facing. Ensuring the access of persons with special needs to the social infrastructure is an important objective of the activity of the ombudsman. This issue should become a concern of the public authorities as well, especially when the subject matter is the adaptability of the social infrastructure to the needs of persons with disabilities. The Centre for Human Rights, in partnership with the Ministry of Labour, Social Protection and Family, have initiated discussions on the condition of the persons with disabilities within the round table dedicated to persons with disabilities in the Republic of Moldova, which was organised on 30 November 2010 in Chisinau.

Other activities have also been undertaken to raise awareness of the public authorities within the working group reunion "Access of persons with special needs to social infrastructure: reality and necessity", organised on 2 Jul7 2010 in Chisinau. A meeting with the same subject took place on 8 October 2010 in Comrat and between 3 and 4 November in Cahul and Balti. The discussions during the working groups have revealed the belief that cooperation between the public authorities and civil society shall contribute to the creation of conditions to integrate persons with special needs in the society and shall deepen the cooperation of the national ombudsman institution with the competent authorities. Additionally, the need to cooperate with non-governmental organisations to develop draft amendments to adjust the national legal framework to the international one in the field was underlined.

The lack of interest of the local public authorities from Cahul and District administrative bodies from Leova, Cantemir and Vulcanesti to the problems of persons with disabilities demonstrates the need of the interventions of the ombudsman to resolve the problems of the persons with disabilities and present the information / specialised report to the Parliament and the Government. Unlike Cahul, the condition in Balti in the respective area is relatively better. In is specialised report the employee of the CHR branch presented data on the improvement of the state of affairs at this chapter.

In each year on 10 December the world community celebrates the International Human Rights Day and the adoption by the General Assembly of the United Nations Organisaiton of the Universal Declaration of Human Rights. In the context of this event, the national ombudsman institution has organised part of its tradition the conference with the subject "Human Rights – evaluations and perspectives", during which the ombudsman have presented an evaluation of the

condition in the area of human rights in the Republic of Moldova and the activity of the ombudsmen in areas of which they are responsible for. The ombudsmen also mentioned the problems the citizens are facing in relation to the observance and protection of their rights, as well as the necessary efforts to attain the stated objectives and ensure human rights a reality for each and every person.

The International Human Rights Day celebrated within this event, reiterated the accomplishments of the human rights defenders, underlying the responsibilities the Government, the public authorities, the ombudsmen, the institutions and organisations involved have while ensuring the observance of economic, social and cultural rights of the persons, which are indispensable for the dignity and free development of personality, as well as for the prevention and eradication of various phenomena which harms the person as a human being.

Children are full-fledged holders of rights and it is important that they benefit from access to information they need. And it is also important that the problems which children are facing be heard. The children's ombudsman is the spokesperson of the child, contributing to the observance of the rights and fundamental freedoms of the child in the Republic of Moldova.

The children's ombudsman, Tamara Plamadeala, organised in 2010 eight information round tables in her field of expertise. Due to the contribution of the children's ombudsman, on 19 March 2010 the cooperation with the National Children's Consultative Council was initiated. This Council shall contribute to the consultation of children in the regions of the country on issues which they face in their daily life, cases when their rights are frequently breached, and shall also contribute to the prevention of violation of children's rights. Local Children's Consultative Councils within the children's ombudsman have been created in 17 regions of the country: Soldanesti, Telenesti, Singerei, Floresti, Calarasi, Straseni, Falesti, Glodeni, Ialoveni, Hincesti, Cimislia, Rezina, Falesti, Dubasari, Criuleni, Briceni and Edinet. Also, round tables have been organised to consult the children of the country in the area of rights and freedoms of children, with emphasis on the difficulties in this area and proposed solutions.

During the process of information and promotion of child's rights in the Republic of Moldova the three events with the subject "The Open Doors Day at the Child's Ombudsman" are also relevant, organised on 14 June in the contexts of the International Child's Day, on 8 September in the context of the International Literacy Day, during which children have organised a flash-mob in the centre of the capital, as well as the Open Doors Day on 5 November 2010. These events have contributed to the informing children with respect to their rights and offered them the opportunity to personally get acquainted with the activity of the children's ombudsman and her team, to find answers to questions that bother them. These actions may be

seen also as a practical demonstration of transparency in the activity of the children's ombudsman and cooperation with children in issues they are interested in.

The development and editing informative publications is also a method of information and promotion of human rights and these products help both adults and children know better their constitutional rights and freedoms and existent mechanisms for their protection.

In 2010 the annual Report on the observance of Human Rights in Moldova in 2009 was developed, which pursuant to article 34 of the Law no. 1349 on ombudsmen from 17 October 1997, is presented to the Parliament at the beginning of each year. Also, the Report on the National Torture Prevention Mechanism's activities for 2009 was developed. The informative date of these reports (in Romanian, Russian and English) was downloaded on the official webpage of the institution and can be accessed at: www.ombudsman.md.

Based on stage budget resources allocated to the Centre for Human Rights four guidebooks have been developed and edited: „The right to appeal at the European Court of Human Rights", „Right to petition", „Legal framework on the rights of foreigners and stateless persons", „Prevention and fight against discrimination" and four leaflets: „Non-discrimination", "Summary of the case-law of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1997-2009) with respect to observance of human rights and fundamental freedoms (articles 8, 9, 10, 11)", "NO to violence against children!", „The rights of the patient".

With the financial support of UNICEF, the Activity Report of the children's ombudsman for 2009 was published and two leaflets: "the Children's Ombudsman" and "The Child's Phone" have been printed.

These publications have been distributed during the activities of the institution, organised in the regions of the country, and during the activities of the partners in the respective field.

The information, communication and promotion of human rights in communities were also ensured by a functional and regularly updated official webpage of the Centre for Human Rights from Moldova: www.ombudsman.md. Thus during January-December 2010 over 220 new subjects have been posted on the website. Similarly, the information, communication and promotion component knows of the dissemination of promotional materials of the CHR and development of a separate chapter about the ombudsmen institution in the Republic of Moldova for the publication "Republic of Moldova – Council of Europe, partnership for a European future", managed by the Institute of European Integration and Political Sciences of the Science Academy of Moldova.

The press conferences also constituted an opportunity to inform the public, the press and the partners on areas of intervention of the ombudsmen and to promote human rights. In 2010

eight press conferences have been organised, during which the ombudsman have presented the problems underlined in the Report on the observance of human rights for year 2009, as well as the difficulties identified in the course of the mandate of observance of human rights and fundamental freedoms, particularly the protection of children's rights. Detailed information is contained in the chapters reserved for the observance of children's rights and persons with disabilities.

In 2010 the children's ombudsman informed the public of certain aspects related to the observance of child's rights, including by means of those 94 participations in TV, radio shows and interviews: 200 TV shows, 11 radio emissions, 14 interviews, 21 articles in written press, 28 press releases of the children's ombudsman used the press.

68 press communiqués have been distributed to the press in 2010, with parallel placement on the webpage of the Centre for Human Rights – www.ombudsman.md.

For better dissemination opportunities for data related to the areas of activity, the ombudsman have organised information and working visits into the regions.

The ombudsman Aurelia Grigoriu organised two visits to homes for elderly, centres for persons without a permanent residence and other similar institutions in the country to check the compliance to international standards of the living conditions in the social assistance institutions in the Republic of Moldova and to monitor the way the public administrations observe the legislation in force related to human rights and fundamental freedoms. Among these is the visit to the Home for the Elderly "Acasa" from Badiceni village, Soroca disctrict (13 July 2010), the Multidisciplinary Centre for the prevention of social exclusion of persons with disabilities (20 July 2010) and the Day Centre for children with disabilities from Cahul (28 December 2010).

On International Children's Day on 1 June 2010 the ombudsmen organised a visit – which already became a tradition – to the Centre of social protection of orphan children, children from disadvantaged families and single elderly "Prometeu" from Straseni, to be closer to them and to express their solidarity with them.

In 2010 the children's ombudsman organised 57 working and informative visits to educational institutions, placement centres, orphanages, summer camps, medical institutions, low educative families and penitentiary institutions where minor children are detained. The information of the public and the communities of the results of these visits were made by means of the official webpage of the institution and the press communiqués sent to the press.

Same as in previous years, the ombudsmen were in favor of developing cooperation relations and deepen the dialogue with the institutions involved in human rights at the national, regional and international levels, thus contributing to the promotion, observance and protection of human rights and fundamental freedoms.

In the context of the open dialogue the ombudsmen had 16 interviews in 2010 both with representatives of various institutions and organisations from abroad on working / information visits in the Republic of Moldova and representatives of diplomatic missions accredited in the Republic of Moldova, as well as public authorities in the country. The meetings have contributed to the maintenance of cooperation relations, exchange of practices and idea and initiation of new cooperation and partnership relations with organizations and institutions which contribute to the observance of human rights.

