



REPORT

ON THE OBSERVANCE OF HUMAN RIGHTS AND FREEDOMS IN THE REPUBLIC OF MOLDOVA IN 2016

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FOREWORD

This Report includes an overall evaluation of the situation about the observance of human rights and freedoms in the Republic of Moldova in 2016, it highlights the major problems from this field and emphasizes the concerns of the Ombudsmen about them. There are made findings and recommendations whose implementation can lead to the improvement of the situation about the observance of human rights in the Republic of Moldova.

In this sense, it focuses on some key-segments as: access to justice, freedom to opinion and expression, right to life, physical and mental integrity, right to health care and social protection, observance of the rights of persons with disabilities, right to a healthy environment. A separate chapter refers to the evolutions regarding the observance of the rights of child. The Report contains a chapter about the observance of human rights in the Transnistrian region and for the first time a chapter about the observance of human rights in the Administrative Territorial Autonomy Gagauzia. The Report comprises and other chapters where are mentioned subjects which draw attention of the Ombudsman.

The activity of the Ombudsman is emphasized in a separate chapter which comprises: information about the reception and examination of claims, contribution to the legislation improvement, promotion of human rights, external communication and international relations, management of financial and human resources.

The year of 2016 was a turning point for the National Institution for the Protection of Human Rights strengthening which was marked by important events in the field of human rights.

As the result of the adoption of a set of normative acts, in 2016 the Centre for Human Rights from Moldova was reorganized in the Ombudsman's Office, the structure of the institution was changed and new employees were employed, process which still continues. We have also obtained the transmission in the management of the Ombudsman's Office of the whole edifice from 16, Sfatul Tarii str. It depends on the financial resources we'll have if the building follows to be renovated or demolished and building a new office. Also, according to Law no. 52, in the last year the Ombudsman for the rights of child has begun its activity, being appointed by the Parliament on April 8.

Through the achievements of the Ombudsman in 2016 there can be noticed the beginning of the activity of the Independent Mechanism on monitoring the implementation of ONU Convention on the rights of persons with disabilities of and of the Council for the torture prevention, made up from the representatives of the civil society. The first one is a Council of

experts created within the Ombudsman's Office and the second – the National Mechanism for the Torture Prevention instituted in the conditions of the Law no. 52.

In 2016 there were realized two important surveys: „Perceptions on human rights in the Republic of Moldova” and ”Observance of human rights while providing pre-hospital emergency care services in the Republic of Moldova”. These works contain valuable information which we hope will be taken into consideration by the authorities while elaborating the policy documents in the field of human rights.

It is obvious that the most important event of 2016 year in the field of human rights was the Universal Periodic Review of the Republic of Moldova.

On November 4, 2016, the Moldavian authorities have presented within the ONU Council for human rights at the 2nd cycle of the Universal Periodic Review (UPE), the National Report on the observance of human rights in our country. The Ombudsman was and is actively involved in this process: it elaborated not only an alternative report, ensured the participation to the UPE pre-session from Geneva on October 07, but it has organized more events at the national level which are related to this mechanism of ONU. In fact, 98 percent from the mentioned matters in the Alternative Report of the Ombudsman were rediscovered in the recommendations for our country of the member states of ONU.

UPE has demonstrated how the Moldavian authorities respect their obligations under UN Charter, the Universal Declaration for Human Rights, UN Conventions to which the state is a member and the national policies in this field, the humanitarian right applicable to the state.

The number of recommendation has increased considerably – from 123 in the first cycle of UPE to more than 200 in the second cycle, fact which denotes that the appreciation of the international community is not a favorable one and the policy documents which were implemented in the period between those two cycles had not the expected effect.

The Ombudsman will monitor and assess the implementation by the state of the recommendations from the 2nd cycle for achieving concrete results in practical terms.

The Ombudsman is actively involved in the process for elaborating a new action plan in the field of human rights which follows to be a national mechanism of the sustainable implementation of recommendations from the 2nd cycle.

Appreciations of the Ombudsman from this Report on the evolutions from the field of human rights in 2016 are similar to those from the Alternative Report for the 2nd cycle of UPE – lack of progress and even the aggravation of the situation in some fields. In the Report there are reiterated the concerns about the observance of the rights for the access to justice, freedom to opinion and expression, social protection and to a decent living, health care and to water and

sanitation, to precarious conditions of detention and to the observance of the rights of persons with disabilities.

Now, the corruption is still a big obstacle in the realization of all human rights – civil, political, economic, social and cultural and the right to the development.

In this context I pleaded and plead that the authorities in the actions for fighting against the corruption to adopt an approach based on the human rights. And this means that first of all, in the center of the actions for the fight against corruption should be put the people. I have declared at the National Anti-Corruption Conference of 2016 that the effort for protecting human right should be in concordance with that of the fight against corruption.

Also within the same event I have launched the idea for the development of the concept of good governance in the national legislation or even the elaboration and application in the Republic of Moldova of a code of good administrative behavior based on the existing code from the European Union which was approved by the European Parliament in 2001.

I came with this proposal beginning from the idea that the doctrine of human rights and the good governance subscribe to the same general principles. Both consider the corruption as being a threat and plead for the creation of some audit institutions which would follow the responsibility and the accountability of the government.

I will insist about this initiative which seems not to be related to the concerns of the authorities about this matter. At least in the Action Plan of the Government for 2016 – 2018 there are provided the adoption and implementation until the 3rd quarter of 2018 of the Strategy of Good Governance.

The Report reiterates the fact that the promotion and the protection of the rights of persons with disabilities, fight against the torture and maltreatments, promotion of child rights and the right to health care will constitute the basic directions in the activity of the Ombudsman and will be in the future. In 2017 I will monitor the situation in another field, that of health system in order to highlight the system problems and to propose solutions for them.

A new direction in the activity of the Ombudsman will be the prevention of corruption through the levers which the Ombudsman has– promotion actions: organization of some actions with anticorruption message which will explain the relation between this negative phenomenon and the violation of human rights, editing and distributing informative materials about this matter.

An objective for 2017 will be the file preparation and submission to the International Coordinating Committee of National Institutions for Human Rights (ICC) for accreditation with A status. The acquirement of A status will have beneficial effects and will offer many advantages for the capitalization of all opportunities which have the members of the international

institutions for this field, but also to make public the opinion of the Ombudsman in different problems related to the observance of human rights from the tribunes of the international organizations.

For the achievement of these objectives we further stake on the Parliament support and the support of the civil society due to which it will be realized the mission for the protection and promotion of the human rights and the fundamental freedoms in our country.

Mihail Cotorobai
People's advocate (Ombudsman)

UNIVERSAL PERIODIC REVIEW

In 2016 the Republic of Moldova was appreciated within the Universal Periodic Review.

The Universal Periodic Review is an instrument of the Council of Human Rights of the Organization of United Nations which consists in revising the evolution in the field of human rights of all member states. This mechanism is a key-element of the Council which reminds to the states about the responsibility they have assumed for respecting and implementing fully the human rights and fundamental freedoms.

In the context of the mentioned above, the Ombudsman in its capacity of National Institution of Protection of Human Rights, accredited in 2009 with status “B”, has submitted an alternative report.

In the report there were exposed the evolutions from the field of human rights which were registered in correspondence with the recommendations of the Council of Human Rights from the first cycle of the Universal Periodic Review of the Republic of Moldova which took place in 2011. At the same time, in the alternative report submitted in 2016, the Ombudsman, for the first time, has drawn attention on other three matters which were not identified in previous reports, and namely: ensuring a decent living, quality and accessibility of drinking water and ensuring qualitative medical care.

In the process of elaboration of the alternative report, the Ombudsman has organized two meetings with the representatives of the civil society. During these meetings there were consulted the opinions regarding the evolutions registered in the context of the recommendations from the first cycle of the Universal Periodic Review for the Republic of Moldova.

The stringent problems which are related to human rights from the Republic of Moldova and the recommendations submitted by the Council of Human Rights, through the alternative reports elaborated by the national institutions for the protection and promotion of human rights and the civil society were discussed within the **National Conference with the title “Human Rights in the Republic of Moldova in the context of the Universal Periodic Review (UPR): recommendations and perspectives”**. Within the reunion which took place on April 14, there have participated 82 persons, representatives of national institutions of human rights, civil society and central public authorities, embassies and international institutions accredited in the Republic of Moldova.

“Human Rights in the Republic of Moldova in the context of Universal Periodic Review (EPU): vision and recommendations of Ombudsman” was the subject of the press club organized by the Ombudsman Office on June 10, where have participated 21 journalists. The discussion was initiated for informing the journalists about the UPR

mechanism; singularity of the second cycle of UPR for the Republic of Moldova; the role in this process of the national institutions for the protection of human rights and mass-media; character of the recommendations advanced by the Ombudsman and their necessity.

During the prior session of the Universal Periodic Review of the Republic of Moldova, organized in Geneva, Palais de Nations, on November 7, 2016, the employee of the Ombudsman's Office has presented an official declaration for the representatives of diplomatic missions of UN states where he emphasized the key-point of the Alternative report for the second cycle of UPR. The recommendations of the Ombudsman about improving the situation on concrete segments from the field of human rights were promoted also within the bilateral meetings with the accredited diplomats in Geneva in order to convince them to take them into consideration and to address them to the Moldavian authorities.

Most from the recommendations formulated in the Alternative Report of the Ombudsman's Office for the second cycle of UPR were identified in the recommendations of the member states of UN for the Republic of Moldova, **fact established during the public event with live transmission from Geneva on the Universal Periodic Review (UPR) of the Republic of Moldova by the Council of UN for Human Rights on November 4, which was organized by the Ombudsman together with the UN Office for Human Rights (OHCHR), UNDP Moldova and the Council on the Prevention and Elimination of Discrimination and Ensuring Equality.**

An ample exchange of views on the process which follows after UPR and the actions which follow to be undertaken after the Universal Periodic Review of the Republic of Moldova took place within the International Conference "Consolidation of national efforts for implementing the recommendations of the Universal Periodic Review (UPR), by the capitalization of international good practices". During two days (November 23 - 24) about 100 national and international experts have analyzed the best practices and models from Serbia, Georgia, Mexico and Norway in order to realize in practice the UPR recommendations.

In this context, the Ombudsman has assumed the engagement to create a Consultative Council, according to the provisions of the art. 34, paragraph (4) from the Law on Ombudsman no. 52 of 03.04.2017 which would be consist of representatives of the civil society and which would ensure the independent monitoring on the implementation of the recommendations of the Universal Periodic Review by the Government. The Consultative Council follows to be created during 2017 year.

CHAPTER I OBSERVANCE OF HUMAN RIGHTS AND FREEDOMS IN THE REPUBLIC OF MOLDOVA

EQUALITY BEFORE LAW AND PUBLIC AUTHORITIES

"All human being are born free and equal in dignity and rights ", this provides article 1 from the Universal Declaration of Human Rights (1948).

The Constitution of the Republic of Moldova provides in the art. 16 paragraph (2) that

" All citizens of the Republic of Moldova are equal before the law and public authorities, regardless of the race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, property or social origin".

Although the state offers sufficient legal guarantees for the observance of the right to the equality of all persons before the law, frequently it is founded that the legal provisions are not fully implemented and respected.

Protection of the rights of minorities is a very important element in the context of the equality ensuring. This subject is rediscovered both in the national policies and national legal mechanisms and in the international ones. Guaranteeing equality of all human beings before the law and ensuring legal equal protection against any discrimination is one from the commitments of the state.

A series of problems in this field were identified by the Advisory Committee on the Framework Convention of the Council of Europe for the protection of ethnic minorities in the Republic of Moldova¹, expressed in the 4th opinion.

One from the identified problem refers to the marginalization of persons who belong to the ethnic minorities, to whom there are not offered real possibilities to develop their own visions and positions, because the languages of the ethnic minorities in the majority of the cases are studied only in the Russian schools. At the same time the ethnic minorities are deprived of the possibility to study the state language, not having the access to qualitative studies and professional teaching made by qualified specialists.

Also, it should be specified the fact that it was not made any amendment to the legal framework in the part which refers to the goal for the application of the Framework Convention for the protection of ethnic minorities. Thus, the provisions of Law no. 382 of 19.07.2001 on the rights of persons belonging to the ethnic minorities and legal status of their organizations refer

¹ Fourth Opinion on the Republic of Moldova adopted on 25 May 2016.

only to the citizens of the Republic of Moldova and have no legal effect on the stateless persons or foreign citizens.

This limitation continues to exist despite of the fact that currently it is not necessary any evidence about the citizenship when it is spoken about the protection of the rights of minorities. This interdiction could have a discriminatory character for the execution of the rights of minorities.

Another problem is the absence of effective participation of ethnic minorities to the public life which constitutes an essential component of a peaceful and democratic society. The experience of Europe and other countries from the world denotes the fact that often for the promotion of such participation the governments should institute specific regulations for the ethnic minorities.

Although, there were made particular efforts for fighting against all the forms of intolerance, including the amendment of the Criminal Code, the investigated number of crimes motivated by hate is still infirm and only some cases were examined in the courts. There is no an independent mechanism for monitoring the forms of inadequate behavior or misuse of authority by the police.

Speaking about the return of the property and historical monuments to the Hebrew and Armenian communities, there is mentioned the fact that it is not still regulated exhaustively by the legal framework. According to the representatives of the community, their effort for reestablishing and protecting the patrimony was not publicly supported, but on the contrary was blocked by different public authorities, thus the problem being unsettled. The petitions for returning the property to religious communities, others than those submitted by the Orthodox Church from the Republic of Moldova were not settled, except one single case, it being submitted to the European Court for Human Rights by the Catholic Church in 2012 about the retrocession of a cathedral and other church properties. Now the case is examined.

Despite of the favorable living conditions of some representatives of Roma minority from Moldova, the majority of Gypsies continue to feel serious difficulties in their everyday life, and their situation did not improve considerable in the last years.

The living conditions of some Gypsies from many villages remain unsatisfactory. They are isolated from the society. Unemployment and poverty through Gypsies are more spread than through other categories of population. The educational level of Gypsies generally is reduced, although there are undertaken measures for attracting the Gypsies in the school education. The efficient participation of Gypsies in the public life through the elective bodies, and to the public administration is very limited. The authorities have elaborated the Action Plan for supporting the

population of Roma Ethnicity from the Republic of Moldova for 2016-2020², which includes actions in the field of education, employment, social protection, health care and protection of culture.

Also on December 14, 2016 the Government of the Republic of Moldova has approved the Strategy for consolidating interethnic relations in the country in the period 2017-2027 by the decision of the Government of the Republic of Moldova no. 1464 of December 30, 2016. At the same time for implementing the *mentioned above* Strategy, the Interethnic Relations Bureau has elaborated the project of the Action Plan for 2017-2020.

For ensuring an ***equitable pension system*** which would guarantee a decent living for the beneficiaries of pensions, on 14.10.1998 the Law no. 156 on the public pensions system entered into force and through it the period of taking care of a child with severe disabilities was not assimilated to the length of employment. As a consequence, this fact has affected all the persons who were taking care of their children and who had not the chance to be employed, respectively the possibility to contribute to the fund of social health insurance.

By the decision of the Council in order to prevent and eliminate the discrimination and ensuring the equality beginning with February 13, 2014 it was founded that mothers are discriminated by association with their children with severe disability, in the realization of the right to pension for the age limit, in comparison with mothers of children with disabilities who have integrated their children in the state institutions where the state takes care of them and they have the chance to realize this right. Thus, they have the possibility to be employed and to acquire those 15 years for getting the minimum length of employment.

This treatment was differentiated and unfavorable towards the parents who have chosen to take care of their child in the family, ensuring to their child the right to a family, as it provides the article 23 of UN Convention on the rights of persons with disabilities³.

In this sense, the Ministry of Labor, Family and Social Protection in 2016 has issued a legislative initiative for settling the mentioned above problem.

Thus, by the Law no. 290 of December 16, 2016 on the amendment and completion of some legislative acts the art. 5, paragraph (2), letter d) of Law no. 156 was modified as follows *For insured persons the following not insurance periods are equated to insurance periods „ ... d) the period of the child care with severe disability aged to 18 years performed by one of parents, the guardian, the custodian before its acceptance to the position of the personal assistant”*.

² Approved by the Decision of the Government of the Republic of Moldova no. 734 of June 9, 2016

³ „States Parties will undertake efficient and adequate measures for eliminating the discrimination against persons with disabilities about all aspects which refer to marriage, family, status of parent and interpersonal relations in equal conditions with others”.

The Ombudsman finds that the mentioned above period is not conditioned by any term, in comparison with the text specified in the art. 50, paragraph (1), letter d) which provides that „ *In addition to the periods specified in the art. 5, in the employment length there are included the periods in which were performed the following activities until January 1, 1999: ...d) taking care of a disabled person first degree, a disabled child under 16 years or a person who is more than 75 years*”.

The Ombudsman also finds that the period of taking care of a child with severe disability until he/she is 18 years old includes fully in the insurance period, but the period of taking care of adults with disability according to the art. 50, paragraph (1), letter. d), includes only the periods before January 1, 1999.

Ombudsman considers that this matter in the part related to the discriminatory treatment, was partially settled, only for the persons who take care of children with disability, but not for the persons who takes care of adults with disabilities, who also need permanent care. Thus, taking into consideration the fact that the period of taking care of adults with severe disabilities does not include in the employment length of parents after January 1, 1999, they have no possibility to exercise their right to be employed in order to benefit of a retirement pension, thus their right to social protection and the right to a decent living are violated.

Currently, although the legal framework offers the right to a personal assistant⁴, offering to mother the possibility to be employed in this position, the state does not cope with the demands, because it has no sufficient jobs for the position of personal assistant.

In this context, the Ombudsman mentions the fact that the Standard Rules about the Equalization of Chances for the Persons with disabilities adopted by the General Assembly of United Nations Organization of December 20, 1993 provide in the rule no. 4 that *the state should ensure adequate personal assistance for the persons with disabilities*.

At the same time the General Comment no. 5 issued by the Committee for the economic, social and cultural rights on December 09, 1994 provides in the point 28 that „*Insuring the right to the social protection and the mechanisms for maintaining the income by the state constitute a special importance for the persons with disabilities. Guaranteeing such a support should foresee the special needs for the assistance of these persons and other expenditures which often*

⁴ The social service of personal assistance is a specialized one, instituted by the decision of the local public administration authorities of second degree and those of Balti municipality. The goal of this service is to offer assistance and care for the children and adults with severe disabilities for favoring their independence and integration in the society (in the fields: social protection, work, medical, educational, informational, assistance access to infrastructure etc.). The personal assistant is employed according to an individual employment contract for the maximal number of hour per week of 40 hours for a beneficiary. The social service of personal assistance was introduced for the implementation of the provisions of the art. 6 paragraph (1), art.9, art.10 and art.12 paragraph.(2) from the Law on Social Assistance no.547-XV of December 25, 2003, with the further amendments and completions, art. 8 paragraph (1) from the Law on Social Services no.123-XVIII of June 18, 2010, and the art. 19 letter b) from the Convention on the Rights of Persons with Disabilities.

are associated with the disability. Additionally, the offered support should also to cover the interests of persons who take care of persons with disabilities. These persons, who in the majority of cases are the family members of the persons with disability, often need financial support, because of the assistance they provide”.

Convention on the Rights of Persons with Disabilities, art. 28 paragraph (1) stipulates that
„ States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability”.

Thus, the state should undertake all the necessary measures for ensuring the adequate social protection for the persons with severe disabilities and to those persons who take care of them.

RECOMMENDATIONS:

- Ensuring the effective access for the representatives of the ethnic minorities for studying the state language by elaborating different educational programs and to focus on studies and qualitative education which will permit the facilitation of the interethnic dialogue in the society;
- Ensuring the amendment of the art. 1 of Law on the rights of persons who belong to the ethnic minorities and to the legal status of their organizations no. 382 of 19.07.2001;
- Ensuring the participation of ethnic minorities to the processes of taking decisions both, on the local and central level;
- Ensuring the training of the competent bodies for preparing specialists for the investigation, sanctioning and effective monitoring of petitions submitted by the victims of the crimes motivated by hate and bias;
- Amendment of Law no. 382 of 2001 in the part which refers to the effective adjustment of it to the provisions of the Framework – Convention for the protection of the ethnic minorities and establishment of some adequate mechanisms for the implementation in practice of legal provisions;
- Ensuring the implementation of the Action Plan on the support of Gypsies for 2016-2020;
- Amendment of legal framework, especially the Law on pensions and social insurances no. 156, so that the period beginning with 01.01.1999 and till now to be

introduced in the employment length of mothers who take care of adults with severe disabilities.

LEGAL STATUS OF FOREIGN CITIZENS AND STATELESS PERSONS

All persons by virtue of their humanity should enjoy the fullness of human rights. The citizens are persons who were recognized by a state as having an effective relation to it. A non-citizen is the person who was not recognized as having these relations with the country where is he or she. There are different groups of non-citizens, inclusively permanent or temporary residents, refugees, asylum seekers, beneficiaries of protection, victims of trafficking, foreign students, migrant workers, tourists, other types of non-immigrants and stateless persons. Although, each from these groups can have rights based on distinct legal regimes, the problems which face the non-citizens in the majority of cases are the same. While all the human beings have the right to equality in dignity and in rights, the states can trace in strict sense distinctions between citizens and non-citizens regarding the political rights guaranteed in an explicit way to the citizens and freedom to move. Nevertheless, in the situation of non-citizens there is a big difference between the rights guaranteed by the international legal framework and the reality they face.

The Human Rights constitute an essential component of the national right established in a series of normative acts, beginning with the Constitution of the Republic of Moldova, in the article 19⁵, which stipulates that foreign citizens have the same rights and obligations as the citizens of the Republic of Moldova, with the exceptions established by the Law.

The Republic of Moldova overran the phase of establishing a legal framework on asylum by adhering to the Convention of 1951 on the status of the Refugees and its additional Protocol of 1967 which entered into force for our country in 2002. Currently, the Republic of Moldova has legal and institutional instruments for the asylum system functioning, in a great measure referred to the requirements of the international law.

In 2016 the existent national regulatory framework about the foreign citizens, beneficiaries of a form of protection was significantly improved. Thus, on 03.11.2016 in the Law no. 200 of 16.07.2010 on the regime of foreign people in the Republic of Moldova it was introduced chapter IX¹, which contains express regulations about the rights and freedoms guaranteed to foreigners and their obligations in the Republic of Moldova for ensuring the unification of the regulatory framework in this field. It also was adopted the Law no.151 of

⁵ Article 19. Legal Status of Foreign Citizens and Stateless Persons. Constitution of the Republic of Moldova.

01.07.2016 for the amendment and completion of some normative acts⁶. These amendments had the goal of completing mechanisms which ensure the transposition of standards set up by the EU directives in the field of asylum and consolidation of the role of the Republic of Moldova in the settlement of humanitarian problems by determining the mechanisms of taking over the refugees from the third countries, who need relocation etc.

For ensuring the efficient implementation of the legislation in the field of the integration of foreigners and promoting a unique and coherent politics in the Republic of Moldova, by a common order⁷ of the authorities who are responsible for the respective field⁸, it was approved the mechanism for involving the foreigners in activities of integration. By this mechanism it was established the process of efficient coordination for the integration of foreigners in the Republic of Moldova in order to settle the problematic cases, identification of the intervention fields and finding the optimal solutions, including submission of proposals about the policies which follow to be promoted. The mechanism represents a way of developing the integration activities for the chapter sessions of socio-cultural adaption, education and studying state language, access to: the system of social assistance, access to the labor market, to the system of social insurances, health care and access to the medical services, activities provided by the Law no. 274 of 27.12.2011 on the integration of foreigners in the Republic of Moldova.

The most frequent problematic aspects identified both by the Ombudsman and by the Bureau for Migration and Asylum of Ministry of Internal Affairs within the process of integration of foreigners are related to the process of state language studying and the process of being employed. Although that the beneficiaries of international protection, according to Law no. 274 of 27.11.2011 on the integration of foreigners in the Republic of Moldova can benefit absolutely free of courses for studying the state language, they not always manifest interest for studying it, being invoked many reasons as they are employed and cannot be present at these courses, lack of an obvious interest toward the language studying or speaking Russian language. The other categories of foreigners can make courses for studying the state language by paying for them. At the same time the reason about not speaking the state language is invoked by some foreigners as being an impediment for being employed. According to the information offered by the Bureau for Migration and Asylum, although in the last years there were made a lot of efforts for creating the conditions for employing and offering the necessary support and counseling, there is not identified a big number of foreigners who address to the employment

⁶ Law no.273 of 09.11.1994 on identity card in the national passport system; Law no.1024 of 2.07.2000 on citizenship of the Republic of Moldova; Law no.270 of 18.12.2008 on Asylum in the Republic of Moldova.

⁷ Order no. 42/26/46/128/61/28-A/107-A of February 16, 2016

⁸ Ministry of Internal Affairs, Ministry of Labor, Social Protection and Family, Ministry of Culture, Ministry of Education, Ministry of Health, National Social Insurance House, National House of Health Insurance.

agencies. Besides the linguistic barriers, the foreigners refuse to be employed because of small salaries. In some cases, they prefer to be employed officially/unofficially by their countrymen who have developed affairs in the Republic of Moldova.

Speaking about the aspects of statelessness, we can say that in 2016 to the Bureau of Migration and Asylum have addressed 111 persons in order to be recognized to them the status of stateless person and at the end of the year there were 118 applicants in the process of stateless status recognition.

An identified problematic aspect is related to the process of drawing up civil status documents by the foreigners who require the recognition of the stateless status. Respectively, the Bureau for Migration and Asylum issues to the applicants for the stateless status, the certificates according to which they are identified and their address on the territory of the Republic of Moldova. However, some applicants declared that the Registry Offices to which they have addressed for drawing up the civil status documents refused to issue them, invoking the reason of the absence of a valid identification document. The representatives of the Registry Offices do not recognize the certificates issued by the Bureau for Migration and Asylum as being identification documents. Thus, the foreigners who have not any other identification documents than the certificates which confirm the stateless status of the applicant cannot draw up civil status documents which in the majority of cases are mandatory for their further documentation with the identity card (for the stateless persons or for the citizens of the Republic of Moldova, depending on the situation).

The Ombudsman recommends to the mentioned above authorities to conjugate the efforts for identifying the optimal solutions for eliminating the impediments in the process of documentation of these categories of persons, inclusively by adjusting the Law no. 100 of 26.04.2001 on the civil status documents. At the same time in the Law on the regime of foreigners in the Republic of Moldova, the certificate *for the confirmation of the stateless status of the applicant* is defined as a documents of the competent authorities for foreigners from the Republic of Moldova, issued to the applicant for the stateless status which identifies this applicant and his/her domicile on the territory of the Republic of Moldova.

RIGHT TO A FAIR TRIAL

The European Convention on Human Rights provides that: *” Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law which will decide on the violation of rights and obligations with civil character, or the substance of each accusation in criminal matters against him/her. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*

2. *Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*

3. *Everyone charged with a criminal offence has the following minimum rights: (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; (b) to have adequate time and facilities for the preparation of his defense; (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court”.*

Thus, according to provisions of the art. 6 of the Convention, we distinguish some essential elements of the right to a fair trial, as it would be the fairly examination of the case, in reasonable time, respecting the right to private life, the principle of presumption of innocence, right to defense, including by offering free legal assistance and other procedural rights which have the goal to contribute to the realization of this right.

The Constitution of the Republic of Moldova guarantees the **free access to justice** by the art. 20 which provides that *“Every citizen has the right to obtain effective protection from competent courts of jurisdiction against actions infringing on his/her legitimate rights, freedoms and interests. No law may restrict the access to justice.”*

The free access to Justice is a constitutional principle and a fundamental right of person. This right has a character of guaranteeing the effectiveness of all the rights and freedoms consecrated in the Constitution. The free access to justice constitutes a fundamental principle for

the organization of any democratic judicial system. At the same time the free access to justice is one from the essential elements which define the concept of rule of law⁹.

During the year of 2016 the Ombudsman has founded that one from the problems about the free access to justice¹⁰ **is non-execution of enforceable title.**

Also, there exists a judicious practice instituted by some bailiffs to sequester all the accounts of debtors, even they are pension accounts or salaries, without prior checking of this fact.

In the part which is related to **the delay of case examination**,¹¹ it is manifested by the delay of trials. Observance of the reasonable time for the judgment of cases is one from the main attributions in the activity of courts and it influences directly the possibility of persons to realize their right on effective satisfaction.

Article 26 from the Constitution provides that din „ ***the right of defense is guaranteed, and everybody has the right to respond independently by appropriate legitimate means to an infringement of his/her rights and freedoms. Throughout the trial the parties have the right to be assisted by a lawyer, either chosen or appointed ex officio and any interference with the activity of those carrying out the defense within legally established confines shall be punished by authority of law***”

In the context of those mentioned above, the Ombudsman has founded that there are a series of problems which are related to providing state guaranteed legal assistance and the absence of the answer to the requests about: providing legal assistance, poor quality of legal assistance provided by lawyers, failure to return original documents which were presented upon the request of lawyers, failure to inform the client about the undertaken measures, refuse of the territorial offices of the National Council for State Guaranteed Legal Assistance to offer state legal assistance.

The majority of invoked subjects result from the inefficient collaboration of the territorial offices of the National Council. All these things happen, although in the Regulation on the operation of territorial offices of the National Council for State Guaranteed Legal Assistance¹² there are regulated the relations of the territorial office of the National Council.

Also, the quality monitoring of provided services is organized by the system of state guaranteed legal assistance, with the involvement of resources from the system of legal

⁹ Venice Commission, in the Report adopted in the 86th plenary session in 2011.

¹⁰ In the reference period, at the office of the Ombudsman were submitted 296 petitions in which was invoked the violation of this right, this number being bigger in comparison with the last years when in 2014 – 265 petitions and in 2015 – 259 petitions.

¹¹ There were registered 61 de petitions.

¹² Decision no.15 of 30.07.2008 on the approval of the Regulation on the operation of territorial offices of the National Council for State Guaranteed Legal Assistance.

assistance guaranteed by the state (internal monitoring) and with the involvement of some resources outside the system of state guaranteed legal assistance (external monitoring). During the year of 2016 it was realized only the internal monitoring, and we consider that it is not objective and it influences negatively the quality of the provided services and the impact over the persons is a big one in the context in which only 49743 persons in 2016 benefited of state qualified guaranteed legal assistance.

Principle of presumption of innocence is guaranteed by the article 21 of the Constitution and it provides that any person accused to have committed an offense shall be presumed innocent until found guilty on legal grounds, in a public trial in the course of which all the necessary guarantees for defense were ensured.

There exists a rich jurisprudence of the European Court for Human Rights for the matter of presumption of innocence. In the case *Allenet de Ribemont v. France* (decision of February 10, 1995), the Court finds that the presumption of innocence consecrated in §2 art.6, is among the elements of a fair trial, as it is provided in §1 art.6. The presumption is violated if a court decision about an accused person reflects the opinion that he/she is guilty, before the guilt have been proven. It is sufficient even in the absence of a formal finding that an argumentation to suggest that the court considers him/her as being guilty. The Court appreciates that the violation of the presumption of innocence can be done not only by a court, but also by other public authorities.

In this context, it is very important that all these aspects to be taken into consideration when publishing the information about the conduct of a process and the guilt of a person is suggested without being taken a prior decision by a competent court.

For **improving the legislation** with the goal to ensure the observance of the free access to justice, the Ombudsman has issued many recommendations. One from the respective recommendations refers to the amendment of paragraph (1) of art. 248¹ from the Enforcement Code, according to which „ *the convicted person can submit a claim against the decision of the chief of the penitentiary through which it was applied a disciplinary sanction through the administration of the penitentiary institution to the investigating judge within 3 working days from the moment the decision was announced,*”. Thus, the Ombudsman says that the phrase “*through*” the penitentiary institution from this article is abusive and arbitrary, because it is in contradiction with the fundamental rights of the person who is convicted to free access to justice and the secret of the mail. This phrase permits the penitentiary institution to control the mail of the convicted person, limiting his/her right to free access to justice. The Ministry of Justice has informed that when amending the Enforcement Code, the phrase “*through the administration of*

the penitentiary institution” will be excluded from the article 248¹ of the Enforcement Code upon the request of the Ombudsman.

Another recommendation of the Ombudsman in ensuring free access to justice refers to paragraph (2) of the art.457 from the Criminal Procedure Code. Thus, the mentioned provisions contravene to the right to a fair trial and to the right to defense in the situation in which the appeal for cancellation is judged without the participation of the parties and only with the participation of the General Prosecutor or prosecutors appointed by him and the defenders of the party who have declared appeal for cancellation or on which it was declared. Committee for human rights and inter-ethnic relations ¹³ has informed that it wants to contribute and promote the corresponding legislative initiative. At the same time the Ministry of Justice ¹⁴ has informed us that it has created the inter-institutional work group for removing the deficiencies and gaps from the Criminal Procedure Code which, inter alia, will identify the criminal procedure norms which limit unjustified the procedural rights of the participants to the penal trial.

In 2016, the Ombudsman has requested the constitutionality control in the light of the article 20 in association with the articles 16 paragraph (2) and 54 paragraph (1) and (3) from the Constitution, provisions of the Criminal Procedure Code which limit the rights of persons with mental disabilities to free access to justice. The Ombudsman has invoked the fact that any interested person, including person with mental deficiencies has the right to address in the court as the law provides in order to defense his/her rights, freedoms and legal interests. Or the justice in the civil cases is made according to the principle of equality of all persons, not depending on the citizenship, race, nationality, origin, language, religion, sex, opinion, political affiliation, nationality, social origin, job, domicile, birth place and other circumstances.

Therefore, it should be mentioned the fact that the principle of free access to justice should be applied irrespective of health condition of the person and it materializes by the possibility of submission of a claim in the court, and the legal character of the formulated pretentions follows to be appreciated only by the court.

According to them, by the ratification of pacts and treaties on human rights, the state of the Republic of Moldova undertook to respect, promote and realize the right to equality and to offer effective legal protection to all persons present on its territory, including the persons with mental disabilities.

Therefore, on November 17, 2016 by the Decision no. 33, the Constitutional Court has founded the contested legal provisions transgress the principle of proportionality and affect the

¹³ Letter CHR 9/73-22 of July 14, 2016

¹⁴ Letter no.03/10021of 26.08.2016

essence of the right to free access to justice, contrary to the art. 20 in association with articles 16 and 54 from the Constitution.

In 2016, the European Court has founded the violation of the art.6 of the Convention by the Republic of Moldova in the cases: *Nichifor v. Moldova*, *Morari v. Moldova*, *Lazu v. Moldova*, *Pascari v. Moldova*, *Rusu Lintax SRL v. Moldova*, *Iurii v. Moldova*.

In these cases the Court has founded problems which refer to: non motivated rejection of an essential argument for the case, non-motivated rejection of the request to check the authenticity of a document considered to be false, conviction under the grounds obtained by provocation, conviction without hearing directly the important witnesses in the case, finding the guilt of a person who was not involved in the process, irregular cassation of a final court decision, offering insufficient compensations for the irregular cassation of a final court decision.

In 2011-2016, in the Republic of Moldova it was implemented the Justice Sector Reform Strategy¹⁵, whose objective was the creation of an accessible justice system which will be efficient, independent, transparent, professional and responsible toward the society which will correspond to the European standards, to ensure the supremacy of law and observance of human rights.

Because, there were not realized all the actions provided by the Action Plan on the Strategy implementation, by the Decision of the Parliament of the Republic of Moldova no. 259 of 08.12.2016 on providing continuity of reforms in the Justice Sector it was extended the headline for the realization of actions from the Action Plan for the implementation of the Reform Strategy from the Justice Sector for 2011–2016 until December 31, 2017.

The Ombudsman considers necessary to consolidate the efforts for elaborating the future policies which follow to be realized after the expiry of the deadline for the implementation of the Reform Strategy from the Justice Sector for 2011-2016, established by the Decision of the Parliament of the Republic of Moldova no. 259 insurance of continuity in the Justice Reform after 2017.

¹⁵ Law on the approval of the Reform Strategy from the Justice Sector for 2011-2016, no. 231 of 25.11.2011; Decision of the Parliament of the Republic of Moldova on the approval of Action Plan for the implementation of the Reform Strategy from the Justice Sector for 2011–2016, no.6 of 16.02.2012.

RIGHT TO LIFE, PHYSICAL AND MENTAL INTEGRITY

Article 24 of the Constitution of the Republic of Moldova guarantees the right to life and to physical and mental integrity.

In the same Article, the Constitution prohibits the torture and cruel, inhuman or degrading punishment or treatment. The prohibition is categorical and it extends on all the persons.

Protection of person against torture and cruel, inhuman or degrading punishment or treatment is guaranteed by the art. 3 from the European Convention of Human Rights (ECHR).

Starting from the importance of the mentioned constitutional regulations, the Ombudsman considers that in the penitentiary institutions from the Republic of Moldova there were not considerably improved the conditions of detention which achieve the minimal level of the severity necessary for constituting an inhuman and degrading treatment.

The Ombudsman emphasizes the systemic nature of the problem of overpopulation in the prisons from the countries, hygienic conditions, and absence of adequate medical care. The mentioned above facts are confirmed and by the European Court of Human Rights in its decisions.

In 2016, the European Court has founded that the Republic of Moldova has violated the art. 3 from the Convention in many cases: *Morgoci v. Moldova*, *Cazanbaev v. Moldova*, *Mescereacov v. Moldova*, *Caracet v. Moldova*, *Ciorap v. Moldova*, *Okolisan v. Moldova*, *Cristioglo v. Moldova*, *Baştovoi v. Moldova*, *Galaida and Copoşciu v. Moldova*.

The main problems that were founded by the Court refer to the absence of an effective investigation and inhuman conditions of detention.

Also, although the legislation enumerates the standards for detention and incriminates the inhuman or degrading deliberately applied treatment, there is no an effective mechanism which could permit the authorities to examine on substance the merits of the applications on the conditions of detention and granting adequate and sufficient compensations. The European Court considers that „*the accused state should offer to litigants an effective and adequate mechanism which could permit the competent authorities to examine on substance the merits of the applications on the conditions of detention and granting adequate and sufficient compensations*”¹⁶.