A strong point to improve the activity of the ombudsmen institution in Moldova was the exchange of best practices with similar institutions from other country, meetings organised by the International Ombudsman Institute (IOI), the Association of Francophone Ombudsmen and Mediators (AOMF), Council of Europe, the European Network of Ombudsmen for Children (ENOC), the OSCE Mission in Moldova, UNDP Moldova, other international organisations and agencies involved in the human rights area. By means of these relations, the ombudsmen and the employees of the Centre for Human Rights contribute to the implementation of advanced practices in their daily activity and development of the dialogue at international and regional level with the institutions in the field of human rights.

The ombudsman have been involved in the activities organised by the public authorities, foreign organisations accredited in the Republic of Moldova and national NGOs on various segments of the human rights area, participating at round tables, international conferences, sessions, seminars and public debates.

One of the key messages presented by the ombudsmen during these events was the fact that there are no factors which can be interpreted by the national legal system as justification for recourse to prohibited action – the behaviour of the victim, the pressure on the offender to continue the investigation or prevent a crime, or any other external circumstances. Thus, the prevention and fight against torture must remain a priority at national level, present in all the consolidations programmes of the rule of law.

An efficient and prompt method of getting informed of the rights and fundamental freedoms is the availability of the Hot Line service. During 2010 there have been two such functional services at the Centre for Human Rights.

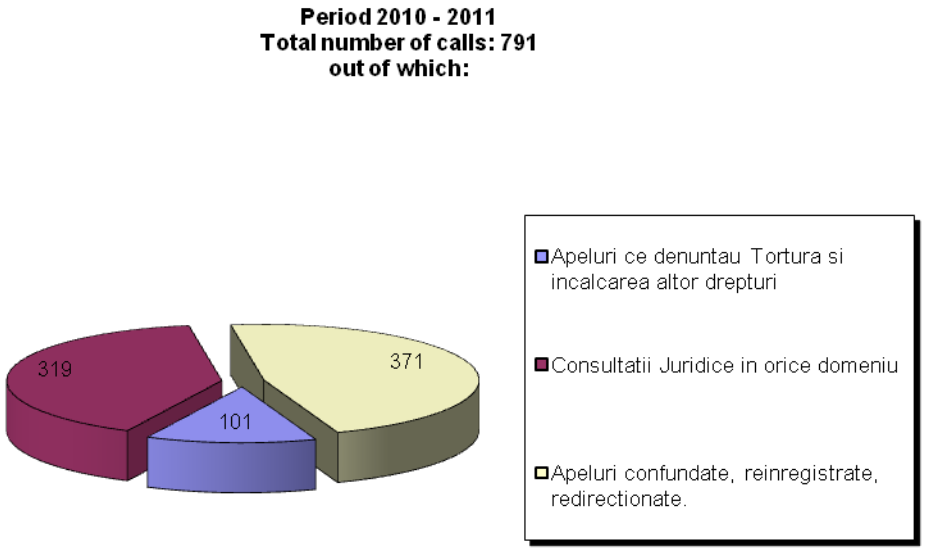
On 1 June 2009 the National Torture Prevention Mechanism Hot Line (0-80012222) started to function, which was created within the "Support to strengthening the National Torture Prevention Mechanism as provided by CAT Optional Protocol" Project, financed by the European Union and co-financed by the United Nations Development Programme (UNDP).

The Hot line "Child's Phone" (080011116) was launched on 30 August 2009 by the children's ombudsman, in partnership with the nongovernmental organisation "CCF Moldova –

Child, Community, Family", official representative of the *Hope and Homes for Children* (UK), with the support of the OSCE Mission in Moldova.

In 2010 there were a total of 791 calls at the Hot Line of the National Torture Prevention Mechanism, out of which only 101 referred to torture or violation of other rights. The chart below presents the tendencies of beneficiaries to deliberately refuse the consultations of an attorney specialised in civil procedure, inheritance, fiscal legislation etc, considering that the Hot Line can offer free legal consulting.

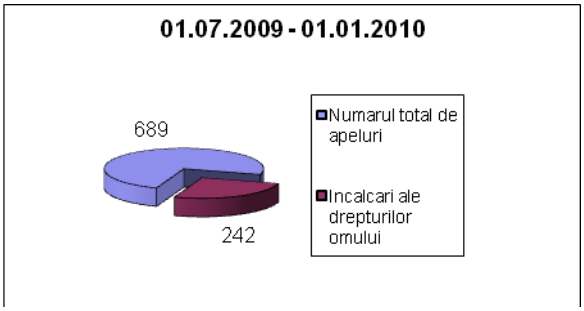
The transfer of practices and the dialogue of the ombudsmen, developed at international, regional and national levels with the institutions involved in the human rights area, shall strengthen the process of promotion, observance and protection of human rights and fundamental freedoms. These shall support the establishment of new cooperation relations while developing draft amendments to adjust the national legal framework and national policies and strategies to the international framework and shall facilitate the exchange of information and management of activities of common interest.

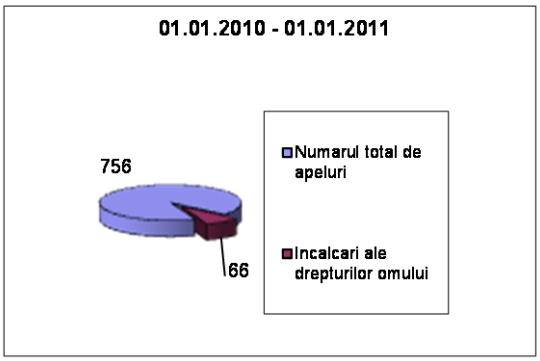


In 2010 there have been 35 calls received which reported the use of torture. A part of those calls reporting torture or bad detention conditions have been received from the relatives of the alleged victims. However, when confirmation of these allegations was managed by the members of the National Torture Prevention Mechanism, the alleged victim was denying the fact of torture, either because of their intimidation or as a result of the data offered by the relatives.

Indeed, the Hot Line of the National Mechanism may not select the information, however when they are received, the data is exposed to confirmation.

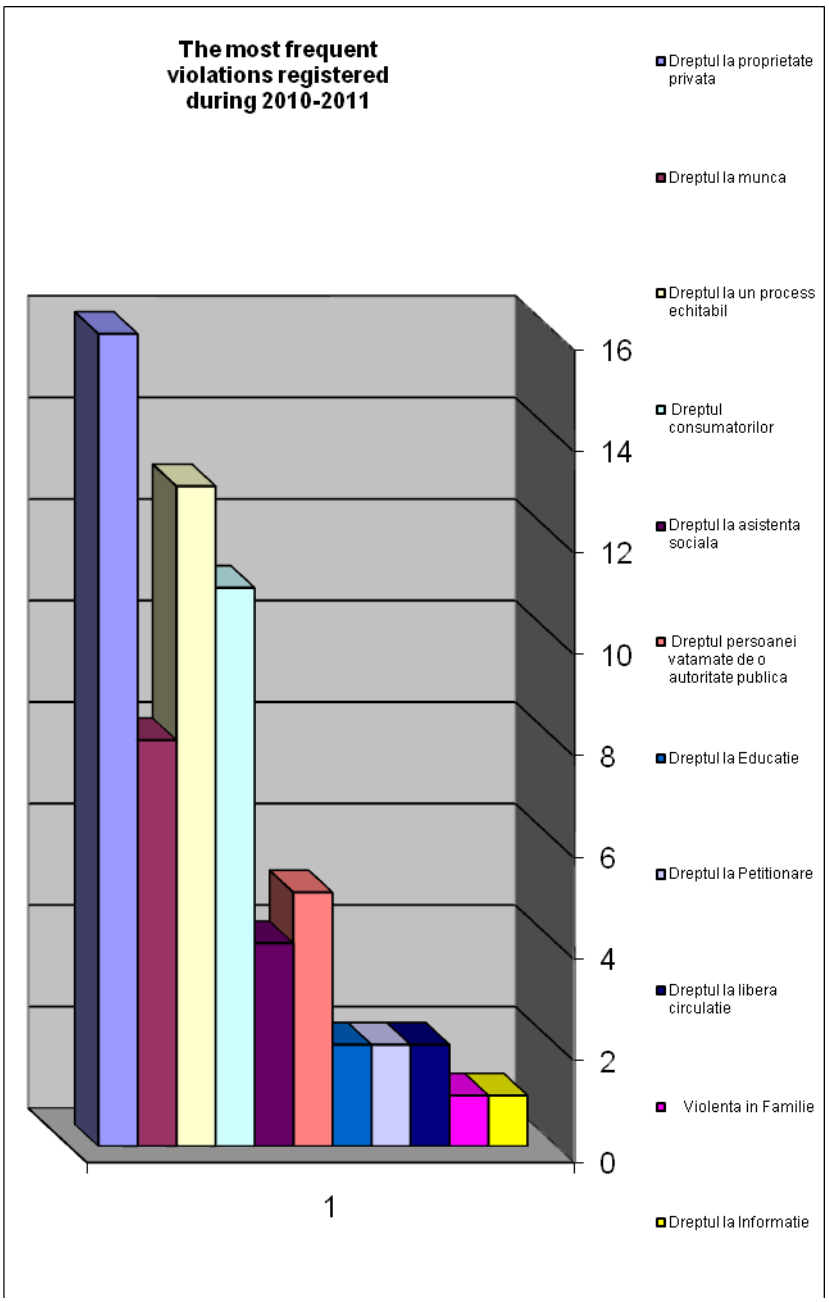
Between January 2010 and January 201 the Hot Line 080012222 registered 66 calls on breach of human rights.