For the fulfillment of the positive general obligations of the state which result from the decision of ECHR in the case *Sisanov v. Republic of Moldova* it was elaborated the draft act regarding the modification of some legislative acts (of the Penal Code and Criminal Procedure

¹⁶ Decision *Sisanov v. Republic of Moldova* of September 15, 2015.

¹⁷ The Draft act was registered in the Parliament of the Republic of Moldova on 23.09.2016.

Code)¹⁷ regarding the degree of humanization of penal policies which has the goal to join up the penal legislation to the standards of the Council of Europe and through it to reduce the population in the prisons. By this draft act it is proposed to be established a prior and compensatory system in correspondence with the standards of the European Convention of Human Rights.

According to the official information, in the custody of the penitentiary system there are about 8000 persons. Only three from those 17 penitentiary institutions were renewed and they correspond to the minimal standards of detention (Penitentiary institution no.7 Rusca, Penitentiary institution no.10 Goian and Penitentiary institution no. 1 Taraclia).

In the conditions of a constant tendency of increasing the number of population in the penitentiary institution in relation to the actual housing capacity of the penitentiary system of about 5500 places there is registered an overpopulation of about 40% of the detention spaces.

In particular, there is attested that the old infrastructure which is not adapted to the system of cells and it does not permit the separation of prisoners in small sectors, in combination with the insufficiency of the custodial staff lead to the perpetuation of violence and subculture in the penitentiary environment.

Intimidation and mistreatment of particular categories of prisoners constitute a phenomenon harsh criticized during many years by the European Committee for the Prevention of Torture (CPT). Moreover, the non-formal hierarchy governed by its own rules and its interaction with the criminal groups outside of the penitentiary system threaten the safety of the whole society.

Another series of major problems which faces the penitentiary system are the reduced capacities for providing medical care, providing the necessary inventory for the preparation and serving meals, and the lack of possibilities to develop in full measure pro-social activities with the goal to motivate for change the detainees.

The Ombudsman agrees the approval of the Strategy for the development of the penitentiary system during 2016-2020¹⁸, which has as the goal to determine a strategic framework which will be simple and functional for the development of the penitentiary system from the Republic of Moldova, including intervention in the settlement of causes of the actual problems of the penitentiary system and reducing their effects for the detainees and reaffirmation of its role within the general system of justice.

¹⁸ The Decision no. 1462 of 30.12.2016 of the Government of the Republic of Moldova on the approval of the Strategy for the development of the penitentiary system during 2016-2020 and the Action Plan on its implementation.

The main problem the Strategy approaches is: the reduced efficiency of the penitentiary system in the achievement of the goal of punishment – social reintegration of convicted person and prevention of committing new crimes. According to the international indicator¹⁹, Moldova has a score of 0.28 from maximum 1 for the sub-indicator *Correctional Services are efficient in the reduction of the criminal behavior*.

The Ombudsman considers that many problems are generated by the penitentiary system sub-financing. In this context, the Ombudsman has planned to make a comprehensive analysis on the financing way of the penitentiary system for issuing some recommendations in this sense.

From those 230 claims about this matter registered at the Ombudsman's Office during 2016, the most frequent (in 203 claims) are reported the bad conditions of detention in the penitentiary system. In 20 claims it was reported the application of maltreatments and in other seven there were exposed different problems which are related to the compliance with the procedure for detention or arrest.

In comparison with previous years we observe a dynamic growth of number of claims came from the detention places (190 claims in 2014 and respectively 195 claims in 2015)²⁰.

For checking the allegations exposed in the claims of detainees in the majority of cases it was necessary to go on the spot.

The most frequent problems invoked by the detainees at the chapter *conditions of detention*, as in the previous years, refer to: overcrowding, especially in the Penitentiary no.13 of Chisinau; cells from demi-basement – very cold; insufficient light, humidity, sanitary-hygienic conditions, unworkable sewage system and ventilation system: insufficient bed sheets, blankets and objects of first necessity; insufficient disinfestation and disinfection measures.

Another frequent problem which is invoked by the detainees is related to *inadequate or late medical care services*.

In some cases, there are not taken efficient measures for ensuring the effective exercitation of the right to independent medical care, including the diagnostics of detainees in the public medical sanitary institutions and prescription of the necessary treatment. The administration of the penitentiary institution invokes the impossibility to transport the detainees for ensuring the independent medical care, because of the staff insufficiency, because the escort needs the involvement of some additional services and a specialized transport for ensuring the guard during the transfer. At the same time, it was founded that there are not standardization instructions for the actions of the penitentiary staff in the cases when it is required private/independent medical care services for the detainees.

¹⁹ Rule of Law Index 2015, de World Justice Project.

²⁰ http://www.ombudsman.md/sites/default/files/document/attachments/raport_2015_final.pdf.

In order to ensure the effective exercitation of the right to independent medical care, it was recommended to the Department of Penitentiary Institutions to undertake efficient measures, by elaborating some internal regulations, for the standardization of the actions of the administration of the penitentiary about ensuring private medical care. The Ombudsman was informed that the Department of Penitentiary Institutions will include the respective proposals in a project for the modification of the executorial-penal legislation which is planned to be elaborated in 2017.

It is also faulty the observance of the *rights of the patient* in the penitentiary institutions from the country. People in detention deplore the violation of the rights of the patient: to be informed, to qualitative medical care, accessibility, to manifest his/her dissatisfaction.

Another problem which is identified in the claims of the detainees is related to *non-adequate conditions from the transport* which ensures the escort of detainees. The Ombudsman previously spoke about this aspect.

The hostile relations between the detainees and the administration of the penitentiary were invoked preponderantly by the detainees from the Penitentiary no. 17 from Rezina and those from the Penitentiary no. 15 from Cricova.

Another aspect identified in the claims addressed to the Ombudsman refers to smoking in cells and the nonsmoking persons are detained together with smoking persons in the same cells.

In this context, the Ombudsman has recommended to the Department of Penitentiary Institutions to establish a mechanism for putting into operation the provisions of the Charter for the execution of the punishment by the convicted persons, approved by the Decision no. 583 of 26.05.2006 of the Government, in the part which is related to prison smoking, by elaborating some internal regulations and creating special places for smoking.

The Department of Penitentiary Institutions has registered during the year of 2016 an increase of claims of detainees with 434 claims (3225 petitions) in comparison with the previous year. The majority of petitions came from the detainees from the Penitentiary no. 13 of Chisinau which constituted a quarter from the number of claims, it being followed by the Penitentiary no. 15 from Cricova and Penitentiary no. 9 from Pruncul. There were registered only 5 petitions from the Penitentiary no. 10 from Goian.²¹

According to the norms of the European Committee for the Prevention of Torture, the effective grievance procedures and inspections in the prisons represent fundamental guarantees against the maltreatments. The detainees should have possibility of appeal both, inside and outside the penitentiary, being included the possibility to have confidential access to an adequate authority²².

²¹ <http://unimedia.info/stiri/permalink-126079.html>

²² <http://www.cpt.coe.int/lang/rom/rom-standards.pdf>

Many claims came from the detainees for this chapter during the reference year who invoke the non-compliance with the procedure for the examination of claims which are addressed to the administration of the penitentiary. They complain that often they do not receive the answer for their claims, it is invoked the faulty procedure for sending correspondence through the service of Posta Moldovei, and the problems they face when paying for the postal services from the peculium accounts.

For example, in the Penitentiary no.4 and no.15 from Cricova there is not respected the procedure established by the legislation²³ for the submission of claims from the detainees to the administration of the penitentiary and subsequently reception of the decision about it. In the claims addressed to the Ombudsman, the detainees mention that the administration does not register all the submitted claims. At the same time, it is invoked the fact that their letters which are addressed to different state institutions do not reach the destination.

In the process of investigation, it was founded that in the Penitentiary no. 4 it was not instituted a mechanism through which to be respected the access of the detainee to the postal box of Posta Moldovei for sending the correspondence. When making the visit, the postal box was not sealed. From the facts said by the detainee the staff of the penitentiary has the key of this box and they check the correspondence sent by the detainees.

The Charter for the execution of punishment by the detainees provides that for the letter sending, on the territory of the penitentiary (separately in each sector) there are installed postal boxes to which the detainees have access. The letters are put in the postal boxes, in closed envelopes, personally by the detainees. Extraction of the correspondence of detainees is made by the workers of the postal office from across the district the penitentiary is placed.

The Ombudsman proposed to the Department of Penitentiary Institutions some recommendations, including creating a commission within the Department of Penitentiary Institutions for making a comprehensive checking in all the penitentiary institutions from the Republic of Moldova in regard to the observance of the right to petition of the detainees and some periodical checking.

The situation in the isolators for provisory detention is still alarming. Previously it was mentioned the fact that the majority of the rooms from the isolators for provisory detention are placed in basements of the edifices of the police inspectorates. That is why they cannot offer

²³ Charter for the execution of the punishment by the convicted persons, approved by the Decision of the Government no. 583 of 26.05.2006, in Section 30 provides that the petitions addressed to the administration of the penitentiary should be registered in the secretariat office of the unit being applied a number and the stamp for reception on the second copy of the respective document which is returned to the detainee.

adequate conditions of detention or adapted to the detention of persons placed in provisory detention.

The Ombudsman finds that in some institutions the conditions are still inhuman and degrading. For example, when visiting the Isolator for preventive detention from Orhei it was founded that those three functional cells (the rest are sealed) do not correspond to the national and international norms for detention. Old mattresses in a deplorable condition, there is penury of pillows and bad linen. In the isolator the water is provided upon request, it being pumped from the aqueduct. The sinks from the cells are old and rusty, taps are deteriorated, not functional. Thus, there is a lack of direct access of detainees to drinking water. In the cells the light is insufficient; there is a smell of mold, precarious hygienic-sanitary conditions. At the same time at the entry of the Police Inspectorate there are not registered all the citizens in the registry for the visitors. The registry for the detainees is not completed correctly (there is not registered the time when the detainee was placed and the time when he/she left the isolator).

The findings of the Institute of Human Rights from Moldova²⁴ of 2016 on the situation of persons who are in the psycho-neurological institutions show that there are still many problems which were previously discussed by the Ombudsman and by the international organizations from the field of human rights²⁵.

In the context, there exists the problem of documentation of the beneficiaries from the psycho-neurological boarding-houses, the problem that they are obliged to perform agricultural and auxiliary works. Also, in the psycho-neurological boarding-house from Brinzeni village, Edinet district it was founded that the situation in the block 1 and 2 remains unchanged in comparison with the situation described in the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatments (CPT) from 2015 regarding the Republic of Moldova. The restrooms are unsatisfactory, being necessary a capital reparation and a corresponding equipment, inclusively to ensure the possibility for the persons with reduced mobility to use the room independently. There were not founded improvements at the chapter of individualization of all personal things of the beneficiaries; there are no individual spaces for keeping personal things.

RECOMMENDATIONS:

- Adoption of the Draft act regarding the modification of some legislative acts, elaborated by the Ministry of Justice which has the goal to join up the penal legislation to the

²⁴ Report on the monitoring visit at the psycho-neurological boarding-house from Brinzeni village, Edinet district of 17.10.2016; Report on the monitoring visit at the psycho-neurological boarding-house from Badiceni village, Soroca district of 24-25.08.2016.

²⁵ Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatments (CPT) concerning the Republic of Moldova, elaborated after the monitoring visit of September 14-25, 2015.

standards of the Council of Europe thus, reducing the population in the penitentiary and establishing a preventive and compensatory mechanism according to the standards of ECHR.

- Ensuring adequate financing for the penitentiary system in order to improve the conditions for detention from the penitentiaries of the country.
- Ensuring the observance of rights of the patient for the detainees to be informed about the applied treatment, to ensure qualitative and timely medical care, access to medical care.
 - Elaborating some internal regulations for the standardization of actions of the administration of the penitentiaries about ensuring the effective exercitation of the right to the independent medical care.

INDIVIDUAL FREEDOM AND PERSONAL SECURITY

Article 25 of the Constitution guarantees the principle of inviolability of the individual freedom and personal security, according to which no one can be detained in custody and arrested only in cases and pursuant to the procedure established by the law. According to paragraph (4), the arrest shall be carried out under a warrant issued by a judge for a period of 30 days at the most. An appeal may be lodged against the validity of the warrant, under the law, at the hierarchically superior court of law. The term of the arrest may only be prolonged by the judge or by the court of law, under of the law, to a period not exceeding 12 months.

Observance of the right to freedom and personal security which is guaranteed by the Constitution and the legislation of the country and by the international conventions to which the Republic of Moldova is a member is still a majeure problem in 2016 year.

On February 23, 2016, the Constitutional Court has pronounced the Decision on the exception of constitutionality of the paragraphs (3), (5), (8) and (9) of the article 186 from the Criminal Procure Code (the term for the preventive arrest)²⁶. The author of the intimation pretended, especially, that the cumulative application of the provisions of the paragraphs (3), (8), (9) and (11) of the article 186 from the Criminal Procedure Code permits the prolongation of the term of preventive arrest for periods which exceed the terms express provided by the article 25 paragraph (4) from the Constitution. In this sense, the conclusions of the Court refer to the fact that according to the art. 25 paragraph (4) of the Constitution:

a) the preventive arrest can be applied for a total period of at most 12 months which includes both the phase of the criminal investigation and the judicial phase, until the issuance of the court decision by which the person is released from prison or the moment the court of first instance pronounces the sentence. The term of arrest shall include the time during which the person: - was detained and preventively arrested; - was under house arrest; - for the purpose of an in-patient evaluation and treatment if coercive medical measures were applied.

b) The term of person's preventive arrest shall start from the moment of the deprivation of his/her liberty by detention and if not detained from the moment of the enforcement of a court judgment on the application of this preventive measure.

c) The term of 12 months refers to the same criminal action(s) for which the person was placed under preventive arrest, whatever of the eventual further requalification of the crime. Any detention which exceeds the total term of 12 months which is applied for committing the same action, whatever of the eventual further requalification of the crime is contrary to the Constitution and thus, it is illegal. At the same time the Court has withheld that the maximal term

²⁶ HCC no. 3 of February 23, 2016.

of 12 months for the preventive arrest covers and the situation in which against the person were submitted more counts of accusation. Thus, the Constitution obliges to carry out justice without delay.

d) The arrest warrant is issued for a term of about 30 days. Each extension of the preventive arrest cannot exceed 30 days, both in the criminal investigation stage and in the stage when the case is judged.

Next, on April 29, 2016, the Constitutional Court²⁷ has issued the Decision on the modality for the execution of the Decision no. 3 of the Constitutional Court of February 23, about the exception of unconstitutionality of the paragraphs (3), (5), (8) and (9) of the article 186 of the Criminal Procedure Code (term of preventive arrest). The Constitutional Court mentioned the fact that the first thesis of the point 2 letter c) from the operative part of the judgment no. 3 of the Constitutional Court of February 23, 2016 about exception of unconstitutionality of the paragraphs (3), (5), (8) and (9) of the article 186 of the Criminal Procedure Code is not applicable to criminal cases which refers to other action(s).

In this context, the Ombudsman has recommended to the Ministry of Justice to initiate immediately the process for amending and completing the provisions of the Criminal Procedure Code which will have the goal of bringing it in concordance with the solutions exposed in the Decision of the Constitutional Court of February 23, 2016 for eliminating the causes and conditions which create premises for the violation of human rights and freedoms, especially the article 25, paragraph (4) of the Constitution of the Republic of Moldova.

Next, through the law no.100 of 26.05.2016, the provisions of the art.186 and 191 of the Criminal Procedure Code were modified being taken into account the findings of the Constitutional Court from its decisions.

In the same context, we emphasize the fact that the right to freedom and personal security is guaranteed also by the art. 5 of the European Convention of Human Rights. Also, the art. 5 of the Convention is the right violated the most by the Republic of Moldova in the period 1997-2016, being on the third place.

In 2016 against the Republic of Moldova it was founded the violation of the right to freedom and personal security which is guaranteed by the art. 5 of the Convention in the following cases: *Balakin v. Moldova*, *Caracet v. Moldova*, *Mozar v. Moldova and Russia*, *Savca v. Moldova*, *Buzadji v. Moldova*. In the majority of cases, the Court has established the excessive duration and lack of detention motivation.

²⁷ DCC no.9 of April 29, 2016

PRIVATE AND FAMILY LIFE

The Constitution of the Republic of Moldova provides in the article 28: „*The State respects and protects the private and family life*”

The right to private and family life is a fundamental one from the category of civil and political rights. This fact was regulated in: The Universal Declaration of Human Rights, International Covenant on civil and political rights, the European Convention of Human Rights, Constitution of the Republic of Moldova, and Law no. 133 of 08.07.2011 on protection of personal data.

The private life constitutes an ability of a person or a group of persons who strive to isolate with the goal to protect their interests. The limits of the private life and what is considered to be private differ between the groups, cultures and persons, according to the custom and traditions, although always there is a common point. The confidentiality can be sometimes associated with anonymity and the will to remain outside the public life. The word „private” which is referred to a person means particular, individual. If we generally speak about personal things, the degree of information „personalization” depends on the modality in which the public can perceive it, fact which differs depending on the circumstances and time. The private life can be seen under the security aspect.

The Ombudsman attests the violation of the right to private life in the cases when the cameras are installed in a private sector, which monitor the private space of neighbors. Although the petitioners have alerted the law enforcement about this aspect, the problem is still unsettled. The Ombudsman has recommended to the competent authorities to intervene efficiently in the concrete case and to investigate the circumstances of the case by respecting the right to private life. In situations like these there is necessary to take into account the jurisprudence of the European Court of Human Rights²⁸ which has brought the following interpretation of the notion of „private life”: ***the right to private life is the right to privacy, the right to live as you want, being protected against the public.*** *The notion of private life comprises elements which are related to the identity of a person, as the name, photo, and his /her physical and moral integrity. The warranty offered by the art. 8 of the Convention is essentially for ensuring personal development of each person in comparison with his/her peers, without external interferences.* In principle, the private spaces are not opened to the public and they cannot be accessed by anyone, anytime and in any circumstances. *At the same time, the Venice Commission (the*

²⁸ Van Oosterwijk v. Belgium; Schüssel v. Austria; Von Hannover v. Germany; Petrina v. Romania

European Commission for Democracy through law of the Council of Europe)²⁹ has specified that the private sphere covers the intimate aspect of the personality of a human being. This brings with it the right of any person to be protected against the unjustified intrusions of the public authorities, mass-media, any institutions or individuals.

Taking into account the related facts, the Ombudsman recommends that this problem to be examined by the Ministry of Justice in the context in which to be regulated the modality for using the video surveillance means so that not to violate the right to private life of individuals.

Disclosure of information about **health condition of the person** without his/her consent constitutes a violation of the right to private life. The disclosure of information about the health condition of the person in mass-media represented a ground for the Ombudsman to observe ex officio which arose with the suggested recommendations. The worst thing is the fact that these unlawful actions are committed by officials, as the president of the district in the concrete case who has publicly declared that the protester X is “on registry at the psychiatrist in the district hospital”, presenting in front of cameras the certificate which confirm this fact.

On July 29, 2016 the Superior Council of Magistracy has adopted the Regulation on the publication of court decisions which contains provisions on the **depersonalization of decisions**.

After analyzing the court decisions, it was founded that in the courts from many districts the names and surnames of judges and of the prosecutor are not published, despite the fact that they are public authorities.

After their adoption, the portal of the courts establishes a new interface in which the decisions cannot be searched according to the names and surnames of persons. Thus, if previously the information could be found on the portal www.instante.justice.md, now this option for searching was excluded, the information being available according to the number and type of file.³⁰

On February 3, 2016, on the web page of the Ministry of Justice was published a press release through which it was specified that in the last period more citizens have addressed

²⁹ Constitutional Court of the Republic of Moldova has become a member of the European Commission for Democracy through Law of the Council of Europe on June 22, 1996

³⁰ <http://jurnal.md/ro/justitie/2017/2/6/csm-ingradeste-accesul-la-informatie-prin-depersonalizarea-hotararilor-judecatoresti-jurnalist-un-pas-inapoi-dosarele-cu-plahotniuc-filat-guma-nu-ar-fi-ajuns-niciodata-in-atentia-publicului/>

objections on the violation of legal rights by publishing their names on the portal of courts without indicating a concrete number of petitions or tendencies.³¹

In this context, we mention the fact that the principle of publicity of legal proceedings is provided by the Criminal Procedure Code³², Code of Civil Procedure³³, Law on judicial organization, point 9 of the Regulation on the modality the court decisions should be published on the unique portal of the courts, and in the art. 117 of the Constitution of the Republic of Moldova.

The Constitutional Norm establishes that in all the courts of law the legal hearings are held in public, and the conduct of lawsuits behind closed doors only is allowed in certain cases as provided for by law and in compliance with the rules of procedure.

The European Court of Human Rights publishes in the database of HUDOC all the decisions including the full name of the plaintiffs or other persons to whom is made reference in it, including the names of judges, prosecutors or other subjects who sentence the state within the ECHR because on committing some specific violations. This fact is realized in all types of cases examined by ECHR, including the criminal cases. As an exception, in particular case, the European Court of Human Rights cannot publish the names of plaintiffs. Thus, according to the provisions of the article 47/1 from the Regulation of the European Court of Human Rights, the plaintiff who do not want the disclosure of his identity should precise it and to bring reasons which justify the derogation.

Initially, the publication of court decisions was conceived as a mean for ensuring the transparency of the activity of the courts of law. In the opinion of the Ombudsman the excessive depersonalization of numbers and data reduces the efficiency of this mechanism.

RECOMMENDATIONS:

- Elaboration of a regulatory framework on the regulation of modality of using the video surveillance means in the private space;
- Ensuring transparency for the activity of the courts of law proportionally with the right to respect for private and family life.

³¹ <http://independent.md/csm-ingradeste-accesul-la-informatie-prin-depersonalizarea-hotararilor-judecatoresti/#.WMeRsW-LSUk>

³² Provisions of article 18

³³ Provisions of article 23

FREEDOM OF EXPRESSION

The situation about the freedom of expression in the Republic of Moldova in 2016 year was not improved. According to the Survey of perception on human rights in the Republic of Moldova realized by the Ombudsman's Office in the last year the degree for ensuring the freedom of expression is reduced. Only 40% of respondents consider that the right to freedom of expression is ensured with regard to the rights of ordinary citizen. More than half of the respondents attest the presence of risk perceptions the free expression. At the same time, mass-media in our country continues to be appreciated as partially free, according to the international rankings, the experts notify a degradation of the situation of the field, mainly being caused by the legal framework which does not favor the real independence of the media institutions, unprecedented concentration of mass-media, particularly from broadcasting, involvement of the political factor in the activity of press.

In 2016, the Ombudsman Office has ordered the realization of a survey on the perceptions of population about the human rights in the Republic of Moldova³⁴, which contains a chapter which refers to the observance of the right of freedom of expression.

The answers given by the respondents attest the persistence of risk perceptions after the free expression. Generally, more than half of respondents feel risks like these. Particularly, 63,3% of the respondents consider as being risky to express opinions about the state government and 18,6% confirm that the risk exists on the full extent. Approximately in the same measure is perceived the risk for expressing the opinion about the politicians, 61,1% of the respondents consider that expressing particular opinions about the politicians involves particular risks, and 18% - risks on full extent. Less risky is considered to express an opinion about religion, 41,1% of the respondents think that the risk persists to some extent and 9,7% - on full extent.

The right to free opinion and expression is considered as being ensured with regard to the rights of the ordinary citizen and less with regard to the right to expression of the journalist by about 40% of respondents.

Approximately 5-6% of respondents have declared that their right to free expression was violated and not only their but also the right of their relatives and friends. According to the opinion of the respondents who have participated to the survey the right to free expression is not on the top of the rights which are more frequent violated, but not through those which are more respected.

According to the frequency of violation of fundamental rights and freedoms of the ordinary citizen in the Republic of Moldova, the right to information, freedom of opinion and expression is on the 7th place with 8,6%. More seldom, in the opinion of respondents are violated

³⁴ http://ombudsman.md/sites/default/files/document/attachments/ro-raport_do_final_pentru_tipar.pdf

the rights to property, freedom of thought and religion, freedom of movement, to elect and to be elected, right to meetings etc.

As is it known the freedom of expression as it is consecrated in the article 10 of the European Convention of Human Rights, in the article 19 of the universal Declaration of Human Rights, in the article 19 of the International Covenant on civil and political rights and other international and regional instruments, is a complex one, which comprises the right to have opinions and to search, to receive and to spread information and idea of any kind, without the interference of authorities and irrespective of borders. The journalists and other media actors have an essential contribution to public debates and processes of taking opinion in a democratic society acting as dogs of public and social security by creating common spaces for discussions and exchange of information and ideas. That is why it is crucial important that mass-media to exercise this role in favorable conditions of activity.

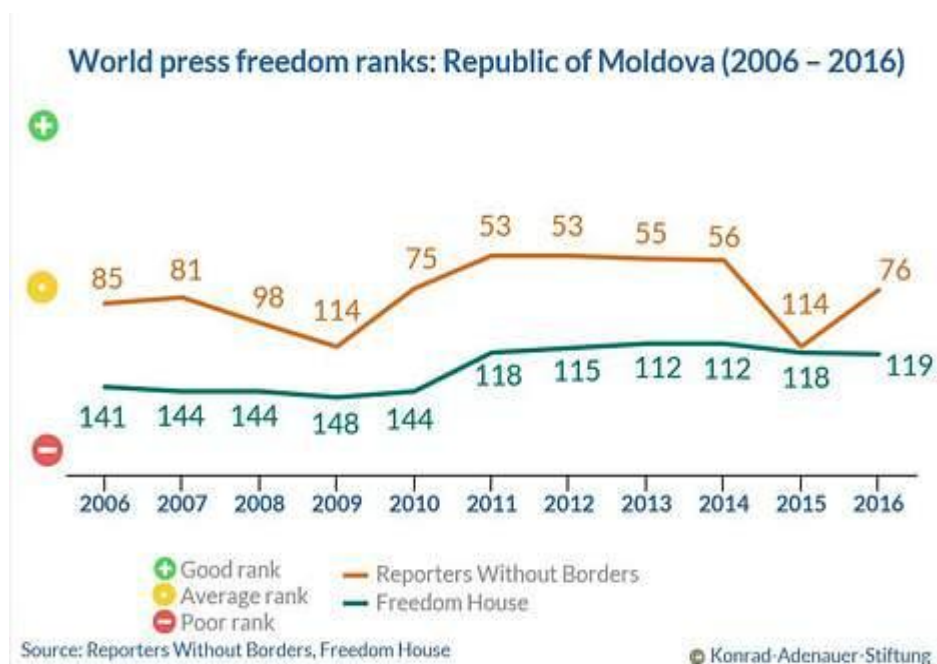
Mass-media community reports about many problems which it faces in the last years. They were reiterated in the second edition of Mass-media forum which took place on December 2-3, 2016, the recommendations of participants being synthetized in the road map which further was sent to the authorities³⁵.

Similar appreciations about the evolutions in 2016 had the international monitoring organizations of the situation of press freedom. Freedom House evaluation for Moldova is that it is a country with partial free press.

In 2016 Reporters without borders (RWB) rank the Republic of Moldova on the 76th place of 180 countries (*see the enclosed diagram*³⁶). According to RWB ranking, taking into account that in 2014 the Republic of Moldova was on the 56th place, the loss of 20 positions by our country is the strongest deterioration of press freedom in all the analyzed countries in 2016.

³⁵ Roadmap Media Forum - <http://mediaforum.md/upload/foaie-de-parcurs-pentru-dezvoltarea-mass-mesiei-din-rm-2016pdf-5891e98736791.pdf> Road map for the mass-media development in the Republic of Moldova.

³⁶ <http://www.kas.de/wf/en/71.13614/>



The representatives of the civil society from Moldova **also have reported about the aggravation of the mass-media situation in the Republic of Moldova** in their reports presented to ONU within the second cycle of the Universal Periodic Review (UPR) of ONU Council which took place on November 4, 2016 at Geneva. The exposed arguments were sufficiently pertinent for convincing some member states of the United Nations about the existent dangers in our country for the freedom of expression.

As a result, in the second cycle of (UPR) there were made many recommendations to the Moldavian authorities for the mass-media field – 10, in comparison with 3 which were made in the first exercise of UPR in 2012. The recommendations, mainly referred to the problems of excessive concentration of media property and the necessity to fight against monopolies in media, to the counteraction of self-censorship among the Moldavian journalists, to the insurance of mass-media pluralism, adoption of legal framework which is necessary for the protection of the independent mass-media, a new Broadcasting Code, creating a propitious environment for the development of the independent press, elimination of corruption in the field of the access to information of public interest.

The appreciations of the national experts in the field attest a grave situation of mass-media in our country. The indicator for the Mass-media situation in the Republic of Moldova (IMMS) for 2016 is only 26,66 points of 60. The most affected zones which were identified by

IMMS are “the political context” followed according to the gravity by the economic environment and media environment security as a part of the national information environment”³⁷.

The monitoring of the editorial behavior of mass media institutions in the electoral period for the presidential elections from the Republic of Moldova, realized by the Association of the Independent Press and the Centre for Independent Journalism, has founded during the elections of the head of the state and also during the local and parliamentary elections, serious deviations about the reflection of the election campaign by many media institutions. According to the performers of the monitoring report, mass-media from the Republic of Moldova has failed the professional maturity exam and objective information of the citizens³⁸.

In 2016 there were operated modifications to the article 66 of the Broadcasting Code, through which the number of licenses which can be held by an owner of media institution was reduced from five to two. But these provisions will have legal character only in 2021 for the media owners who have got the licenses in 2014 and correspondingly in 2022 for those who have got the licenses in 2015. Although, the reported modifications were very necessary, the desired effect - to reduce the property concentration and insurance of political pluralism – was not achieved. The problem of mass-media monopolization, in particular, the problem of broadcasting institutions is an extreme acute one.

Also, we report that after the amendment of the Broadcasting Code in November 2015, the TV channels were obliged to present to the public the name of their owners. Thus, currently in the heading “Decisional transparency/Transparency” from the official page of the Broadcasting Coordinating Council can be identified the affidavit about ensuring the media property transparency with the appropriate specifications about the names of individuals, final beneficiaries of every media institution from broadcasting, so that each program consumer to know who stays behind a particular TV channel or radio.

In 2016 there was not adopted a new Broadcasting Code, according to the resolutions of the Council of Europe, good community practices and the recommendations of the development partners, even if the Action Plan of the Government for 2016 – 2018 provides this thing. Instead in the TAU Gagauzia was adopted a new broadcasting law which was criticized by the journalist community and by the civil regional society, because it could lead to the establishment of political control over the Gagauz Autonomy broadcasting.

The draft Act called “Big brother” was in the attention of the public opinion which has causes vehement critics from the civil society for the fact that it provided the possibility that

³⁷ http://media-azi.md/sites/default/files/Indicele%20situatiei%20mass-media%20%28ISMM%29%20din%20Republica%20Moldova%20in%202016_0.pdf

³⁸ <http://www.api.md/page/ro-monitorizarea-mass-media-n-perioada-electoral-pentru-alegerile-prezideniale-2016-304>

investigating authority to be able to block sites, to check personal e-mails and sms, to read messages on Viber, Telegram or What's app. The draft act was elaborated by MIA and it has as a goal to fight against child pornography, terrorism, children sexual exploitation and for stopping war propaganda, racial discrimination, hostility or violence.

The Ombudsman has shared the concerns of the civil society about the risks which involves the adoption of the nominalized draft act for the right to respect private life and freedom of expression.

While taking action to this subject, the Ombudsman reminded that according to the European standards and those of ONU, the restrictive measures of the state should meet some essential criteria: to have a legal goal, to respect the principles of necessity and proportionality, legal provisions to be clear, in order to exclude interpretations and using legal norms for other purposes than those related to the national security. Also, these measures follow to be applied according to a decision of an independent judicial authority.

In the CM/Rec(2016)5 recommendation on freedom on internet, the Committee of Ministers of the European Council pointed out the member states of the EC that „before applying restrictive measures for the Internet access, a court of law or independent administrative authority should establish that the disconnection from Internet is a less restrictive measure for achieving the legal goal”.

At the same time, in the UN special Report for the freedom of expression, David Kaye, notes in the Report on the promotion and protection of the right to freedom of opinion and expression that in 2016 the Council for Human Rights unequivocally has condemned the measures adopted by some states to prevent or disrupt access to or dissemination of information online in violation of international human rights in the field of human rights. The UN special Report made appeal to all the states to hold back from actions like these (see the Resolution of the Council 32/13, paragraph 10). *„Blocking Internet platforms and telecommunication infrastructure constitute threats for the freedom of on-line expression, even if the restrictive measures are motivated by the necessity for ensuring national security and public order, it is mentioned in point 22 of the mentioned Report.*

The Ombudsman has supported the idea promoted by NGO's for sending the draft act to the Venice Commission for being verified the correspondence with the European standards and it recommended to the Parliament to launch public debates on the indicated draft act.

The Ombudsman appreciates the fact that in the Republic of Moldova there is a legal framework which comprises regulations in the key-fields which refer to mass-media, as are those concerning: the freedom of expression, access to information, activity of media institutions from the written press and broadcasting etc. at the same time, the Ombudsman pleads for

strengthening the mass-media legal framework, the priorities in this sense being the implementation of the engagements assumed by the Government, in the chapter XV „Mass-media” of the Action Plan for 2016-2018, for adoption of a new Broadcasting Code, elaboration of the national concept for the mass-media development.

In the opinion of Ombudsman there are imposed changes for the Law on the access to information and for the Law on personal data, which is frequently abusively interpreted for not offering the journalists information of public interest, being invoked the protection of personal data.

For counteracting the concentration of property in mass-media and protection of loyal competition, on the advertising market it is imposed the adoption of a law on the completion of the Competition Law. Another law which follows to be adopted according to the European norms and good practices in the field is the Law on advertising. The current Law on Advertising was adopted in 1997 and it is already inoperative.

Although, the journalists in a great measure have exercised their mission in secured conditions, however the cases of their obstruction were present. There were many situations in which the journalists were threatened, verbally or physically bullied, their equipment was damaged, or there were filed cases against them. The experts consider that actions like these have one goal – to intimidate mass-media, to make it more docile, especially toward the authorities.³⁹

The journalists especially the investigative journalists were supposed to different forms of intimidations particularly in the cases in which they focused on corruption cases. In 2016 the mass-media organizations brought to the public 10 cases of pressure over the journalists, intimidation and verbal or physical bullying.

A form of intimidation of journalists was not allowing them to be present in the parliament plenary hall, subject which in 2015 was in the attention of Ombudsman⁴⁰. In April 2016 the situation has returned to normal and after two years the journalists continued their activity in the parliament plenary hall.

³⁹ http://media-azi.md/sites/default/files/Indicele%20situatiei%20mass-media%20%28ISMM%29%20din%20Republica%20Moldova%20in%202016_0.pdf

⁴⁰ <http://www.ombudsman.md/ro/content/comunicat-de-presa-26> (The Ombudsman has issued a press release in which he recommended the Parliament to identify solutions for settling the problem of free access of journalists in the Parliament plenary hall).

RECOMMENDATIONS:

- Undertaking measures for the realizations of the last recommendations from the Committee of Ministers of the Council of Europe, UN Committee for Human Rights, UN Special Report for freedom of opinion and respect of the European and international norms in the field on the whole.⁴¹
- Elaboration and approval of the national concept for the mass-media development, based on strengthening the pluralism and freedom of expression, in the established terms (second quarter of 2017) in the Action Plan of Government for 2016-2018.
- Adoption of a new Broadcasting Code according to the resolutions of the Council of Europe, EU directive, good community practices and recommendations of the development partners.
- Adoption of a new law on advertising in compliance with the European norms, current reality both, on the advertising market and on the media market of the Republic of Moldova;
- Improving the Law on the access to information.
- Completing law on competition and ensuring counteraction of property concentration in mass-media and protection of loyal competition on the advertising market.
- Application by the public authorities of Law on personal data in the spirit of the European standards while processing the information requests.

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1. Recommendation CM/Rec(2016)5 on freedom on Internet;
2. Report of the General Secretary of the Council of Europe on the state of democracy, human rights and state of law, May 18, 2016;
3. Declaration of April 30, 2014 on the protection of journalism, safety of journalists and other actors of mass-media;
4. CM/Rec (2016) 4 Recommendations on the protection of journalism, safety of journalists and other actors of mass-media.

RIGHT TO INFORMATION

The access to information of public interest and decisional transparency represent two from the most important elements of a functional democracy. The right of citizens to require and to receive the information of public interest is established in the art. 34 paragraph (1) of the Constitution of the Republic of Moldova.

On May 11, 2000 it was adopted the Law no. 982 on the access to information which offer the juridical instruments which are necessary for exercising the right to information. During the implementation process of the mentioned law there were founded some gaps.

The authorities frequently do not respect the term for the presenting the required information, although according to Law no. 982 of May 11, 2000 on the access to information, the public institution should answer to the requests of information within 15 days. In the most frequent cases, the public authorities do not inform the applicant of the request about the prolongation of the term for presenting information and about its reasons, as the current law provides.

In the case of the answer in which the authorities refuse to present the requested information, there are not indicated the modalities for contesting the refusal and the limitation period as it is specified in the art. 19 of Law no. 982 of May 11, 2000 on the access to information.