Compared to the previous report, the number of calls referring to the violation of one particular right has significantly diminished. Most of the calls were related to the breach of the right to private property, whilst the main offenders are the state and the physical entities, which by means of their actions / omissions have breached constitutional rights. In most of the cases the beneficiaries obtained consultations on the provisions of the Civil Code and Civil Procedure Code to enforce their legal rights in a court of law.

The following is a list of rights mostly claimed as breached:



The majority of the rights mentioned here are the same as the ones in the previous report. The continuous nature of these breaches must be seriously treated, even though the numbers greatly differ from 2009. The eradication of this rhythmical process is needed, whilst the gnosiological support may be given trough the Hot Line of the National Mechanism, although this is not enough.

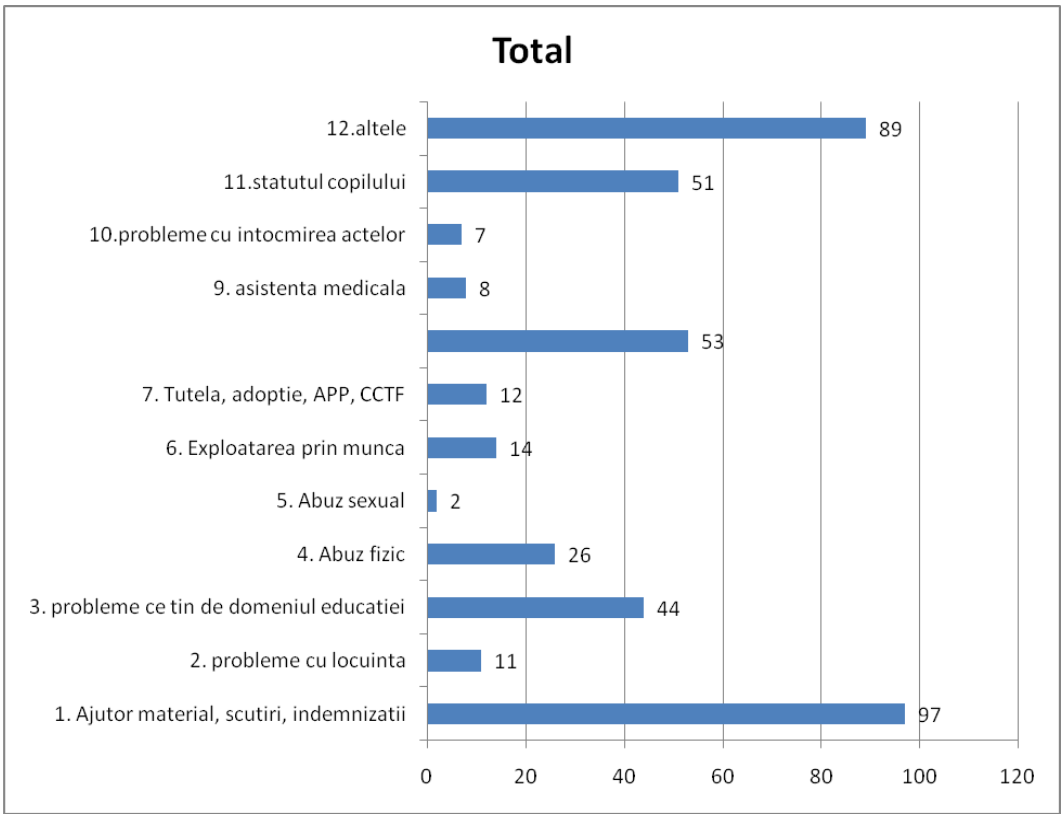
Human rights represent the main tools which allow a person develop and use to their vastest extent his/her personal qualities: physical, intellectual, moral, affective and spiritual. The rights derive from the inspiration of the humanity for a life where the dignity and the value of each person is observed and protected.

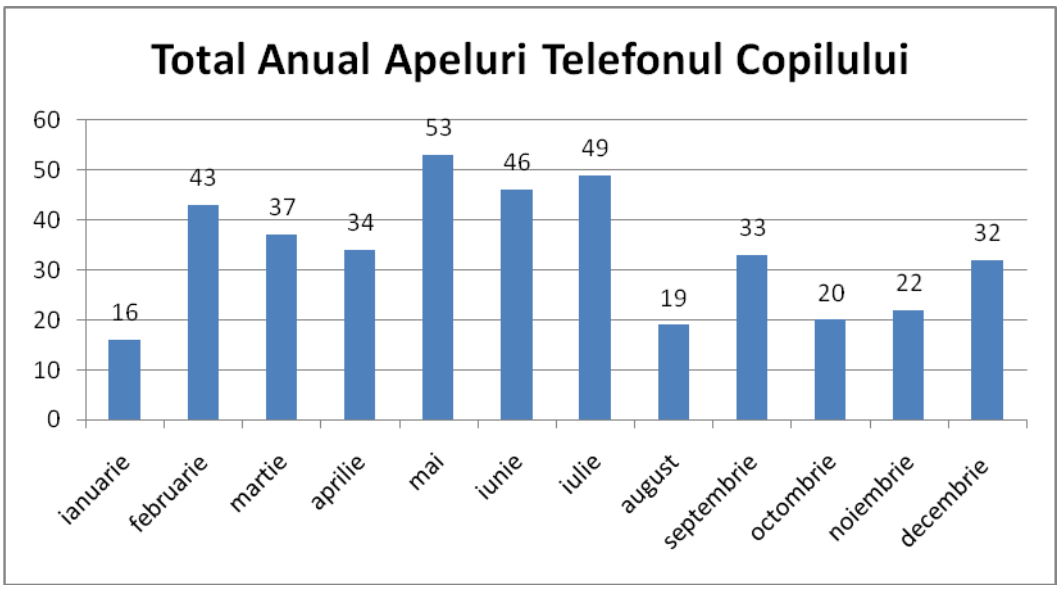
The torture phenomenon is present not only in the Republic of Moldova, this being confirmed by many of the decisions of the European Court for Human Rights. Even the most

developed countries face such difficulties. For instance, in 2009 the leader of breaching article 3 of the ECHR was Russia (87 cases), followed by Turkey (30), Romania (14), Italy (11), Poland (10), Ukraine (9), Moldova (8), Georgia (7), Greece (5), Bulgaria (3) and one or two convictions for Slovakia, Spain, Albania, Armenia, Austria, France. Irrespective of these factors, the Republic of Moldova should aim not only at one ideal result – zero cases in the statistics of breach of article 3 of the ECHR. This ambition was attained by Germany, Norway and Finland etc. Regretfully, the cases registered in Moldova in 2010 by means of the Hot Line of the National Torture Prevention Mechanism demonstrate that the same is to be reported for 2011.

The second phone service – *The Child's Phone – 08001116* – administered by the Centre for Human Rights from Moldova, has the mission to contribute to the protection of children by offering free legal aid, direct involvement in the resolution of serious cases of abuse and, if necessary, the possibility to discuss directly with the children's ombudsman.

During January-December 2010 the Child's Phone registered 401 calls. Most of the times the calls were related to issues of financial aid, waves and allowances, as well as subjects related to the educational field of information on the ombudsmen institution. The charts below present a statistical overview of the calls to the Child's Phone.





A large number of citizens called the Hot Line *Child's Phone* to obtain a free consultation on a large spectrum of issues related to child protection. The operators of the Hot Line registered a series of calls related to emotional, physical, sexual abuse or neglect, violence and exploitation, and have subsequently got involved in the resolution of some of the cases.

The children's ombudsman issued a recommendation to the Government to fund the Hot Line, which may become an opportunity for children to have support when they are abused or ignored. No answer came from the Government. Irrespective of the development, the Centre for Human Rights shall maintain the phone line until other financial resources are found. It is necessary that the Child's Phone is functional 24 hours a day so that children receive psychological counselling.

The Hot Lines have demonstrated their importance and efficiency, especially by facilitating access to information not only for the sectors they have been created – fighting torture and ensuring the rights of children. They have opened resolution opportunities for persons who do not have access to information, means and skill to act independently. In this respect the impact of the Hot Line of the National Torture Prevention Mechanism (0 8001 2222) and of the Hot Line – Child's Phone (0 8001 1116) is relevant to increase the access of citizens to informational and free legal consultation services in the area of human right and to enforce the rights of persons whose rights have been breached.

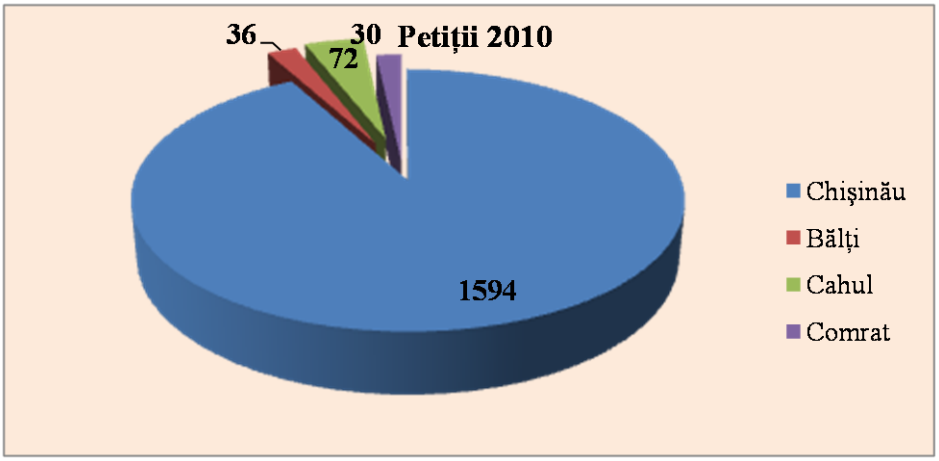
CHAPTER IV

Other aspects of the activity of the Centre for Human Rights

4.1. Statistics of the activity of the Centre for Human Rights

The Centre for Human Rights, as a national institution of promotion and protection of human rights, is authorised by means of article 13 of the statutory law to examine the complaints of the citizens of the Republic of Moldova, foreign citizens and stateless persons who have a permanent residence or temporarily reside on its territory, whose rights and freedoms have been breached in the Republic of Moldova.

Thus, each person has the right to request the ombudsman the investigation of cases of breach of his rights and freedoms, subject to condition that the alleged breached right be a constitutional one and the breach be imputed to one of the institutions expressly mentioned in article 15 of the Law on ombudsman no. 1349 from 17 October 1997.



For all citizens to be able to use this right, the applications sent to the ombudsman are exempted for state tax, as provided by paragraph 2 of article 14 of the Law on ombudsmen.

During 2010 the Centre for Human Rights from Moldova received 1732 applications, received by the representatives of the Centre in Chisinau, Cahul, Comrat and Balti (Annex no. 1), which constitutes 68 applications less than in 2009 (Annex no 2).

Before embarking into the analysis of the performance indicators, we shall explain the fact that the current system of statistical data compilation does not cover the needs of the institution in managing complaints, whilst the classification of applications by the CHR does not always represent their nature very clearly. Categories such as the “the right to healthcare” or “the right to citizenship” are rather clear, whilst others are less evident. For instance, the most extensive category in each year is “personal security and dignity”. It is not an informative title and may include many aspects – from torture to relatively insignificant details.

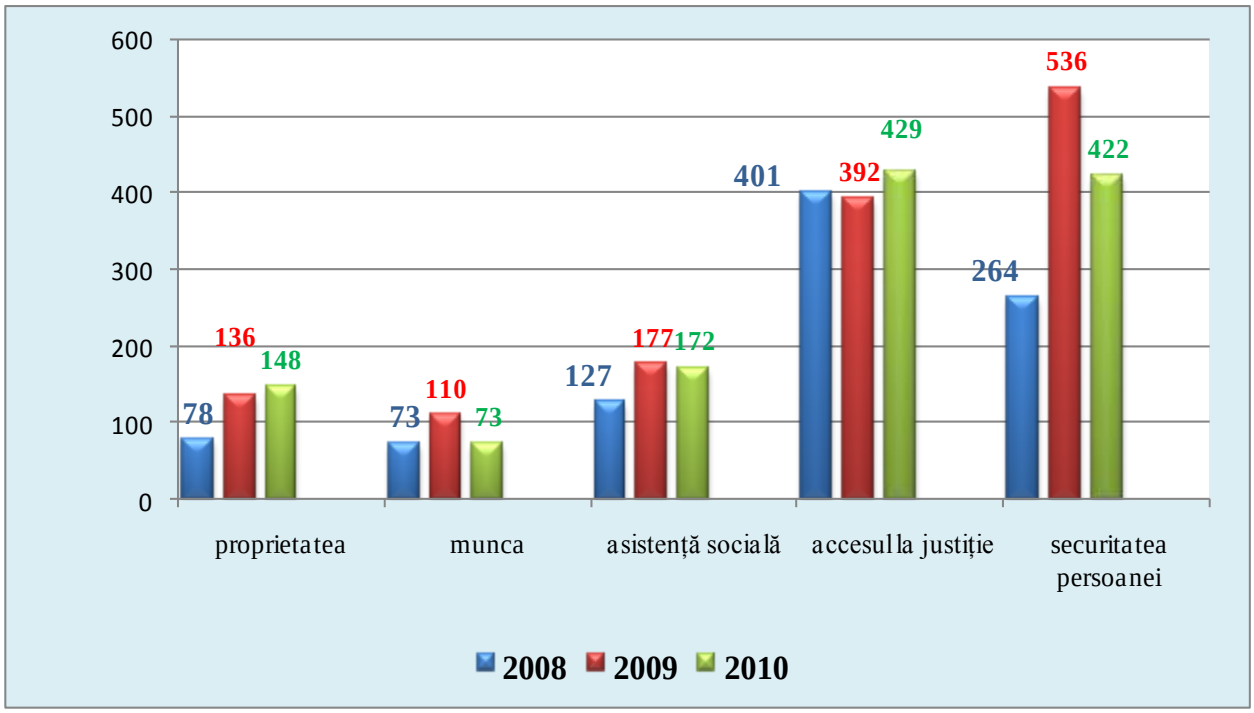
The existent gaps in the this high priority area have been underlined by the international experts Richard Carver and Alexei Korotaev, during the performance evaluation mission of the

national human rights protection institution in 2007 and by Eric Svanidze during the country monitoring mission of eradication of maltreatment from 2009.

From the perspective of those experts, formulated separately by each of them and presented in their report, a more detailed and thorough description of the applications would ensure a clearer picture, whilst the integrity of data in a national uniform system of statistical data collection shall certainly increase the efficiency of the institution.

The analysis of the statistical data reveals that the most frequent reasons to contact the Centre for Human Rights are legal ones, constantly linked to alleged violations of the right to social assistance, private property and labour, limitation of the free access to justice, as well as breach of the right to personal security and dignity. Out of the total of 1732 applications received in 2010 1244 (72%) is linked to one of the issues mentioned below (Annexes III and IV).

Annex III



Annex IV

Issue	**Petitions**	**%**
Free access to justice	429	24.77
Personal security and dignity	422	24.36
Right to employment	73	4.21
Free access to information	160	9.24
Family life	117	6.76
Right to social assistance and protection	172	9.93
Free movement	33	1.91
Right to healthcare	45	2.60
Right to defence	39	2.25
Private property	148	8.55
Right to a healthy environment	6	0.35
Right to petition	37	2.14
Right to citizenship	10	0.58
Right to education	16	0.92
Right to administration	3	0.17
Private and personal life	12	0.69
Personal freedoms	4	0.23
Electoral right	1	0.06
Other	5	0.29
Total	**1732**	**100.00**

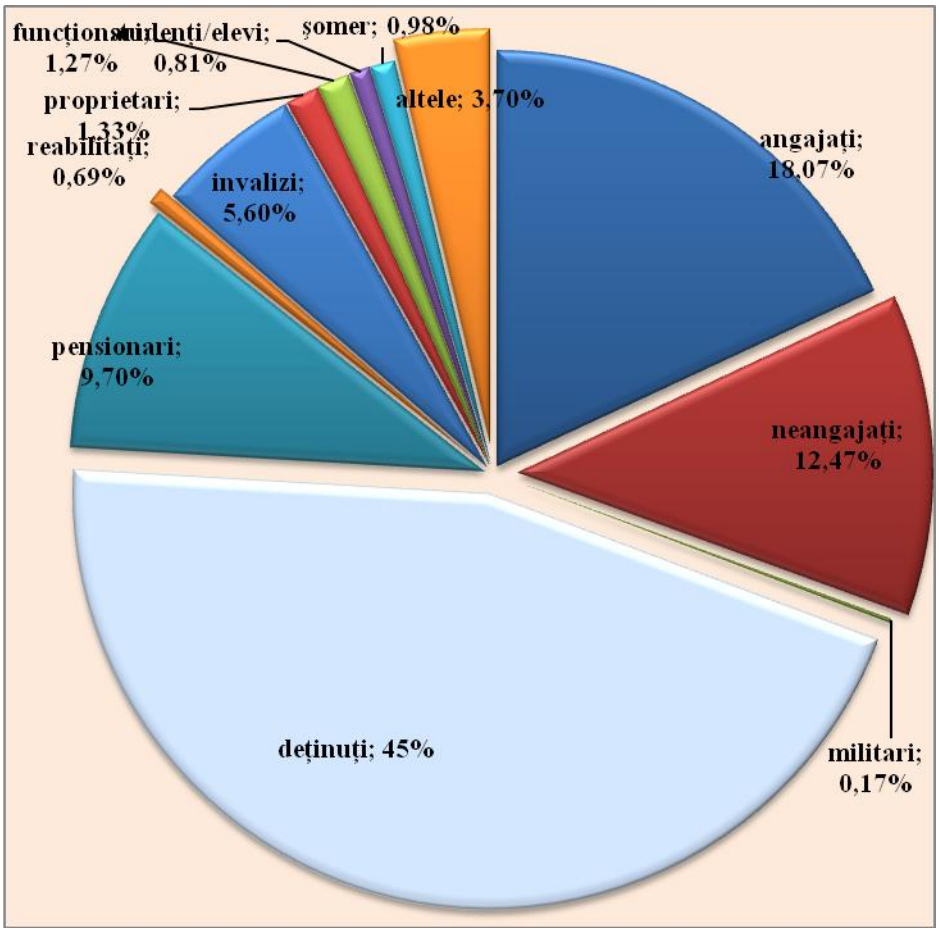
Note: the "other" compartment contains the applications where the breach of a constitutional right is not mentioned, such as the right of the consumer.