There is not respected the principle of transparency of the public information, because on the official web pages of the authorities there are not published the relevant materials which refer to a draft of legislative or normative act (ex. Synthesis of objections and proposals).⁴²

Despite the ratification by our country through the Law no. 217 of September 26, 2013 of the Convention of the Council of Europe of May 18, 2009 on the access to the official documents and assuming the engagements for adjusting the national law to the mentioned above Convention, by the national authorities, until now the legal framework was not totally amended in order to correspond to its provisions.⁴³

On June 27, 2014, a group of deputies have registered in the Parliament a draft act which provided the amendment and completion of articles 15 and 16 of the Law on the access to information and article 71 of the Contravention Code which had the goal to remove the

⁴² Mass-media access to information in the Republic of Moldova: problems and perspectives, 2014, <http://www.media-azi.md/ro/publicatii/accesul-mass-media-la-informa%C5%A3ie-%C3%AEn-republica-moldova-probleme-%C5%9Fi-perspective> ;

⁴³ <http://infoeuropa.md/legislatie/parlamentul-republicii-moldova-a-ratificat-conventia-consiliului-europei-privind-accesul-la-documentele-oficiale/> ;

⁴⁴ <http://media-azi.md/ro/comentariu/accesul-mass-media-la-informa%C5%A3ie-%C8%99i-perspective-de-optimizare-cadrului-legal> ;

deficiencies which were in Law no. 982, and adjusting the legal framework to the provisions of the Convention of the Council of Europe of June 18, 2009 on the access to official documents.⁴⁴ The project proposed the modification of the procedure for registering the requests on the access to information, reducing the term for making available the information and tightening the sanctions for violating the law on the access to information for the persons who are responsible for making available the information. But the Project was withdrawn without being examined.

In order to harmonize the national law to the Convention of the Council of Europe in November 2016 it was modified only the Contravention Code. According to the new redaction of the article 71 of the Contravention Code, the violation of the law on the access to information or that on petition will be sanctioned with a fine of 100 to 150 conventional units (from 5.000 to 7.500 lei) in the case of individuals and with a fine of 300 to 400 c.u. (from 15.000 to 20.000 lei) in the case of persons with leading position. At the same time, offering an answer with erroneous data will be sanctioned with a fine of 400 to 500 c.u. (from 20.000 to 25.000 lei) which will be applied to the person with leading position. The contravention case will be examined by police upon the request of person to whom were caused prejudices by contravention.⁴⁵

Until the period of writing this report there were not undertaken other actions for the purpose to improve the Law no. 982 of May 11, 2000 on the access to information. The Ombudsman recommends to be adjusted the mentioned already law to the European standards, especially that on September 2017, the Government follows to present to the European Council a report on the implementation of the Convention on the access to official documents.

The Ombudsman also finds that there are not applied the provisions of the art. 11 of Law no. 982, which stipulates that „ In order to guarantee free access to official information, the information provider: ... b) will appoint and train officers who will be in charge of providing official information; c) will develop regulations monitoring the access to information in the Republic of Moldova on the rights and obligations of officers in the process of making available documents and official information”.

Thus, it was established the fact that many authorities for the time being have no documents like these in correspondence with the Regulation on the rights and obligations of officers in the process of making available documents and official information.

RECOMMENDATIONS:

- To expedite the process of adjusting the articles 15 and 16 of Law on the access to information to the European standards;

⁴⁵ <http://mediaforum.md/ro/legislatie/cum-responsabilizam-autoritatile-care-ingradesaccesul-la-informatie>

- Ensuring trainings for the officers in the field of the access to information and for the purpose of efficient application of Law on the access to information;
- Elaboration of instruments and methodologies which are necessary for ensuring the right to information;
- Ensuring elaboration of the Regulation on the rights and obligations of officers in the process of making available documents, official information by the public authorities who have not yet elaborated such a document;
- Ensuring publication by the public authorities on their official web pages of all information of public interest which is related to the interests of the citizens.

RIGHT TO HEALTH PROTECTION

The right to healthcare represents one from the fundamental human rights, being a natural and inalienable right.

Article 25 of the Universal Declaration of Human Rights proclaims the right to an adequate standard of living which would ensure health and explicitly the access to medical care. Article 36 of the Constitution of the Republic of Moldova being dedicated to the right to the protection of health provides that the right to health protection is guaranteed and the minimum health insurance provided by the State shall be free of charge.

The current law of the Republic of Moldova establishes the responsibility of the State for protecting the citizens' health. Ensuring the right to health is mandatory by guaranteeing the access to medical care services by the equity and quality of these services for each citizen who requires them.

When speaking about medical care services, the patient is not only the person who suffers from a disease, but also the healthy person who benefits of medical care services which are offered to the citizens by the competent institutions.

The right to health is taped through the light of the international provisions, the accent being put on the rights of the patient, they being stipulated in the European Charter of Human Rights which includes 14 rights of the patient⁴⁶. In the Republic of Moldova, the rights and responsibilities of the patient are provided in Law no. 263 of 27.10.2005 on the patient rights and responsibilities.

According to the survey „Perceptions on human rights in the Republic of Moldova”, realized by the Ombudsman Office in 2016, 61% of the population from the country consider that the state does not ensure an equal access for all the citizens to qualitative medical care, also in the work it is identified that the right to health protection of some categories of persons as would be those with modest incomes and old people is not respected. The existence of informal payments in the medical institutions restrict significantly the access of the mentioned already categories of persons to medical care services, not depending on the fact that they have or not a medical insurance policy. The monitoring on respect of the right to health and access to medical care services was declared by the Ombudsman as one of its priorities for the next years.

⁴⁶ Right to preventive measures; accessibility; correct information; informed consent; free choice; respect of privacy and confidentiality; respect for the patient time; respect of quality, security and innovation standards; avoiding suffering and pain which are not justified; personalized treatment; right to manifest dissatisfaction; right to be compensated.

Although at the national level there is a regulatory framework for the protection of the patient rights, the Ombudsman has founded the necessity for its improvement. This is due to the fact that the identified legislative gaps represent a danger for ensuring the right to health for the citizens in the part which is related to the quality of standards while accessing medical care services.

Because of the fact that in the last period the on-line medical consultations (consultations, diagnostic and treatment prescription which are made through the information technologies) are the most requested, the Ombudsman has analyzed the regulatory framework regarding this aspect. It was founded that in comparison with other countries in the Republic of Moldova there is no a regulatory framework which could regulate online medical consultations. On the contrary, according to the article 17 of the Law no. 264 of 27.10.2005 on exercising the medical profession, the doctor is obliged to start the treatment only after a medical investigation realized by him/herself and in exceptional cases, emergencies to give indications about the treatment by means of telecommunications.

According to the international practices, legal framework which regulates the supply of online medical services, each doctor and patient signs a contract. The patient is informed about the benefices, risks and the limits of this method of consultation, about his/her rights and the doctor assumes the responsibility to do all is possible in these conditions, for the patient benefice. The contracts provide that both, the patients and the doctor are obliged to offer correct information and on time, to keep the confidentiality about the information. What about the communication and presentation of the information in digital form, they should be registered, logged and archived. The specialists in the medical ethics state that exercising telemedicine does not mean and professional independence, the doctors being responsible for the offered diagnostic, recommendations and treatment.

Thus, taking into consideration that online medical assistance intensifies, being already registered some cases which had bad results for the minor patients⁴⁷, the Ombudsman has proposed to the Parliamentary Commission, Committee for human rights and interethnic relations to initiate the process for elaborating a special law which will regulate the procedure of offering online medical assistance. The Ombudsman was informed that the proposal was submitted according to the competence to the Commission for social protection, health and family.

⁴⁷ <http://www.e-sanatate.md/News/5808/un-bebelus-din-chisinau-a-ajuns-la-reanimare-dupa-ce-ar-fi-urmat-un-tratament-indicat-la-telefon>

The problems from the field of health protection were identified in 40 petitions registered with the Ombudsman Office and frequently invoked within the hearings. Persons complaint about the disrespectful attitude of the medical staff toward the patients, fact which violates the human dignity, the right to be treated with respect, avoiding suffering and any inhuman treatment. The majority of the petitions referred to failure to provide medical assistance on time, insufficiency of the competent medical staff or its lack in villages; reduced access to emergency health services; failure to offer an adequate/personalized treatment for the patient, deficiencies in providing medical services which are provided by the Unique Program; inefficient examination of petitions by the responsible authorities from the field of health. Some petitioners were pleased with the quality of medical services or of their lack, sanitary-hygienic condition and inadequate equipment in the medical institutions.

A stringent matter which remained current in 2016 is related to the medical act ensuring. The Ombudsman founded out from the press about the cases the medical institutions use old medical equipment which is a danger for the health of patients. The problem was examined under the aspect of respecting the necessary conditions for the accreditation of the institution and conformity of the existent medical equipment in the sanitary institutions from Moldova.

According to Disposition no. 38-d of 29.01.2016 of the Ministry of Health which was adopted for the purpose of implementing the Order no. 1019 of 29.12.2015⁴⁸, of the Ministry of Health in the period February – April 2016, the medical equipment which at that moment were used in five medical institutions followed to be supposed to the process of periodic checking⁴⁹. The Ombudsman has founded some deficiencies in ensuring periodic checking of the medical equipment by the medical institutions. The expenditures for the realization of this procedure are incurred by the medical institutions which are obliged to plan the necessary financial resources in the annual budget of the institution. But the available financial resources are limited, and because of this reason first of all there are planned expenditures for the purchase of supplies. Also, the managers of the public medical sanitary institutions also have invoked some deficiencies while implementing the specified normative acts, as would be the insufficiency of time which is necessary for organizing checking by the representatives of the Conformity Assessment Body FCE„TRANS-STANDART” SRL. And this is because at the PMSI Republican Clinical Hospital the checking can be realized only on the day when there are made surgeries. We notice that FCE „TRANS-STANDART” SRL is the single profile institution

⁴⁸ Order no.1019 of 29.02.2015 on ensuring periodic checking of the medical equipment which is used in the medical institutions.

⁴⁹ PMSI Oncologic Institute; PMSI Republican Clinical Hospital; PMSI Municipal Clinical Hospital „Sfinta Treime”; PMSI Emergency Medicine Institute; PMSI Institute of Mother and Child.

⁵⁰ Order no.1399 of 09.12.2014 of the Ministry of Health.

which is currently accredited⁵⁰. Moreover, this institution is accredited for periodic checking of only 10 types of medical equipment, covering only 15% of the types of medical equipment which is used in the medical institutions from the country.

The Ombudsman has recommended to the Ministry of Health to examine carefully the factors which impede the effective realization of the process of metrological checking of the medical equipment which is used by the medical institutions and elaboration of legal regulations which will facilitate this process. Taking into consideration that the engagements of the Republic of Moldova established through the Association Agreement with the European Union, it is imposed the compliance with the regulatory framework from the field of the medical equipment, European and European principles and recommendations which are applied to this field, in order to ensure efficient operation of the health system by offering the citizens some secured and inoffensive medical equipment.

But not the least, a particular role in the improvement of the quality of services offered to population by the medical-sanitary and pharmaceutical units has the process of evaluation and accreditation of the public medical sanitary and pharmaceutical institutions. Organization and development of this process and elaboration of evaluation criteria and accreditation standards are under the responsibility of the National Council for Evaluation and Accreditation in Health⁵¹.

The Ombudsman considers imperative necessary the revision of current criteria for the evaluation of public medical sanitary institutions from human rights perspective. At the same time, it recommends to the Ministry of Health to include in the list of experts for the evaluation the specialists from the National Institutions for the Human Rights Protection and Promotion, which would facilitate this process.

A case which was widely publicized and drawn the attention of the Ombudsman highlighted the vicious mechanism of cooperation/collaboration of the emergency service with police and firemen service⁵² when a person died because the doctors of emergency service did not succeed to enter his/her house. The Ombudsman has recommended to the Ministry of Health to undertake measures for making more efficient the emergency services which are provided to the population. On May 20, 2016 the Ministry of Health and the Ministry of Internal Affairs have approved Order no. 369/145 on measures for improving the cooperation between these two

⁵¹ Decision of the Government of the Republic of Moldova no.526 of 29.04.2002 „On National Council of Evaluation and Accreditation in Health”,

⁵² <http://www.jurnal.md/ro/social/2016/2/2/avocatul-poporului-cazul-bastovoi-a-scos-in-evidenta-grave-lacune-ale-sistemului-de-asistenta-medicala-de-urgenta/>

authorities for preventing in the future the situations of violating rights of patients to emergency medical services.⁵³

Because of the multitude of signals/problems noticed by the Ombudsman⁵⁴ on the reduced access to emergency medical services, especially in the rural areas, in 2016 the Ombudsman in collaboration with PNUD and OHCHR, has realized the survey „Respecting Human rights while providing pre-hospital emergency medical services in the Republic of Moldova”.⁵⁵

The elaboration of the survey has a goal the evaluation of the situation on the degree of respect for human rights while providing pre-hospital emergency medical services and offering reliable data and recommendations for improving the activity of this service.

The results of this survey highlighted a series of problems which compromise the service activity, implicitly the effective realization of the access to qualitative and timely services for the patient. The problems identified from the discussions with the focus-groups which refer to: the insufficient correlation between the Service of pre-hospital emergency medical care with primary medical care; acute insufficiency of medical staff, especially in the rural areas; the doctor is not present in all the teams (doctor supply constitutes 44%); inadequate(difficult) labor conditions; insecurity at the working place, fact which demotivates the staff; insufficiency of ambulances which have all the necessary equipment; lack of the necessary medicines, especially in the first three months of every year; big distances traversed between the localities on roads which are in a deplorable condition, especially in the cold period of the year and on rainy days, the houses do not have numbers, the streets do not have names in the rural areas and the streets are not illuminated during night time.

According to data offered by the National Centre of Pre-Hospital Emergency Medical Service (NCPEMS), from those 355 existent cars used by the pre-hospital emergency medical service (PEMS) at the national level, 305 units have the attrition degree of more than 80%. And this is the situation when the specialized sanitary transport cannot be used within PEMS in the case when the coefficient of attrition exceeds 50%⁵⁶. In order to ensure the promptness of the emergency medical intervention there are necessary 455 emergencies on the whole territory of the country. At the same time, the majority of the existent ambulances do not have the necessary equipment, boxes are not available and the conditions for maintaining the ambulances the same fact which affects the PEMS service quality. Also, the inadequate equipment of ambulances

⁵³ <http://ms.gov.md/?q=legislatie/ordin-nr-369145-20052016-privire-masurile-imbunatatire-conlucrarii-dintre-ministerul>

⁵⁴ http://ombudsman.md/sites/default/files/document/attachments/report_2015_engl.pdf

⁵⁵ http://md.one.un.org/content/dam/unct/moldova/docs/pub/ro-raport_do_final_pentru_tipar.pdf

⁵⁶ Decision no.564 of 22.05.2006 of the Government of the Republic of Moldova for approval of the State Program on the Development of Emergency Medical Service for 2006-2010.

reduces the chance of the patient in a critical condition to survive, especially the lack of specific equipment (cardiology, neurological etc.).

Also, it was founded that in the last years it is observed the tendency to reduce service funding⁵⁷, despite of the fact that the necessities are increasing (attrition of the equipment and ambulances which were bought long time ago, reparation of old buildings etc.

In conclusion it was established that the actual situation of PEMS indicates a high degree of violation of human fundamental rights, especially the right to qualitative medical services access and the right to be respected the necessary time for emergency.

According to sounding data⁵⁸ which was realized within the mentioned above survey, the right to access is limited by the lack of possibilities to pay the expenditures which are related to the treatment, if necessary. Over 40% of respondents have declared that in the last 12 months before the survey there were cases when they have refused to require a treatment while being ill, because of its costs. The treatment was refused more frequent by the respondents with a reduced socio-economic level (the poorest people) 44% in comparison with 33% of the wealthiest people who have declared the same thing. Depending on the status of the respondent, the refuse to address for receiving treatment is through the persons with disability with 43,8% values of those who have declared refuse, at least partially, and through pensioners – with 41,3% answers like these.

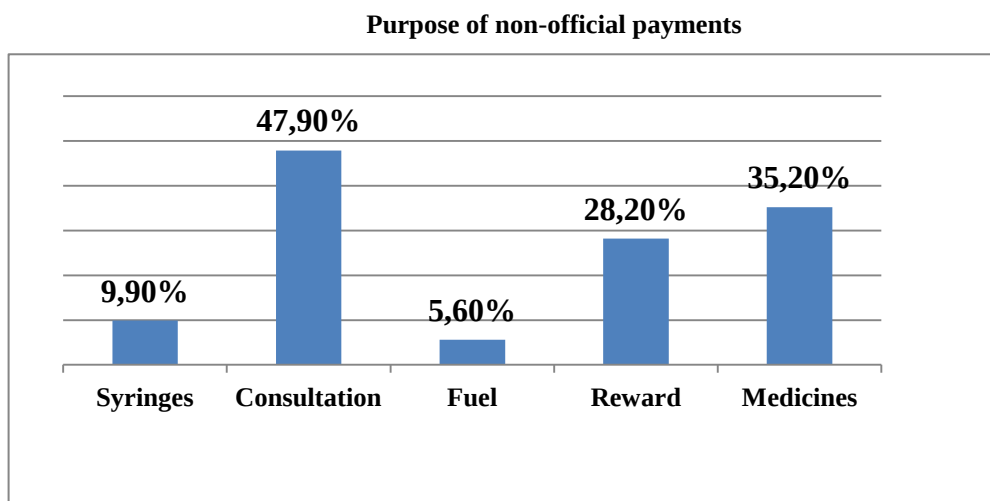
The Republic of Moldova passes a period marked by an increased level of complaints from the citizens toward the state and governmental institutions. Public Opinion Barometer⁵⁹ of April 2016 shows the lowest level of confidence in the main state institutions. Also, 84% of respondents are displeased for the state actions in the field of medical care.

The data of the realized sounding certify the fact that 6% constitute the incidence of corruption cases in medicine, in a great measure the non-official payments being paid upon the patient initiative (4,5%). More often these payments are made for rewarding the doctor for the consultation (47,9%) to which we should add those 28,2% cases of payments as rewards and after them according to values follow the payments for medicines (35,2%).

⁵⁷ 2008-9,26%; 2016-8,14%; necessity according to estimations of NCPEMS - 12,7%

⁵⁸ Sociologic sounding realized by CBS-AXA on the satisfaction of population, on national level, of a sample of 1225 respondents with aged 18+ years.

⁵⁹ http://ipp.md/public/files/Barometru/BOP_04.2016_prima_parte_finale-r.pdf



At the same time the survey of the World Bank” Poverty Assessment in the Republic of Moldova 2016. Poverty and shared Prosperity in Moldova: progresses and perspectives” emphasizes the fact that ” *the poorest segments of the population use at least the medical services and frequently renounce to treatment when need them, partially because of the lack of adequate insurance and other financial barriers which have a negative effect on the health results*”. Also, it is noted that ” *because the households are near the poverty line and they have a more precarious living, the payments even relatively low, incurred directly for medical services can push them into poverty*”.

RECOMMENDATIONS:

- Creation by the Ministry of Health an independent professional medical expertise body which will examine objectively the requests and claims of patients.
- Revision of the regulatory framework on periodic checking of medical equipment which are held and used by the medical institutions and adjusting it to the international standards.
- Revision by the National Council of Evaluation and Accreditation in Health of the criteria of evaluation and accreditation of medical sanitary institutions under the aspect of human rights respect.
- Revision of the mechanism of assigning funds for PEMS from CHIF budget, foreseeing the service real necessities.

- Elaboration of curriculum and initiation of initial and continuing training courses in the field of medical legislation and human rights for medical staff for respecting the rights of patients while realizing the medical act.

RIGHT TO A CLEAN ENVIRONMENT

The realization of fundamental human rights to life, physical and moral health is inconceivable without the existence of a clean environment. At the same time the maintenance of some favorable ecological conditions constitutes an important factor for the durable development which is based on economic, social and environmental objectives.

Ensuring a clean, wealthy and durable environment is an objective which continues to be important for the authorities of the Republic of Moldova, because in 2016 our country faced with serious problems in this field.

In the opinion of the Ombudsman, the most serious problems which need to be settled immediately are: *ensuring efficient management of water resources, storage and collection of waste and those from the field of forestry sector management, conservation and forest protection*. These matters are also included in the Environmental Strategy of the Republic of Moldova for 2014-2023: „*Insufficient management of solid waste leads to soil, air and water pollution; inadequate management of forests and irrational agricultural practices result in soil degradation and biodiversity losses; small rivers and wells are heavily polluted due to agricultural activities, obsolete sewage infrastructure, illegal storage of waste and manure*”...⁶⁰

UN Committee for Economic, Social and Cultural Rights declares that through the light of the human right to water, each person has the right to sufficient, safe, acceptable, accessible water from the physical and financial point of view, for personal use and for the household. These main attributes represent the base of water security.

As the Ombudsman has mentioned already, the availability of water resources in the Republic of Moldova represents a critical aspect which affect the capacity of economic development of the country.

The Ombudsman has mentioned the problem of the water quality and drinking water supply in the Alternative Report⁶¹ which was presented to the Council for Human Rights which revised the situation on human rights in the Republic of Moldova during the second cycle of the Universal Periodic Review on November 4, 2016. It should be mentioned that through the recommendations submitted for the Republic of Moldova as the consequence if this process there are also the recommendations on the water quality and drinking water supply.

⁶⁰ Environmental strategy for 2014-2023

⁶¹ http://ombudsman.md/sites/default/files/document/attachments/rom_raport_upr_0.pdf

The resources of water from the Republic of Moldova are sensible to climatic changes from the point of view of both the quantity and quality of water. According to some estimations, the available surface water resources will be reduced with 16-20% until 2020. This means that the assurance on water supply for all the users will be compromised in 2020, when the intensity of water usage will achieve a maximal peak⁶².

The situation about the drinking water which is provided to consumers from the Republic of Moldova continues to be critical. Although with the support of foreign donors there were undertaken measures for settling the problems of water supply and sewage, they weren't nor sufficient, nor efficient. Particularly it is imposed to be remarked the fact that water supply network was not built together with the sewage systems, fact which leads to environmental problems. Thus, the rate of population connection to centralized water supply systems is about 43%, being excluded Chisinau municipality, and only 21,4% of population benefit from centralized systems of waste water collection, and only 1,0% are from rural areas. Because of the lack of the of waste disposal systems and because of failure to respect the elementary measures for the protection of resources of water the situation about the quality of water has aggravated from about 84,2% of wells which are used as a source of water supply for about 75% of rural population.

The Ombudsman was notified by the population of Magura village, Falesti district who have invoked that during many years they do not have both drinking water and sewage. All the wells dried up and other resources of water they do not have. In these conditions they are forced to go long distances in the neighbor villages for water. The citizens have mentioned that they made appeal many times to the public local administration, but the problem is still unsettled.

In this situation, the Ombudsman has recommended to public local administration to initiate the procedure for elaborating the project documentation for being submitted to the National Ecological Fund for getting funding in the field of water supply and sewage system for their locality. Or, the National Ecological Fund finances projects for implementing strategies, programs and national plans for environment protection, standards and norms, for the construction and participation through shares to the construction of the objectives of environment protection, including funding the works of projection and implementation of projects in the field of water supply and sewage. The projects proposed for funding from the ecological funds are presented by the authorities of public local administration to the Ministry of Environment or to its territorial structures⁶³.

⁶² Water supply and sanitation strategy for 2014-2028

⁶³ Decision of the Government no. 988 of 21.09.1998 on the approval of the Regulation on environmental funds

The Ombudsman recommends to the authorities of public local administration to prepare the necessary project documentation for being submitted to the National Ecological Fund for getting funding in the field of water supply and sewage for rural localities.

Another problematic aspect is related to the lack or degradation of sewage networks. According to the conclusions of the specialists from the National Centre of Public Health, the quality of drinking water from the aqueducts is becoming worse in every year. It contains a higher level of microorganisms, fluorine and nitrates which does not correspond to chemical parameters.

In the localities from Anenii Noi district the water from the aqueducts does not correspond to the sanitary norms in proportion of 98%. In this area there are only two water treatment plants and 17 schools and kindergartens are supplied with bottled water.

The water from the aqueducts Glodeni, Causeni, Falesti, Rascani, Ialoveni, Stefan Voda, Taraclia and Orhei also does not correspond to the sanitary norms. The main causes are the lack of installations for water treatment and lack of areas of sanitary protection for aqueducts. According to the specialists from the field the most populated water id in the aqueducts from the villages, which does not correspond to the chemical and microbiological parameters in proportion of 53 % and respectively, 17 %?

In this context, the Ombudsman reminds that the Republic of Moldova was convicted in 2016⁶⁴ by the European Court of Human Rights for violating the art. 8 from the European Convention of Human Rights for the fact that the courts of law did not offered sufficient compensations for the reparation of the prejudice which was caused to health. The person concerned in this case was hospitalized after she/he consumed infected water from the tap, and the national courts did not offered her/him the requested compensations for the damages brought to his/her health.

The Ombudsman considers necessary: strengthening the efforts in order to extend the sewage network from the country, especially in the rural localities and construction of new aqueducts; making efficient the sectorial politics for supervising, managing and protecting water resources; systematic and coordinated monitoring the water quality at the national level.

Another actual subject is the protection of surface water resources, especially Nistru, Prut and Bac rivers, other small rivers and lakes. Transmission for water resources usage, without establishing rules for usage, without controlling as it is agreed their fulfillment, without guaranteeing the compensation of damages, facts which finally lead to continuing degradation

⁶⁴, Otgon case against the Republic of Moldova, Decision of October 25, 2016 (claim no. 22743/07)

both of infrastructure (dams, barrages, water offtake, pipe-lines, installations etc.) and wholly the water resources⁶⁵.

In the attention of the Ombudsman were many times cases of pollution of Bac river or some streams by some economic agents.

In 2016, the Ombudsman has observed ex officio on the information published in mass-media referring to ecological catastrophe on Bac River. According to information which appeared in press, the waste from poultry slaughterhouses of Floreni village, Anenii Noi district reached Bac River, because of a faulty pumping station. The Ombudsman has informed the State Ecological Inspectorate for being checked the lawfulness of actions of the economic agents and for identifying the degree in which the fundamental right to clean environment is respected, right which is guaranteed by the article 37 of the Constitution of the Republic of Moldova. The Ombudsman was further informed that the State Ecological Inspectorate notified the General Prosecutor's Office for initiating a criminal case for water and soil pollution, as the result of the irregularities admitted by ÎM GLC „Floreni service”, Floreni village. Also, the person from SRL „Avifor GV” with leading position was applied a fine of 7000 MDL issued a prescription to eliminate the identified shortcomings⁶⁶.

Speaking about the ecological situation from the Nistru basin river, the decision of the Government of Ukraine to build new six hydroelectric plants on Nistru river, placed above the hydroelectric plant from Novodnistrovsk arises concerns. And this is despite the fact that according to the opinion of the scientific community and NGO's from the field, Novodnistrovsk Hydroelectric Complex represents a real danger for the biodiversity and water resources of Nistru river. The result of the activity of the mentioned above complex there were reduced the capacity of water self-purification, because of the thermal regime deterioration, the volume of the accumulation reservoir from Dubasari and the potential for afferent areas recreation was reduced. The construction of six similar hydroelectric plants would have a catastrophic impact for the ecologic situation of Nistru river and would reduce our important drinking water resources, being given the fact that this is the main source of water supply for Chisinau and other localities from the country (*water supply of about 70% from the water necessities of Moldovans*).

In this context, the Ombudsman welcomes the decision adopted by the prime minister to create an inter ministry working group which will elaborate an Action Plan for remediating the situation of the hydrologic system of the Republic of Moldova and inventorying all the bilateral

⁶⁵ Environmental strategy for 2014-2023

⁶⁶ <http://ombudsman.md/ro/content/cazul-poluarii-riului-bic-urmare-scurgerii-deseurilor-de-la-abatoarele-fabricii-avicole>

and international documents on this matter, to which the Republic of Moldova and Ukraine make part, including on the association agreements of both states with the European Union and the commitments assumed under the ecological and investment aspect.

The Ombudsman considers important for the authorities to keep on agenda of its priorities this matter and to intensify the negotiation efforts with the Ukrainian part a collaboration agreement on operation of actual complex from Novodnestrovsk, which is managed by the Ukrainian part.

The Ombudsman also encourages the responsible authorities to insist further on requiring to Ukraine to organize transboundary consultations before starting the construction and to respect the provisions of Convention on the environmental impact in the transboundary context, signed and ratified by Moldova and Ukraine, provisions of the Protocol on the strategic environmental assessment (SEA).

A serious environmental problem in the Republic of Moldova is related to the waste management. The waste remains to be an important pollutant source for all the environmental components. However, in our country practically the infrastructure of waste management is absent and the method for managing the waste reduces to their mixed collection and storing them on a bare ground, at dumps. With small exceptions, the waste practically is not recycled and reused.

The most spread method for treating the household waste – storing on ground – represents an important source of soil and groundwater pollution. In this context, the sanitation of localities, management of urban and rural waste represents an important objective of public central and local authorities. Evacuation of waste to dumps remains to be a basic modality in eliminating waste.⁶⁷ An extremely serious situation at this chapter is attested in Chisinau municipality.

The Ombudsman observed ex officio on the mediatized subject on waste storing near Bubuieci commune. Once the waste storage on the polygon from Tintareni, Anenii Noi district (2010) was stopped, the waste is stored at the border of the capital according to the decision of Chisinau municipal council⁶⁸, which permitted to ME Regia “Autosalubritate” provisory use as an alternative of the plot with the surface of 8.93 ha on Uzinelor str. (transfer station).

During of more than 6 years, the problem of waste storage in Chisinau municipality was not settled and the impact was and is still felt mostly by the residents near the non-authorized

⁶⁷ Environmental strategy for 2014-2023.

⁶⁸ Decision no.11/22 of September 28, 2010 of Chisinau municipal council on assigning some plots to DG Housing and planning; Decision no. 14/23-1 of 02.12.2010 of Chisinau municipal council

dumps. The residents near the dumps complain the pathetic situation in which they are. The polluted water and air, insupportable smell make their living impossible.

The ministry of Environment has informed the Ombudsman upon request that after the ecologic controls made many times, there were founded infringements both, about the placement and arrangement of stores and correct management of waste which are prohibited for inhumation. At the same time, the responsible ministry has also informed the Ombudsman that the situation is unfavorable especially in the sector of the placement of observation point no. 9 on 171, Uzinelor str. Thus, the degree of air pollution, according to the evaluation of air quality indicators is appreciated as increased and high in this industrial sector. In 2016 the level of atmospheric air was high in April, June, July, August, September months and increased in the rest of months from the year. In 2016 the highest level of pollution was registered in August month, being caused by the increased concentrations of nitrogen dioxide.

The National Centre of Public Health (NCPH) has informed the Ombudsman that during 2010-2016 the specialists of the Centre of Public Health of Chisinau municipality investigated the quality of water from about 10-15% of those 66 public wells placed on the territory of Bubuieci commune. The results of quality water investigation from the wells placed in Bubuieci commune, Chisinau municipality denote high levels of non-conformity of water quality to sanitary-chemical parameters, including according to the content of nitrates and dry residue, the founded values enclosing in the limits of 80 - 100% (2014 - 100%; 2015 - 100%; 2016 - 80,09%).

Also, the NCPH has mentioned the general death rate of the population of Bubuieci commune during the period 2013–2015 has an increasing tendency from 6,8 (50 abs) in 2013 to 8,3 (58 abs) in 2015. It is attested an increase of the number of registered cases of persons with affections of the cardiovascular system from 1207 (976 abs) cases to 10 thousand in 2013 to 1403,3 (1159 abs) to 10 thousand in 2015. A similar situation is also identified in the case of morbidity of population because of malignancies: the number of persons affected of cancer has increased from 57 cases (771,2 to 100 thousand) in 2013, of about 84 cases (1019,0 to 100 thousand) in 2015. NCPH has mentioned that although it is not attested a direct influence of the polygon for solid household waste storage and composting on the health of population of Bubuieci commune, The State Supervision Service for Public Health recommends to stop the activity of accumulation and storage of solid household waste on the polygon from Bubuieci commune.

The Ombudsman considers that the problem of waste storage in Chisinau mun. does not support postponement and the responsible authorities for the environment and public local

authority of Chisinau mun. should undertake immediate measures for finding optimal solutions in this case. This subject follows to be in sight of the Ombudsman.

According to data offered by Moldsilva Agency, currently the national forest fund constitutes 12,7% of the territory of the country, the minimal rate in the European Union being of 40%. Most of the land covered by forests (87.2%) is state-owned, the rest being owned by municipalities (12.2%) and only 0.6% - by private owners⁶⁹.

The statistics offered by Moldsilva Agency are the evidence of the fact that the forest fund of the country is a reduced one, the Republic of Moldova being through the states of Europe with the smallest rate of forestation. It appears more questions about the phenomenon of massive land clearings of forests in the last years.

Approximatively four thousands of hectares of forests are cut annually from the wooded surface of the Republic of Moldova, partially by illegal land clearings. The reason for the illegal land clearings is getting unaccounted earnings which rich ten million euros. The declaration was made by the Minister of Environment within public debates⁷⁰. The Minister of Environment also has mentioned that in the Republic of Moldova the forest field costs approximatively ten million euros accounted and other ten million are earned from forest thefts.

Moreover, the Republic of Moldova with a minimal rate of forestation in the Europe arrived to export big quantities of lumber.

Mass-media has reported in the last year many cases of illicit land clearing and has drawn attention of the authorities on matters related to the protection of forest spaces.⁷¹ In the context, the Ombudsman approves the adoption by the Government of the Decision on stopping the export of wood, supporting the idea for instituting a long-term moratorium for the export of wood until the reestablishment of forest spaces and bringing them to minimal European rate.

Illegal land clearings took place and for other purposes than those of wood export. In 2016 there were registered cases in which the economic agents leased forests for the purpose of green space development, but they have disforested the leased surfaces and built an aquatic basin and two access roads⁷².

Another problem which is in the sight of Ombudsman is the construction of capital buildings in the wooded spaces. This happens even the Regulation on assigning land from the

⁶⁹ <http://www.moldsilva.gov.md/pageview.php?l=ro&idc=180&t=/Fondul-forestier-national/Resursele-forestiere>

⁷⁰ http://www.realitatea.md/in-moldova-anual-sunt-taiate-patru-mii-de-hectare-de-padure-zeci-de-milioane-de-lei-sunt-puse-ilegal-in-buzunar-video_35518.html

⁷¹ <http://www.ziarulnational.md/mafia-padurilor-din-r-moldova-jaful-din-codru/>

⁷² http://www.publika.md/perchezitii-la-intreprinderea-silvica-de-la-balti-intr-un-dosar-de-taiere-ilicita-a-padurilor_2814121.html#ixzz4a9f1NSsk

forest space for being used for the purposes of hunting and/or agreement⁷³ prohibits construction of capital buildings on the spaces of forest fund.

The Ombudsman approves operation of changes in 2016 of the Regulation on assigning land from the forest space for being used for the purposes of hunting and/or recreation⁷⁴. By the operated changes it is prohibited the transmission of the lease right for the purpose of recreation to other legal persons or individuals, irrespective of organizational-legal form in order to avoid the “sale” of forests by the concession of the rights of use. Equally important it was the increase of about five times the cost for forest rent, so that the cost for an area of one year for one hectare of forest area will constitute 19092,37 MDL.

According to the information offered by the Ministry of Environment the forests have suffered serious damages. In a bulletin distributed by the Ministry of Environment it is said that “the Republic of Moldova has lost from its management thousands of hectares of valuable forest, the majority of it being destroyed in barbaric anthropic interventions – construction of buildings with many floors, cellars, swimming pools, concrete fences, asphalted roads and even stadiums”⁷⁵. The same source specifies that between „Moldsilva” Agency and beneficiaries remain in force 650 rent contracts for a total area of 7000 hectares, but the process of termination by justice actions and by mutual consent of the parties – from those 842 contracts signed during the period 2008-2015, almost 200 were terminated.

The Ombudsman considers necessary the monitoring of the strict compliance with the interdictions imposed for the rent of forests and concession of the rent right of the forest areas to other persons and undertaking legal actions for bringing forests which are exclusively state-owned for the benefit of all citizens, undertaking necessary measures for extending forest areas.

⁷³ Decision no.187 of 20.02.2008, p.30.of the Government of the Republic of Moldova „For the approval of the Regulation on assigning land from the forest space for being used for the purposes of hunting and/or recreation”

⁷⁴ Decision no.770 of 17.06.2016 of the Government of the Republic of Moldova „for changing and completing the Regulation on the rent of the forests for hunting and/or recreation”

⁷⁵ <http://mediu.gov.md/index.php/serviciul-de-presa/noutati/2482-arenda-padurilor-a-fost-interzisa>

RECOMMENDATION:

- Making efficient the sectorial policies for supervising, managing and protecting the water resources, water quality monitoring on a national level, systematically and coordinated.
- Strengthening the efforts for extending the sewage networks of the country, especially in the rural localities together with the construction of new aqueducts.
- Consolidation of capacities of public local authorities to elaborate the project documentation for getting from the National Ecological Fund in the field of water supply and sewage system for their locality.
- Intensifying the efforts for realizing the control and evaluating the ecological situation from the Republic of Moldova from the point of view of waste management and acknowledging about it the population.
- Undertaking immediate measures for elaborating optimal solutions for the problem of waste storage from Chisinau mun.
- Monitoring of the strict compliance with the interdictions imposed for the rent of forests and concession of the rent right of the forest areas to other persons and undertaking legal actions for bringing forests which are exclusively state-owned for the benefit of all citizens, undertaking necessary measures for extending forest areas.
 - Promotion of ecological education for young generation at all levels, as component part of a modern educational system.

RIGHT TO VOTE AND RIGHT TO BE ELECTED

In 2016 in the Republic of Moldova were held the presidential elections. Although the national observers have identified that in the process of election and process of counting votes for the presidential elections in the Republic of Moldova of October 30, 2016 there were not committed infringements which could influence the results of elections so that they could be declared null, although there were reported incidents/deficiencies in this process. Most of them were related to the presence of advertising materials, placards, billboards on the territory near the polling stations (100 meters from the polling station) and unjustified presence of non-authorized persons at the polling stations or in the perimeter of 50 meters of the polling station and the organized transportation of the voters⁷⁶.

According to the findings of Election Observation,⁷⁷ on the election day 36% of the monitored polling stations were not accessible for the persons with special mobility needs (lack of ramp/slopes, the polling station was placed at the second floor etc.). Other 33% of the polling stations were not ensured with proper equipment for visually impaired persons with (at least one from the following elements was absent: insufficient illumination, magnifying glass, a ballot with large font etc.).

The Ombudsman referring to the deviations which were attested by the national and international observers in the second round of the presidential elections emphasized that it is not sufficient that the *stricto sensu* election process to contain rules adequate for the European electoral heritage: it should be guaranteed the credibility of the election process. Moreover, the voter has the right to a correct evaluation of the election results and the State is obliged to penalize any election fraud.⁷⁸

Also, some citizens were not satisfied the way in which was organized the election process in some polling stations from abroad. The representatives of the Moldovan diaspora from abroad could not exercise their right to vote because of the lack of ballots.

The Ombudsman has reported in taking attitude toward this problem⁷⁹ that those five fundamental principles which constitute the basis of the European electoral heritage are the universal, equal, free, secret and direct suffrage. Universal suffrage means that each human being has the right to vote and to be elected. The obligation of the State is to make efficient

⁷⁶ <https://promolex.md/wp-content/uploads/2016/11/Raport-5-ro-enectorala-2016.pdf>

⁷⁷ <https://promolex.md/wp-content/uploads/2016/11/Raport-5-ro-enectorala-2016.pdf>

⁷⁸ <http://ombudsman.md/ro/content/avocatul-poporului-mihail-cotorobai-se-arata-profund-deceptionat-de-modul-care-fost>

⁷⁹ www.ombudsman.md

permanently the voting procedure to ensure the exertion of this fundamental right without impediments. Voters should benefit permanently from the possibility to vote at polling station⁸⁰.

Taking into consideration the mass-media information and the conclusions of the national and international observers on impossibility of effective realization of the right to vote by many citizens who are abroad, the Ombudsman has opined that the authorities failed the realization of positive obligations to ensure the effective exertion by the Moldovans from diaspora of the right to vote. The State should foresee efficient mechanisms for the plenary realization of this right. the Ombudsman has encouraged the authorities to examine the possibility to modify and complete the electoral legislation for introducing the postal voting procedure or electronic voting system.

In 2016 in the attention of the Ombudsman was the subject on realization of the right to vote of persons who are deprived of legal capacity. In this sense, the Ombudsman has recommended the modification of the Election Code for the purpose to offer the right to vote for the persons lacking legal capacity⁸¹. Although the Republic of Moldova has ratified the UN Convention on the rights of persons with disability six years ago and it assumed the engagement to implement the provisions of this important treaty for all the persons with disability, we cannot speak about a significant evolution in ensuring the rights of persons with psychosocial/ mental disabilities.

In the situation they have been declared incapable, the persons with mental disabilities are deprived from the right to vote. The UN Committee on the rights of persons with disabilities emphasizes that for full realization of equal recognition of legal capacity in all the aspects of life it is important to be recognized legal capacity of persons with disabilities in public and political life. The capacity of the person who takes the decision cannot be used for justifying any exclusion of persons with disabilities from exertion of political rights, including the right to vote.

RECOMMENDATIONS:

- Ensuring implementation of recommendations on the accessibility to polling sections for persons with reduced mobility and providing suitable equipment for persons with visual disabilities.
- Undertaking necessary measures in the process of organization and conduct of elections, adjusting the regulatory framework for ensuring effective realization of the right to vote

⁸⁰ Code of Good Practice in Electoral Matters. Guidelines and Explanatory Report adopted by the Venice Commission

⁸¹ Parliament addressing no. 07-2/22 of 06.10.2016 submitted by the Ombudsman together with the members of the Council of experts for monitoring the implementation of UN Convention on the rights of persons with disabilities near the Ombudsman's Office.

by all the citizens of the Republic of Moldova, including those who are abroad.

FREEDOM OF ASSEMBLY

Freedom of assembly is a fundamental right which guarantees to each human being the possibility to peaceful assembly with other people, inclusively in a public space as would be central market from the locality, streets of the locality, parks and squares, etc.

Freedom of assembly is guaranteed by the International Covenant on civil and political rights, European Convention of Human Rights (art.11), Constitution of the Republic of Moldova (art.40) and Law no.26 of 22.02.2008 on Assemblies.

According to constitutional provisions meetings, demonstrations, manifestations, processions or any other assembly are free and may be organized and conducted only peacefully and without the use of any kind of weapon.

According to survey " Perceptions on the human rights in the Republic of Moldova", realized in the last year upon the request of Ombudsman's Office, about 34% of respondents consider that they feel free to sign petitions, claims and to participate to legal demonstrations/strikes. The smallest rate is the rate of persons who consider that the freedom to participate to actions for blocking streets to protest or to declare hunger strike (27,7%). At the same time, approximately 37% of respondents have declared that they do not feel at all free to participate at these actions.

LGBT Community has remarked that for them it is important to organize „LGBT march”, mentioning that in this way will be changed the perception of people on the rate of LGBT community in the society. However, some representatives of the community consider that these marches on the contrary make people to have a more negative attitude toward LGBT.

What about the frequency of the violation the right to assembly , it was identified that the rate of violation of this right is one from the lowest, constituting about 2,5%.

In 2016 there took place more protests in the country. According to statistics of the General Police Inspectorate in the first nine months of 2016 on the territory of the country there were organized and conducted 12735 social-politic, cultural and other types of assemblies and from them in Chisinau mun, were realized - 2749⁸²

Although 2016 year was marked by a big number of assemblies, the Ombudsman did not

⁸² https://promolex.md/wp-content/uploads/2016/12/web_RAPORT-DREPTUL-LA-INTRUNIRI.pdf

registered petitions on the so-called violation of freedom of assemblies in the reference period. However, taking into consideration the signals appeared in mass media⁸³ on participation of some persons from the psycho-neurological boarding-house from Badiceni, Soroca district at the mass meeting of January 13, 2016 for supporting a political party, the Ombudsman observed ex officio. According to the information which was reported in press, these persons were brought to mass meeting without being explained to them the character of the event they followed to participate.

The exposed facts have aroused the Ombudsman in the aspect of respecting the freedom to assembly of the beneficiaries of the boarding-house, especially their possibility to decide knowingly and willingly the participation to assembly. According to provisions of the article 7 of the Law no. 26 of 22.0.2008, on Assemblies no-one can be obliged to participate or to assist to an assembly.

No doubt that any person, including the person with mental disabilities is free to participate actively or to assist to an assembly. The concern about this case refers to the compliance with the principle of inalienable dignity, individual autonomy and independence of persons to make their own choices.

On this case the prosecution bodies were notified for organizing a checking who ordered not to initiate criminal investigation because of the lack of elements of crime in the actions of the employees of the institution. At the same time, after the intervention of the Ombudsman, the General Prosecutor Office has requested from the territorial prosecutors to ensure the corresponding investigation of each informed case about pretended actions of constraint or interference in any form in exercising freedom of assembly.

The actions of the employees of the boarding-house were examined also by the Ministry of Labor, Social Protection and Family, six of them being further disciplinary sanctioned.

Non-governmental organizations which have monitored the degree of exertion of freedom of assembly have founded a constant positive dynamics in realization of freedom of assemblies⁸⁴, if we would compare the number of violations reported to the number of assemblies.

Amnesty International Moldova has mentioned in an annual report that the protests from Chisinau and other regions of the country were generally conducted in a peaceful manner, except

⁸³ <http://www.zdg.md/stiri/stiri-sociale/12-pacienti-cu-deficiente-mentale-au-fost-adusi-la-mitingul-organizat-de-pd>

⁸⁴ Report of PROMO-LEX "Exercitarea dreptului la întrunirile pașnice versus managementul organizării întrunirilor publice. Retrospective anului 2016".

⁸⁵ <http://amnesty.md/ro/media/lansarea-raportului-anual-20162017-republica-moldova/>

some minor clashes between the protesters and police. Although the police have reacted generally moderate, occasionally it used unjustified force excess, including tear gas and batons.⁸⁵

At the same time, Promo-LEX Association mentions that the non-sanctioning problem and lack of police intervention being identified also by ECHR. Although the Governmental Agent has invoked before the Committee of Ministers the fact that the authorities organized many trainings and information of employees from the bodies responsible for keeping the public order during public assemblies, the police actions not always are consequent.

For instance, during the LGBT marsh of May 2016, the police employees made only observations against the aggressive protesters and they recommended to the organizer of the event to stop the protest and during an assembly of August 27, 2016 when a small group tried to pass the police cordon, the police employees used tear gas for dispersing the group without announcing in advance the participants to protest. The lack of a clear position toward the persons who violate deliberately the norms which regulate the conduct of assemblies lead to the perpetuation of infringements.

One of the problems notified by Promo-LEX is related to the examination of the regulatory framework on the liability of the representatives APL and APC for inaction and actions which brought damages the freedom of assembly, according to the findings of ECHR in Promo-LEX case and others against Moldova.

Currently, according to art. 23 of Law on assemblies, only the organizers and the participants to assembly are liable. In this context, the Ombudsman supports the proposal about the completion of the Law with express norms on the liability of authorities for the failure to keep public order.

RECOMMENDATIONS

- Examination of opportunity to operate modifications in the current regulatory framework for concretizing the liability of public authorities for the actions/inactions provided by the Law no. 26 of 22.02.2008 on Assemblies who prejudiced the freedom of assemblies.
- The Prosecution should ensure the proper intervention in the notified cases about supposed actions of constraint or infringements in any form while exercising the freedoms of assembly, and unjustified usage of special means.
- Consolidation of capacities of police bodies for ensuring public order when the assemblies are conducted, respecting the principle of proportionality while applying special means.

⁸⁵ <http://amnesty.md/ro/media/lansarea-raportului-anual-20162017-republica-moldova/>

FREEDOM OF PARTIES AND SOCIAL-POLITICAL ORGANIZATIONS

Article 41 paragraph (1) of the Constitution of the Republic of Moldova provides that: "*All citizens are free to associate in parties and other socio-political organizations. These organizations shall contribute to the definition and expression of the political will of citizens and take part in the election process, according to the law*".

According to article 1 paragraph (1) of the Law no. 294-XVI of 21.12.2007 on political parties, Political Parties are voluntary associations, with the status of a legal entity, of the

citizens of the Republic of Moldova who have the right to vote, who, due to their joint activities and according to the principle of free participation, contribute to the conception, expression and accomplishment of their political will.

Article 41 paragraph (1) of the Constitution of the Republic of Moldova and article 11 of the European Convention is applied to any form of association or group. These norms are seen as a guarantee of proper functioning of democracy and political parties are subject to the art. 11 of the European Convention.

On April 9, 2015, the Parliament adopted a series of modifications for the Law no. 294 on political parties, Election Code, Penal and Contravention Code according to which the funding system of political parties was modified from the exclusively private funding to a mixt system where the private funding is completed with funds from the state budget. Thus, the dispositions which regulate the allocations from the state budget followed to be applicable to the eligible parties for the first time on January 1, 2016. The legislative modifications brought concrete improvements for the existent legal framework, but speaking about reporting, transparency and supervision of political parties funding still were founded some gaps in practice while implementing of the provisions of this Law⁸⁶.

First of all, Law no. 294 on political parties imposes a series of requirements about the management and transparency of political parties. In the most of cases it was founded that the internal regulations and structure of political parties do not correspond to legal requirements. This situation is characteristic in great measure for the parties with limited financial and human resources, being attributed at the same time to the insufficiency of awareness or erroneous understanding of legal provisions.

Secondly, the legislation provides an accounting and control system which could protect political arena of the Republic of Moldova from the illegal funding, dependence of parties on a

⁸⁶ https://promolex.md/old/upload/publications/ro/doc_1459254428.pdf

limited number of donors or over-expenditures, financing practices and instruments of the political parties of the Republic of Moldova, voices of ordinary citizens. The accounting and control system is assured by the introduction of some limits about the received donations or the total amount of incomes which can be obtained by a party from private sources. The problem consists in the fact that the limits are established on very high levels, they hardly serve their goal. Thus, although the mutual checking and balance keeping system is well conceived, it should be consolidated by establishing some smaller limits for donations and generally for the incomes of the parties.

Thirdly, there are a series of provisions which are related to the transparency and control of political parties funding. In the situation in which these provisions are fulfilled by the parties, they will ensure the full transparency for the process of political parties funding. With all these, already on the stage of consultation of political parties, they showed a big reluctance toward the disclosure of financial record. Also, annual financial report of political parties was very irregular until now. From the registered political parties, only ten have presented their financial reports in 2013 and 18 in 2014. At the same time, the sanctions provided for non-compliance with the disclosure obligations are not sufficient harsh and cannot serve as an efficient discouragement factor.

RECOMMENDATIONS:

- Promotion of new regulations through the parties on the management and transparency of political funding;
- Rigorous checking exertion on the management and transparency of political financing;
- Tightening the sanctions provided for the non-compliance of provisions related to financial transparency of political parties.

RIGHT TO ESTABLISH AND TO AFFILIATE TO SYNDICATES

International treaties on fundamental human rights contain express references on the possibility to affiliate to syndicates⁸⁷.

⁸⁷ Universal Declaration of Human Rights (art. 20), International Covenant on civil and political rights (art. 22); International covenant on economic social and cultural rights (art. 8); European Convention on Human Rights (art. 11); Convention no. 87 of the International Labor Organization (ILO) Freedom of Association and Protection of the

For realizing their function for protecting their rights, according to provisions of the art. 42 of the Constitution, each employee has the right to establish and to affiliate to syndicates for protecting his/her rights. Syndicates are constituted and develop their activity in the conditions of law and these organizations contribute to the defense of professional, economic and social interests of the employees.

Assurance of the right of employees and employers to affiliation for protecting their rights and interests, including the right of employees to affiliate to syndicates and to be members of syndicates, and the right of employers to affiliate to patronages and to be members of the patronages is guaranteed and by the art. 5 of the Labor Code.

At the same time, the right of employees and employers to affiliation for protecting their rights and interests is consecrated by the Law of Syndicates or.1129-XIV of July 7, 2000 and Law on patronages no.976-XIV of May 11, 2000.

The right to affiliation is consecrated also in the art.11 of the European Convention which provides that any person has the right to freedom to peaceful assembly and freedom of affiliation, including the right to establish with others syndicates and to affiliate to syndicates for protecting his/her rights. The European Convention not just protects the right to establish syndicates, but it also supports implicitly syndicate activities of the members of such organizations, exercised for the purpose of protecting professional, economic, social and cultural interests, this means the possibility of some collective actions, from where results the right of these organizations to be consulted and listened by employers.

In its jurisprudence, pronouncing on practical valences of the individual syndical freedom, the European Court specified that the provision „any person has the right [...] to establish together with others a syndicate and to affiliate to syndicates for protecting his/her interests” of the art.11, paragraph. 1 of the Convention will be understood in the following way: an employee should have the possibility to choose the syndicate which he/she considers the most efficient for protecting his/her rights.

Also, the art.2 of the Convention no.87 on freedom to affiliate and protect the right to organization provides that the employees and employers without any difference have the right, without prior authorization to establish organizations upon their choice and to affiliate to these organizations with the single condition to respect their Articles of Associations.

In accordance with the provisions of the mentioned international documents is the article 5

of the European Social Charter (Revised) which guarantees the employees and employers the right to organize so that will be able to protect their economic and social interests.

On December 28, 2016 the Government has approved the draft bill on modification of article 42 of the Constitution of the Republic of Moldova. In the notice of this draft bill it is made reference to the fact that currently the Constitution of the Republic of Moldova divides the freedom to affiliation in two components: freedom to establish or affiliate to syndicates (art.42) and freedom of parties and other social-political organizations (art.41). For these reasons it was proposed to be modified the Constitution so that the art. 42 to be one which consecrates generally the right to affiliation, incorporating the right to affiliation to syndicates and patronages. At the same time it was proposed to be maintained the art. 41 of the Constitution, due to the fact that the affiliation in political parties involves some specific regulations.

The Constitutional Court also has expressed its point of view on the modification of the article 42 of the Constitution, mentioning the fact that *„this draft bill does not violate the limits of revision imposed by the constitutional dispositions of the art. 142, paragraph (2)⁸⁸ and can be submitted for examination to the Parliament”*. At the same time the Constitutional Court required the exclusion of paragraph (2) which provided the conditions on constraint of this right, because the provisions of the article 54 of the Constitution contain already the framework rules which regulate the cases of restriction of some fundamental rights or freedoms and the limits which can be brought.

The Ombudsman considers that the adoption of the draft bill for the modification of the article 42 of the Constitution should respect the limits imposed by the article 142 paragraph (2) of the Constitution, so that the proposed modifications to realize the proposed objective on strengthening and consolidating the mechanisms of human fundamental rights and freedoms protection, especially the right to assembly and affiliation.

RIGHT TO WORK AND LABOR PROTECTION

Right to work and labor protection is guaranteed by the article 43 of the Constitution of the Republic of Moldova. This right provides that: *„ every person shall enjoy the right to work, to freely choose his/her profession and workplace, to equitable and satisfactory working conditions, as well as to protection against unemployment. All employees shall have the right to so-cial protection of labor. The measures of protection shall bear upon labor safety and hygiene,*

⁸⁸ *„Any revision can be realized, if it has as the consequence the suppression of human fundamental rights of citizens or their organizations.”*

working conditions for women and young people, introduction of a minimum wage per economy, weekly rest and annual paid leave, as well as difficult working conditions and other specific situations. The length of the working week shall not exceed 40 hours. The right to hold labor bargaining and the binding nature of collective agreements is guaranteed”

According to survey „ Perceptions on the human rights in the Republic of Moldova”, the right to work and satisfactory working conditions is on the top of the most important and actual rights whose respect is required to be ensured by the state. According to 27% of respondents, this right is after the right to health, social protection and right to education, through the most important rights which are not respected.

Also about 1/3 of respondents (marks 7-10 of the Survey) consider that the access to information on the right to labor protection is relatively ensured in great measure and 8,5% - in a very great measure. At the same time most of respondents agree the fact that well-paid jobs can be founded with the help of relatives, friends or by paying bribery (about 80%), expressing their relatively agreement with the statements offered in the survey and about 50% have declared that they agree completely with them.

Simultaneously, about 1/3 of respondents do not agree the statements on ensuring the right to work and the fact that the employer ensures labor protection, and more than 10% consider that these rights are absolutely uninsured (completely not insured). Only 10% consider that these rights are ensured to a certain extent.

Both, the respondents of the group discussions and some experts are worried about the rate of envelope wages, phenomenon which further reflects on social security of persons. Although persons who are informal employed or who receive informal a part of their wage, at a great extent know this fact, however there were identified some situations when the employers declare that they pay all the contribution to the State, but in fact this thing does not happen. Thus, the persons find out about this thing when accessing some medical services or social benefits.

Also the number of petitions submitted for the Ombudsman at this chapter (74) has increased in 2016 if compared with last years (2015- 48 petitions, and in 2014 – 70 petitions).

As in the last years, at the chapter respect for the right to work and labor protection the problems remained actual: small wages, salary arrears, non-compliance of labor legislation, practice of some employers to press their employees for terminating the employment contract by submitting resignation or by mutual agreement of the parties, insufficient involvement of labor inspectors for examining the claims, unemployment.

In the situations in which persons pretend the violation of this right are parties of some

cases pending before the courts of law, they are required to go through legal procedural steps. Or the Ombudsman according to provisions of the art. 21 of Law no. 52 of 03.04.2014 on Ombudsman does not examine the claims which is in judicial procedure for investigation in the court of first instance, except those on actions and/or inactions of the judge. At the same time, the Ombudsman undertakes all efforts for settling the disputes amicable in the case when the parties involved in the disputes (employee and employer) express their availability and reach an agreement.

The problem about salary arrears is still actual in 2016, being necessary a more efficient involvement of the competent authorities. Although there were undertaken many measures for eliminating the salary arrears, according to the information offered by the National Confederation of the Syndicated from the Republic of Moldova, currently there are salary arrears of about 2-3 months. According to statistical data on December 1, 2016 the salary arrears constituted more than 200 million MDL. The biggest salary arrears are in the field of transport – more than 107 million MDL. There existed significant salary arrears in the field of industry – 45,7 million MDL, agriculture – 19,1 million MDL, and in constructions – about 10,5 million MDL.

According to data of sector-national trade-union centers the biggest salary arrears has the SE Calea Ferată a Moldovei where work about 10 thousand persons. According to the situation on February 5, 2017 the salary arrears constitute about 120 million MDL. The administration of the enterprise motivates the creation of salary arrears as the result of the shortage of funds which created because of the critical reduction of the volumes of rail freight and passengers transport.

The situation of employees at this enterprise was in the sight of the Ombudsman as the consequence of a collective addressing. According to the information presented on 03.10.2016, the salary arrears constituted 136 million MDL, with the retention of salaries of 3,5 – 4,5 months. Although the payment of salaries at SE Calea Ferată of Moldova a constituted the object of discussions with the competent authorities, including the Syndicates⁸⁹, the problem rested unsettled for a long time and this fact affects seriously the observance of human rights for the employees and their families. As a consequence, the Ombudsman has notified the Government for an efficient involvement in this case, proposing for this purpose to be convoked an extraordinary session for identifying the solutions and paying the salary arrears. The efficient involvement of the Government is absolutely necessary in situations like these.

⁸⁹ On December 14, 2016 it was organized a working session at the MLSPF where the Ombudsman was present, the goal of the session was identification of solutions in settling the situation of employees of CFM.

Also, according to information offered by Ministry of Labor, Social Protection and Family it was identified the fact that during the year of 2016 the employees of the SE Calea Ferată a Moldovei were ensured with individual equipment of protection in proportion of only 27% of the necessary volume. Non-insurance of employees with individual equipment of protection can cause both professional diseases and working accidents.

It is unanimous recognized the fact that for the majority of persons the work is the single and the most important source of income and existence, implicitly for ensuring with pensions when being old. Thus, the right to work is and will be further supposed permanently to some profound changes which are related to the processes which take place in the social-economical life of the country. That is why the regulation of labor relation should remain through the priorities of the state policies.

The amount of the minimum salary in the country of 1000 MDL⁹⁰, represents only 52% of the subsistence minimum of the population capable of gainful employment which constituted in the 1st quarter of 2016 - 1926 MDL⁹¹. The minimum salary in the country was not modified from 01.10.2014, but the consumer price index in the period October 2014-November 2016 was 121%.

A very important element which characterizes the quality of the labor force is the cost of labor force or the motivation degree of the work of employees. The existent possibilities for motivating the work do not stimulate the labor force, the level of salary in the majority of sectors of economy resting on a reduced degree, fact which does not represent the warranty of a life without poverty.

UN Committee for Economic, Social and Cultural Rights has recommended to the state to intensify its efforts for ensuring a national minimal salary sufficient for ensuring an adequate living standard for the employees and their families⁹². Another recommendation of the Committee refers to the institution of a mechanism for determining and adjusting in a regular way the minimal salary proportionally to the living cost.

Unemployment and employment of youngsters are the problems which are also actual in 2016.

Analyzing the situation of the labor market for the last years we identify that the indicators in this field did not support significant changes in 2016, registering a non-essential decrease.

⁹⁰ Decision of the Government of the Republic of Moldova no.550 of 09.07.2014 on establishing the amount of the minimal salary in the country.

⁹¹ Data of the National Bureau of Statistics.

⁹² Committee for Economic, Social and Cultural Rights, session 46, Geneva, May 02-20, 2011.

Labor force, employment and unemployment

	2014	2015	2016 (3 rd quarter)
Employment rate of population more than 15 years, %	44,2	45,2	43,5
Number of unemployed persons, <i>thousand persons</i>	43,9	44,0	38,7
Unemployment rate, %	3,3	3,3	2,9

Source: Data of the National Bureau of Statistics

Unemployment rate in the country has insignificantly deviated in comparison with 2015 year, men - 3,4% women - 2,4%. There were registered disparities between the rates of urban and rural unemployment (4,3% and, respectively, 1,8%).

Although it is registered a reduction of the unemployment rate through the young people in comparison with previous years, the value of this indicator still remains high.

Unemployment rate through young persons

	15-24 years old	15-29 years old
2014	9,5%	7,2%
2015	10,7%	7,2%
2016 (3 rd quarter)	8,9%.	5,7%.

Source: Data of the National Bureau of Statistics

According to data presented by the National Bureau of Statistics, **the inactive population** of 15 years and more represented 55,2% of the total population of the same category of age, without significant changes in comparison with the 3rd quarter of 2015 (54,8%). From the point of view of the relation with the labor market, within the inactive population there are distinguished two important categories: discouraged persons and persons who were declared by households that are abroad for looking a job. The persons discouraged about not finding a wanted job constituted about 9,3 thousand – in comparison with 6,0 thousand in the 3rd quarter of 2015. The number of persons who were declared by household that are abroad for looking a job,

according to estimations, about 347,0 thousand persons – in comparison with 328,9 thousand in the 3rd quarter of 2015. More than two thirds from the number of those who are declared to be abroad constituted men (68,2%), the same the persons who moved from the rural localities (70,2%).

According to data of the Report elaborated by the experts of the World Bank ” Poverty Assessment in the Republic of Moldova 2016”⁹³, there is a lack of opportunities to be employed in the non-agricultural sectors, especially in the rural areas. Although the majority of population lives in the rural space, the most production activities and investments are in those two big cities, Balti and Chisinau. The concentration of economic development in the capital could serve for perpetuating the competitive gap between the companies from the capital and the companies from other countries and it presents a constraint on the development of the economic non-agricultural activities outside the big cities. The lack of economic diversification in rural areas in combination with the limited access to working places in urban areas have led to two important tendencies. One of them is the high and increasing rate of migration in rural areas. The migration of young people from the rural areas is very worrying. About 23,6 % of young people with the age between 15-24 years old from the rural areas work abroad in comparison with only 15,7% in the national economy, fact which indicates a lack of attractive opportunities of employment through youngsters from the rural areas.

Taking into account all these facts, it is imposed the necessity to be undertaken long-term measures. The actions which will be undertaken should be related to the development of business environment, trainings for employees and young persons who graduate high education, creation of some branches or sub-branches in the economy of the Republic of Moldova and others.

Earnings from the salary activity still remain the most important income source, 41,1% of the total available incomes. At the same time, money transfers from abroad remain to be an important source for the budget of households. On the average, they represent 18,1% of the total incomes, and their contribution is with 1,8 percentage points bigger than the same period of 2015 year.

The official data emphasize the fact that in the 2nd quarter of 2016 the earnings of population constituted on the average monthly per person 2030,4 MDL. In real terms (adjusting to the consumer price index), the earning of population have registered a reduction of 5,8%⁹⁴.

⁹³ Documents.worldbank.org/curated/en/715861467989513808/pdf/105722-WP-P151472-PUBLIC-ROMANIAN-Moldova-Poverty-Assessment-2016.pdf

⁹⁴ Consumer price index in the 2nd quarter of 2016 in comparison with the 2nd quarter of 2015, constituted 107,9%.

RECOMMENDATIONS:

- Strengthening the state efforts for guaranteeing a national minimal salary, sufficient for ensuring of an adequate living standard for the employees and their families. Institution of a mechanism for determining and adjusting in a regular way the minimal salary proportionally to the minimum income for existence.
- Adoption and promotion of some active measures for stimulating the employment of youngers, stimulation of the entrepreneurial spirit and creating attractive jobs.
- Efficient intervention of the Government in identifying solutions for ensuring payment of salaries of the employees of SE Calea Ferată a Moldovei.

RIGHT TO STRIKE

The strike is an extreme protest action of employees of an economical organization or an institution, mainly manifested by stopping the activity.

In 2016 the Ombudsman was not notified through claims in would have been claimed the violation of this right.

In the Republic of Moldova the right to strike has a constitutional consecration. Thus, the article 45 of the Constitution provides that the right to strike is recognized. Strikes can be launched only for the purpose of defense of professional interests with economic and social character of the employees.

In the International Covenant on Economic, social and Cultural Rights, art. 8 the right to strike is proclaimed with specification which substantially amends it “it should be exercised in conformity with the laws of the particular country”.

An important document of the European Council, European Social Charter (revised) of 03.05.1996, states that "the right of employees and employers to collective actions, in the situation of interest conflict, including the right to strike, under the reserve of the obligations which could result from current collective conventions".⁹⁵

Thus, the right to strike is in the concept of the Council of Europe, a mean for ensuring collective negotiation.

According to Labor Code of the Republic of Moldova⁹⁶, the strike represents the voluntary refuse of employees to fulfill totally or partially their work obligations for the purpose to settle the collective labor conflict launched according to in force law. From the sense of the above norm it is deducted the possibility of the employee to launch or not the strike in the case some of his/her right were violated and it cannot be organized for political purposes. Whence derives the obligation of employees not to focus on political criteria when participate to strike, this norm being imperative, derogation from it leads to application of some disciplinary, material, administrative and penal sanctions in correspondence with the in force law.

Article 362, paragraph 3 provides the fact that the strike can be declared in prior were exhausted all the methods for settling the collective labor conflict within the conciliation procedure provided by the Labor Code.

Thus, from the provisions of this norm we can deduce the fact that before launching a strike, the employees should pass a prior stage for settling the conflicts called „conciliation procedure”, which is regulated by the Labor Code. But the legislator does not provide what happens in the case in which the conciliation procedure did not take place, or it represents from the point of view of the Ombudsman a legislative gap.

Another problem which was notified by the Ombudsman constitutes restriction in absolute terms through the provisions of the art. 369, paragraph (2) of the Labor Code, right to participate to strike of many categories of employees as: medical-sanitary staff of hospitals and emergency services; employees of the energy and water supply services; employees of the telecommunication system; employees of air traffic control services; persons with leading positions within the public central authorities; employees of bodies which ensure public order, rule of law and state security; judges of the courts of law; employees of the military units, organizations or institutions of the Armed Forces; employees of the units with continuous flow; employees of units which produce production for the needs for protecting the country.

⁹⁵ Article 6 of the European Council, European Social Charter (revised) of 03.05.1996, partially ratified by the Republic of Moldova through [Law no.484-XV of 28.09.2001](#).

⁹⁶ Art.362 (strike declaring), Labor Code of the Republic of Moldova no.154 of 28.03.2003.

In this context, the European Committee for social rights in its report and conclusions for 2014 has mentioned that the legislation of the Republic of Moldova on the interdiction to participate to strike to some categories of employees contravene to the provisions of the article 6 paragraph (4) of the European Social Charter (revised).

Through the invoked reasons in this sense there are indicated the following aspects:: restriction of the right to strike for the public authorities and employees of the public administration, state security sector and national defense; prohibition of the right to strike for the employees of energy and water supply service, telecommunications and air traffic control; it is not established the fact if the restrictions on the right to strike of employees of customs authorities correspond to the conditions provided by the Charter; restrictions imposed to employees, which are related to strike for the purpose to protect the installations and equipment of the enterprise and for ensuring their continuous functioning.

The European Committee for Social Rights considers that the reported aspects do not correspond to the provisions of the article G of the Charter⁹⁷.

RIGHT TO PRIVATE PROPERTY AND ITS PROTECTION

According to principles specified in articles 9, 46 and 127 of the Constitution, the State protects the property and guarantees the realization of the property right in the form required by the owner, if they do not contravene the interests of society. In essence, it represents the right of person to be respected his/her movable and immovable goods.⁹⁸

The European Convention of Human Rights guarantees the right to property, because the individual right to hold his/her goods constitutes a traditional fundamental element of the property right. in order to correspond to the provisions of ECHR, the deprivation of property should have the goal of public utility and respect the conditions provided by law and general principles of the international law.

In this context as a „good” protected by the art. 46 of the Constitution and by the article 1 of the Protocol no. 1 of the European Convention for Human Rights, any element of the patrimony of person which has economic value can be recognized. At the same time, article 1 of

⁹⁷ 1) Rights and principles enumerated in the 1st part, when will be effectively applied and the effective exertion of these rights and principles, as it is provided in the 2nd part, will not be able to be the subject of some restrictions or limitations not specified in the 1st and 2nd parts, except those prescribed by law which are necessary in a democratic society for guaranteeing the respect for others rights and freedoms or to protect public order, national security, public health or good manners.

2) Restrictions permitted by the virtue of this Charter and the recognized obligations in it can be applied only for the purpose for which they were provided.

⁹⁸ HCC no. 19 of October 18, 2011

the Protocol no. 1 of the European Convention consecrates the right to respect for property. Concomitantly the private property consecrates the right of owner to possess, use and hold a good exclusively, absolutely and perpetually, in the limits established by law.

In the reference period, the Ombudsman's Office has registered 49 claims in which it was claimed the violation of the right to property, their number being considerably smaller than in the last years, and namely: in 2015 – 80 claims and in 2014 – 148 claims.

Through the problems invoked in the context of the respect for property it is identified those which are related to the engineering networks which are installed in the attic process.

Another problem is related to the actions of some public authorities the result of which obviously was the violation of the right to property of person and the authority did not intervene for instating the person in his/her rights only by the intervention of the Ombudsman.

In the same context, after the examination of a collective claim it was identified the violation of the right to privatization of held living spaces with the status of dormitory which were under the management of the Ministry of Internal Affairs. Despite of the fact that by the decision of the Locative Commission of the National Army of 2011, it was offered the right for privatization of these housings, the roomers couldn't realize their right for privatization. Currently, the Ministry of Defense justifies the refuse for offering the privatization authorization making reference to the provisions of art. 5 and 17 of Law no. 1324⁹⁹, and Law no.75 of 30.04.2015¹⁰⁰ on housing, Art.25 paragraph (3) of Law on housing: dormitories belong to legal, public and private law persons and they cannot alienated in the case they were built or bought from the state budget resources or of local budgets.

Another problematic aspect which was invoked in the addressing for the Ombudsman in the context of efficient realization of the right to private property is related to the correct and prior compensation in the case on the estate demolition. Since 1993, as the consequence of the living house demolition, the owner should be given an apartment in the building which was constructed. In the meantime the building was constructed, but the family did not receive the apartment under the decision of 1993 being made reference to the Regulation on the modality for the distribution of apartments for the socio-economic vulnerable groups.

In this year, the Ombudsman has submitted a proposal for changing the Law no. 1530-XV of 12.12.2002 and Decision of the Government of the Republic of Moldova no. 179 of 12.02.2003 on the indexation of cash deposits of citizens in the Banca de Economii.

Thus, from the moment the mentioned provisions were adopted have already passed 13 years and the degree of inflation has increased with 1,5 times. Money supposed to indexation lost

⁹⁹ Law on privatization of housing fund no. 1324-XII of 10.03.1993.

¹⁰⁰ Entered into force on 29.11.2015.

their value and the citizens who have received the indexed amounts in 2003 -2006 were privileged if compared with those who receive money now or if compared with those who will receive money later. We have founded that the Ministry of Finances who have received for examination the claim of a petitioner refused the initiation of the procedure for changing the nominalized normative acts motivating this by the lack of additional financial resources necessary for increasing the expenditures destined for indexation.

At the same time, according to data of the National Bureau of Statistics the inflation rate for March 2003 – April 2016 constituted 191,8%. Thus, it is obvious the fact that the indexation under this law needs to be revised being taken into consideration the inflation rate.

In its jurisprudence the European Court stated that art. 1 of the Additional Protocol no. 1 of the Convention contains three distinct norms. The first one is general and it enunciates the principle of property respect, the second vises the deprivation of the property according to particular conditions, and the third recognizes the power of states to regulate the usage of goods in correspondence with the general interest, adopting laws which it considers necessary in this sense¹⁰¹.

At the same time if a state has instituted an interference to the property right , however it will be compatible with the European Convention, if the interference is provided by law, follows a goal which will serve to the general interest and it is proportionally to the intended goal¹⁰².

Also, we withheld the jurisprudence of the European Court which provides that art. 1 of the Protocol no. 1 does not recognizes the right to become the owner of a good, being applied only toward the actual goods (*case Lupuleț vs. Romania*), and it does not guarantee the right to acquire a particular good (*caser Linde vs. Sweden*).

In the Ombudsman opinion and in the context of the exposed facts, indexation under this law violates the right to private property of depositors of Banca de Economii.

¹⁰¹ Sporrong and Lönnerot vs Suedia, September 23, 1982.

¹⁰² Megadat.com SRL v Moldova, April 8, 2008.

RIGHT TO SOCIAL PROTECTION

Social protection represents ensemble of economic, social politic and legal measures undertaken by the state for ensuring the process of formation and development of human personality, designated to neutralize the negative factors which influence the personality and to create favorable conditions for the affirmation of the person.

Data of survey” Perceptions on human rights in the Republic of Moldova”, realized in 2016 upon request of the Ombudsman’s Office show the fact that the right to social protection is systematically violated because of the reduced level of pensions, social aids, salaries and compensations. According to survey results, the right to social protection of population, assessed through the light of monetary incomes is ensured at small or very small extent, opinion expressed by 80% and respectively, 90% of respondents. But the worst is assessed the level which is ensure by the increase of pensions which registered about 90% of answers, followed by the size of the social aid with 88%.

According to the population opinion the persons with physical or socio-social disabilities are insufficiently protected, the rate of those who consider this way is of about 72,7% of respondents.

Generally, the observance of human rights in the state institutions of social-vulnerable persons (hospitalized, asylums of old persons, shelters etc.) is considered ensured in a small extent. About 55% of respondents appreciated with mark 1-4 (10 being the maximal) the answer to this question, and 20% of respondents consider that the observance of human rights in this context is generally not ensured.

As a confirmation for the facts identified within the mentioned survey is the big number of claims addressed to Ombudsman about problems related to the field of social protection and addressing while hearing the persons. In 2016 the claims at this chapter (133) as in the last years occupied the third place of the top of appeals to the institution. Moreover, it is attested an increase of the rate of appeals to this chapter in comparison with previous years, the addressed subjects practically being the same. The conclusion which is imposed is that the authorities did not elaborate solutions for ensuring a decent standard of living for each person, as the Constitution provides in the article 47. People are still unpleased with the reduced level of incomes, social benefits which do not cover even the minimum income for existence; pension system; modality foe offering social aid/ aid for the cold period of the year and other social benefits. The population is not sufficiently informed on the facilities offered for social vulnerable groups, existent social services and the public local authorities, including the social assistants,

are not sufficiently involved in the settlement of problems of families with increased risk of vulnerability etc.