With respect to data presented in Annex IV it is to be mentioned that the reduced frequency of certain issues does not necessarily imply a high level of observance of human rights of citizens in these area, but rather the incapacity to contact the Centre due to various subjective reasons or tolerance of breaches with a reduced level of damages, or resolution of the issue by means of courts of law.

This condition reflects the insufficient nature of the current system of compilation of statistical data, in this case, due to the fact that the groupings are too general. From the ombudsmen's point of view, this creates difficulties in finding the real reasons which determined the citizens make recourse to the services of the Centre for Human Rights. For instance, the right with the highest number of references – right to "personal security and dignity" – has a very general formulation, whilst to present objective data related to the issue of petitions the manual processing of mail is needed, which implies in turn unjustified consumption of the institution's resources. Thus, out of those 422 applications included in this compartment, 48% are complaints on torture and maltreatment by institutions subordinated both to the Ministry of Justice and the Ministry of Interior. Sixteen percent of the applications invoke the illegality of transfer into another penitentiary institution, as well as the refusal, considered illegal by petitioners, of transfer to another penitentiary institution localised closer to relatives. In around 11% of the cases the quality of medical services in the penitentiary system is accused, whilst in 24% of the cases the complaints relate to detention conditions.

Annex V answers the question "Who contacts the ombudsmen for help?" Thus, during 2010 the Centre received petitions from 783 detainees, 313 employees, 168 pensioners, 216 unemployed, 97 persons with disabilities, as well as other categories of persons which are less numerous, reflected in the chart below.

Annex V



The geographical source of petitions, presented in Annex VI, reveals that the majority of complaints, as in previous years, come from the Chisinau municipality (approximately 40%). This is explained by the accessible nature of the institution for the residents of the municipality and of the near-by settlements.

Annex VI

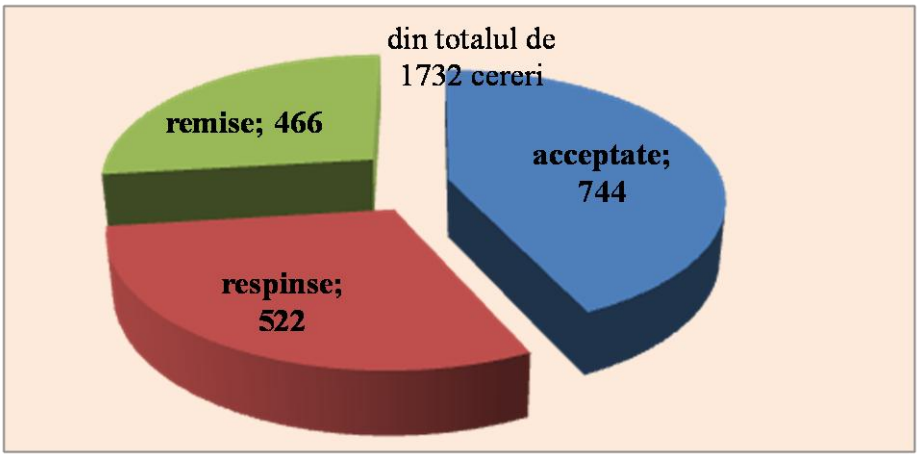
The small number of complaints from the eastern part of the country (23 application) is explained both by the lack of trust of citizens that the authorities from Chisinau shall resolve the problems existent in this region, where the laws of the Republic of Moldova are not enforceable and by the fear of being persecuted for this by the self-proclaimed authorities in Tiraspol.

After the registration of the application, the ombudsman adopts one of the solutions prescribed by article 20 of the Law on ombudsmen and is entitled to: 1) take the application and examine it; 2) reject the application, explaining the petitioner the procedure he/she is entitled to follow to protect his rights and freedoms, or 3) transfer the application to the competent bodies to be examined pursuant to the Law on petitions

In practice however, all applications pass a primary review, which has as aim identification of the alleged breached right, the check of the respective application with the national and international legal and normative framework, examination of the possibility to involve the ombudsman, and if the application is outside the mandate of the ombudsman, the competent authority to resolve the case is identified.

Annex VII

Annex VII presents that out of the total amount of registered applications (1732), 744 have been accepted and investigated using own resources, 522 have been returned, with the indication of legal procedures for the petitioner to enforce the alleged breached right, whilst other 466 have been sent for review to the competent bodies, with the subsequent monitoring of the ombudsman on their developments.



After the examination of those 744 application, a series of actions have been taken and reaction acts adopted, which are presented in Annex VIII, on a comparative basis with 2008 and 2009.

Annex VIII

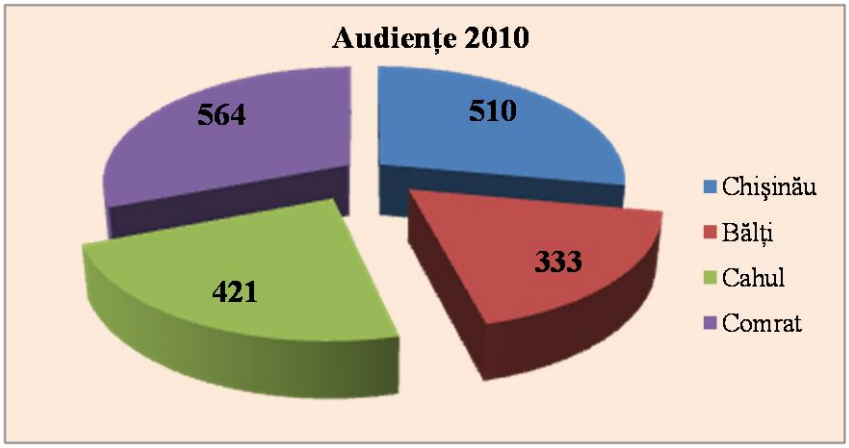
The type of action / reaction intervention	2008	2009	2010
Notices (based on article 27 of the Law no. 1349)	13	68	144
Requests (to initiate criminal prosecution / disciplinary measur based on article 28 letter b) of the Law no. 1349) and Notifications (on cases of breach of duty ethics, delays ar bureaucracy based on article 28 letter d) of the Law no. 1349)	8	33	32 59
Appraisals at the Constitutional Court (based on article 31 of th Law no. 1349)	2	2	10
Proposals to improve the legislation in the human rights are (presented to the Parliament and the Government pursuant article 29 of the Law no. 1349)	10	5	28
Court litigation	-	-	6
Specialised reports	-	-	24
TOTAL	**33**	**108**	**335**

It is to mentioned that a series of authorities have not come to know and recognise the empowerments of the ombudsmen. Among these bodies are the local public administration bodies, private capital commercial entities, as well as some central public authorities, such as the Ministry of Education, which, without knowing legal provisions, answered to notice of the ombudsman

from 23 august 2010 only on 6 December 2010, breaching the give time to answer with almost 2 moths. Additionally, this list includes the General Prosecutor's Office who was caught on breaching the time limit of one month to examine the notice with around two months, or the Ministry of Labour, Social Protection and Family and the Centre for Combating Economic Crimes and Corruption, both institutions breaching with over one month the time offered by the ombudsman to examine the reaction notice. And the examples may continue.

The ombudsmen consider that this phenomenon essentially jeopardises the activities of the human rights institution, whose efficiency is strongly linked to the way the applications are examined. That is why the highlighting of the met difficulties is appropriate and this practice may be developed. Another method to obtain information from first source on alleged cases of violation of human rights are the *daily audiences*, organised both by the ombudsmen and the employees of the Centre for Human Rights, based on a schedule approved each month by means of an Ordinance of the chief of the institution.

The purpose of the audiences is to identify the breaches which may be investigated by the institution, the applicant being given recommendations to address an application to the ombudsman by means of filling in a template form, and if the case is outside of the ombudsman's mandate, the citizen is directed to the competent body and benefits from a legal consultation.



At the same time, there are three branches of the Centre in Balti, Cahul and Comrat, these being created to ensure equal access conditions to the services of the national human rights protection institution. During 2010 the regional offices of the Centre for Human Rights received 2046 persons in audience.

In 2010 a series of actions have been planned and implemented, which in turn have made closet to rural settlements the activities of the Centre for Human Rights audiences outside the premises of the institution. While in the regions, the ombudsmen and the employees of the Centre, including the experts of the representatives, have offered audience to 391 citizens. The practice of offering audiences in the regions shall be developed by the ombudsmen in 2011.

4.2. The activities of the Centre for Human Rights inthe areas of international cooperation and partnership for human rights

Accreditation and the impact over the performance of the Centre for Human Rights from Moldova

At the second session of the Accreditation Subcommittee of the International Coordination Committee of National Human Rights Institutions, which took place between 16 and 18 November 2009, the application of accreditation of the Centre of Human Rights from Moldova was examined and it has been recommended to accredit the CHR with the B status, the final decision being endorsed as well by the ICC Bureau.

In its recommendation, the ICC Subcommittee for Accreditation expressed its appreciation for the work of the CHR managed in difficult conditions, especially, due to inadequate funding of the institution, which in turn has an impact on the capacity to efficiently manage the mandate.

Meanwhile, the sub-committee has found that: "the lack of adequate funding is a structural problem of the Centre for Human Rights from Moldova. In spite of the significant efforts of the institution, insufficient funding jeopardises the capacity of the CHR to employ personnel, value equipped premises and manage activities. The Centre for Human Rights needs to be equipped with adequate resources to ensure gradual and progressive attainment of institution's strengthening actions and manage the fulfilment of its duties. The budget of the CHR should also have a special budgetary chapter for financing the National Torture Prevention Mechanism".

Additionally, the subcommittee encourages the CHR to continue constructive cooperation with the international human rights system.

After obtaining the B status, the Centre for Human Rights from Moldova established as objective the implementation of all necessary actions to comply with the conditions to be accredited for A status in the shortest possible timeframes. This new status shall allow the ombudsmen institution to participate in full in the activity of the UN Human Rights Council. The attainment of this objective is however strongly dependant on the support of the public authorities (from the amendment of the national legal framework until the development of efficient cooperation on common activity areas, as well as mutual support when necessary). Indeed, when successfully combining the capacities and procedures used by them within the resolution of issues in the human rights area with competences and specific methods of

intervention of the ombudsmen, the Republic of Moldova may demonstrate that there is a healthy tendency and will to improve the situation in the area of observance of human rights, that there is pluralism of opinions.

Indeed, presently the public authorities demonstrate an increased level of openness to the reaction notes of the ombudsmen, the cooperation relations have strengthened, whilst the interaction with the public authorities, as well as the involvement of the CHR in the promotion and protection of human rights and fundamental freedoms has a more extensive nature.

In spite of this, the necessary prerequisites to be guaranteed by the state, which would allow the access of the A status by the Centre for Human Rights from Moldova as the national human rights protection institution are lacking.

The ombudsmen reiterate that the accreditation represents the official recognition by the International Coordination Committee Bureau of the National Human Rights Protection Institutions that a national institution meets or continues to fully comply with the Paris Principles. The national institutions may be given the following accreditation statutes:

- *Voting member*: full compliance with the Paris Principles.
- *Observer*: are not fully compliant with the Paris Principles or have not delivered necessary documentation to obtain this qualification.

  The institutions accredited with A status may participate fully in the works and sessions of the national institutions at international and regional level as member with voting rights, and may hold positions in the ICC Bureau or any Subcommittee created by the Bureau. The institutions with A status may also participate at the sessions of the Council for Human Rights, may present their positions on any subject of discussion in the agenda, may present documents and have a separate standing.

The institutions accredited with B status may participate as observers at the works and sessions of the national institutions at national and regional level. They cannot vote or hold a mandate within the ICC Bureau or in any of the Subcommittees. The institutions with such a status do not have NHRI badges (National Human Rights Institution), they cannot present their positions on subjects present in the agenda and present documentation to the Council for Human Rights.

Therefore, the failure of the efforts to obtain accreditation of full compliance with the Paris Principles may give the possibility the community understand that a national human rights protection institution is not fully independent and efficient, and, thus, not fully credible.

The recommendations and final observations of the international bodies presented with respect to the Centre for Human Rights (national ombudsman institution) of the Republic of Moldova

1) Recommendation 1615 (2003) of the General Assembly of the Council of Europe on the national ombudsman institution: The Assembly concludes that certain characteristics are essential for any institution of ombudsman to operate effectively, namely: 1) establishment at constitutional level in a text guaranteeing the essence of the characteristics described in this paragraph, with elaboration and protection of these characteristics in the enabling legislation and statute of office.

2) The Committee for Human Rights considered the second periodic report submitted by the Republic of Moldova, which includes useful information on the measures adopted by the state party to implement the Covenant of Civil and Political Rights (CCPR/C/MDA/2) at its 2659th and 2660th meetings, held on 13 and 14 October 2009, and adopted at its 2682nd meeting, held on 29 October, the following *Concluding Observations* (the next periodic report to be presented by 31 October 2013): „ 11. 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."

3) „ The Committee against Torture considered the second periodic report of the Republic of Moldova (CAT/C/MDA/2) at its 910th and 912th meetings (CAT/C/SR.910 and 912), held on 11 and 12 November 2009, and adopted, at its 922nd meeting (CAT/C/SR.922) held on 19 November 2009, the following conclusions and recommendations (the periodic report, the third one, is to be presented no later than 20 November 2013):

With respect to the ombudsmen and the national torture preventive mechanism:

"The Committee notes with concern 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."

4) *Concluding observations* of the Committee on the elimination of all forms of racial discrimination, adopted during the during the session from 16 May 2008 on the combined period reports 5-7, presented by the Republic of Moldova on the measures taken by the state party pursuant to article 9 of the International Convention on the Elimination of all Forms of Racial Discrimination (Periodic reports 8 and 9 presented on 25 February 2010): „ The Committee notes that the Parliamentary Advocates heading the Centre for Human Rights of Moldova have dealt with only a few complaints related to racial discrimination.

The Committee recommends that the State party promote the role and strengthen the activities of the Parliamentary Advocates in relation to complaints about racial discrimination, and consider elevating the status of the Centre for Human Rights to that of a national human rights institution in compliance with the Paris Principles (General Assembly resolution 48/134 of 20 December 1993)."

5) The third Report on the Republic of Moldova, adopted by the European Commission against Racism and Intolerance (ECRI) on 14 December 2007:

ECRI reiterates its recommendation that the Moldovan authorities enshrine the status of the Ombudsman institution in the Constitution in order to reinforce its independence. They should also take measures to guarantee that the Ombudsman's decisions are implemented, and give this institution all the means and resources it needs to carry out its various tasks, including combating racism and racial discrimination.

ECRI strongly encourages the Moldovan authorities either to clarify and strengthen the responsibility and ensure the competence of the Ombudsman in the field of combating racism and racial discrimination or to set up in the near future an independent specialised body to combat racism and racial discrimination.

The role of the Centre for Human Rights as national human rights protection institution within the universal periodical Evaluation

The Resolution of the General Assembly no. 60/251 from 15 March 2006 by means of which the Council for Human Rights (CHR) was created, decided that it should „ undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies (...)".[310]

The basis for evaluation, the principles and objective, the processes and method, as well as the result of examination are presented in Resolution 5/1, adopted by the CHR on 18 June 2007, and are contained in the report of the fifth session (so called "package of institutional strengthening"), available in the six official languages of the UN on the webpage of the Office of the High Commissioner for Human Rights (OHCHR).

Resolution 5/1 allows an active involvement of the National Human Rights Protection Institutions in the universal periodic evaluation mechanism. This evaluation shall "ensure the participation of all relevant stakeholders, including non-governmental organizations and national human rights institutions, in accordance with General Assembly resolution 60/251 of 15 March 2006 and Economic and Social Council resolution 1996/31 of 25 July 1996, as well as any decisions that the Council may take in this regard".

The objectives of the review are:

(a) The improvement of the human rights situation on the ground;

(b) The fulfilment of the State's human rights obligations and commitments and assessment of positive developments and challenges faced by the State;

(c) The enhancement of the State's capacity and of technical assistance, in consultation with, and with the consent of, the State concerned;

(d) The sharing of best practice among States and other stakeholders;

(e) Support for cooperation in the promotion and protection of human rights;

(f) The encouragement of full cooperation and engagement with the Council, other human rights bodies and the Office of the United Nations High Commissioner for Human Rights (OHCHR).

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[310] Article 5 (e) of the General Assembly Resolution no. 60/251 from 15 March 2006

The universal periodic review evaluates how the states parties observe their obligations in the human rights area contained in the United Nations Charter, the Universal Declaration of Human Rights, the Human Rights instruments (covenants, conventions and other treaties) to which the state is a party to, voluntary commitments taken by the state, the applicable international humanitarian law.

The situation of the Republic of Moldova shall be evaluated within the 12th session (the last session of the Committee for Human Rights), which shall take place during 3-14 October 2011.

The Centre for Human Rights as a National Human Rights Protection Institution shall present data by 21 March 2011 to be included in the Report of the stakeholders, which shall be discussed at the 12th session of the Working Group for universal periodic review.