Ensuring a decent living for any person, implicitly for the social-vulnerable groups still remains a challenge for public authorities on the background of the increase of prices and tariffs for consumer goods and services of first need, fact which aggravates more the situation of the population. In this sense there are imposed consolidated efforts of authorities for the identification in short time the efficient mechanisms for supporting the population for overrunning the crisis situation and the revision of the regulatory framework and the mechanisms for adjusting the amount of minimal salary, minimal pension, social benefits to the minimum income of existence.

According to data of the National Bureau of Statistics in December 2016 the annual inflation (for the last 12 months starting with December 2015 until December 2016) **constituted 2,4%**, inclusively for: food goods – 2,8%, non-food goods – 3,2% and services provided for population – 0,5%.

**Evolution of prices and tariffs for consumer goods and services in the period
2014-2016**

Goods and services	December 2016, in % in comparison with:	December 2015, in % in comparison with:	December 2014, in % in comparison with:
	December 2015	December 2014	December 2013
TOTAL	2,4	13,6	4,7
Food goods	2,8	14,3	5,1
Bread	1,7	9,4	1,9
Vegetables	-7,0	49,1	13,3
Fruits	8,4	33,9	19,7
Meat, meat products and preserves	0,6	1,9	2,2
Milk and dairy products	2,1	6,9	6,2
Sugar	10,1	19,2	-11,9
Eggs	16,5	7,1	13,6
Seed oil	6,4	21,4	-7,2
Nonfood goods	3,2	14,1	6,5
Confections	4,9	14,2	5,6
Footwear	9,4	12,2	6,2
Medicines	-1,2	20,0	5,6

Fuel	1,6	3,2	6,4
Construction materials	1,4	10,7	5,4
Services	0,5	11,3	1,6
Housing services	-4,9	17,5	0,8
Drinking water and sewage	1,3	13,5	0,0
Electricity	-9,9	34,5	0,0
Gas network	-10,1	9,7	0,0
Centralized heating	7,1	0,0	0,0
Passenger Transport	0,4	2,5	0,9
Public food service	4,6	11,7	5,6

Source: National Bureau of Statistics

According to data of the National Bureau of Statistics, in the third quarter of 2016, *the available incomes* of population constituted on average per person 2080,5 lei per month and the *monthly average consumption spending* of population were on average of 2200,1 MDL per person. At the same time, according to the same survey, the average monthly minimum income of existence per person constituted 1813,7 MDL.

Official data show the fact that the amount of the established average monthly pension (1278,8 MDL) covers only 83,9% of the average value of the minimum income of existence for pensioners, established in the 1st quarter 2016 (1523,6 MDL). Although, the data show an increase of this rate in the last years (78%-in 2014; 81%-in 2015 and 83,9% - in 2016), anyway the average pension does not reach the minimum income of existence established for pensioners.

Also, data of the National House of Social Insurance show the fact that the amount of pension for 78,8% of the beneficiaries of pensions is under the minimum income established for pensioners.

Pension type	Total number of pension beneficiaries (persons)	From which:	Rate of pension beneficiaries from the total number of pension beneficiaries by the respective category, (%)
		Pension beneficiaries whose amount of pension is under the minimum income of existence established for pensioners* (amount of about 1523,60 MDL), (persons)	
TOTAL Pensions	691212	544778	78,8
<i>Inclusively:</i>			
Pensions for the age limit	531801	411184	77,3
Pensions for disability	132920	118316	89,0
Survivor's pension	14242	13856	97,3
Pensions for the accumulated service	71	71	100,0
Pensions for some categories of employees of the civil aviation	617	18	2,9
Pensions for public servants	7323	413	5,6
Pensions for deputies	271	0	0,0
Pensions for local elected officials	719	0	0,0
Pensions for the Government members	69	0	0,0
Pensions for customs employees	13	0	0,0
Pensions for judges	264	0	0,0
Pensions for prosecutors	238	0	0,0
Pensions for the participants to the liquidation of the Chernobyl accident	1857	124	6,7
Pensions for conscripts	781	776	99,4
Pensions for some employees from the field of culture	26	20	76,9

We remind in the context the recommendation of the UN Committee for Economic, Social and Cultural Rights for the authorities from our country to ensure the increase of pensions so that this could permit an adequate standard of living and as a first step to be brought to the minimum income of existence.

The Ombudsman draws attention and about the fact that the minimum salary in the country of 1000 MDL per month which was established beginning with October 01, 2014 does

not cover the minimum income of existence established for an old person fit for work of the average amount of 1926 MDL. The coverage rate in this situation constitutes about 52%.

In the report „Poverty assessment in the Republic of Moldova in 2016”, the experts of the World Bank mention the fact that *„there exists concerns on the sustainability of previous realizations, while the poor persons and the poorest 40% are straitened for the capital necessary for advancing. Slowly increase of the agricultural sector and limited access to markets, non-agricultural working places and modern services mean that the persons from the rural areas are persistently poorer. The degree of coverage with heating, water supply and sewerage is limited through the population from rural areas (through the poor persons and the poorest persons 40% of population).”*

In the document there is said that the maintenance of progresses in relation to the reduction of poverty and shared prosperity faces enormous risks because of the long-term fiscal pressures and increased volatility in economy. Determined by the reduction of fertility and acceleration of migration of young people, the population of Moldova decreases and rapidly becomes old. Combined with a reduced participation of labor force, the basis of the contribution system will be contracted, undermining the durability of the system and reducing the coverage with pensions of pensioners. Although the pensions were not generous and many times insufficient for preventing that more old persons to become poor – the poverty rate through old persons is bigger than the population average, so that their potential contraction can jeopardize the economic security of old persons.

In 2016, by the Law no. 290 of 16.12.2016 on amendment and completion of some legislative acts there were introduced amendments in the Law no. 156 of 14.10.1998 on public system of pensions. The draft bill no. 290 was not transmitted to the Ombudsman’s Office for being examined through the light of the standards from the field of human rights.

At the same time, the National Confederation of Syndicates from the Republic of Moldova has addressed to the Ombudsman with a request in which there are invoked a series of problems related to this field.

In this context, the Ombudsman will investigate the required subjects and will express on their correspondence through the light of human rights.

Referring to social assistance in 2016 there were registered claims on non-accordance of “Personal Assistance” service to persons who should benefit from this service according to in force law. The Ombudsman considered inadmissible postponement by the structures of social assistance and family protection of the process of admission for this (about 2 years) of a single person with impaired vision (absolutely blind).

Or the goal of this service consists in favoring independence and integration of persons with disabilities in the society, and prevention of marginalization and their social exclusion. The investigation of a concrete case highlighted another problematic aspect. It was founded the fact that the persons with disabilities are not registered according to disaggregated data by categories, types of disabilities etc., so that to be realized effectively the adoption and realization of local strategy, programs of social assistance for supporting the persons and disadvantaged families.

In this process there are very important the monitoring and coordination of the activity of the staff from the system of social assistance together with the territorial structure of social assistance, actions which are realized very bad. Collaboration of social assistants with the territorial structure of social assistance resumes to the expedition of the social investigation of person without being followed what decision was taken for intervening if necessary with other temporary measures/ social services depending on the situations of increased risk.

And in the reference year the citizens manifested their dissatisfaction toward the modality for offering the social aid/ aid for the cold period of the year. In the process of investigation of some cases it was identified that frequently the applicants are not informed about the taken decision on offering or not offering social aid/aid for the cold period of the year, the reasons which serve as the basis of this decision and the modality for contesting it.

In the context of those reported facts the Ombudsman urges the competent authorities to undertake all efforts for monitoring this field and identifying efficient solutions for each separate case.

The Ombudsman appreciates the completion of Labor Code with art. 124¹, which establishes the right to a paternal leave of 14 calendar days and the right to a paternal compensation paid from the social insurance code. The paternal leave offers the possibility for parents to offer the necessary care for the new-born child, fact which constitutes a benefice from which should benefit the child. At the same time, it is very important that the authorities to ensure the application on term of the legal provisions. Or the late adoption of the mechanism of implementation has provoked dissatisfactions through the beneficiaries. The Ombudsman was notified by some fathers who although have benefited from paternal leave, once the provisions of law entered into force they could not benefit from the established compensation. The Regulation on the establishing conditions, the modality of calculation and payment of paternal compensation was adopted only in November month (after about 6 months after the law entered into force).

RECOMMENDATIONS:

- Ratification of the Additional Protocol to the International Covenant on Economic, Social and Cultural Rights.
- Revision of the indexation mechanisms/ compensation of incomes of population generated by the increase of prices and tariffs for consumption goods and services and identification of levers for helping the population, especially social-vulnerable groups.
- Improvement of the management of human resources in the field of social protection.
- Ensuring implementation of legal provisions from the field of social protection, inclusively by the elaboration on time of the implementation mechanisms.

OBSERVANCE OF THE RIGHTS OF PERSONS WITH DISABILITIES

Once being ratified the UN Convention on the rights of persons with disabilities, the Republic of Moldova ¹⁰³ has assume the engagement for implementing their provisions by adjusting the legislation and national practices, but also the promotion and protection of legal rights and interests of persons with disabilities. The Convention on the rights of persons with disabilities institutes a new disability paradigm which is based on the social model. Although there are already six years this document was ratified, the article 51 of the Constitution of the Republic of Moldova contains the notion of” disabled persons” which is discriminatory and old. Also the dispositions of this article highlight the protective aspect and medical character of the disability.

The Ombudsman reiterates the recommendation which was exposed in last years on the necessity to modify the article 51 of the Constitution¹⁰⁴ for its harmonization to the standards of the UN Convention on the rights of persons with disabilities by replacing the notion” disabled persons” with” persons with disabilities”, and the paradigm approach of persons with disabilities – from the medical model to that of inclusion.

In the same order of ideas, the Ombudsman appreciates the progresses registered in the promotion of policies, elaboration of programs adjusted to the international standards in the field of persons with disabilities, but it considers that there are no arrears about the fact of the efficient implementation of legal provisions.

The law on social inclusion establishes a general framework of regulation of services of social protection in compliance with the international standards on social inclusion of persons with disabilities. The law guarantees legal rights for the persons with disabilities, as for the rest of the citizens, the right to: social protection, medical care, rehabilitation, education, employment, public life, clean environment, transport, information technologies and systems, communications, and other facilities and public services. The implementation of provisions of this law is still difficult because of the lack of the efficient mechanisms with impact on the quality of the life of persons with disabilities.

¹⁰³ Ratified by the Republic of Moldova by the Law no.166 of 09.07.2010.

¹⁰⁴ Article 51. Protection of disabled persons

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

(2) No one can be subdued to the forced medical treatment unless for the cases provided by the law.

Approval of the series of indicators for the monitoring of UN Convention implementation on the rights of persons with disabilities¹⁰⁵, in the opinion of the Ombudsman constitutes an important step which will permit the State to assess the progress registered in ensuring the observance of the right of persons with disabilities and for establishing the fields of priority intervention.

Also, it should be mentioned that once finished the implementation of the Strategy of social inclusion of persons with disabilities for 2010-2013, another strategic document was not adopted. In this context, the Ombudsman recommends to the Government to facilitate its activity by fields: accessibility, participation, equality, employment, education and professional training, social protection, health, statistics and data collection. In the Ombudsman opinion the document of politics should contain mainly measures for adapting the emergency service for being able to be accessed by the persons with disabilities; measures for establishing some minimal standards and elaboration of instructions for the access to the transport public system; creating support services for ensuring exertion of legal capacity; realization of public opinion awareness raising campaigns for fighting against stereotypes and encouraging the full participation of persons with disabilities to community life and deinstitutionalization by stages of persons with disabilities from the residential institutions together with the development of services specific for this category of persons.

During the last years, the Ombudsman manifested constantly a concern interest for persons with disabilities and the problems they face. After the consultancy with the civil society which activates in the field of disability, the Ombudsman has created,¹⁰⁶ created¹⁰⁶ within the Ombudsman Office a Council of experts with disabilities and the authority which represent them. The Council of experts was instituted under the art. 34 on Ombudsman of Law no. 52 of 03.04.2014 and art.10 of Law no.60 of 30.03.2012 on social inclusion of persons with disabilities with the goal to offer consultancy and assistance to the Ombudsman in the monitoring process of UN Convention (on the rights of persons with disabilities) implementation, promotion and protection of the rights of persons with disabilities.¹⁰⁷

In article 33, the UN Convention on the rights of persons with disabilities provides national monitoring of Convention implementation. But still now it was not officially instituted the independent mechanism for the promotion, protection and monitoring the Convention implementation in compliance with paragraphs 2 and 3 of the article 33 of the Convention.

¹⁰⁵ Decision of the Government of the Republic of Moldova no.1033 of 08.09.2016 „on the approval of the indicators for monitoring the implementation of UN Convention on the rights of disabled persons”.

¹⁰⁶ Ombudsman’s disposition no.01-09/16, of 30.05.2016.

¹⁰⁷ <http://ombudsman.md/ro/content/consiliul-de-experti-pentru-monitorizarea-implementarii-conventiei-onu-privind-drepturile>

The Ombudsman agrees the approval of the amendments of the regulatory framework in the field of disabilities by the Law no. 201 of 28.07.2016¹⁰⁸, by which was strengthened the mechanism of protection and realization of the rights of persons with disabilities. At the same time the proposal for modifying the Election Code which would offer the persons with mental disabilities the right to vote was excluded from the mentioned draft bill.

Because of these considerations, the Ombudsman has sent on 06.10.2016 to the Parliament of the Republic of Moldova an appeal, on its behalf and of the members of the Council of experts which was created within the Ombudsman Office by which it recommended the initiation of the process of amending the Election Code in order to guarantee the right to vote for all the persons, including for those without legal capacity. Further the Parliament Legal Commission, appointments and immunities has decided the involvement of the Ministry of Justice in the elaboration of the proposed modifications in the Election Code.

The Ombudsman together with the members of the Council of experts also has recommended undertaking measures for ensuring the access of persons with disabilities on the local level¹⁰⁹. For 2017 the Ombudsman and the members of the Council of experts have established a priority in the activity promotion on the national level the provisions which are related to the insurance of accessibility for persons with disabilities.

Concomitantly, during the 2016 year, the Ombudsman has received claims from persons with disabilities and non-governmental organizations from the field from where results that the persons with disabilities still continue to meet serious barriers during the plenary realization of human rights.

In 2016 many of the addressed problems in the last years still remained actual and they are: reduced accessibility of persons with disabilities to the social infrastructure, transport, information environment, existent difficulties in the realization of the right to justice access and ensuring equality, barriers in the realization of the right to vote and work, insufficiency of social services on community level and social benefits under the minimum income of existence.

The current law contains the obligatoriness of public authorities to ensure the accessibility to social infrastructure, common transport means, cultural, touristic objects and sportive complex (sport halls), to information by all means, but the undertaken measures did not contribute to significant changes in the aspect of accessibility for persons with disabilities. Because of the total lack or inadequate insurance of the access means to the institutions of public utility, housing and the inaccessibility of public urban and interurban transport, inclusively taxi services, deaf

¹⁰⁸ Legea pentru modificarea și completarea unor acte legislative, nr. 201 din 28.07.2016.

¹⁰⁹ Letter no.06-6/1 of 28.10.2016, addressed to the Mayor of Hagimus village, Căușeni district.

and impaired persons or persons with difficult walking remain isolated in their houses or are not helpless, because their walking depends on a third person.

According to non-governmental organizations from the field of protection of the rights of persons with disabilities, the norms in construction which were approved by the Ministry of Regional Development and Constructions do not correspond to the international standards, especially if referred to impaired persons. Moreover, the subdivisions of the referred Ministry did not establish a supervision mechanism for respecting the accessibility norms.

The access to information of persons with sensorial disabilities is limited – for the TV channels, the interpreting of sign language is not ensured in full volume and information of public interest is not translated in the Braille language. Although the Broadcasting Code provides that the broadcasters must secure sign language interpreting of TV programs of major importance and news in the sign language for deaf persons¹¹⁰ not all TV channels presents transmissions in sign language the time guaranteed by law of 20 minutes is not sufficient for ensuring the access to information.

In this context, the Ombudsman recommends the Broadcasting Coordinating Council to examine the opportunity of revising legal provisions for increasing the duration guaranteed with sign language interpreting and supervision if this requirement is respected by all the broadcasters.

In the previous reports it was recommended to the Ministry of Education together with the non-governmental organizations from the field to establish an official sign language which would be accepted for being ensured the training for deaf persons, elaboration of books, preparing interpreters of sign language.

The Ombudsman appreciates the increasing number of authorized interpreters for sign language. According to official data ¹¹¹ published by the Ministry of Justice, currently in the Republic of Moldova there are 17 interpreters of sign language in comparison with 9 in the last years.

Previously the Ombudsman has notified the existence of problems which are related to the development of community services for persons with disabilities and the monitoring of the existent one. These problems are generated inclusively by the fact that the organization and operation of the mentioned services are rested for the local public administration and the public local authorities invoke the lack of financial resources for their development.

¹¹⁰ Paragraph (4) art.13 of Broadcasting Code no.260 of 27.07.2006.

¹¹¹http://www.justice.gov.md/public/files/file/persoane_autorizate/traducatori/2017/extras_Registru_interpretilor_a_ctualizat_la_10.03.17.pdf

The Ombudsman is frequently informed by persons with disabilities about the difficulties met in the realization of the right to social services. In 33 of claims was claimed the faulty operation of the social service „Personal Assistance”. Frequent approach by the persons with disabilities of this problem impose us to conclude that the responsible persons from the field of social protection, especially social assistants not always undertake sufficient efforts for facilitating the independent life and social integration of persons with disabilities. The evidence on this fact are the cases examined by the Ombudsman which were settled only after the involvement of Ombudsman.

In this context, the Ombudsman recommends to the responsible persons from the field of social protection, implicitly to social assistants from the local communities to undertake all the efforts for the examination and settlement of problems which face the persons with disabilities. It is extremely important that in the case when is postponed the employment of a personal assistant for the person with severe disabilities, the social assistant to identify other alternative services.

Another actual problem is employment of persons with disabilities; it exists although the Law no.60 of 30.03.2012 about the social inclusion of persons with disabilities provides expressly creation or reservation of working places and employment of persons with disabilities by the employers, not depending on the legal organizational form.

The realization of the right to work by the persons with disabilities continues to be a problem in the Republic of Moldova, because the state does not ensure sufficiently the employment of these categories of persons. Employment of persons with disabilities should be realized according to professional training and their abilities for work, attested by the certificate for employment depending on the degree of disability and according to the recommendations contained in the individual program of rehabilitation and social inclusion.

The Ombudsman considers that for the plenary realization of this right it should exist access to all the levels of education for ensuring professional qualification for the working places. Also, it is necessary that the public opinion to be informed about the necessity of changing the approach of problems of persons with disabilities in the sense of their inclusion in the social life. Moreover, it should be an engagement from the Government for supporting the access of persons with disabilities to labor market and for offering assistance to employers who want to offer working places like these.

In many claims addressed to the Ombudsman, the persons with disabilities refer to the violation of the right to health protection, including qualitative medical services or their total lack. Law no. 60 of 30.03.2012 on social inclusion of persons with disabilities guarantees the right to health protection of persons with disabilities, obliging the providers of medical services

to take into consideration these persons with a respectful and human attitude. Persons with disabilities should have access as all the citizens to medical services without any discrimination or restriction.

Services of medical care are not fully offered to persons with disabilities. Often their right to health is violated by non-insurance of physical accessibility of medical institutions, especially in the rural areas. Additionally, medical workers are not trained in the field of disability and ethics in communicating with them.

After examining some claims, the Ombudsman has established that persons with severe difficult walking are not provided with prophylactic medical examinations, because they depend on a third party for going to medical institution. Moreover, being bed mobilized, they are obviously disadvantaged in getting information on medical innovations from which they could benefit from. Although the mentioned above law provides the compulsoriness of authorities to offer visits to domicile for persons with disabilities for satisfying their socio-medical needs. The Ombudsman has notified cases when persons like these were not visited by the family doctor during a whole year, in this way being violated his/her right to health protection.

The representatives of the organizations which settle problems of persons with disabilities have informed the Ombudsman about some problems which face these persons when need stomatology services, especially in situation of emergency. Considering the fact of the singularity of the mental or physical condition of persons with disabilities, often it is difficult to ensure them dental treatments, without general anesthesia. At the same time, the specialists frequently refuse to apply anesthesia, because they do not want to assume responsibilities for some eventual complications which this can have over the patients with disabilities. Thus, in the case of persons with disabilities the specialists resort to tooth extraction and not tooth treatment. The lack of access to dental treatment services is more difficult in rural areas.

The Ombudsman recommends to the Ministry of Health to examine the opportunity to include the dental treatment of persons with disabilities in the emergency dental care from the surgical maxillofacial wards or application of alternative sedation methods in the dental rooms of polyclinics.

Another problematic aspect is related to the respect for sexual and reproductive rights of persons with difficult walking. The official data show that the total number of persons with disabilities in the Republic of Moldova in 2016¹¹² constituted 184,5 thousand persons which represent 5,2% of the total number of the population of the country. Also women constitute 48% of the total number of persons with disabilities.

¹¹² National Bureau of Statistics.

It was elaborated a report for this purpose by the Reproductive Health Training Center: „Situation analysis of problems faced by women and girls with locomotor disabilities in exercising their sexual and reproductive rights”.¹¹³ On the national level there are no statistics or established systems of collection, monitoring, report and assessment of data on the access of family planning services, use of contraception methods, abortions, infections with sexual transmission, number of births through the persons/women with disabilities. The lack of gynecological chairs in the medical institutions which are adapted for the needs of this category of women constitutes a barrier in exertion of sexual and reproductive rights.

The report denotes the fact that the persons with disabilities face significant problems which are related to the respect and guarantee on the national level of the sexual and reproductive rights. This fact produces consequences both, by direct discrimination and the incapacity to be adapted to needs of persons with disabilities. The regulatory and policy framework is not sufficiently adjusted for guaranteeing and ensuring the respect for sexual and reproductive rights of persons with disabilities. The accessibility is a major obstacle when speaking about the respect for sexual and reproductive right and participation of persons with disabilities in all the fields of social life. The access problems aggravated by bias and direct discrimination limits the access to qualitative medical services. Despite of the progresses in particular fields, the sexual-reproductive rights as specific rights of persons with disabilities are not expressly regulated in the national legislation in the context in which the sexual and reproductive rights are a part of the category of fundamental human rights. They enframe in the general concept of human rights which is already recognized and embedded in the international, regional and national standards of some states.

Persons with mental disabilities still face stigmatization, isolation and disability based discrimination which are often aggravated by stereotypes and bias. In the situation they were declared incapable, the persons with mental disabilities are deprived of the rights which are indispensable for human beings, as the right: to get married, to take care of their own children, the right to vote, access to justice. Without the consent of the persons, without speaking with him/her there are undertaken decisions with serious consequences for them, as would be sell of goods or institutionalization of person.

As a consequence of the Ombudsman intimation, on 17.11.2016 the Constitutional Court has declared some provisions of the Civil Procedure Code as being unconstitutional, provisions which instituted the interdiction for the persons who were declared incapable to exercise their right of free access to justice.

¹¹³http://www.sanatateafemeii.md/wp-content/uploads/2016/10/Raport_Evaluare-DSR-persoane-cu-dizabilitati_FINAL_27.02.17.pdf

According to some data, in the Republic of Moldova there are approximately four thousand persons with intellectual and mental deficiencies which are placed in the residential institutions. In the recent researches of the non-governmental organizations which are active in the field of human rights it is attested the fact that approximately 30 % of persons who are hospitalized in the psycho-neurological institutions have legal capacity and they could be integrated in the communities they come. Annually in the courts of law there are registered near 300 files in which it is invoked the deprivation of the legal capacity.

In conclusion, the Ombudsman considers that the improvement of the life quality of persons with disabilities will be possible by the access to integrated qualitative support (social, health, educational) services developed on the level of communities they live in. Reduction of situations of multiple discriminations, rate of persons with disabilities who are under the poverty risk and social exclusion will be possible to realize by increasing their competences, added value of their work and by the conjugated effort of public institutions, private and non-governmental sector in supporting the process of implementation of policies from this field.

Those social, economic, legal, politic and environmental conditions which actions as barriers in the full exertion of the rights of persons with disabilities to be identified and eliminated so that the persons with disabilities to participle fully and effectively in the society in equal conditions with the rest of people.

RECOMMENDATIONS:

- Modification of article 51 of the Constitution of the Republic of Moldova for adjusting to UN Convention standards on the rights of persons with disabilities, both on the aspect to support the used notion and on the aspect to facilitate the social inclusion of persons with disabilities.
- Speeding the elaboration and approval process of the National Program of social inclusion of persons with disabilities which would ensure the promotion and implementation of principles and objectives of UN Convention on the rights of persons with disabilities from the Republic of Moldova.
- Changing the regulatory framework in order to create the Independent Mechanism of monitoring of UN Convention on the rights of persons with disabilities.
- Ratification of Optional Protocol of Convention on the rights of persons with disabilities.
- To be undertaken by the public central and local responsible authorities some concrete measures for ensuring the implementation of legal provisions on ensuring the accessibility of persons with disabilities in all the fields. For eliminating the existent

barriers and ensuring the accessibility for all persons and for making efficient this process we recommend to the authorities to collaborate with the civil society from this field.

- Institution by the Ministry of Regional Development and Constructions and Ministry of Transport and Roads Infrastructure of some efficient mechanisms of monitoring and sanctioning for not respecting the accessibility requirements.
- Supervision by the Broadcasting Coordinating Council of respect for the requirement on ensuring the interpretation of sign language by all the broadcasters of TV programs and newscasts of major importance.
- Examination by the Ministry of Education and other competent authorities in collaboration with the Deaf Association of the opportunities of establishing an official sign language and ensuring the training of deaf persons, elaboration of books, preparing interpreters of sign language.
- Development of social community services depending on needs and examination of opportunities for revising the funding modality and the monitoring of used resources and quality of the provided services.

RIGHT TO PETITION

According to article 15 of the Constitution of the Republic of Moldova, citizens benefit from rights and freedoms consecrated by the Supreme Law and other laws. This norm orients the activity of the state authorities for ensuring protection and respect for the rights of each person. Also the citizen holds constitutional levers which are oriented for ensuring an active behavior in relation to the public authorities.

One of these levers is provided by the article 52 of the Constitution which guarantees to the citizens the right to petition. Thus, the citizens have the right to address to public authorities by petitions formulated on the behalf of signatories. The legally constituted organizations have the right to address petitions exclusively on the behalf of collectives they represent.

The right to petition represents a general legal guarantee for the realization of other fundamental human rights and freedoms. Besides, the petition represents a method through which the citizens can capitalize their right to require an explication on any personal or public interest matter in the relations with a public authority.

The modality for the examination of petitions of the citizens of the Republic of Moldova which are addressed to the state authorities, enterprises, institutions and organizations for ensuring protection of their legal rights and interests is stipulated in the Law no.190 of 19.07.1994 on petitions.

Examination of verbal and written applications submitted on the behalf of the Ombudsman at this chapter impose us to conclude that there are still reserves on ensuring the plenary realization of this right by public central and local authorities.

In the appeals to the Ombudsman the persons report the fact that some institutions refuse to receive claims or they do not offer answers on term for the registered claims. These situations mostly refer to public local authorities.

There also were submitted claims which invoke the violation of the art. 9 paragraph (2) and art.12 of the Law no.190 of 19.07.1994 on petitions which” *prohibits submission of petitions to official bodies or persons, whose actions or decisions are subject to appeal*”.

The Ombudsman recommends to public authorities to undertake all efforts for examining all the petitions registered by the authorities careful and on the terms established by the current law.

OBSERVANCE OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN TAU GAGAUZIA

Gagauzia is an autonomous territorial unit with the special status, being a form of auto-determination of Gagauz people, it is an integrant and inalienable part of the Republic of Moldova and it settles independently in the limits of its competence, pursuant to the provisions of the Constitution of the Republic of Moldova, for the interest of its population the problems with political, economic and cultural character.

On the territory of Autonomous Territorial Unit of Gagauzia there are guaranteed all the rights and freedoms provided by the Constitution and law of the Republic of Moldova. The control on the respect of the law of the Republic of Moldova in the Autonomous Territorial Unit of Gagauzia is made by the Government in the conditions of Law. The organic law which regulates the special status of the Autonomous Territorial Unit of Gagauzia can be modified with the vote of three fifths of the number of deputies of the Parliament.

Soil, subsoil, waters, vegetable and animal kingdom, other natural resources which are on the territory of the Autonomous Territorial Unit of Gagauzia represent the property of the Republic of Moldova and are at the same time the economic basis of Gagauzia. The budget of the Autonomous Territorial Unit of Gagauzia is formed in correspondence with the norms established in the law which regulates the special status of Gagauzia.

In the Autonomous Territorial Unit of Gagauzia activate the representative and executive bodies in compliance with the Law no. 344 of 23.12.1994 on the special legal status of Gagauzia (Gagauz-Yeri).

The representative authority of Gagauzia is the People's Assembly invested with the right to adopt normative acts in the limits of its competence, in the following fields: science, culture and education; communal household and buildings, town planning; health care; physical training and sport; budgetary-financial and fiscal local activity; economy and ecology; labor relation and social insurance.

According to art. 13 paragraph (4) of the Law on the special legal status of Gagauzia, the laws and decisions of People's Assembly are remitted to the Parliament and the Government of the Republic of Moldova in a term of 10 days from the date they were adopted, with the title of information. At the same time, according to the decision of the Government no. 845 of 18.12.2009 on territorial offices of the State Chancellery, the territorial office Comrat has the attribution to make the mandatory control, under the lawfulness aspect, of the normative acts issued by the People's Assembly of the Autonomous Territorial Unit of Gagauzia. The normative acts of Gagauzia which contravene to the [Constitution of the Republic of Moldova](#)

and law on the special legal status of Gagauzia are declared null. In this way there is ensured the lawfulness of the legislative process.

The autonomy is divided into three districts, each of them being governed by a president which is appointed by the baskan. Within these districts there are district councils, their orders being executed by the People's Assembly of Gagauzia.

Starting with 2001 in the ATU Gagauzia activates the representative of Ombudsman Office (previously Center for Human Rights). The mission of Ombudsman Office representative in Comrat consists in contribution to the realization of the attributions of Ombudsman in the Autonomous Territorial Unit of Gagauzia. For the realization of its mission, the representative exercises the following functions: monitoring the respect for human rights and freedoms in the Autonomous Territorial Unit of Gagauzia; contribution to restore the rights of persons whose rights and freedoms were violated; contribution to ensuring compliance of the local normative acts with the provisions of the legislation of the Republic of Moldova; promotion of human rights and institution in ATU Gagauzia.

The Ombudsman monitors the degree of respect for human rights on the territory and identifies the problems which are specific for the region through its representative in Comrat. Thus, it was founded that the most frequent in ATU Gagauzia there are violated the right to property, right to work, right to vote and to be elected.

The biggest number of appeals for the representative of Ombudsman Office in Comrat is related to the violation of the right to property. Mostly, the claims are related to matters on housing, lease of land, agricultural activities, and a big number of claims refers to problems of non-respect of contracting obligations for infields lease by the lessees, especially in the cases in which the lessors are pensioners. In some localities of ATU Gagauzia (in Kotovskoe village, Dezginzja village, Comrat) it was not finalized the process of cadastral inventory and issuance of documents which confirm the property right of persons over the agricultural goods (titles of ownership).

Another actual problem in ATUG is the respect for the property right and freedom the entrepreneurial activity. In ATU Gagauzia was maintained the single kolkhoz from the Republic of Moldova – „Pobeda” of Copceac village. Because in the legislation there is not provided the support of such a form of household, the kolkhoz cannot benefit from the agricultural subsidization fund assistance as the others peasant farms and it cannot pretend to financial support for the consolidation of agricultural lands. A condition in this sense would be the repeated registration of kolkhoz as Joint Stock Company or SRL. It should be mentioned that in the kolkhoz there are realized with success social programs for supporting the persons who are in risk situation and old persons. It was not finalized the program of consolidation of agricultural

lands in Gaidar village, that is why the people of this village cannot realize transactions for becoming owners of the lands.

Deterioration of houses and other immovable as the consequence of their flooding by the groundwater, constitute a cause frequently invoked by the citizens of central zone of Comrat municipality. This happens because in Comrat it was not settled the problem of sewage system construction.

Because of the fact that the labor legislation of the Republic of Moldova does not correspond to that of ATU Gagauzia it appears some divergences about the working program in the non-working holidays. According to paragraph (1) art. 111 of the Labor Code of the Republic of Moldova in our country there are established non-working holidays with the payment average wages. But in Gagauzia according to the decision of People's Assembly of ATU Gagauzia no.69-VII/III of 12.08.2004, there are established non paid legal additional holidays¹¹⁴, for employees who work within enterprises whose central office is outside the autonomy. The employees of the mentioned enterprises should work while the kindergartens and schools on these days do not work.

Linguistic situation in Gagauzia is sufficiently serious. According to article 3 of Law on the special legal status of Gagauzia, the „official languages of Gagauzia are Moldavian, Gagauz language and Russian language. The correspondence with the authorities of public administration of the Republic of Moldova, enterprises, organizations and institutions situated out of Gagauzia is made in Moldavian and Russian languages”.

Gagauz language is the mother tongue for the majority of population. Russian language has the function of communication interethnic language and for many inhabitants of the autonomy, especially in the capital of the autonomy; Russian language in fact is the mother tongue. Russian language also is the instruction language in the majority of educational institutions of ATU Gagauzia. Only in two educational institutions the instruction language is the state language – Lyceum” Mihai Eminescu” of Comrat municipality and Lyceum no. 2 of Vulcanesti city. Only in some lyceums the instruction is made in more languages – Moldo-Turkish Lyceum of Congaz village and Ceadâr-Lunga Lyceum. The pupils of the autonomy have the possibility to be instructed in the mother tongue: Gagauz language, Bulgarian language or Ukrainian language. The most of parents and children declare difficulties which they meet while studying Gagauz

¹¹⁴ August 19 – Day of Gagauz Republic.

November 08 – Day of St. Dumitru (Kasim).

May 06 – Day of St. Gheorghe (Hederlez).

December 23 – Day of the Autonomous Territorial Unit of Gagauzia.

language (curriculum is very difficult; there are no sufficient didactic materials and literature). For instance, the Gagauz – Moldavian – Russian dictionaries which were edited in a small edition in 1995 are in great demand.

The right to vote and the right to be elected are consecrated in the article 38 of the Constitution of the Republic of Moldova. According to it the population will constitute the basis of the state power. This will be expressed through free elections which take place periodically by universal, equal, direct, secret and free expressed suffrage. The citizens of the Republic having attained the age of 18 on or by the voting day inclusively have the right to vote, except for those who are under interdiction in the way the law provides. The right of being elected is granted to all citizens of the Republic of Moldova in the conditions of the law. According to the article 13 of the Election Code of the Republic of Moldova no. 1381 of 21.11.1997, the following individuals cannot vote: a) those who do not meet the requirements specified in Article 11, and namely the citizens of the Republic of Moldova who didn't attain the age of 18 on or by the voting day inclusively, except for those who are deprived of this right as it provides the law; b) those declared incapacitated by a final decision of a court of law.

At the same time, the Election Code of ATU Gagauzia contains additional restrictions to them. According to article 13 of the Election Code of ATU Gagauzia the persons sentenced to prison by a definitive court decision and who serve their sentence in penitentiaries are deprived of the right to vote¹¹⁵. Although the similar norm of the Election Code of the Republic of Moldova was repealed in 2011, the Election Code of UTA Gagauzia still was not brought in compliance with the national law.

According to art.10 of the Election Code of ATU Gagauzia during an election ballot the elector votes for one candidate and within a referendum he/she expresses his/her vote for one option. At the same time, according to art. 42, "the elector who supports one candidate or other candidate(s) or the list of the candidate(s) indicates in the list of signatures his/her name, surname, date of birth, residence, series and number of identity card, date he/she signs the register of votes and the signature for each supporter". This norm gives the possibility to the elector to sign for supporting a non-limited number of candidates, fact which violates the presumption one elector – one vote.

According to the article 8 paragraph (2) of Law on special status of Gagauzia, the number of deputies in the People's Assembly should not exceed the limit of one deputy for five thousand electors, but each locality should have at least one deputy. In the art.75 paragraph (1) of Election Code of Gagauzia this norm is treated another way: for the purpose of organization and conducting the elections, the Central Electoral Commission of Gagauzia forms electoral sectors

¹¹⁵ Art.13) p.(1) lett. b of the Election Code of ATU Gagauzia.

with a number of electors which is less than five thousand electors. As a result these norms can be easily interpreted fact which affects the election process.

In ATU Gagauzia, the representatives in the People's Assembly and the baskan are elected in compliance with the local laws and the electoral process is coordinated by the Central Electoral Commission of ATU Gagauzia which is autonomous toward the Central Electoral Commission of the Republic of Moldova.

In the political and electoral context of the Republic of Moldova, elections from ATU Gagauzia have their singularity. This is explained by the fact that besides the national elections - parliamentary and local general elections where were elected the local councils and mayors of ATU Gagauzia, according to Law on special legal status of Gagauzia (Gagauz-Yeri) periodically there are organized the elections of the governor of Gagauzia (baskan) and the members of the People's Assembly (Halk Topluşu). Because of this reason in the ATU Gagauzia often take place different elections, one or twice a year. Thus, two election campaigns – election of the President of the Republic of Moldova and elections of the People's Assembly of Gagauzia – took place with the difference of one week.

Presidential elections are regulated by the Election Code of the Republic of Moldova, and the elections of the People's Assembly – by the Election Code of ATU Gagauzia, the requirements toward the election process being different, fact which creates a big confusion for the candidates and for the staff of the electoral commissions. For a better perception by the electors of these norms and for increasing the efficiency of the activity of the electoral commissions it is necessary to standardize the electoral norms and procedures.

Elections for the People's Assembly of ATU Gagauzia differ from the Parliamentary elections, because it is used the majoritarian system. In Gagauzia the confidence of people in the political parties is more reduced than in the whole country. Because of this from those 127 candidates pretenders to those 35 mandates only 10% of the candidates of political parties were registered, the rest being independent candidates.

It is very important to be drawn up correctly the registers of voters; this fact ensures the realization of the right to vote. In the process of the Presidential elections of the Republic of Moldova the registers of voters were drawn up by the Central Election Commission of the Republic of Moldova under the State Register of voters. At the elections of the People's Assembly of Gagauzia the registers of voters were again drawn up by the mayors and they had many mistakes and divergences, fact which has generated the repeated registration of voters on the Election Day, annulment of elections in the sector no. 1 of Comrat municipality.

At the presidential elections of October 30, 2016 in the register of voters were introduced 132287 persons. At the same time, in the 1st round of elections for the People's Assembly of

Gagauzia of November 20, 2016 in the registers of voters were introduced 122366 of voters, with 10000 less than some weeks earlier. At the first round have participated 53114 of voters, which constituted 42,8% from the total number of voters which were included in the registers of voters. At the second round of elections which took place on December 4, concomitantly in several sectors have participated 36437 of voters or 45,3% of electors. In some localities, the second round of elections took place on December 18. These data denote the fact that the electors from the autonomy are overburdened and that they do not entrust the electoral process. In the Election Code of the Republic of Moldova there are no regulations which are related to the organization of elections in the territorial autonomies, fact which leads to confusions in the electoral procedure.

Law no.438-XVI of 28.12.2006 on regional development in the Republic of Moldova defines the functional development regions on the territory of the Republic of Moldova, the inter-regional cooperation modality, institutional framework, instruments which are specific for the policy for the regional development, the necessary means for the creation and operation of the development regions. The development regions are not administrative territorial units and they have not legal personality. The composition of the development regions is specified in the annex of Law no.438 and through them is the Administrative Territorial Unit Gagauzia.

According to art. 8 of the mentioned Law, in each development region there is constituted a regional development agency with particular attributions: making the analysis for the social-economic development of the development region, elaboration of strategies, plans, programs and projects of regional development; coordination of the implementation process of strategies, plans, programs and projects of regional development; monitoring and assessment of implementation of strategies, plans, programs and projects of regional development; attraction of non-budgetary means for the implementation of strategies, programs and projects of regional development; offering the informational, methodological and consultative support to the regional council and the authorities of public local administration for the balanced and durable development of the region; stimulation of cooperation of the civil society in the field of social-economic development of the region.

In Gagauzia because of different reasons opening such an agency delayed with 8 years and in 2016 it was created the Regional Development Agency of ATU Gagauzia which started to function on September 01, 2016. In this short period of time from the resources of the National Fund of Regional Development, the Agency succeeded to attract and capitalize MDL 5 mln. It also was developed the competition of the applications for funding and as the result in the Operative Regional Plan were introduced 11 projects, seven of them being proposed for examination to the inter-ministerial commission for being included in the Unique Documentary

Program. The inter-ministerial commission has accepted five projects which suppose investments of more than MDL 65 million in ATU Gagauzia from the National Fund of Regional Development. The Agency also works in the direction for attracting funding from different foreign funds. It is prepared for being approved the Regional Strategy of Gagauzia and in collaboration with the development partners it is planned the elaboration of regional sectorial programs in several main directions: ensuring with drinking water and sewage, road constructions, energetic efficiency, waste processing, economic development.

But there exist some difficulties which block the good implementation of Law no. 438: insufficient funding for ensuring the efficient activity of the Agency and insufficient experience in elaboration of strategic programs and as a consequence, the low quality of the elaborated projects.

RECOMMENDATIONS:

- Finalization of cadastral inventory and issuance property right documents (titles of ownership) of persons from the localities of ATU Gagauzia.
- Settlement of the problem which is related to the status of „Pobeda” Koklhoz from Copceac village ATU Gagauzia and ensuring its participation to programs of agricultural subventions.
- Elaboration of a series of measures for finalizing the consolidation of lands in Gaidar village, ATU Gagauzia.
- Undertaking necessary actions for constructing the sewage in Comrat municipality.
- Harmonization of labor law taking into account the requirements of Law no.344 of 23.12.1994 on special legal status of Gagauzia (Gagauz Yeri).
- Elaboration and implementation of some actions for improving teaching of Romanian language in Gagauzia.
- Improving the program for studying Gagauz language.
- Amendment of Election Code of the Republic of Moldova for regulating the procedure of conducting elections in the autonomous territorial units.
- Amendment of Election Code of Gagauzia for ensuring its correspondence with the current laws of the Republic of Moldova.
- Realization of the necessary actions for increasing the professional skills of employees of the Regional Development Agency of ATU Gagauzia.

OBSERVANCE OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN THE TRANSNISTRIAN REGION OF THE REPUBLIC OF MOLDOVA

In 2016 the Ombudsman has continued monitoring the situation on the observance of human rights and freedoms in the Transnistrian region of the Republic of Moldova. The activity of Ombudsman on this segment has as the goal to contribute to identification and consolidation of the national mechanisms to ensure human rights in the districts from the Eastern part of the country and to protect the victims from the abuses of the Transnistrian administration. At the same time the Ombudsman has reacted to the cases in which the national authorities admitted the violation of human rights. In a great measure the Ombudsman has perceived the essence of systematic problems after the received appeals, research and analysis of the situation from the opened sources and information from press, reports of the civil society and the opinions of activists from the region. The Ombudsman reminds that its access in the Transnistrian region is limited and not secure, fact which impedes the complete exertion of its mandate of human rights protection and promotion. In this sense, the Ombudsman reiterates the stringent need to identify some efficient mechanisms of human rights protection on the uncontrolled territory and settlement of Transnistrian problem by peaceful and transparent means.

In order to increase the accessibility of the national institution for the protection of human rights of the inhabitants of the districts from the Eastern part of the country, in 2012 it was opened the Ombudsman Office representative in Varnita village, Anenii Noi district. Annually, the Ombudsman Office representative of Varnita ensures hearing of more than 160 persons who are domiciled preponderantly in left bank of Nistru river, it constitutes the meeting platform between the representatives of the civil society from both banks of Nistru river and interaction with public central local authorities and with the members of the international community. The employees of Varnita representative also make periodic visits in the territory and in the Limitrophe localities.

In 2016 Varnita representative has registered 168 written and verbal claims, the majority of them being from the petitioners who are domiciled in the Transnistrian region (aprox. 73%). Through the problems which were invoked by the applicants were: *faulty documentation with national documents and birth documents, especially those of minor persons; interferences in the free circulation and private property; violation of the right to work, social protection and health protection.* The number of claims of the following fields: *freedom and security of person, access to justice, information, respect for the right to petitions and protection of personal data* was smaller.

The most noticed problem by the Ombudsman continues to be the **documentation with identity documents and civil status documents**, and recognition of acts of civil status produced and registered in the Transnistrian region. The mentioned above problems appeared because of the imperfection of law which provides the mechanism of citizenship recognition and the documentation process and because of applied faulty practices. In this context the Ombudsman considers that the national authorities should identify clear, non-bureaucratic, standardized mechanisms for increasing the efficiency in the documentation of population from the left bank of Nistru river. The ombudsman also is opened for collaboration in the mentioned aspect with the national authorities for identifying an optimal mechanism of population documentation by the Civil Status Service and SE Registru.

Another problem previously identified which is still actual **lack of guardianship authorities** with attributions of children rights protection in/ for localities from the eastern districts. The Ombudsman has continued to register claims on the impossibility of documentation the orphan minors by the reason of non-existence of any guardianship authority. According to non-official sources in the region there exists more than 2000 children without parental protection, fact which would mean that the impact of this problem is sufficiently serious¹¹⁶. The Ombudsman reiterates the imperative need to identify a guardianship authority responsible for ensuring protection for children from the Transnistrian region.

In another train of thoughts, the Ombudsman expresses its perplexity on the admission of some constitutional authorities of **interference in the private life** of persons who are domiciled in the left bank of Nistru river. The Ombudsman has established: The National House of Social insurances (NHSI) transmitted to so-called institutions of social protection personal data from the pension files of some categories of employees of the Republic of Moldova who are domiciled in the eastern part of the country. This list contained 32 persons. Immediately, after the administration has received the respective list it stopped *de facto* the payment of social compensations of the concerned persons. At the same time the National House of Social Insurances has suspended the payment of the established pension and it has imposed in this illegal way the citizens of the Republic of Moldova to benefit from a single social compensation. Thus, during several months the persons were deprived of pensions. Further, it was resumed but in proportion of 80%. The Ombudsman considers this practice as being abusive and illegal. Once the normative acts do not provide restriction of state pension payment established for the reason of receiving a similar compensation from the non-recognized funds, the deprivation of pension is inadmissible.

¹¹⁶ Statistical data of the de facto administration, 2016, http://minsoctrud.org/otchyoty_ministerstva/;

In this regard, the Ombudsman has required the assistance of the Center of personal data protection which on August 12, 2016 has established that NHSI admitted the violation of provision of Law no.133 of June 08, 2011 on personal data protection.

The Ombudsman regrets that its mandate of *preventing torture* cannot be extended in the Transnistrian region. However, the Ombudsman has continued to support the efforts of the Platform for the prevention of torture in the Transnistrian region whose members are from the local civil society. The representatives of the Ombudsman Office have offered informational, methodological support, space for organizational sessions for the purpose of consolidation of their efforts in the field of torture prevention. The support of the Ombudsman has encouraged the members of the Platform to require from the de facto administration the incrimination of torture in the punitive local norms, promotion of reforms, avoiding negative practices, promotion of a hot line etc.

Thus, in March 2016, for the first time, the non-governmental organization Media Centru has launched the hot line „anti-torture”. During several days, the hot line has registered two calls about the application of mistreatment in the Remand center no. 3 of Tiraspol. The torture allegations were communicated to the *de facto* administration which infirmed the torture facts¹¹⁷.

Consolidation of civil society in the Transnistrian region in the aspects which are related to human rights monitoring and custodial places monitoring may lead to a better perception of phenomena of violation of human rights by the authorities and other interested actors. Consolidation of civil society from the Transnistrian region in the aspects which are related to human rights and penitentiary institution monitoring can lead to a better perception of the phenomena of human rights violation by the authorities and other interested actors and the appreciation the interaction degree and interaction.

On October 24, 2016 it was instituted the Council for the torture prevention and other punishments or cruel, inhuman and degrading treatments According to art. 32 of Law no. 52 of April 03, 2014 about Ombudsman the members of the Council chose independently the places where are or can be the persons deprived of liberty for being visited. When reporting the members of the Council did not decide on visits in the detention places from the Transnistrian region.

The Ombudsman continues to be concerned about the *cases of kidnapping people in the security zone*. On March 02, 2016 in Varnita village it was broken the attempt for kidnapping a person by the so-called Transnistrian force structures with the serious violation of the engagements assumed within the unified Control Commission of February 26, 2016 where it was identified that during the events consecrated to the commemoration of people died within Nistru

¹¹⁷ http://pitkamnet.mediacentr.md/obraschenie_na_gliniyu/1027-golodovka-kak-protest-protiv-proizvola.html

conflict from the Security Zone there will not be undertaken actions with destabilizing character¹¹⁸.

On March 03, 2016 a young man of Cocieri, Dubasari district (Centru Security Zone), was kidnapped during night time from his house, being mistreated and transported to militia section of Dubasari city¹¹⁹. The victim was released on the second day after he was convicted by the court of Dubasari to a pecuniary sanction. Police has initiated an investigation which was not finalized on that day.

These cases denote the fact that the freedom and security of persons of the localities which are under the jurisdiction of the constitutional authorities are in danger. In this sense, the Ombudsman calls the authorities to identify mechanisms for ensuring the safety of persons from the left bank of Nistru river.

The Ombudsman still continues to draw attention to ***the respect for the right to education***. Those eight schools where the educational process is realized in Latin script which are under the custody of the constitutional authorities continue to be supposed to some challenges, as would be: *buses with children are imposed to cross through the control posts, children are forbidden to cross the posts, the products for schools are retained at customs posts, parents are persecuted, double taxation for utilities for teachers who work in these institutions, non-motivated increase of tariffs for space rent, blackmail with non-prolongation of rent contracts, prohibition to make reparation in the rented spaces, prohibition to sing the anthem and flagging the flag, prohibition of bringing in the region the manuals, defamation, refusal to return back the sequestered buildings* etc. the Ombudsman appreciates the fact that the authorities who are involved in the negotiations and the education work group have made attempts for settling the problems which are related to the operation of educational institutions. However, these problems remain unsettled fact which affects the educational process on the left bank of Nistru river and reduce from the enthusiasm of teachers and pupils from these schools. In 2016 in the institutions where the educational process is realized in Latin script were studying more than 1300 pupils.

In 2016 the ***access to lands with agricultural destination*** which are situated behind the road Râbnița-Tiraspol and being in the private property of the habitants of Dubasari district was prohibited. The de facto administration has re-transmitted these lands with the lease title to some local economic agent. The attempts within the work group to settle the problem on the access to the lands which are behind the road have failed. The authorities have decided to continue the

¹¹⁸ <http://gov.md/ro/content/o-noua-provocare-structuri-de-forta-transnistrene-zona-de-securitate-0>, seen on 14/03/2017;

¹¹⁹ <http://www.basarabia.md/promo-lex-un-barbat-din-cocieri-rapit-de-militia-transnistreana/> seen on 14/03/2017;

practice of offering direct payments to those 5561 owners of lands. Thus, in October 2016 through the Decision of the Government of the Republic of Moldova no. 1201 of October 31, 2016 it was decided that the allocation of MDL 7,98 million to be made from the reserve fund of the Government, resources which followed to be paid by Dubasari District Council. The surface of agricultural lands of Dubasari district which are situated behind the road Rabnița-Tiraspol constitute 6494,80 ha, which represents 42% from the total surface of the district.

In the context of those mentioned above and the problems expressed in the previous reports. The Ombudsman reiterates that the state of uncertainty for the respect for human rights on the left bank of Nistru river is generated not only by the actions/inactions of the authorities from the Transnistrian region but also by other factors. Through these factors are: the lack of mechanisms for ensuring human rights in the non-controlled space; non-intervention or insufficient intervention of central local authorities in some cases, when it would be possible; the lack of some legislative regulations which would offer solutions on particular segments; bureaucracy and negligence or the abuse of service which is admitted by some public servants; insufficient information of population on the attributions and services provided by public authorities, reduced legal culture etc. without pretending an exhaustive approach of the problem of human rights observance in the Transnistrian region, the Ombudsman mentions the importance of efficient use of all mechanisms which are available in the process of Transnistrian conflict regulation and which are oriented to impulsion of the process of negotiations and getting some perceivable results.

CHAPTER II

OBSERVANCE OF CHILD'S RIGHTS IN THE REPUBLIC OF MOLDOVA IN 2016

Any action undertaken by the state authorities, legal representatives of children should correspond to its superior interest.

The Ombudsman for the protection of children's rights, in 2016, focused in its activity on the examination of the efficiency of the existent public policies and monitoring the way in which the state authorities ensure the realization of children's rights in compliance with the provisions of UN Convention on children's rights (hereinafter referred to as CCR).

RIGHT TO LIFE, TO SURVIVAL AND TO DEVELOPMENT

The right to life, to survival and to development presumes the positive obligation of the state to create a proper environment for ensuring survival and physical, mental, spiritual, moral, psychological and social development of child in a dignified manner and which will prepare him/her for life in a free society.

Guaranteeing the right to life, to survival and to development supposes the obligation of state to undertake measures oriented for ensuring optimal development for all children and to examine all factors which have a major importance for the realization of these rights. Many of the risk and protection factors which are basic for life, survival and development of child should be identified systematically for the development and putting into operation the approved policies being taken into consideration a large range of factors which are determined in the life process. In their budgetary decisions, the Government should take into account the factors which are bases on the needs and age of children. The investments in the development of children of early life are very important and have a positive impact for the future generations.

For ensuring the right to life, to survival and to development, the Government has undertaken many actions:

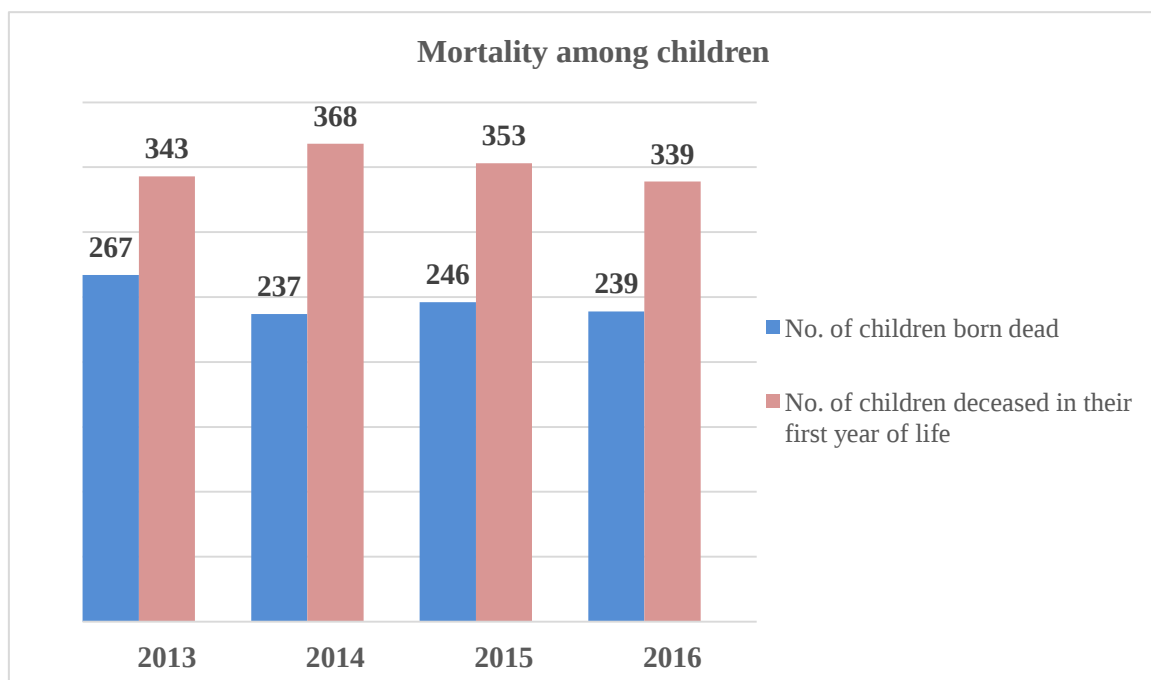
- Implementation of the regionalized system of perinatal assistance on three level;
- Implementation of the Concept Family Friendly Maternity;
- Implementation of the mechanism of inter-sectorial collaboration in the medical-social field for reducing the infantile mortality of children who are under five years old;
- Strengthening the infrastructure of perinatal centers by purchasing and installing modern medical equipment;

- Approval of the mechanism of early intervention¹²⁰ which provides the modality of supervising children from the early age and intervention for their rehabilitation.

In the same context, by the Order of the Minister of Labor, Social Protection and Family no. 201 of 25.10.2016 it was modified the regulation of the Centre for assistance and protection of victims of trafficking in human beings and in its base it was introduced a new category of beneficiaries – children – victims and the potential victims of violence, negligence and exploitation who will be able to benefit from different services of assistance (primary medical assistance, temporary accommodation, food, legal counseling and others).

In the last years in the Republic of Moldova the result of the developed policies it was registered a light reduction of the *infantile mortality* from 9,8%, in 2012, to 9,2%, in 2016¹²¹.

According to the information presented by the Civil Status Service in comparison with 2013, in 2016 the number of children born dead has decreased with 10,5%, and the number of children who have died in the first year of life was reduced with 102%.



Source: Civil Status Service

However, the Republic of Moldova is still a country with infantile mortality which exceeds the European average (4,1%).

The causes of mortality in 2016, mostly were some affections in the perinatal period and congenital malformations.

¹²⁰ Framework regulation on organization and operation of services of early intervention, approved by the Decision of the Government of the Republic of Moldova no. 816 of June 30, 2016.

¹²¹ Answer of the Ministry of Health no. 07-3/13 of 30.01.2017.

As the result of the monitoring of the mentioned subject, the Ombudsman for the protection of children's rights underlines that on this segment there are still problematic aspects:

- Irresponsibility of some families/ parents about their own children health;
- presence of risk factors in the families, including alcohol abuse/drugs, violence within the family, abuse toward children, negligence of parental obligations etc.;
- insufficiency of living spaces, sure sources of incomes and the incapacity of families in establishing priorities about the settlement of the identified problems;
- insufficiency of pre-school institutions in some localities, including the lack of nursery groups, expenditures for enrolling the children in the pre-university institutions etc.;
- penury of community social and specialized services.

The Ombudsman for the protection of children's rights, also draws attention on the extreme situation about the existence of a direct correlation between the air pollution and the population health which was identified by the specialists from the respective field. They precise that one of the indirect factors which causes the death of children as the result of congenital malformations and other affections from the perinatal period is the environment condition. This situation imposes to be taken some radical decisions without delay by the authorities.

Data from the chapter **increase of child life expectancy** denote the fact that there were not registered significant progresses¹²².

The National Bureau of Statistics shows that the minimum income of existence for children constitutes on average MDL 1715,8 per month, with a difference of this indicator depending on the age of the child from MDL 658,3 per child who is under 1 year old and MDL1942,2 per child who is 1-17 years old.¹²³

According to the same source, the maternity grant for children under 3 years old represents on average MDL1186,7 for insured persons, amount which covers 80% of the value of the minimum income of existence for children who are 1-6 years old. In the situation of non-insured persons, the amount of the maternity grant (MDL 440) ensures only 29,7% of the minimum need for children of the same age.

In the same context, we precise that the National Bureau for Statistics calculates the minimum income of existence for children only taking into account their age and not taking into consideration the specific needs of some categories of children, as would be children with disabilities.

¹²² National Bureau of Statistics informs that the preliminary number of stable population in the Republic of Moldova at the beginning of 2017 has constituted 3550,9 thousand persons in comparison with the same period in 2016 with 2,2 thousand persons.

¹²³ <http://www.statistica.md/newsview.php?l=ro&idc=168&id=5343>.

Thus, we consider that it is necessary for the competent public authorities to identify relevant criteria for calculating the minimum income of existence taking into consideration the real needs of different categories of children. The Government also should identify financial resources for covering the needs of social-vulnerable families which grow up and educate children in co-report with the minimum income of existence, inclusively the payment of compensations for non-insured persons.

Referring to **child malnutrition**, the National Program on Food and Nutrition for 2014-2020 provides that the respect for the principles of rational and balanced food is a simple and efficient remedy for strengthening and maintaining the health condition and prevention of non-communicable diseases which are caused by diets, malnutrition and nutritional deficiencies.

The World Health Organization (WHO) and UNICEF have recognized breastfeeding until 2 years as one from the methods of malnutrition prevention. For promoting this idea, it was launched the Campaign “World Breastfeeding Week” which is marked annually in more than 175 countries and it will encourage breastfeeding for improving children health condition in the world.

Healthy food is very important at any age of the child. In the context of poverty from the Republic of Moldova there are children who do not benefit from a proper food for their age. As the consequence these children do not correspond to the parameters of height according their age (height retardation) and to the standards of “height-weight” (weight or overweight retardation).

Year of 2016 has proven the disastrous situation at chapter children’s nutrition in both educational institutions – nursery groups, kindergartens and schools and other institutions where children are. The Ministry of Health has prohibited in the general education institutions the consumption of meat products which contain addition of food additives and it has elaborated the standard menu for schools and kindergartens.

The Ombudsman for protection of children’s rights noticed ex officio on not healthy nutrition of children in the general education institutions required to prime-minister to be convoked immediately the extraordinary session of the National Council for Children’s Rights. The Ombudsman of children has underlined that:., *the state should identify optimal solutions in relation to public procurement, certification of food quality and to ensure an efficient control of the prepared food quality, inclusively with the involvement of parents. The insufficiency of financial budgetary resources should not be an excuse, because the states which invest in children have a future, Or, all the actions should follow the superior interest of child*”¹²⁴.

¹²⁴ Addressing of Ombudsman for protection of children’s rights M.Banarescu no. 07-1/18 of 29.11.2016 to the Prime-minister of the Republic of Moldova P.Filip (http://ombudsman.md/sites/default/files/demers_catre_p.filip.pdf).

The Ombudsman for children's rights considers that the security of child should be integral part of the Strategy of National Security, because the single legitimization of a state is the capacity to protect and maintain the rights of people and to ensure them a favorable environment for life and development.

For ensuring the respect for the right to survival the actions of state undertaken for the purpose of **prevention and combating diseases** are very important. In this sense a particular accent is put on the immunization of population. The national program for immunization for 2016-2020 has as the objective the elimination and reduction of morbidity, disablement and mortality by ensuring people with mandatory immunizations which are guaranteed by the state¹²⁵.

To the address of the Ombudsman for the protection of children's rights were submitted petitions from parents who invoked the obligations to vaccinate the child contrary to their will. The reason for the refusal to vaccinate the child was based on the non-confidence in the quality of the vaccine, consequences of vaccination etc. in the opinion of parents the obliging the population to prophylactic measures represents a violation of the right to physical integrity and the right to express the consent. And when speaking about children, parents are obliged to express their consent for the vaccination of children, but the state does not ensure the quality of service and the corresponding assistance in the situation in which secondary effects appear.

In the opinion of Child Ombudsman in the conditions in which there is no an equity between the safety of the provided prophylactic service and further insurance about the child wellbeing we cannot speak about obligating the population to such services. The prior task of the State is to improve the system on checking the prophylactic measures, ensuring the quality of services preceding the immunization, immunization services and social services necessary after the appearance of secondary effects and offering all the measures of social protection.

The European Action Plan on vaccination for 2015-2020 does not provide obligating actions, but convince actions for population by ensuring checking of the vaccine quality, vaccination preceding measures and social protection.

In this context, the Ombudsman for the protection of children's rights considers that public authorities from the field of health follow to intensify the campaigns of promotion and information on the benefit of vaccination for children, vaccine quality and other relevant information for convincing parents. It is necessary also to be established measures of qualitative medical care before, during and after the immunization, the respective procedure in the case of appearance of secondary effects and ensuring some measures of social protection.

¹²⁵ According to data of the Ministry of Health, 90 % of the children from the country are vaccinated against a poliomyelitis, tuberculosis, diphtheria, mumps, rubella, scarlet rash and hepatitis B.

Phenomenon of suicide and suicide attempts

Although the public policies of this field¹²⁶ are oriented for ensuring the children safety and their protection, statistical data show that the number of cases of suicide is increasing.

Attempts of suicide and suicide among children, depending on age

Year	Suicide attempt			Suicide		
	Under 13 years old	13-16 years old	17-18 years old	Under 13 years old	13-16 years old	17-18 years old
2008	-	-	-	3	8	7
2009	-	-	-	0	7	3
2010	-	-	-	0	9	2
2011	-	-	-	3	8	7
2012	2	73	33	7	11	6
2013	8	59	20	1	12	4
2014	4	51	41	0	14	6
2015	6	64	33	4	3	3
2016	4	88	40	6	14	13

Source: Ministry of Internal Affairs, Ministry of Health

Psychologists identify the fact (and information presented in the table above confirm them) that the teenage age (13-16 years) is the one when attempts like these are more frequent. Because of these reasons the authorities designated to ensure child protection are obliged to examine the premises of this phenomenon, the form which are frequently used and to identify optimal and long-term solutions for preventing and if necessary to fight against it. It is obvious that the age of 13-16 years of children is a sensible one, fact which needs a special attention for helping them to exceed particular stages of life.

Statistical data on the number of suicide cases confirm the fact that the intensity of phenomenon is different for those two sexes, thus boys commit suicide in a bigger number if compared with girls both, from the rural and urban areas. Another picture can be observed in the case of suicide attempt – where girls are more predisposed for attempts, but fewer of them commit suicide if compared with boys.

It is necessary to remark the fact that the number of attempts of suicide among children has increased with 25% if compared with data of the last year, fact which imposes a more insistent involvement of psychologists in the activity with the children who have the experience of a suicide attempt.

¹²⁶ Criminal Code, Law on social protection of children who are in risk situation and children who are separated from their parents no. 140 of 14.06.2013, Decision of the Government of the Republic of Moldova „on approval of the National Health Policy”, no.886 of 06.08.2007, Decision of the Government of the Republic of Moldova „On approval of the Development Strategy of health system in the period 2008-2017”, no.1471 of 24.12. 2007, Chapter V „The necessary measures for achieving the expected objectives and results”, Section 3 „Provision of health services”, point 66, letter f).
<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=350833>, Strategic objectives II and IV.

In context, the Ombudsman of the Child draws attention of authorities on making efficient the activity of the inter-sectorial mechanism of cooperation for the identification, assessment, reference, assistance and monitoring of children-victims and potential victims of violence, negligence, exploitation and traffic; presence of psychologist in the educational institutions; implementation of the inter-sectorial strategy of the development of parental abilities and competences for 2016-2022¹²⁷ etc..

RECOMMENDATIONS:

- Increasing the knowledge of families and communities on signs of danger for the child life and health;
- Promotion of family planning services and formation of parental abilities for growing up and educating children.;
- Development of the monitoring system of families with children, especially those families which are in risk situations;
- Development of psychological services for the support of young families both in the period of pregnancy and in the post-natal period for the purpose of educating in the spirit of a healthy family and responsibility which are adequate for each member of the family;
- Implementing minimal quality standards for the early intervention services;
- Development of medical services through the continuous training of the medical staff and ensuring medical institutions by installing the adequate equipment;
- Implementation of the inter-sectorial strategy of the development of parental abilities and competences for 2016-2022;
- Examination of possibilities to establish a calculation formula for the assessment of the minimum income of existence for children with disabilities;
- Consolidation of the state efforts for ensuring the quality of vaccines and assuming the responsibilities by the state in the case if some negative consequences appear;
- Realization of information campaigns on the importance of children vaccination;
- Identification of measures for ensuring qualitative nutrition in the pre-university institutions;
- Involvement of children, teenagers in extra-curriculum activities (sportive, educational, cultural activities);

¹²⁷Decision of the Government of the Republic of Moldova no.1106 of 03.10.2016 „on approval of the inter-sectorial strategy of the development of parental abilities and competences for 2016-2022”..

- Organization of trainings for the social assistants, school psychologists, teachers in the field which is related to the recognition of signs which can lead to suicide attempts or suicide.

RIGHT TO HEALTH

The right to health represents the right of child to enjoy the best possible health condition and to benefit from medical services, treatment and recovery.

The World Health Organization defines is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

Health condition of children is permanently under the influence of several factors which impose the development of policies about new problems and priorities as: HIV/AIDS, influenza pandemic, non-communicable diseases, neonatal mortality, infantile mortality, infantile disability, poverty, unemployment, migration, discrimination and marginalization and the influence on children health condition of some climate changes and urbanization, development of new technologies of vaccines and medicines production etc.

For ensuring the respect for the right of child to health protection, the Ministry of Health has implemented a series of reforms about the facilitation of children's access to medical services, prevention of death cases, improvement of the medical services quality like: development of early intervention services and minimum quality standards for the early intervention services, implementation of new standards of children supervision in out-patient conditions, return of pediatrician in the public health medical institutions etc.

In the opinion of Children's Ombudsman the pediatricians will be able to settle promptly stringent problems which are related to the protection of child health and it supported the initiative of the Ministry of Health to offer the pediatrician the right to prescribe compensate medicines during primary medical care¹²⁸.

It is very important the fact that in our country for the first time the children who are under 18 years old were included in the lists of the beneficiaries of compensate treatments. Thus, the Government of the Republic of Moldova has assumed the quality of insurant for all children and all the expenditures which are related to children medical are integrally covered by the state¹²⁹.

¹²⁸ „Granting the pediatrician the right to prescribe compensate medicines will contribute to the opportune initiation of treatment, excluding the necessity to go repeatedly to family doctor for the compensate medicine prescription”.

<http://ombudsman.md/ro/content/medicii-pediatri-vor-putea-solutiona-cu-promptitudine-problemele-stringente-ce-tin-de>

¹²⁹ According to art.4, paragraph (4), letter. a), b), c), d), g) of Law no. 1585-XIII of 27.02.1998 on mandatory health insurance, the Government of the Republic of Moldova as the quality of insurant for children. According to art.2, paragraph (1) of Law on mandatory health insurance no. 1585-XIII of 27.02.1998, the volume of medical care services which are offered within the

Thus, by including children in the lists of the beneficiaries of compensate treatment it was settled the problem of treating children who suffer from rare diseases which was approached by the Ombudsman for the protection of children rights.

it also was settled the problem of those 400 children who suffer from diabetes, who were ensure for the year of 2016 with glucometers and tests for glycaemia monitoring and lancets for five daily analyses.

The Ombudsman for the protection of children's rights was notified by a parent whose child is diagnosed with diabetes of 1st type insulin-dependent about the fact that this parent had to buy from his/her own money the tests for determining glucose in blood and insulin which is vitally necessary for child, but according to the established norms they should be ensured by the state. After the intervention of the Ombudsman for protection of children's rights (Note for the Ministry of Health no. 03-520/16 of 09.08.2016, Answer of the Ministry of Health no. 01-9/1544 of 06.09.2016), the child was provided with all the necessary, benefiting from a qualitative treatment. And the prompt decision of the Ministry of Health had an impact over all the children who suffer from this disease.

The Ombudsman for the protection of children's rights draws attention on the problem which is related to the financial coverage of the expensive treatment of some rare diseases for which currently in the Republic of Moldova there is no treatment. The Ministry of Health also has answered that these cases cannot be included in a special program, because there is no a therapeutic strategy or a unique protocol of treatment for these diseases. In situations like these children are included in the lists of patients who receive the necessary medicines from the centralized sources of the Ministry. This problem remains in the attention of the Ministry of Health.

The Children's Ombudsman also draws attention on some problematic aspects appeared because of management deficiencies of public institutions of the system of health and because of insufficient information of population about the way of requiring medical care according to mandatory medical insurance policy.

The level of respect of children rights in providing pre-hospital emergency health care process has constituted another priority for the Ombudsman in 2016¹³⁰. There were founded a series of problems which are related to the operation of the children emergency health care system from Republic of Moldova.

During the investigation of a claim on the violation of the right to health protection, fact which has led to death of a child, the Office of Ombudsman has founded in the process of providing medical care to a patient there were admitted several deviations from the norms of the unique protocol of treatment. The faulty management which is aggravated by the insufficient equipment with necessary medical devices has reduced considerable the capacity to offer qualitative and opportune medical care. There were identified deviations at the stage of pre-hospital medical care in the activity of telecommunication service from the Emergency Health Care Service and the lack of some mandatory devices in correspondence with the List of mandatory medical equipment and devices for equipping sanitary transport units from Emergency Health Care Station which is approved by the Ministry of Health „on organization and operation of the Emergency Health Care Service of the Republic of Moldova” no.85 of 30.03.2009. These factors have generated fatal consequences for the child life.

The causes of this situation are of material, social and managerial nature and the deficiencies identified within the emergency health care system are conditioned by: insufficiency of the necessary medical staff, inclusively pediatricians (human resources); insufficiency of transport units (financial support); insufficiency of the necessary equipment for the emergency health care teams (general profile and reanimation profile) designated for children; lack of indicators with the name of streets and numbers of houses in some localities fact which causes the loss of time „golden” in critical situations.

These factors generate physical incapacity of the medical staff to fulfill qualitatively their service obligations.

Another aspect which should not be neglected is the legal culture of the population. It is very important for the population to know the ground and the way to call the emergency health

¹³⁰ http://ombudsman.md/sites/default/files/document/attachments/studiu_medicina_0.pdf.

care services, spread and promotion of the respective information would be a premise for reducing the cases of late call to emergency health care services.

RECOMMENDATIONS:

- Ensuring the durability of reforms from the health protection system;
- Identification of financial resources for covering the expenditures which are related to the expensive treatments for children who suffer from rare diseases;
- Development of promoting campaigns of the right to health protection among the population (modality of choosing the medical institution, specialist, volume of medical care granted within the mandatory medical care insurance which is provided by the Single Mandatory Health Insurance Program etc.);
- Implementation of the reform of the pre-hospital medical care system;
- Informing population on the modality to address to pre-hospital medical care assistance;
- Organizing and ensuring formation and continuous trainings of doctors with pediatric profile for the emergency medical care system and the whole medical staff;
- Elaboration by the Ministry of Education and including in the curriculum of Civic Education discipline of information on the modality of requiring emergency medical assistance service by children.

RIGHT TO NAME AND CITIZENSHIP

The right to name and citizenship supposes that every child should be registered and to have a name and to acquire the right of affiliation to a nationality.

The Law of the Republic of Moldova regulates expressly the modality of children documentation from the moment of birth¹³¹ and during life¹³².

The Ombudsman for the protection of children's rights draws attention on the existence of a big number of cases when children have no identity documents. Non-documentation of children leads to the violation of their right to name and citizenship, education, social protection and work etc.

Direct causes, usually, are related to the responsibility of parents and the tutelary authorities by the virtue of fitting attributions under the legal framework do not undertake concrete, sufficient and efficient measures for the interest of non-documented children.

The subject of children non-documentation was discussed with the tutelary authorities from the country within the meetings organized by the Ombudsman for the protection of

¹³¹ Law no. 100 of 26.04.2001 on Civil Status Acts.

¹³² Law no. 273 of 09.11.1994 on identity card in the national passport system.

children's rights. After the discussions there were identified gaps in application of law, excessive bureaucracy of the documentation process, irresponsibility of parents and lack of inter-sectorial collaboration of public authorities.

The Ombudsman for the protection of children's rights has examined the case of two sisters who were 16 and respectively 17 years old and had no identity acts; they had no birth certificates and identity cards. Children rested without parental care, those two sisters had no a determined official status and an established protection form.

The girl who was 17 years old after graduating the 9th form and being without identity card was not accepted by the administration of the educational institution where she was studying for 9 years to study in the 10th form (although she wanted this thing) or in another educational institution and she could not be employed. In the same risk situation was her sister who was 16 years old and a 9 form pupil.