The stakeholders, which are mentioned in Resolution 5/1, contain NGOs, national human rights institutions, human rights activists, academia and research institutions, regional organisations, as well as representatives of the civil society.

The universal periodic review shall be organised by a working group comprised of 47 member states of the Committee for Human Rights, whilst the results shall be included in a report which shall contain a summary of the procedure, the conclusions and / or recommendations, and voluntary commitments of the state party in discussion.

Thus, in accordance with Resolution 5/1:

- States are encouraged to prepare the information through a broad consultation process at the national level with all relevant stakeholders" (Article 15 letter (a))
- Additional, credible and reliable information provided by other relevant stakeholders to the universal periodic review which should also be taken into consideration by the Council in the review. The Office of the High Commissioner for Human Rights will prepare a summary of such information which shall not exceed 10 pages. (Art. 15,litera (c))
- Other relevant stakeholders may attend the review in the Working Group (Art.18 (c))
- States parties and observer status state, as well as NGOs and other stakeholders, may participate at the plenary sessions to analyse the contents of the evaluation.
- Before the adoption of the outcome by the plenary of the Council, the State concerned should be offered the opportunity to present replies to questions or issues. Other relevant stakeholders will have the opportunity to make general comments before the adoption of the outcome by the plenary (Articles 29 and 31).

- The outcome of the universal periodic review, as a cooperative mechanism, should be implemented primarily by the State concerned and, as appropriate, by other relevant stakeholders (Article 33).

Stakeholders may contribute to the monitoring of the result of the evaluation process (2012-2015), if needed:

- Monitoring may take place in cooperation with state institutions to which the recommendations have been directed.
- The stakeholders may nominate disseminate at national level the conclusions of the universal periodic evaluation.

Meanwhile, the stakeholders are encouraged to inform the citizens of the guidelines of the evaluation and contribute to rising awareness on the evaluation process.

The role of the National Human Rights Protection Institution at the *follow-up* stage include large scale dissemination of the results of the universal periodic evaluation; prioritise the issues for *follow-up* by connecting the recommendations of the evaluation with the ones of the UN agencies, national and regional bodies; active contribution to the consultation processes of the state and other stakeholders on the results of the evaluation; facilitate the enforcement of the recommendations; define reference and monitoring / reporting criteria on the implementation by the state of the results of the universal periodic evaluation; maintenance of the link and exchange of best practices with other regional and international networks of National Human Rights Protection Institutions on the *follow-up* of the evaluation.

Thus, the role of the National Human Rights Protection Institution in the process of the universal periodic evaluation within those stages – preparation for evaluation, plenary working group, *follow-up* of the evaluation / implementation of the recommendations – resides in the counselling of the Government on the universal periodic evaluation, managing and conducting public consultations, cooperation with civil society during the evaluation process, development of the Report, monitoring (*follow-up)* of the implementation of recommendations by the state.

In this respect, in October 2010 the Ministry of Justice initiated the creation of the national working group to initiate the process of development of the country universal periodic evaluation Report, where the representatives of the Centre for Human Rights are also present.

Cooperation of the Centre for Human Rights with the Council of Europe

From the outset of his mandate, the Human Rights Commissioner of the Council of Europe considered the national human rights protection institutions as key partners in the protection of human rights at national level. Thus, the Human Rights Commissioner initiated a

process of effective cooperation with the national human rights protections institutions, with particular emphasis on continuous exchange of information and open discussion about the existent practices which could beneficially contribute to the either individually or commonly implemented activities.

At the round table organised in Athens at the initiative of the European Commissioner a new stage of cooperation was initiated, which complies with the recommendations developed by the Group of the Wise from November 2006. Since then, the national human rights protection structures, which operate on the basis of the national level general mandate in the member states of the Council of Europe, have answered the invitation of the Human Rights Commissioner to be nominated as focal points. Along with them, the Bureau of the Commissioner established a working agenda for activities adjusted to the specific needs and the requirements of the national human rights protection structures.

The first meeting of the focal points, organised in November 2007 at Strasbourg was used to initiate the creation of an active network between the Commissioner's Bureau and the national human rights protection structures.

The second annual meeting of the focal points took place in Strasbourg on 19-20 November 2008 and was financed by the project "Peer to peer", a common initiative of the European Union and Council of Europe.

For a better cohesion in the implementation of the activities of the Commissioner's Bureau, the managers of national human rights protection institutions and the focal points have been invited to participate at the annual meeting along with the managers of the institutions.

Starting with 2008 the Centre for Human Rights from Moldova has nominated a focal point who is responsible for the implementation of the activities provided for by the Common Initiate of the Council of Europe and European Commission related to the creation of active and non-judicial independent structures in the human rights area.

With the creation of the National Torture Prevention Mechanism the Centre for Human Rights nominate a focal point for the respective sector, which contributes in turn to the facilitation and strengthening of the cooperation relation with the Council of Europe.

The third reunion of the focal point took place on 17 and 18 November 2009 in Budapest, whilst the "Peer to peer" project, which ended in December 2009, was succeeded by the "Peer to peer II" project (2010-2011), which included also the component of prevention and fight against corruption, still administered by the Council of Europe and the European Union.

During this project there have been many workshops and focal points gatherings organised in 2010, with the participation of the employees of the Centre for Human Rights from Moldova. They have tackled issues like: "Promotion of national non-judicial human rights

protection mechanisms, especially the prevention of torture", „The role of the national human rights protection institutions in the promotion and protection of the rights of persons with mental disabilities" etc.

The ombudsmen consider that the workshops organised by the "Peer to peer" projects are relevant and useful for the activity of the national human rights protection institutions, with coverage of both theoretical and practical aspects, concentrated on the priorities of the national structures, with consideration of the national particularities.

The joint programme of the Council of Europe and the European Union to support democracy in the Republic of Moldova

As a result of the event immediately after the elections in April 2009 the representatives of the Council of Europe and the European Union have organised a series of visits in the Republic of Moldova, where consultations took place to define the main guidelines for technical assistance to eradicate the major deficiencies and fundamental causes which led to the collapse of the human rights protection mechanisms in the country. They were followed by the launch of a common initiative of the EU and CoE "The Joint Programme to support Democracy the Republic of Moldova".

The Centre for Human Rights formulated suggestions of actions to improve the pace of democratic reforms in the Republic of Moldova, which have been later assumed by the Joint Programme.

During June-July 2010, an evaluation of the current situation related to the statutory and institutional independence of the Centre for Human Rights was managed a group of experts[311] with the aim to launch the process of institutional consolidation and capacity strengthening.

Some of the actions include in Objective no. 4 – "Support for the Ombudsman Institution" from the Joint Programme were to be implemented in cooperation with the Polish Ombudsman Institution. Thus, during 16-17 December 2010 a training seminar took place, during which both the representatives of the Polish Ombudsman Office and the employees of the Centre for Human Rights have made an exchanged of experience related to the standards of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the case-law of the ECtHR and its impact on the national legal framework, the right to respect private and family life.

[311] Marek Antoni Nowicki, former international ombudsman in Kosovo

Until the end of the project around 15 activities which include organisation of a series of events (seminars) are envisaged by the Council of Europe along with the Centre for Human Rights from Moldova, aiming at strengthening the role of the local public administration bodies in the protection and promotion of human rights and fundamental freedoms and publish a guidebook directed to the public servants related to human rights.

The Dialogue Republic of Moldova –European Union related to the visa facilitation process

The Republic of Moldova initiated the dialogue with the European Union on the visa facilitation process, as a result of the provision inserted in the Common Declaration of the Eastern Partnership Summit Common Declaration in Prague of Cooperation between the European Union – Republic of Moldova on 21 December 2009. Those expressly provide for the liberalisation of the visa regime as a long term objective, which could be offered gradually after implementation of reforms.

The European Commission decided to delegate a fact-finding mission which was in Chisinau on 1 and 2 March 2010. The experts of the European Commission have evaluated the process of implementation of the reforms in the justice, freedom and security sectors to preliminary estimate the readiness of the Republic of Moldova to initiate the dialogue of visa facilitation.

Aiming at the resolution of the problems which have appeared with the initiation of the visa liberalisation process for the citizens of the Republic of Moldova, by means of Decision no.40-d from 19 May 2010 the Government of the Republic of Moldova created the working group on the coordination of the visa liberalisation process with the European Union, which gathered on 11-12 sessions in 2010. The working group comprises decision makers from the responsible ministries and services, including a representative of the Centre for Human Rights.

The working group is responsible for the planning and coordination of the actions necessary to comply with the conditions of the European Union in the context of the visa liberalisation process for the citizens of the Republic of Moldova, as well as development of positions and reports on this subject.

Subsequently, during the session of the Cooperation Council Republic of Moldova – European Union from 15 June 2010 it has been decided to launch the Dialogue Republic of Moldova – European Union on visa facilitation, which includes four subject clusters: Cluster 1: Security of documents, including biometric passports; Cluster 2: Illegal migration, including readmission; Cluster 3: Public order and security; Cluster 4: External relations.

In September 2010 two evaluation mission have taken place during which European experts have developed an evaluation report *(„Gap Analysis*"), which underlines the list of actions which the Republic of Moldova is to implement to create conditions to liberalise the visa regime.

Based on the evaluation report the draft action plan Republic of Moldova – European Union on the visa liberalisation was developed. On 25 October 2010 the Council of Ministers of Foreign Affairs of the European Union recognised the progress registered by Moldova with respect to the visa liberalisation regime and invited the European Commission to present a draft Action Plan. Subsequently, the Action Plan on the liberalisation of the visa regime, approved on 16 December 2010, was officially presented in Chisinau on 24 January 2011 by the European Commissioner of Internal Affairs, Cecilia Malmstrom.

Pursuant to the agreements with the European Union, the authorities of the Republic of Moldova have developed the National Action Plan on the implementation of the priorities of the Republic of Moldova on within the dialogue on the liberalisation of the visa regime with the European Union. This plan is concentrated on the priority reform actions, the steps necessary in this respect, the responsible institutions, as well as the periods of implementation for both stages of the Dialogue. A first reporting to the Commission on the implementation of the Action Plan is scheduled for the Cooperation Council on 5 May 2011.

In this respect, the ombudsmen underline the fact that Cluster no. 4 "External Relations", relevant for the Centre for Human Rights as the national human rights protection institution, contains components which deal with prevention and eradication of discrimination, racism, xenophobia and anti-Semitism in the Republic of Moldova, ensure the observance of the rights of minorities and the freedom of religion and promote inter-ethnical tolerance.

4.3. Other aspects of the activity of the ombudsmen institution

The Centre for Human Rights was created in accordance with the Law on ombudsmen no. 1349 from 17 October 1997 and started its activity in 1998. The National Human Rights Protection and Promotion Institution is an independent state institution, whose mandate is to ensure the activity of the ombudsmen, oriented to ensuring the observance of human rights and constitutional freedoms in the Republic of Moldova by the central and local public authorities, by enterprises, institutions and organisation, irrespective of the form of property and legal form, by NGOs and decision makers of all levels; improve the legislation in the area of human rights protection; legal training of the population.

From the creation of the Centre for Human Rights the ombudsmen have met a series of obstacles in the fulfilment of their duties, especially, due to the insufficient logistical coverage. Thus, the deficiencies of the Centre for Human Rights correlated to the Principles of National Human Rights Protection and Promotion Institutions (the Paris Principles) have been mentioned on numerous occasions, according to which the allocation of financial resources for activity 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.

The lack of adequate premises is one of the major problems the institution is facing. The ombudsmen and the employees of the Centre for Human Rights work in the right wing of the building located in the centre of the Chisinau municipality. In spite of the good location, this building may not cover the needs of a functional institution. Being built in 1948 the building is in damaged condition, with a low level 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. Pursuant to the conclusions of the expertise the building was built using construction materials prohibited in seismic areas, there it being recommend to examine the possibility to demolish the building and build a new one, in compliance with all current requirements.

The employees of the Centre for Human Rights are practically under constant risk and face 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. All these factors make it impossible to supplement the vacancies of the Centre for Human Rights.

The bad positioning of branches of the Centre for Human Rights in Cahul, Comrat and Balti limit the free access of citizens to the ombudsmen. Thus, 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. The positioning of the Balti office 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.

The lack of transport means to ensure the activity of the branches and the National Torture Prevention Mechanism is another impediment in the fulfilment of the mandate of the National Human Rights Protection and Promotion Institution. Presently, the four ombudsmen have only to transport means at their disposal:

- Toyota HIACE (minibus) – year of make 1998 and received in 2001, within a UNDP project
- VAZ 2107 - year of make 2002, given on the basis of Government Decision no. 1193 from 13.10.2006.

Other two vehicles GAZ 2410 (year of make 1991) and GAZ 3102 (year of make 1993), given to the Centre for Human Rights pursuant to Parliament Decision no. 163 from 18 May 2008, are obsolete and have not been used due to bad condition. Their repairs with a consumption of 16.5 litters per 100 km are financially unjustified and managerially irrational.

Budget 2010

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 2010 no. 133-XVIII from 23 December 2009 the Centre for Human Rights from Moldova received allocations of 3198.7 thousand lei.

Out of the allocations approved for 2010 and pursuant to the limits of financial expenditures of the state budget, the Centre for Human Rights has the possibility to plan the following expenditures:

1. Expenditures for labour retribution – 2482.6 thousand lei (including: state social insurance contributions – 435.9 thousand lei, mandatory medical insurance premiums –66.2 thousand lei), which is 78% of the entire allocated amount.

2. Expenditures to ensure the functionality of the institution and management of the activities of the ombudsmen – 586.9 thousand lei (including: 122.4 thousand lei rent and utilities,

126.5 thousand lei – security, 51.8 thousand lei – transport means (fuel), 25.7 thousand lei – editorial services etc.), which is 18% of the total allocated amount.

3. Expenditures for payment of membership fees in the specialised international organisations – 19.1 thousand lei.

4. Expenditures for official visits – 37.4 thousand lei (including: 2.9 thousand lei – visits within the country and 34.5 thousand lei – visits abroad).

5. Procurement of stationary equipment – 72.7 thousand lei.

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 insufficient retribution of the employees of the Centre for Human Rights does not contribute to the good functioning of the institution.

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 below.

For instance, in many of the European countries the functions of specialised administration and enforcement are assimilated to the ones 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, which 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.

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

Although the ombudsmen are fully fledged members of these organisations and the institutions pays the respective fees, it is impossible to participate at the annual congresses and conferences organised by these international institutions, during which important issues related to the area of activity of ombudsmen from all the counties are discussed, as well as action plans and debates on the internal regulations of the respective organisations.

The ombudsmen from the Republic of Moldova do not participate at such meetings because all the expenditures related to visits and the participation fees must be paid by the participants, whilst the budget of the Centre for Human Rights does not allow the coverage of these expenditures.

Indeed, the insufficiency of financial resources does not allow answering to all the invitations that come to the institution, amongst which the European Conference and the General Assembly of International Ombudsmen Institute, from 3-5 October 2010, which took place in Barcelona.

Being aware of the importance of partnership with fellow organisations, the ombudsmen find it regretful that dues to limited resources neither 2010 the Centre for Human Rights did not have the possibility to organise a conference or another reunion at international level.

Internal environment

Presently the Centre for Human Rights from Moldova has the following personnel: four ombudsmen, 22 servants who ensure the ombudsmen with organisational, informational and analytical assistance (including five from the regional offices), as well as eight technical personnel units (drivers, cleaners etc.), with a total of 39 people, compared to the 55 units in the personnel schedule.

All employed public servants have higher education in the occupied fields, whilst 7 have specialised graduate studies, 4 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 the annex below.

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 2010 the Centre for Human Rights employed nine persons, but other seven have left the institution.

Implementation of the financing plan for 2010 according to economic classification of expenditures **Thousand lei**

Nomination of indicators	Classifier		Planned 2010	Accomplished 2010
	Art.	Para.		
Labour retribution	111	00	1980.5	1979.9
Contributions to state social insurance fund	112	00	435.9	435.6
Medical insurance premiums	116	00	66.2	65.9
Total expenditures for labour retribution	111 112 116		2482.6	2481.4
Office supplies, building maintenance goods	113	03	72.3	68.3
Books and periodicals	113	06	10	7.3
Telecommunication services and mail	113	11	71.4	55.5
Rent of transport and maintenance of own transport means	113	13	51.8	51.6
Current repairs of the equipment and inventory	113	17	9.5	9,5
Rent of offices	113	18	2.4	2.4
State and local symbols, state distinction signs	113	19	122.4	118.9
Printing services	113	20	3.5	1.3
Protocol expenditures	113	22	25.7	24.2
Interdepartmental security	113	23	2.9	2.9
IT works	113	29	126.5	126.5
Garbage evacuation	113	30	43,6	41.6
Office supplies, building maintenance goods	113	35	2.4	2.2
Goods and services not included in none of the above	113	45	42.5	41.4
Total expenditures for payment for goods and services	113	00	586.9	553.6
Internal visits	114	01	2.9	2.9
External visits	114	02	34.5	33.7
Total expenditures for duty visits	114	00	37.4	36.6
Other transfers abroad (membership fee in international organisations)	136	03	19.1	19.1
Total transfers abroad, payment of membership fees in specialised	136	00	19.1	19.1
Purchase of fixed property	242	00	72.7	71.9
TOTAL			**3198.7**	**3162.4**

CHR		**Mayoralties of villages**	**With more than 6500 inhabitants**	**Central administration Ministries**		**Parliament's of 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

ANNEX

	According to employment schedule	Factually employed
Ombudsmen	4	4
Personnel of the ombudsmen	8	6
Service training programmes, public relations	3	2
Service protection of children's rights	4	3
Service reception of petitions and management of auditions	3	2
Service investigation and monitoring	18	10
Chancellery	2	2
Administrative service	7	5
Branches	6	5
TOTAL	55	39