In this situation, the public local authorities during 17 years did not undertake the necessary measures for determining the status of the child and the protection form, measures for ensuring the right to identity, namely to documentation. Although, the mayor of the village has tried to make documents for those two girls he faced a series of impediments of bureaucratic nature which were the cause of non-motivated tergiversation for drawing up the identity acts for children. In this case the responsible authorities did not take into account the superior interest of child and did not look for solutions but they have preferred to give formal answers which perpetuated the grave situation of children – absence of identity acts of these children fact which had as a consequence the violation of children's rights.

The result of the intervention of the Ombudsman for the protection of children's rights (Note no.06-5/19 of 19.08.2016 which was addressed to the MLSPF; Note no. 06-5/17 of 19.08.2017 which was addressed to the Cimislia District Council for the protection of children's rights; Note no. 06-5/18 of 19.08.2016 submitted to the Ministry of Education; Recommendation notice no. 06-2/51 of 19.08.2016 for Cimislia DSAPF (tutelary territorial authority); Recommendation notice no.06-2/52 of 19.08.2016 submitted to the Theoretical Lyceum „Hyperion” of Gura Galbenei village; Recommendation notice no.06-2/53 of 19.08.2016 addressed to Cimislia Educational Department; Recommendation notice no.06-2/52 of 19.08.2016 submitted to Gura Galbenei Mayoralty (tutelary local authority), there were drawn up identity acts for both girls, both of them were enrolled and they continue their studies in a college. The Ombudsman for the protection of children's rights has drew attention on the necessity to urge the determination of status and the form of protection of minor girls.

Another serious problem which was identified is the lack of statistical data about the exact number of children who have no birth certificate.

Number of children who have no identity acts is presented in the Information of the Ministry of Information Technology and Communications of the Republic of Moldova and it can be founded that it is very big, fact which is difficult to argue, because the first identity card of the citizen of the Republic of Moldova is free of charge according to the provisions of the Decision of the Government of the Republic of Moldova no.210 of 24.03.2014 „on granting facilities when issuing identity acts”¹³³.

Also a good few of citizens of the Republic of Moldova from the administrative-territorial units from the left bank of Nistru river remain to be undocumented. According to the information which was presented by the Ministry of Information Technology and Communications of the Republic of Moldova,¹³⁴ the impediments when registering children from the left bank of Nistru river are the following: their parents have non-official identity acts and domicile documents from the left bank of Nistru river; the lack of a mechanism for establishing a form of protection for children from the left bank of Nistru river who are in risk situation.

Number of children who are registered in the State Register of population who have no identity acts

Year	No. of minorities who are registered in the State Register of population	No. of minorities who are registered in the State Register of population who have no identity acts	No. of minors from the left bank of Nistru river and Bender mun. who are registered in the State Register of population who have no identity acts
2013	792630	409960	19393
2014	803882	391719	17289
2015	819428	373852	15402
2016	833831	353475	13678

Source: Ministry of Information Technology and Communications of the Republic of Moldova

The Ombudsman for the protection of children’s rights specifies that the documentation with identity acts of the Republic of Moldova of children from the left bank of Nistru river remains a serious problem which follows to be settled by the central public authorities.

RECOMMENDATIONS:

- Intensification of the activity of the inter-sectorial mechanism of cooperation for identifying undocumented children and applying case management for ensuring the necessary measures of protection;

¹³³ P. 1 of Annex no. 1 of the Decision of the Government of the Republic of Moldova no.210 of 24.03.2014 „on granting facilities when issuing identity acts”.

¹³⁴ Letter no. 01/184 of 14.02.2017 of the Ministry of Information Technology and Communications of the Republic of Moldova.

- Amendment of legal framework for facilitating the childbirth certification;
Identification of the mechanism for documenting children from the left bank of Nistru river with national identity acts.

RIGHT NOT TO BE SEPARATED FROM PARENTS

The right not to be separated from parents means the child right to live with his/her parents and the right to keep the contact with both parents.

The subject about the leave of parents abroad for finding a job and the effects of migration on children was also reflected by the Children's Ombudsman in the last years¹³⁵.

This phenomenon generates positive effects of short term from the financial point of view and long-term negative effects. The main positive effects refer to: child welfare, increasing the living conditions and endowing with goods of long-term use and personal goods (mobile phone, computer, bicycle etc.), traveling abroad and other material benefits. Through the negative consequences there can be enumerated those which refer to the deterioration of child – parent relation, especially with the rested home parent and on psychological level – depression, consumption of prohibited substances, problems in the educational process etc.

Children whose parents are working abroad have a similar profile with those who live in single parent families as the result of parents' divorce or the death of one of them. Although the leave abroad is temporarily the effects on children can be similar with those of one long-term or definitive separation.

Another serious problem identified by the Children's Ombudsman from many examined cases is the lack of the protection form for children who are rested home being cared by relatives or other persons. As the consequence these children are missing a legal representative of their interests in the social relations: educational environment, health protection, social assistance and protection, justice and other fields.

We also specify the fact that there is no a mechanism for identifying parents who intend to go abroad and for establishing a form of protection for children rested home.

In this regard, the Ombudsman for the protection of children's rights considers that it is opportune the strict monitoring of parents who go abroad for instituting a form of protection for children rested home and being cared by other persons, including introduction of some measures with restrictive character. There are also recommended the information measures, conducting information campaigns for sensitizing parents who intend to migrate for working for ensuring children's security.

There are also attested deficiencies in the exertion of attributions of the tutelary authorities which are related to the identification, taking for registration and granting the necessary support for children rested without parental protection.

¹³⁵ http://ombudsman.md/sites/default/files/document/attachments/raport_2015_final.pdf.

Another subject which was in the attention of the Ombudsman for protection of children's rights according to the claims came from citizens is the recovery of child support pensions. From the total number of civil cases which were examined during the 1st quarter of 2016, 1303 files referred to the collection of child support pension¹³⁶. According to the information of the National Union of Judicial Executors in the 1st quarter of 2016 there are 30,4 thousand executory documents on the collection of child support pension.

We also mention the lack of a database with applications at this chapter which are submitted from abroad to the competent authorities from the Republic of Moldova and the applications submitted from the Republic of Moldova to the courts of law from other countries.

Migration of parents, especially in the situation of their separation and not knowing the place where one of them is has generated another problem which is related to the impossibility to be pronounced a court decision on the collection of child support pension because the impossibility to be presented the proof of completion of summons procedure.

Another important aspect is the execution of court decisions about the determination of child domicile in the situation in which he/she refuses to stay at the domicile of the parent which was established by the court. If on the legislative level everything seems to be easy, the judicial executors in practice face the problem of the impossibility of court decision execution because of the lack of a technology of collaboration of the authorities responsible for ensuring the child rights in the process of court decisions execution.

Frequently, because of misunderstandings which appeared between the legal representatives (parents) children are influenced to the detriment of the execution of court decision, fact which generates within the execution both, psychological barriers and procedural barriers.

In this context, Ombudsman for protection of children's rights came with the proposal for the Ministry of Justice to modify the legislation and elaboration of a methodology of execution of court decisions which refer to children.

RECOMMENDATIONS:

- Examination of the opportunity for settling the cases with elements of extraneity for recovering child support pensions;
- Elaboration of a methodology for the execution of court decisions about establishment of child domicile;

¹³⁶http://www.justice.gov.md/public/files/diagrama_6_luni_al_anului_2016.pdf.

- Raising awareness of tutelary authorities about the attributions which are proper for them in relation to children rested in the country after the migration of their parents;
- Implementation of the Inter-sectorial strategy for the development of parental abilities and competences for 2016-2022.

CHILD OPINION

Child opinion represents the child right to express and to be taken into consideration his/her opinion being taken into account his/her age and his/her degree of maturity in any procedure which regards him/her.

Article 12 of the Convention on children's rights establishes everyone right to express freely the opinion on matters which regard him/her and the right to get the revealed attention about the exposed opinion. Thus, the state has the positive obligation to recognize and to ensure the realization of this right in all the fields of social fields by the creation of friendly conditions in compliance with the age and the degree of maturity. The state should ensure that the children's opinion is taken into consideration in the realization of all rights which are provided by the Convention.

That is why the Government is bound to provide efficient mechanisms for the submission of claims and offering legal state guaranteed assistance in the cases of ignorance and violation the child right to opinion and/or not taking into consideration the expressed opinion.

For ensuring the respect for the child right to opinion the Ombudsman for protection of children's rights has organized the discussion forum „Participation of children and teenagers – catalyzer for the promotion and monitoring of children's rights in Moldova”.

During the forum, the Children Ombudsman had the opportunity to listen the opinion of children on perception of the respect for rights provided by the Convention on children's rights. Children have specified the problems they face and they have expressed their opinion on the eventual solutions. It also was discussed the modality of interaction with the Children's Ombudsman and with other public authorities.

In the children's opinion the least respected rights are:

- Right to education – children have remarked the over busy school program, big number of mandatory disciplines, insufficiency of sport practicing, favoritism, informal payments, over demand, lack of school psychologists and teachers, non-adequate conditions (drinking water, toilet room in the schoolyard) etc.;

- Right to opinion – children think that their opinion is listened, but it is not taken into account;
- Right to rest – children have mentioned the lack of time for recreation, preferred occupations, discussions with parents;
- Right to health – children have remarked the lack of doctors in schools and the necessary equipment for granting the first aid, lack of prophylaxis actions for different diseases etc.;
- Right to a wealthy environment – children have spoken about the non-satisfactory quality of drinking water, food, smoking in public places, lack of recreation spaces.

The Ombudsman for protection of children's rights has taken into account the children vision on the modality in which they consider that the Ombudsman shall intervene for ensuring the respect for their fundamental rights namely:

- systematic monitoring on the local level of the way the children's rights are respected;
- ensuring the participation of children to the actions organized by the Ombudsman;
- mediatization of child opinion and information on the protection of child rights;
- promotion of pupils' councils;
- representation of interests before the public authorities;
- organization of thematic clubs, trainings and roundtables with the participation of children;
- mediatization of information on children's rights;
- ensuring the access to information for every child.

The Ombudsman for protection of children's rights will take into account all the ideas and opinions expressed by children in regard to the establishment of an efficient methodology of interaction and communication with it for ensuring the respect for the fundamental rights and freedoms of child.

RECOMMENDATIONS:

- Development of the mechanisms for submission of claims from children;
- Extend of categories of beneficiaries/children of legal state guaranteed assistance, including in the civil cases;
- Application of standards in the process of hearing of the child victim/witness of a crime in the justice system;
- Organizing trainings for specialists who enter in contact with children in the process of their hearing;

- Taking into account child opinion in any situation which regards him/her.

FREEDOM OF EXPRESSION, AFFILIATION, ACCESS TO CORRECT INFORMATION

Freedom of expression, association, access to correct information represents the child right to look for, receive, and distribute information and to affiliate to associations.

Child has both the right to require and to receive any pertinent information in written, oral printed or artistic form or through other modalities, upon the child choice and to be consulted, to express his/her opinion and to be informed on the consequences which can have his/her opinion, if it is respected and the consequences of any decision which concerns him/her. The Governments undertake to respect children's rights to free affiliation in formal and informal structures and freedom of peaceful assembly in the limits the law provides.

According to article 11 of Law on public associations no.837 of 17.05.1996, „Members of youth public associations can be citizens who reached the age of 14. Members (participants) of children's public associations can be citizens, reached the age of 10.”¹³⁷

Children's Ombudsman greets the initiative of the Centre of Information and Documentation on Children Rights which in 2016 has supported 49 children in the process of elaboration of a report on the respect for children's right in the Republic of Moldova, for being presented to UN Committee on children's rights. For collecting opinions of several fellows and for disseminating accessible information for all children about their rights, teenagers have decided to create an on-line platform – Children's Platform where every child felt free to speak on how his rights are respected. Children have disseminated through this mechanism the report and the final observations of the Committee.¹³⁸

Another aspect which should not be neglected is the children's access to information. Here we refer to the information accessibility for children. Because there are still gaps in the aspect of reasonable accommodation, a good few of children with sensorial deficiencies (seeing/hearing), and children with mental deficiencies meet barriers in the process of information in the society, both on educational and cultural, recreation.

This fact is caused by the gaps of the educational system and by the fact that the recreation institutions do not offer sufficient opportunities for children with disabilities to be informed correctly on any aspect of the social life.

¹³⁷ <http://lex.justice.md/index.php?action=view&view=doc&id=325424>.

¹³⁸ http://drepturilecopilului.md/files/Raport_DC_ONU_FINAL_for%20WEB.pdf.

In this context it is necessary to mention the fact that neither mass-media does not undertake efforts for creating special necessary conditions which would facilitate the access for children with disabilities.

The Ombudsman for protection of children's rights draws attention on the problem about ensuring children's to information and opinion, especially in the rural environment and it encourages all the actors from this field to make more efforts on this segment.

PROTECTION AGAINST ABUSES AND NEGLIGENCE

Protection against abuses and negligence represents the obligation of the state to protect children from all the forms of maltreatments committed by parents or responsible persons for their care.

According to official data of the Ministry of Internal Affairs during the year of 2016 there were registered 202 cases of violence in the educational institutions and from them: teachers toward pupils– 44 cases; pupils toward teachers–two cases; between pupils – 156 cases.

In this context, in the address to the Ombudsman for children's rights were submitted 20 claims where there are invoked violence actions toward children, from them eight refer to sexual abuse. There were submitted claims on violence in schools, there are invoke abuse actions from teachers toward children, pupil toward another pupil, pupil toward teacher.

Within the examination of claims, it was founded the fact that Order no. 858 of August 2013 on the Methodology of application of the Procedure of institutional organization and intervention of the staff of the educational institutions in the case of abuse, negligence, exploitation and child traffic is not executed correctly and in full volume by the coordinators of violence prevention actions. Pupils do not know about the modalities of procedure application on the level of the educational institution. The execution of the mentioned above Order is not monitored.

As a consequence, there were drawn up reaction acts which were sent to public responsible authorities being required to be undertaken actions for informing children and parents about their right to announce the violence cases and about the obligation of teachers and the administration of the educational institutions to intervene in their settlement.

It also was founded that minors-victims do not benefit from corresponding measures for the physical and psychological rehabilitation and social integration, fact provided by the article 39 of UN Convention on children's rights.

In the exposed context, the Ombudsman for the protection of children's rights has monitored the implementation of provisions of Law special protection of children who are in risk situation

and of children who are separated from their parents no.140 of 14.06.2013 with regard to the employment by the local tutelary authorities of the specialist in the field of children rights.

According to the information presented by the local public authorities of second level there exists a specialist in the field of child protection only in four localities of the country. As for the rest, these attributions are for the specialists from the territorial subdivisions of social assistance. The lack of financial resources in the local budgets and the refusal of the Government of the Republic of Moldova to allot financial resources for this purpose were indicated as the reasons for not employing specialists in the field of children rights.

Child Ombudsman considers that the lack of the mentioned specialist in the inter-sectorial mechanism of cooperation for identifying, assessing, reference, assistance and monitoring the children – victims and the potential victims of violence, negligence, exploitation and traffic has a negative influence on the system of children's rights protection and it draws attention of the Government on the identification of the solution for the invoked problem.

RECOMMENDATIONS:

- Identification of the necessary resources for ensuring each locality with a specialist in the field of children's rights, in compliance with the in force;
- Supervision and improving the existent inter-sectorial mechanisms in the field of children's rights protection;
- Developing together with mass-media the awareness campaigns for the purpose to inform young people on the behavior for dealing successfully to particular stages of life.

PROTECTION OF CHILDREN WITHOUT FAMILIES

Protection of children without families represents the obligation of the state to offer special protection to lacking family children and to ensure the possibility of proper care by another family or within an institution.

Although orphaned children were always in the attention of the authorities and currently they need a particular support both from the authorities and from the whole society.

By signing the Convention on children's rights, the governments agree to protect children against discrimination, sexual and economical exploitation and violence and to offer special protection to orphaned children.

Although the subjects about offering social housing, social benefits and social services to children rested without parental care were largely approached in the Report on observance of human rights in the Republic of Moldova in 2016, elaborated by the Ombudsman Office we can say that the reflected problems were not settled during the year of 2016.

It is clear the fact that the public policy for child protection is oriented to deinstitutionalization and the development of social alternative services in order to help the children without families and parental care to benefit from an environment closer to that of traditional family. It is important that all children to be educated in the spirit of the family values, to get those life skills (self-care, self-service, care about his/her neighbor etc.) which are necessary in a wealthy society.

During many years, inclusively in 2016, in the attention of the Ombudsman for the protection of children's rights were the cases where for the adoptive parents were not established compensations and the adoptive parents said that they were not informed about the fact that they have this right, although the Decision of the Government of the Republic of Moldova „ About approval of the Regulations on conditions of appointment and allowance payment to the adopted children and children over whom it is established guardianship/guardianship” no 581 of 25.05.2006 which provides: *”1.For the adopted children and those who are under the guardianship/guardianship, the adoptive parents, guardians/curators are paid monthly compensations for food, clothing, footwear, personal hygiene items etc. and 2.The compensation is established and is paid in an amount of 800 MDL for each adopted child or who is under guardianship/guardianship ”*¹³⁹.

Also in a critical situation are the children whose parents are deprived of liberty. The parent being deprived of liberty has no possibility to support his/her child. More difficult is the situation of mothers who have with them in prison a child who is under 3 years old. Respectively they have no possibility to work in the prison and to earn money for transmitting them for the maintenance of the other children whom it is established guardianship.

At this chapter the law maker did not take into consideration neither the situation of children whose parents have no possibility to support their children because of health problems they have.

Because of these reasons, the Ombudsman for children's rights has submitted a proposal for modifying the law¹⁴⁰. The Ombudsman has proposed the initiation of the modification procedure and completing point 10 of the Regulation on the conditions of appointment and payment of compensations for adopted children and children over whom it is established guardianship/guardianship, approved by the Decision of the Government of the Republic of Moldova no.581 of May 25, 2006 and according to Law no. 140 of June 14, 2013 on special protection of children who are in risk situations and children separated from their parents for the

¹³⁹ <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=316122&lang=1>.

¹⁴⁰ Proposal for the modification of law (no. 01-11/1 of 20.01.2017).

clear regulation of the right on the compensation payment for children who are under guardianship, because of the physical incapacity of the biological parent to protect the and to offer the corresponding care.

RIGHT OF REFUGEE CHILDREN

Right of refugee children represents the right to a special protection offered to refugee children or to children who are looking for getting the refugee status and the obligation of the state to cooperate with the competent organizations which ensure a protection and an assistance like this.

As the consequence of the social relations which have appeared due to the migration international policy, the problem of refugee children is more often discussed. According to the information offered by the Bureau of Migration and Asylum,¹⁴¹ the number of children who required asylum in 2016 (82 children) remains practically constant in comparison with that from 2015 (91 children). According to the same source with regard to children who require asylum it is applied a more favorable regime in comparison with adults who require asylum as respects the access to medical care and mandatory education. The children applicants for asylum are treated in the same conditions as the children of the Republic of Moldova.

Beside those three regional centers of foreigners' integration of Balti, Cahul and Chisinau, the Crisis Service for immigrants near the Republican Asylum for invalid persons and pensioners of Chisinau, the refugees are offered a monthly compensation for children.

At the same time, it is necessary to be remarked the fact that in the period 2012-2017 on the territory of the Republic of Moldova there were not registered cases of minor stateless person recognition.

Based on above, the Children's Ombudsman **RECOMMENDS:**

- Assessment of measures of social protection of refugee children;
- Development of the spectrum of services for refugee children in correspondence with their needs for their social integration.

RIGHTS OF CHILDREN WITH DISABILITIES

Rights of children with disabilities are the right of children with deficiencies to care, education, schooling which have the goal to help them to integrate in the society.

¹⁴¹ Letter no. 5/4-1326 of 14.02.2017.

Once the UN Convention on the rights of persons with disabilities and the UN Convention on human rights were ratified, the Republic of Moldova has compelled to undertake all the necessary measures for promoting and implementing the public policy of social inclusion of persons with disabilities. The social inclusion of persons with disabilities means a series of measures and multidimensional actions from the fields of social protection, employment, housing fund, education, sport, health protection, information and communication, mobility, security, justice and culture and from other fields designated for the integration in the society of persons with disabilities.

The Ombudsman for the protection of children's rights has elaborated a survey on monitoring of social inclusion of children who suffer from disorders of autist spectrum¹⁴².

Within the monitoring there were identified numerous deficiencies in the field of health protection, social protection and education which limit considerably the access of these children to social life. The Children's Ombudsman encourages central public and local authorities and non-governmental organizations which actions for the children interest, to establish a mechanism of efficient collaboration and cooperation for the realization of social inclusion of children with disorders of autistic spectrum and of children with mental deficiencies.

Another aspect which should not be neglected refers to children with locomotor deficiencies and sensory deficiencies (hearing/seeing). The access of children with special needs to social life often is limited because of the lack of a reasonable infrastructure accommodation: physical access to buildings and in public places, access to information (for children with hearing/seeing deficiencies). All these threaten the process of social integration of children with disabilities.

These problems are treated in the majority of Reports on respect for children's rights which are written by the Ombudsman and they remain a priority for the next years.

In this context, we mention the fact that by the Decision of the Government of the Republic of Moldova no. 732 of September 16, 2013 it was created on the central level the public institution the Republican Centre of Psycho-pedagogical Assistance which is subordinated to the Ministry of Education and on the level of the territorial – administrative units, through the decision of the Councils of the second level, including those from Chisinau municipality, Autonomous Territorial Unit Gagauzia and Balti municipality – Services of psycho-pedagogical assistance in the administrative suborder of the district/municipal subdivision with attributions in the field of education and methodologically – of the Republican Centre of Psycho-pedagogical Assistance.

¹⁴² http://ombudsman.md/sites/default/files/document/attachments/raport_tematic_autismul.pdf.

The Ombudsman for the protection of children's rights monitors the efficiency of the new created service during the period 2014-2016 realizing a thematic Report on the implementation of provisions of the indicated Decision.

At the end of 2016 year, the Ombudsman for the protection of children's rights has addressed to the Prime-Minister in order to be maintained the Republican Centre of Psycho-pedagogical Assistance (RCPA) in the new structure of the Government¹⁴³, specifying that the services provided by the Centre are very important in the process for ensuring the respect for the rights to education for all the children, inclusively for those with disabilities in the juvenile justice and in other cases with their involvement.

The Ombudsman considers that the liquidation of the Republican Centre of Psycho-Pedagogical Assistance would be an incorrect action in the actual context for the promotion of the inclusion of persons with disabilities, friendly justice for children, consultation of children opinion in all the actions undertaken by the public authorities and other involved actors.

According to NBS data, in the study year 2016-2017 the number of children from special educational institutions has constituted 860 persons, if compared with the study year 2015-2016, it was reduced with 16,7%. The majority of children of these institutions are pupils with deficiencies in the intellectual development (64,2%). At the same time the number of children with special needs which are integrated in usual schools have constituted 8675 persons and 1455 persons with disabilities.

**Number of children with special educational needs and disabilities
in the study years 2012-2013 – 2016-2017**

	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017
Total	4 558	6 302	9 198	11 426	10 990
in usual schools	2 258	4 495	7 660	10 393	10 130
in schools for children with deficiencies in the intellectual or physical development	2 300	1 807	1 538	1 033	860

¹⁴³ Letter of the Ombudsman for the protection of children's rights M. Banarescu addressed to the Prime-Minister P.Filip no.07-1/1 of 03.01.2017; <http://ombudsman.md/ro/content/avocatul-copilului-lichidarea-centrului-republican-de-asistenta-psiopedagogica-ar-fi-o>

Parents of a child with special educational needs were many times advised by the administration of school to transfer their child in another institution because of the child behavior. The child needed treatment and he has accumulated many absences due to illness, inclusively non-motivated absences. As the result of the created situation and because of the general condition of the child he did not manage to assimilate the material and the institution has intentioned the parents about their child expelling. This case was settled by signing a Conciliation Agreement (no. 06-1/2 of 22.04.2016) after the Ombudsman for the protection of children's rights exercised the capacity of mediator. The agreement provided that the educational institution will make all efforts for the child inclusion and it will ensure the necessary conditions and measures for this cause and the parents will ensure the necessary assistance for their child, will attend the recommended therapy sessions, will ensure the child presence to sessions with the consultation specialists, will keep the relation with the teachers from the educational institution. The realization of the conciliation agreement follows to be monitored by OAP.

Starting from the above, in the opinion of the Ombudsman for the protection of children's rights it is imposed the necessity of consolidation of authorities' efforts on the segment which is related to:

- Maintain the activity of the Republican Centre of Psycho-Pedagogical Assistance and the Service of Psycho-Pedagogical Assistance;
- Development of social services focused on children's needs;
- Ensuring accessibility of children with disabilities to the infrastructure of public institutions;
- Continuing the process of children deinstitutionalization.

RIGHT TO SOCIAL SECURITY

Right to social security implies the positive obligation of the state to ensure for each child the right to social insurances under all the aspects.

Children have rights wherever they are: in biological, extended families and other forms of protection, pre-university educational institutions or other public institutions etc. family members, specialists who work with children and any responsible citizen should know these rights.

Public local and central authorities have the obligation to guarantee and to promote children's rights. An important factor in the child harmonious development constitutes provision by these authorities of an efficient mechanism of protection which involves both measures of social assistance and social insurance.

According to the information presented by the National House of Social Insurances¹⁴⁴ in 2016, 5246 of beneficiaries (socially insured) and 9649 beneficiaries (socially non-insured) have acquired the right to single indemnity at first childbirth of MDL 3100 for each child. While in 2015, approximatively 5508 of beneficiaries (socially insured) and 10188 beneficiaries (socially non-insured) have acquired the right to single indemnity at first childbirth of MDL 3100 for each child.

These data denote the fact that the difference between the number of non-insured persons and insured persons is very small, fact which calls in question the welfare of these families, especially in the case when the amount of the monthly allowance for child care until the age of 1.5 years is of MDL 440 per month.

The Ombudsman for the protection of children's rights is concerned about the fact that the social compensations which are offered to young families do not cover the minimum income for existence of child.

The National Bureau of Statistics¹⁴⁵ shows that in the first quarter of 2016 the minimum income of existence for a child constituted MDL 1715,8 and for an adult – MDL 1813,7.

Relating the minimum income of existence for a child and that of the adult who takes care of the child to the amount social benefits we can draw the conclusion that the non-complete (mono-parental) families are imposed by the circumstances to live in poverty.

Another form of social security is providing each child living space. The project on construction of buildings for socially/economically vulnerable classes comes for supporting this idea. Thus, initially there were selected for construction the following cities: Calarași, Briceni, Singerei, Hancești, Soroca, Nisporeni, Ialoveni, Falești Rezina and Glodeni. Beginning with 2017 it is planned to be started the implementation of new project in Falești, Rezina, Glodeni and this fact gives hope that: children from social-vulnerable families will have a more decent standard of living.

The Children's Ombudsman agrees the initiative of authorities to start the project on offering social houses to social-vulnerable persons and at the same time it will monitor the correctness of actions undertaken under the aspect of children's right respect.

Speaking about the provision of social benefits to families with children, the Ombudsman recommends to the authorities to undertake additional measures for supporting the families with children.

RIGHT TO EDUCATION

¹⁴⁴<http://cnas.md/lib.php?l=ro&idc=244&t=/Statistica/>.

¹⁴⁵<http://www.statistica.md/newsview.php?l=ro&idc=168&id=5343>.

Right to education implies the positive obligation of the state to ensure at least free of charge and compulsoriness of the primary education.

Creation of equal opportunities in education for all children is a contemporary tendency which is common for all signatories of UN Convention on children's rights. The qualitative education is a fundamental right of child for guaranteeing the access to opportunities of development and life and the governments should take all the decisions in the field of education taking into account this thing.

This desideratum is upheld by the European Ombudsmen for the protection of children's rights with a reference to a more extended conceptualization of the right to education, because in the XXI century the right to education cannot be limited only to compulsory education. This right should include the access to pre and post - mandatory education, to formal and non-formal educational processes.

Existence of inequalities constitutes a violation of the right to education for the most disadvantaged children and the states should urgent approach these inequalities. Covering the needs of the most disadvantaged children involves systems and strategies which put children's welfare in the foreground of any school reform¹⁴⁶.

The last years are the years of reforms for the educational system of the Republic of Moldova, fact which has brought changes on the level of perception of some aspects like: inclusive education (for children from social-vulnerable families or for those with special educational needs), ensuring the necessary conditions for children's training (healthy food, free of charge transportation to the constituency education institution, fight against non-formal payments etc.).

Although there are still reserves at this chapter, the Children's Ombudsman appreciates the fact that the authorities have assumed engagements in this field and they hope that together with other involved actors they will succeed to ensure the right to education for each child. It is very important that the Ministry of Education in the process of the system creation to take into consideration the pupils opinion who appreciate the curriculum as being overcharged, the big number and exaggerated volume of homework, quality of teaching school disciplines etc.

Problems identified by the Ombudsman for the protection of children's rights are related both to the managerial aspect of the educational institutions and the monitoring inefficiency of the way of legal regulations observing by the educational territorial subdivisions.

¹⁴⁶ <http://ombudsman.md/ro/content/avocatul-poporului-pentru-protectia-drepturilor-copilului-maia-banarescu-participat-la-cea>

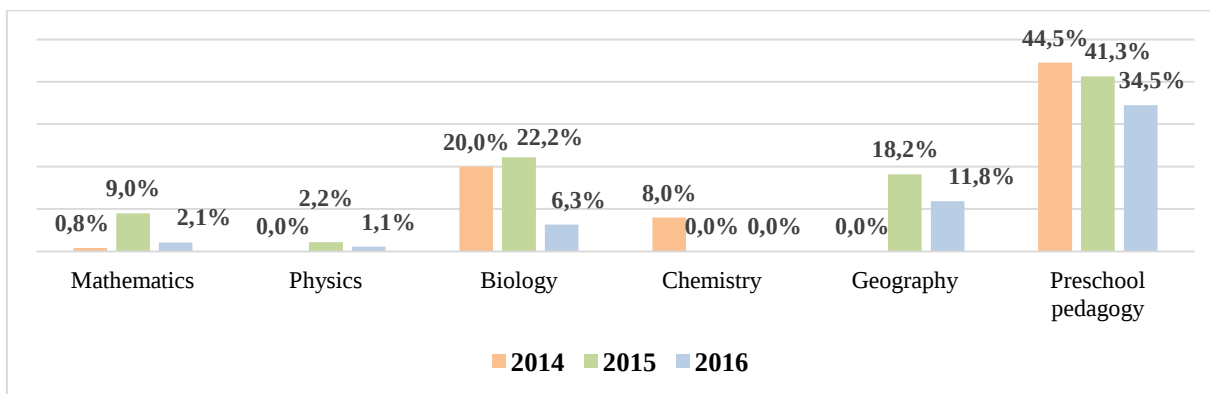
One of the problems is **ensuring the pre-university educational institutions with**, and training specialists who activate in these services. According to the decentralization policy, the medical staff from the educational institutions is not subordinated to the Ministry of Health, fact which call in question their training and information about the last tendencies in the field, quality of provided services, control of their efficiency and respectively the appropriate remuneration. According to the National Bureau of Statistics in the study year 2015/2016, the first aid post is available in 47,5% primary schools, 82,2% gymnasiums and 96,2% lyceums. The Ministry of Education mentions the fact that in 2016 in the educational institutions there were employed 1014 trained nurses and social assistants.

The lack of medical staff puts in danger the children's security and health from all the educational pre-university institutions, especially in the case when the doctor is one from the subjects able to identify physical abuses applied to children.

We also cannot ignore the problems which are related to the respect for sanitary-hygienic norms. The Ombudsman for the protection of children's rights after the visits made on the community level and according to the information parvenu from the Educational Departments from the country, has founded the fact that the major problem, especially in the rural environment is the lack of toilet rooms, on the territory of the institutions toilet rooms are in the yard and the majority of them are not connected to the aqueduct networks and they have no washstands, thus, being created impediments both for the respect of personal hygiene and for their sanitary – technical maintenance.

Lack of teaching staff or their insufficiency for some disciplines is another problem which was identified in the educational system. Audit report of 22.11.2016 on the performance of governmental instruments oriented to the modernization/improvement of services in the educational system reflects the fact that the analysis of information on the necessary teaching staff which the Ministry of Education had in 2016 (1252 vacancies) confirms an increase with 162 units in comparison with 2014 (1090 vacancies). Thus, the elucidated data attest the fact that the degree of vacancy covering in 2016 has constituted on average 61,5%, decreasing with 3,1 p.p. in comparison with 2015. At the same time the covering degree on the level of administrative-territorial units in 2016 has varied from 5,1% to 100%.

Synthesis of data on the covering degree of the necessities of teaching staff for some disciplines for 2014-2016, %



School inclusion is a topic of discussion because it reflects the way of school integration of children from social-vulnerable families and non-vaccinated children.

School integration of orphaned children or temporarily deprived from parental care constitutes another interest segment of the Children's Ombudsman. According to the provisions of point 7 of the Regulation on the organization and admission to technical post-secondary and non-tertiary post-secondary professional training programs, approved by the Order of the Ministry of Education no. 545 of June 8, 2016: „*Children rested without parental protection will be released from the fee for the registration for admission and they will be accommodated without taxes in the student dormitory of the educational institution in the period of admission.*”

However, the Children's Ombudsman has identified many cases when the educational institutions have charged taxes for studies from orphaned children.

In this case is eloquent the case of a pupil, orphaned child, who was obliged by the administration of „V.Lupu” Collegium of Orhei, where she was studying to pay the tax for studies, despite the fact that the administration was informed about the status of this child. After the intervention of the Ombudsman for the protection of children's rights (Note with recommendations no. 06-2/2 of 12.01.2017), the educational institution has returned the money which was paid for the study period.

As regards the accession of non-vaccinated children in the educational institutions, under the Law on the state supervision of public health, „*admission of children in collectives and educational and recreation institutions is conditioned by the fact of their prophylactic systemic*

vaccination". Non vaccinated children are admitted in schools and kindergartens after the administration of vaccine doses under the vaccination calendar of the Republic of Moldova.

The Ombudsman for the protection of children's rights supports the promotion of prophylaxis measures, but it considers as being non-admissible to restrain the right to education of a wealthy child, because of the lack of immunization, discriminatory fact in the realization of the right to education in comparison with the rest of children. Moreover, there are children with disabilities who are not permitted particular vaccines.

Another subject which was included in the agenda of the Ombudsman for the protection of children's rights refers to the **access of children to recreation spaces** (playgrounds and sport activities).

Currently not all the educational pre-university institutions have spaces for conducting sport classes and those which have space – have no the necessary equipment.

According to the National Bureau of Statistics in the study year 2015/2016, almost every second primary school is equipped with sports hall and in the case of gymnasiums and lyceums 84,9% and respectively 93,4% of them.

The Children's Ombudsman underlines the necessity to be promoted the extracurricular activities, because these are the most efficient measures for the prevention of factors which attempt to child life, health and psychological integrity.

Taking into account the revealed data, the Ombudsman for the protection of children's rights concludes that it is imperiously imposed the necessity to coordinate the specialists' efforts from the field of education and health for ensuring the primary schools with sports halls/ athletic fields considering that practice of sport is primordial for the children development. The National Bureau of Statistics shows that almost half of pre-school institutions have no sports halls.

In 2016 the problem of **unschooled children** still exists. According to the information presented by the Ministry of Education¹⁴⁷, from the total number of 684,5 thousand children from the Republic of Moldova, 115 are unschooled.

The public data of the Ministry of Education show that at the end of the 1st quarter of the study year 2016-2017, the number of children with school dropout has constituted 148 pupils, in comparison with 203 children at the end of the study year 2014-2015. From those children who dropped out of school, 19 are pupils of 1th -4th forms and 129 of 5th -9th forms.

Number of children in the educational pre-university institutions

	2013	2014	2015	2016	
Total no. of children in the Republic of Moldova	712,1 thousand	699,8 thousand	690,9 thousand	685,5 thousand	On January 01

¹⁴⁷ Letter of the Ministry of Education no. 02/15-489 of 09.02.2017.

No. of unschooled children (age, cause, environment)	63	61	86	115	2013-2015 on May 31; 2016 – on December 31
No. of children who dropped out of school (age, cause, environment)	168	203	220	148	2013-2015 on May 31, 2016 – on December 31
No. of educational institutions	2792	2787	2776	2752	
No. of residential institutions which are subordinated to the Ministry of Education and LPA	40	35	30	30	
No. of children in the residential	3801	2447	1610	1365	
No. of closed educational institutions	21	14	15	28	
No. of trained nurses and social assistants from the educational institutions (to be specified how many vacancies, causes)	1140	1074	1055	1014	ME has no data about the no. of vacancies and their causes
Total no. of psychologists (to be specified how many vacancies, causes)	592	695	710	647	ME has no data about the no. of vacancies and their causes
No. of unschooled children because of non-vaccination	-	-	-	-	-

Source: Ministry of Education

According to the same source, the number of unschooled children in 2016 remains constant if compared with 2015 year.

For the chapter of school dropout compared with last years it was founded a slow remediation of the situation. The reasons of school dropout are different: 53 children went abroad with their parents (16 of them – children of gypsies, periodically leave the country with their parents who work there), 40 children by the reason of parents' refuse and they work, 20 - marriage, maternity leave, wanted children, 19 - fugitives, vagrancy, 6 – because of precarious financial situation, 5- because of health condition, 5 children – because of unsuccessful schooling.

It is important to be mentioned that in a great measure, the reasons which stayed on the basis of school dropout in the study year 2016-2017 are not different essentially from those from previous years.

Reasons of school dropout in the study years 2015/2016

Causes	No. of children with school dropout	No. of unschooled children
Went abroad together with their parents	53	25
Parents refuse/work	40	38
Marriage/ maternity leave	20	1
Vagrancy as the result of leaving home	19	24

Precarious financial situation	6	8
Health condition	5	18
Unsuccessful schooling	5	1
Total	148	115

Source: Ministry of Education

The Ministry of Education for improving this situation has elaborated the Action Plan on prevention and fight against the school dropout and absenteeism in general education. Instruction of prevention and fight against the school dropout and absenteeism (Order of the Ministry of Education no. 559 of 12.06.2015) and has established mechanisms and procedures for collecting data on local level; has revised the intervention schemes in the cases of school non-attendance; has systematized data which reflect in dynamics the pupils' attendance which was registered at the end of the 1st and 2nd quarters of the study year.

The Children's Ombudsman considers that the educational institutions follow to intensify the collaboration with the other representatives of the Inter-Sectorial Mechanism of cooperation for identifying, assessing, referring, assistance and monitoring of children victims and potential victims of violence, negligence, exploitation and traffic in order to make parents more responsible and for preventing school dropout and children non-schooling.

Children's nutrition in the educational preschool institutions has come again in 2016 as in the previous years in the attention of the society. The Children's Ombudsman was always concerned about this problem, because children nutrition in the institutions of the educational system is a determining factor for the health of the whole generation and the Ombudsman for the protection of children's rights sees the settlement of the food quality problem in the systemic and consequent approach by all the authorities and responsible bodies.

According to the regulatory framework which regulates the field children nutrition in the educational institutions, only the pupils of primary classes and those of 5th- 12th forms from the educational institutions of the eastern districts of the Republic of Moldova which are subordinated to the Ministry of Education and those from the educational institutions from Dubasari, Causeni and Anenii Noi situated in the security zone are fed free¹⁴⁸.

At the same time, only pupils from the 1st-12th form who come from socially vulnerable families are fed free from the fund of public local administration.

The financial norm established by the Ministry of Education for free feeding of pupils in 2016 has constituted the amount of 7,45 MDL/day¹⁴⁹, only for breakfast and lunch. It is obvious that it is an amount which cannot cover the nutritional need for a 7-11 years' child, according to

¹⁴⁸ Decision of the Government of the Republic of Moldova on pupils feeding, no. 234 of February 25, 2005.

¹⁴⁹ Order no.759 of 18.08.2016 of the Ministry of Education.

which from daily food should not lack the proteins of animal nature – cheeses, eggs, fish, meat, fruits and vegetables.

Another problem consists in the fact that food is not purchased by the procedure of public procurement¹⁵⁰, and the provider is selected according to the criteria of the smallest offered price. As a result, because of the insufficiency of financial resources assigned for children nutrition and because of the provisions according to which the public procurement procedure is realized the quality of the purchased food does not correspond to the recognized sanitary norms.

By the end of 2016 there were founded several serious violations in this field and there were initiated criminal case files on facts which refer to the quality of the purchased food.

Some educational institutions have no school canteens, pupils “eat” in the classrooms or in the kindergarten canteens.

Survey show that every eighth child from the educational pre-school and pre-university institutions is exposed to a risk to get ill after drinking water which does not correspond to the sanitary established norms according to the content of nitrates and fluorine. Each fourth child is exposed to increased concentrations of boron and each sixth preschooler risks to get ill of acute diarrheal diseases after the consumption of microbial polluted water.¹⁵¹

In this context, the Ombudsman for the protection of children’s rights **considers necessary** to be taken measures by the public authorities on the segment of strengthening the efforts of community mobilization for improving the situation. The Ombudsman considers that it is necessary to be modified the procedure of public procurements and to be intensified the control of food and of prepared food.

The subject of **schooling children of different ethnicities** is followed by the Ombudsman for the protection of children’s rights and it is widely discussed within the survey „Perceptions on human rights in the Republic of Moldova”¹⁵², realized by the Ombudsman’s Office in 2016. An aspect which is examined within the survey is the creation by the state of sufficient conditions so that the pupil from the Russian language schools to be able to learn the state language. According to the survey about 1/3 of respondents consider that these conditions are sufficient, offering them marks of 7-10. Those who less agree these conditions are from the urban environment with the same 1/3 answers appreciated with 1-4, those from the rural environment expressed less their opinion in this context. Also, about 40% of respondents of other nationality and 21,3% Moldovans/Romanians consider that the state does not create

¹⁵⁰ Law no. 96 of April 13, 2007 on public procurements.

¹⁵¹ <http://deschide.md/ro/stiri/social/4439/Raport-UNICEF-CNSP-%C3%8En-fiecare-a-patra-gr%C4%83dini%C5%A3%C4%83-se-consum%C4%83-ap%C4%83-care-prezint%C4%83-risc-pentru-s%C4%83n%C4%83tate.htm>.

¹⁵² http://ombudsman.md/sites/default/files/document/attachments/ro-raport_do_final_pentru_tipar.pdf.

sufficient conditions for pupils from Russian language schools to learn the state language, appreciating with 1-4 the answer for this question.

Article 4(1) Law no.382 of 19.07.2001 on the rights of persons who belong to national minorities and the legal status of their organizations, provides that the state guarantees equality before the law and equal protection before the law to persons belonging to national minorities.

Currently, the Government of the Republic of Moldova has approved the Action Plan on supporting population of Roma ethnicity from the Republic of Moldova for 2015-2020¹⁵³. One of the objectives refer to ensuring effective access of persons of Roma ethnicity to educational services, medical care, employment, documentation and better living conditions through the promotion at national level of community mediators service.

For evaluating the efficiency of the community mediator, including on the segment which is related to schooling children of Roma ethnicity, the Coalition „Voice of the Roma”, in partnership with the Eastern-European Foundation have made in 2016 a Report on the analysis of the functional framework of the normative acts on formalization, consolidation and making efficient the activity of the community mediator.

According to this report the mediator will be the one who will contribute to the reduction of number of non-schooled Roma children.

Although the report underlines the role of the community mediator in schooling Roma children, on 15.09.2016 from the total number of the necessary mediators – 48 units, de facto were activating only 20 units and from them 14 – full working program, 2 – with half day program and 4 – on a voluntary basis. Employment and funding community mediators in compliance with the national legal framework is made from the budget of public local authorities of the first level.

The Children' Ombudsman considers that it is opportune to take into consideration the opinion reflected in the Final Declaration of United Nation Special Rapporteur on minorities issues in the Republic of Moldova, Ms. Rita Izsák-Ndiaye, of June 2016 i.e.: *„Recognizing the essential role of the Roma community mediators in construing some bridges between authorities and persons of Roma ethnicity and their concrete realizations in promoting Roma rights it should be taken measures for completing all the vacancies and ensuring them with salaries from the central budget.”*

Transportation of pupils to district schools is also a part of the structural reform in the field of education which has as the goal ensuring the access of each child to a qualitative education.

¹⁵³<http://lex.justice.md/viewdoc.php?action=view&view=doc&id=339319&lang=1>

The essence of the reform consists in the reorganization of the educational institutions so that to be optimized the costs for the educational process and conditions per pupil, because of the exaggerated costs which should be incurred for the maintenance of some institutions which were attended by a small number of pupils as the result of the demographical regress, especially in the rural environment.

According to the information presented by the Ministry of Education¹⁵⁴, under the data presented by the local specialized bodies from the field of education, the transportation of pupils in the study year 2016-2017 is realized with 310 school buses from the allowances provided in the funding based on standard cost per pupil of the educational institutions. Respectively, according to the situation from 01.10.2016, from the total number of 323 791 children, about 18 088 children (6%) were transported to school in another locality.

At the same time, in the database of the educational departments for the transportation of pupils there are still necessary 120 transport units.

The Children's Ombudsman appreciates intentions and efforts made by the public authorities for ensuring safe transportation of children to the district educational institution, inclusively transport adapted for children with disabilities, but it underlines that this subject remains in its vision as being one of major importance for ensuring with success the corresponding level of the instructive-educative process.

RECOMMENDATIONS:

- Identification of a mechanism for ensuring each educational institution with medical staff, in compliance with the current law and their continuous training and their transfer in the subordination of the Ministry of Health;
- Informing children on healthy lifestyle and promotion of extracurricular (sportive, educational, cultural, artistic) activities;
- Consolidation of identification, reporting and prevention school dropout mechanisms and elaboration of Instruction and Action plan on preventing and fighting against school dropout and the absenteeism in the general education (Order no. 559 of 12.06.2015 of the Ministry of Education);
- Supporting families which are in the risk situation in order to prevent the situations in which children drop out school because of the poverty;
- Realization of the objectives of the Integration Strategy of national minorities from the Republic of Moldova during the period 2015-2020;

¹⁵⁴ Letter no. 02/15-489 of 09.02.2017 of the Ministry of Education.

- Adaption of financial norms for children nutrition from the educational pre-university institutions and supplementing financial resources for ensuring a menu which will correspond to child development;
- Ensuring the educational pre-university institutions with qualitative food products by changing the selection criteria for food production providers which should correspond not only according to the criterion of the smallest price, but also to the criterion of food quality which is established as the norm on the national level;
- Ensuring with spaces for children feeding in compliance with medical-sanitary requirements.
- Consulting children's opinion by creating and making to operate the Councils of pupils and youngers within the reform of the educational system.

RIGHT TO LEISURE, RECREATION, CULTURAL ACTIVITIES

Right to leisure, recreation and cultural activities implies the child right to leisure, play, participation to cultural and artistic activities.

Any government is obliged by the ratified international instruments to intensify its guaranteeing efforts of children's rights to leisure, play and to engage in recreational age-matched activities and to participate freely to cultural and artistic life.

In this context, the Ombudsman for the protection of children's rights draws a particular attention for the respect of this right emphasizing the fact that the government should intensify its efforts and to make available for children, especially for children with disabilities adequate playgrounds where they could carry out recreational activities.

For this chapter, the Children's Ombudsman took into consideration children's opinions which were exposed within the meeting with them and the conclusions of experts from the field of education and research who work on the fact that curriculum is inflexible and overcharged¹⁵⁵: „Curriculum does not serve as the basis for the creation and operation of an effective system of school and professional orientation, the candidates to studies, pupils and students do not see the role of studies they follow in their future professional course”.¹⁵⁶

The report of children from the Republic of Moldova for the UN Committee on Children's Rights for 2016¹⁵⁷ shows that the curriculum is overcharged. According to children's opinion, pupils have 6-9 lessons and they come home being tired. Because of this fact they have

¹⁵⁵ http://www.ipp.md/public/files/Proiecte/Studiu_Formarea_Competentelor-Cheie.pdf

¹⁵⁶ Studiul comprehensiv privind domeniul educațional și al politicilor educaționale, Educația în Republica Moldova, susținut de către Fundația pentru Libertate "Friedrich Naumann", Chișinău, 2016.

¹⁵⁷ http://drepturilecopilului.md/files/Raport_DC_ONU_FINAL_for%20WEB.pdf.

no sufficient free time and power for concentrating for doing homework which is also in big volume, they do not succeed to involve in extracurricular activities, to discuss with their friends and to rest. Their schedule often is not adapted to child needs, rhythm and regime: the most difficult disciplines (mathematics, physics, chemistry, biology) are at the end of the day and those optional – through the first; difficult disciplines often are in the schedule in one and the same day and one after another.

According to legal framework, the extracurricular activities (choir, dance, orchestra, decorative applied art, design, ikebana, handicraft, painting, graphics, research activities for the study disciplines etc.), provide 8 hours a week for each complement of I-IX forms and 4 hours a week for each complement of X-XII forms, according to curriculum for primary, gymnasium and lyceum education for 2016-2017¹⁵⁸, but the specialists from this field notice the fact that actually they are not carried out, especially in the rural environment, where these possibilities do not exist:

Up to 120 pupils	4 hours (one sports club)
from 121 to 280 pupils	8 hours (2 sports clubs)
from 281 to 400 pupils	16 hours (4 sports clubs)
from 401 to 640 pupils	24 hours (6 sports clubs)
from 641 to 880 pupils	32 hours (8 sports clubs)
from 881 to 1120 pupils	40 hours (10 sports clubs)
more than 1121 pupils	48 hours (12 sports clubs)

The Ombudsman for the protection of children's rights concludes that the **coordination of efforts of specialists** from the field of education and health is absolutely necessary for joining up to the requirements of a modern and wealthy society. Moreover, the involvement of children in the extracurricular activities, as it was said is one of the most efficient methods of child multilateral development and one of the most efficient method for preventing a deviant and antisocial behavior.

CHILD WORK

Child work implies the positive obligation of the state to protect the child from his/her employment to a job which constitutes a danger for his/her health, education or development.

Convention of children's rights stipulates that member states recognize the child right to be protected against the economic exploitation and exercising a work which involves risks or

¹⁵⁸ http://www.edu.gov.md/sites/default/files/plan-cadru_2016-17.pdf.

impedes his/her education or brings damage to his/her health or physical, mental, spiritual, moral and social development.

The specialists of the National Centre of Public Health attentions on the fact that hard and improper work has often bad consequences for the child health. There can appear: kyphosis, scoliosis, and lordosis. Also, for a long term, if a child would be involved in physical activities which are not adequate for his/her age and morphological particularities this would influence the cardiovascular system.

Concomitantly, in the last period mass-media reflects the fact that: „the child work in Moldova is determined by poverty and inequality which have been amplified in the transitory period to the market economy. Often parents who have a lot of concerns do not understand the long term benefices of the investment in education in relation to the short term earnings brought by the child work.

This happens because of parents' incapacity to look beyond the strategies to survive in which they are caught, lack of confidence in the possibility of the educational system to increase the children's chances for a decent work in the future, perceptions according to which the work is beneficial for the development of child (irrespective of the dangers related to the work made by the children).”¹⁵⁹

The Children's Ombudsman considers necessary the education of child and his/her adaption to social life by the support of parents and legal representatives to different home or agricultural activities, but all these activities should be realized so that not to endanger his/her health, education and development.

This situation involves another approach from public authorities, inclusively the need to organize informational campaigns with the involvement of syndicates, patronages, civil society on the segment for preventing children illegal work and risks related to it.

PROHIBITION OF TORTURE AND DEPRIVATION OF LIBERTY

Prohibition of torture and deprivation of liberty implies the positive obligation of the state to protect the child from illegal deprivations of liberty, torture and maltreatments.

One of the priorities of the Ombudsman for the protection of children's rights, including in its capacity of a member of the Council of torture prevention in the Republic of Moldova is the prevention of torture and maltreatment of minor children.

Respectively a particular attention is paid to cases of minor children arrest, placement in detention and the execution of prison sentences.

¹⁵⁹ <http://vocea.md/munca-copilului-in-republica-moldova/>

According to official data of the Department of Penitentiary Institutions of the Republic of Moldova in 2016, 26 minor children were remanded in custody, 18 of them were 17 years old and all were boys. 10 of them have committed serious crimes and 13 - particularly serious crimes.

Those 37 minor children (35 boys and 2 girls) were executing the prison sentence in 2016, 20 of them were 17 years old. The average duration of detention of minor children after sentencing constitutes 3 years.¹⁶⁰

Information about the number of children (boys/girls) and the average duration of detention

Years	2009	2010	2011	2012	2013	2014	2015	2016
Number of children (boys/girls)	85/6	92/5	92/6	81/4	73/2	58/1		35/2
Average duration of detention	5 years	3 years	3 years	3 years	3 years	3 years		3 years

Source: Department of Penitentiary Institutions of the Republic of Moldova

The Children's Ombudsman recommends to the actors who are involved in the examination of cases with the involvement of minor children to be applied the preventive measures alternative to deprivation of liberty and during the criminal investigation other than the remand custody, according to the criminal law.

The detention conditions also often do not correspond to standards fact which generates degrading treatment and in this regard the isolators of criminal investigation represent a major problem.

Another identified problem is the observance of the rights of children who are under three years old and who are in the penitentiary institutions with their mothers who execute their sentence. In the opinion of the Ombudsman for the protection of children's rights in the budgets of the penitentiary institutions where are these children it should be provided a separate budget line for covering all the necessities for maintaining these children.

RIGHT TO RECOVERY CARE

Right to recovery care implies the positive obligation of the state to ensure an adequate treatment for the psychological and social recovery of children-victims of torture, maltreatment or exploitation.

¹⁶⁰ <https://drive.google.com/file/d/0B3cDJ-pp652HTHhLbFJUSmE1Znc/view>

The social realities denote the fact – children often become victims of different forms of abuses, maltreatments, actions qualified as crimes.

The official data show that during those twelve months of 2016 in 980 criminal cases – 1029 children were officially qualified and recognized with the status of victims of crimes (2015 - in 1334 criminal cases) which constitutes a decrease with - 26,53% in comparison with the similar period of the last year.

Children have become victims of crimes against life and health, being initiated 11 criminal cases under the constituent elements of crimes provided by the articles 145-149 Criminal Code (2015 year - 6), 28 – for injury of bodily integrity (2015 year -32).

Children are often the victims of patrimony crimes, being initiated 247 criminal cases according to the constituent elements of the crime provided by the article 186 of the Criminal Code (2015-291); 47 – according to article 187 Criminal Code (2015-57); 2 – according to article 188 Criminal Code (2015-1).

Concomitant, there were registered 40 actions of hooliganism against children (2015-53), and in 79 cases (2015-84) they have become victims of the crime provided by the art.264 of the Criminal Code (violation of traffic safety rules).¹⁶¹

In 2015 there were identified 68 victims of child trafficking, a double number in comparison with that registered in 2014 (26 identified victims). From them, 48 were sexually exploited and 19 - exploited through work. The internal child trafficking remains in 2015 on the first place, with 64 identified children in this regard, being thus attested an increase in comparison with the number of victims of child trafficking identified in 2014 (15 victims).

The Ombudsman for the protection of children's rights emphasizes that although in 2016, in comparison with 2015 the number of children who have become victims of crimes is in a slight decrease this indicator still remains quite high and the right to security and protection of these children is further. Each case needs to be examined with maximum diligence for being able to offer to child the necessary assistance for his/her psychological and social rehabilitation. Otherwise they risk to be affected for the whole rested life.

Considering that the policemen during the first contact with the minor victims face the problem of case referral and further – problems related to providing assistance to these victims, it was taken the decision through the Ministry of Labor, Social Protection and Family will undertake measures for the consolidation of mechanisms for implementing the RNS Strategy, for providing non-conditioned assistance services to victims to trafficking in human beings and monitoring the post-assistance/reintegration of cases process.

¹⁶¹http://igp.gov.md/sites/default/files/nota_informativa_cu_privire_la_starea_delicventei_juvenile_pe_parcurul_a_12_luni_2016.pdf

During its session of May, 2016, national Committee for Combating Trafficking in Human Beings has discussed the subject on violation of the rights of victims and international standards during the examination of cases in compliance with articles 165 and 206 of the Criminal Code which lead to their victimization. Thus, the Committee has recommended to be taken additional measures for eliminating these serious gaps.

Taking into account the impediments emphasized on this segment, the Ombudsman for the protection of children's rights considers necessary to intervene immediately in their settlement.

The Children's Ombudsman also is concerned about the insufficiency of measures of assistance, especially the psychological one, so necessary for the psycho-emotional rehabilitation of children.

RECOMMENDATIONS:

- Improvement of the mechanisms of non-conditioned access to assistance and protection of children victims of different forms of abuses: legal representation of children, emergency placement, hospital services etc.;
- Ministry of labor, Social Protection and Family together with the Ministry of Finances/ Public Local Administration to identify the financing mechanisms of the created social services and the methods and means of development of the new specialized services, including those of emergency placement;
- Training the staff from the system of child protection and their specialization according to the new identified necessities.

ADMINISTRATION OF JUVENILE JUSTICE

The administration of juvenile justice implies the right of children who are in conflict with the law to be treated with respect for their human dignity.

According to the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)¹⁶², the prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young persons can develop non-criminogenic attitudes.

The provisions of these principles, as well as other international standards in the field require a child-centered legislative system that recognizes the child as a subject of fundamental rights and freedoms and ensures that all actions that concern him are guided primarily by the superior interest of the child.

In this context, the issue of juvenile justice is constantly addressed by the Ombudsman for the protection of children's rights, fact reflected in the previous annual reports. It is worth mentioning that this phenomenon is gaining momentum, which arouses the concern of the Ombudsman. For these reasons, authorities need to take measures to combat the premises of the phenomenon.

The Ombudsman for the protection of children's rights brought on the Government's agenda the issue of street children¹⁶³, so efforts have been made to seek and find solutions, but the problem remains open yet without systemic, real and viable solutions. Lack of staff competent to interact with such children, as well as the lack of financial means are the main causes of the existing situation.

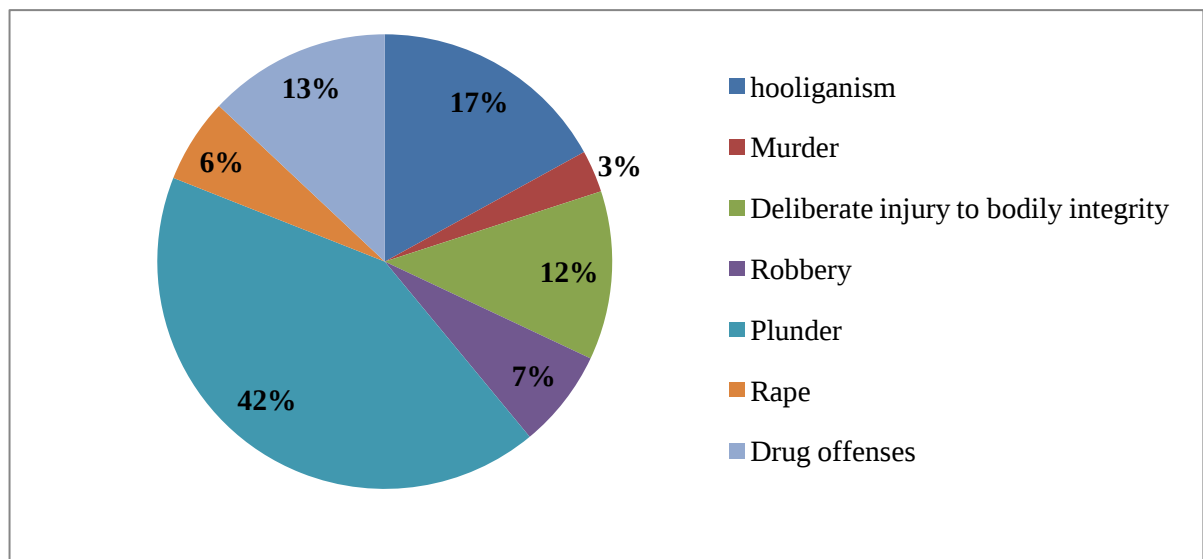
Social and economic factors favor the increasing number of children in conflict with the law. In terms of juvenile delinquency, compared to previous years,¹⁶⁴ the situation has not changed considerably.

¹⁶² United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), Resolution 45/112 of December 14, 1998 (the 68th Plenary Meeting);

¹⁶³ <http://ombudsman.md/ro/content/avocatul-poporului-pentru-drepturile-copilului-pledeaza-pentru-crearea-unui-serviciu-de>

¹⁶⁴ http://ombudsman.md/sites/default/files/document/attachments/raport_2015_final.pdf;

Crimes committed by minors or with their participation during the period of 10 months of 2016



Source: Ministry of Internal Affairs

According to the information provided by the General Police Inspectorate,¹⁶⁵ in 2016 there were recorded 941 crimes committed by minors or with their participation. From the total number of offenses, the minors committed: 5 extremely serious offenses, 100 – serious, 610 – less serious and 66 minor offenses.

According to the data of the Department of Penitentiary Institutions of the Republic of Moldova, in 2016 in pre-trial detention there were 26 boys, 18 of whom were 17 years old. Of these, 10 committed serious crimes and 13 - very serious. 11 children lived in incomplete families and 4 were separated from their parents.

In 2016, under a conviction sentence, 37 (35 boys and 2 girls) of minors executed the sentence, 20 of whom reached the age of 17. Of these, 15 minors came from incomplete families, and one was living separately from the family.

In accordance with the public policy of ensuring a child-friendly justice, an important role is played by the **hearing conditions of minors**.

The conditions in the hearing rooms for minors and to what extent they meet, the standards have been discussed for a long time.

¹⁶⁵ Letter of the General Police Inspectorate of the Ministry of Internal Affairs no. 34/11-516 of 02.02.2017.

Taking into account the information presented by the General Police Inspectorate¹⁶⁶, In the Police Inspectorates there are 2 hearing rooms (at the Causeni Police Inspectorate and Ungheni Police Inspectorate), where 47 repeated hearings took place. According to the General Prosecutor's Office¹⁶⁷, there are 8 hearing rooms in the Prosecutor's Offices, where 2 repeated hearings were held.

The Ombudsman for the protection of children's rights is concerned that no standards are being developed at national level on hearing rooms. The authorities holding hearing rooms have referred to international standards, which represent some general rules.

Juvenile child-friendly justice is a legal system designed to respect the human dignity of the minor and to provide him with the necessary assistance for re-education and his integration into society.

The subject **of the education of children in penitentiary institutions** has been specifically monitored over several years by the Ombudsman for Children. The Ombudsman's Institution carried out the Study „Respecting the right to education of minor detainees / convicts in penitentiary institutions”, which states that: „Although the Constitution of the Republic of Moldova guarantees that high school, secondary professional and higher education is equally accessible to all, based on merit, minors detained in penitentiary institutions are restricted by this right.”¹⁶⁸

In this respect, we recall the **recommendations of the study** to be implemented:

Establishing the number of hours and study subjects for minors in the penitentiary institution, in accordance with the Order of the Minister of Education „On the Framework Plan for Primary, Secondary and High School Education in the Year of Study 2016-2017”.

- Modification of the Execution Code of the Republic of Moldova no. 443-XV of December 24, 2004 and Article 240 paragraph (1) of the Law on the penitentiary system no. 1036 of December 17, 1996, article 11 paragraph (13), which stipulates that in penitentiaries shall be organized, on a compulsory bases, the secondary general education of the convicts and the incorporation of these provisions into the Constitution of the Republic of Moldova, but also into the Education Code which stipulates that compulsory education starts with the preparatory group in pre-school education and finishes with high school education or secondary and post-secondary professional technical education and the obligation to attend compulsory education ends at the age of 18.

¹⁶⁶ Letter of the General Police Inspectorate, Ministry of Internal Affairs no. 34/11-516 of 02.02.2017.

¹⁶⁷ Letter of the General Prosecutor's Office no. 25-16d/2017-39 of 03.02.2017.

¹⁶⁸ http://ombudsman.md/sites/default/files/document/attachments/raport_tematic_educatia_in_peniteniarele_pentru_minori.pdf. The study „Respecting the right to education of minor detainees / convicts in penitentiary institutions”, page 5-6.

- Ensuring the educational process for minors in detention who have completed the gymnasium cycle;
- Ensuring the educational process for detained minors who at the time of retention / arrest / conviction started the studies in the high school cycle and cannot continue it in the penitentiary institution;
- Systematic monitoring of the process of education in penitentiary institutions;
- Ensuring detainees with textbooks and school supplies necessary to acquire the school curriculum.

The problem of re-socialization of minors remains also present.

Social integration of minors from detention institutions

Year	No. of registered minors	No. of minors who benefited from social integration assistance	No. of minors integrated into society
2013	373	533	338
2014	320	437	312
2015	344	450	304
2016	346	662	316

Source: National Probation Inspectorate

Statistics show that in 2016 of the total number of minors who benefited from social integration assistance, about 47.7% were integrated into society. Approximately 63.4% of the total number of minors in this category were integrated in 2013. These figures signify the existence of deficiencies in the system of social integration of minors in conflict with the law.

RECOMMENDATIONS:

- Development of social assistance and social integration services for minors in contact with / in conflict with the law;
- Elaboration of country-level standards for hearing rooms for child victims / witnesses of crimes;
- Development and implementation of improvement programs for penitentiary employees to use methods of education appropriate to the age of detainees;
- Upgrading the technical and material base to allow the detainees to be properly educated;
- Professional specialization and continuous training of all the actors involved in the examination of cases concerning the minors (judges, lawyers, prosecutors, etc.).

CHAPTER III

ACTIVITY OF TORTURE PREVENTION

State obligations in the context of the ratification of OPCAT (Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment)

The Republic of Moldova is one of the 71 States that ratified on December 18, 2002 the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment (hereinafter referred to as OPCAT or Protocol) adopted by the General Assembly of the United Nations.

Torture and inhuman or degrading punishment or treatment are prohibited and constitute serious violations of human rights. It is still necessary to take measures to achieve the objectives of the Convention against Torture and Inhuman or Degrading Treatment or Punishment and to strengthen the protection of persons deprived of their liberty, against torture and inhuman or degrading treatment or punishment.

With the ratification of the OPCAT, the State is required to maintain, designate or establish, no later than one year after the entry into force of this Protocol or from the ratification or accession to it, one or more national independent mechanisms to prevent torture, in order to combat torture at national level. The mechanisms set up by decentralized units may be designated as national preventive mechanisms for the purposes of this Protocol if they comply with its provisions.

In the OPCAT sense, any place, whether public or private, that a child, adult or young person, cannot leave by his or her own will means deprivation of liberty institution. In order to prevent any form of torture, inhuman or degrading treatment that may occur in such closed institutions, the Protocol establishes public control through an unannounced visit mechanism. The purpose of this mechanism is to protect people from the abuse of state officials.

In order to allow national and international mechanisms to fulfill their responsibilities, the States-Parties to the Protocol have undertaken to grant them:

Unrestricted access to all information on the number of persons deprived of their liberty in places of detention and the number of such places and their location;

Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention;

Unrestricted access to all places of detention and their installations and facilities;

The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the Sub Council on Prevention believes may supply relevant information;

The liberty to choose the places it wants to visit and the persons it wants to interview.

Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defense, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.

According to OPCAT, no authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Sub Council on Prevention or to its delegates any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

Following the ratification of the OPCAT and the creation of a National Mechanism to Prevent Torture, the state guarantees the functional independence of the National Mechanism to Prevent Torture and the independence of their staff. It also takes the necessary steps to ensure that experts in the National Mechanism to Prevent Torture have the necessary skills and professional knowledge. The state will also ensure the balance in terms of gender representation and adequate representation of ethnic and minority groups in the country.

At the same time, the state is committed to making available the necessary resources for the functioning of national prevention mechanisms. When establishing the national prevention mechanisms, account will be taken of the Principles on the Status of National Institutions for the Promotion and Defense of Human Rights.

Establishment of the Council for the Prevention of Torture

Although the Law on the Ombudsman no. 52 came into force in May 2014, a mechanism to prevent torture according to the new legal requirements was only created on October 24, 2016. This delay was due to the late adoption of the Regulation on the organization and functioning of the Ombudsman's Office (Law no. 64 of 31.07.2015, in force from 02.10.2015), on the basis of which the Center for Human Rights was reorganized into the Ombudsman's Office.

Immediately after the reorganization of the Center for Human Rights in the Ombudsman's Office, article 30 paragraph (1) of the Law on the Ombudsman, the Ombudsman has begun the process of creating the Council for the Prevention of Torture as a National

Mechanism to Prevent Torture in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

At the same time, given that the Law on the Ombudsman contains imperfect regulations regarding the organization and functioning of the National Mechanism to Prevent Torture, the Ombudsman asked the Directorate General Human Rights and Rule of Law (Directorate for Human Rights) of the Council of Europe to carry out a detailed analysis of the Chapter V of the law, which regulates the organization of torture prevention activity.

According to the Opinion of the Directorate General Human Rights and Rule of Law of November 28, 2015, *"the issues arising from the provisions of the current Law have more to do with some fundamental questions of content and structure of the provisions than with its overall compliance with international standards. Thus, some provisions in the law point to the Council for the Prevention of Torture as a separate legal entity to enjoy the mandate of the National Mechanism to Prevent Torture. However, other provisions refer to the Ombudsman as MNPT. The key issue - which is the National Mechanism to Prevent Torture in the Republic of Moldova - is not a matter of formality, but an essential issue of legal clarity, responsibility and obligation, which has not been solved. According to the Opinion, it is essential that MNPT and civil society, especially NGOs, work closely together, which implies an atmosphere of mutual respect and the willingness of both sides to cooperate. On the other hand, there are strong arguments against the assumption by civil society representatives (NGOs) of the responsibility for exercising public functions. In principle, this can be considered to be in contradiction with the specifics of NGOs and creates ambiguous situations in the relationship between the Ombudsman as a state institution and NGOs as important representatives of the civil society. This also raises very complicated practical problems with the MNPT decision-making process"*.

At the same time, the Opinion states that there are strong arguments in favor of designating the Ombudsman's Office as a National Mechanism to Prevent Torture, but respecting the principle of close and respectful cooperation with the civil society.

On January 20, 2016, the Ombudsman, in collaboration with the Council of Europe, held consultations with the representatives of the civil society on the draft Regulation on the organization and functioning of the Council for the Prevention of Torture. When drafting the regulation, the Ombudsman took into account the recommendations contained in the Council of Europe's Opinion of the Directorate General Human Rights and Rule of Law (Directorate for Human Rights). The participants in the consultations subsequently came up with detailed proposals to improve the Regulation. After finalizing the draft of the Regulation on the organization and functioning of the Council for the Prevention of Torture, it was repeatedly

placed on the official website of the Ombudsman's Office for final consultations with the civil society.

On June 30, 2016, the Regulation on the organization and functioning of the Council for the Prevention of Torture was endorsed by the Commission Human Rights and Interethnic Relations of Parliament¹⁶⁹, and on July 4 - was approved by the Ombudsman¹⁷⁰. It should be noted the fact that the legislative loopholes regarding the establishment and functioning of the National Mechanism to Prevent Torture under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment did not allow the development of a comprehensive document capable of ensuring the effectiveness of the torture prevention activity under the Protocol on the one hand and the assurance of the independence of the Ombudsman in the decision-making process on the other.

On July 11, the Ombudsman announced the contest to select the members of the Council for the Prevention of Torture. Due to lack of sufficient files, the contest was prolonged.

It was only on October 24, 2016 that the Council for the Prevention of Torture was created as a National Mechanism to Prevent Torture under the Law on the Ombudsman (People's Advocate) no. 52 of 03.04.2014.

The purpose of the National Mechanism to Prevent Torture is to regularly examine the treatment of persons deprived of their liberty in order to strengthen their protection against torture and inhuman or degrading treatment or punishment. For the purposes of the Article 4 of the Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, which that person is not permitted to leave at, will by order of any judicial, administrative or other authority.

According to the provisions of the Law no. 52, Council for the Prevention of Torture is comprised of seven members. The Ombudsman and the Ombudsman for the protection of children's rights are lawful members of the Council. The other members proposed by the civil society, are selected by a selection process organized by Ombudsman's Office and are appointed for a 5 year mandate, which can't be renewed.

The Members of the Council are performing their duties based on principles of independence, impartiality, objectivity and confidentiality. At the same time, the Members of the Council have an official pass and enjoy the guarantees for independence and inviolability set for the Ombudsman.

The mission of the Council is to ensure the protection of persons against torture and other cruel, inhuman or degrading treatment or punishment through:

¹⁶⁹ http://ombudsman.md/sites/default/files/acte_de_reactionare/aviz_0.pdf

¹⁷⁰ http://ombudsman.md/sites/default/files/acte_de_reactionare/reg_in_intregime.pdf

- carrying out preventive and monitoring visits to places where could be people deprived of their freedom, placed there by the disposal of a state body or at its directions, or with its agreement or consent;
- preparing reports following each preventive or monitoring visit, according to the working methodology;
- formulating recommendations on improving the behavior towards prisoners, improving detention conditions and preventing torture, formulating proposals to improve legislation to eliminate the causes and conditions that create preconditions for violations of human rights;
- contributing to establishing and maintaining collaborative relationships with national and international governmental and non-governmental organizations active in the field of torture prevention and human rights in order to exploit their positive experiences and engage in joint activities aimed at contributing to the prevention of torture;
- contributing to continued cooperation and communication with the UN Sub-Committee on the Prevention of Torture.

The resources required to carry out the tasks of the Council shall be included in a separate budget line, an integral part of the budget of the Ombudsman's Office. Members of the Council, except for members of the law, shall be entitled to a 10% remuneration in the average monthly salary for each day on which they have carried out preventive visits to the places of detention or have attended the meetings of the Council.

The Ombudsman is currently drafting the operational instructions necessary for the standardization of torture prevention activities - methodologies for making visits to different types of institutions that ensure people's detention, instructions on planning visits and reporting on visits etc. A Code of Ethics for the members of the Council for the Prevention of Torture is also in the process of elaboration, containing regulations on their conduct in relations with the representatives of the detention institutions, the persons detained, the collaborators of the Ombudsman's Office, etc.

In the meantime, a specialized subdivision has been created within the Ombudsman's Office, which provides the necessary information and methodological assistance to the members of the Council for the Prevention of Torture in order to ensure the proper conduct of their work. Taking into account that the employees of the Ombudsman's Office are civil servants, this subdivision has three basic functions: ensuring the prevention of torture activity; providing information and methodological assistance by the Council for the Prevention of Torture; ensuring that activities to promote zero tolerance of torture are carried out.

In the transition period, until the establishment of the Council for the Prevention of Torture as a National Mechanism to Prevent Torture, torture prevention was provided by officials of the Ombudsman's Office.

CHAPTER IV

THE ACTIVITY OF THE OMBUDSMAN IN 2016

CONTRIBUTION TO THE LEGISLATION IMPROVEMENT PROCESS

According to the Paris Principles¹⁷¹, a National Institution for the Protection of Human Rights is called upon to submit to the Government, Parliament and other competent body's opinions, recommendations, proposals and reports on any issue related to the promotion and protection of human rights.

However, these provisions are found in the Law on the Ombudsman no. 52 of 03.04.2014, which states that, in order to improve the legislation in the area of human rights and freedoms, the Ombudsman submits to the subjects with the right for a legislative initiative proposals and recommendations to improve the legislation in order to remove the causes and conditions creating premises for the violation of the human rights and freedoms; issues opinions on the draft normative documents which envisage the human rights and freedoms; issues opinions on the compatibility of the national legislation with the international legal tools in the area of human rights and freedoms¹⁷².

Thus, as can be seen from the table below, **80 draft normative acts** were examined in 2016 and the Ombudsman expressed his views in terms of their compliance with the human rights standards. At the same time, **15 proposals for modification** of the normative framework were formulated, and **three notifications** regarding the control of the constitutionality of some normative acts.

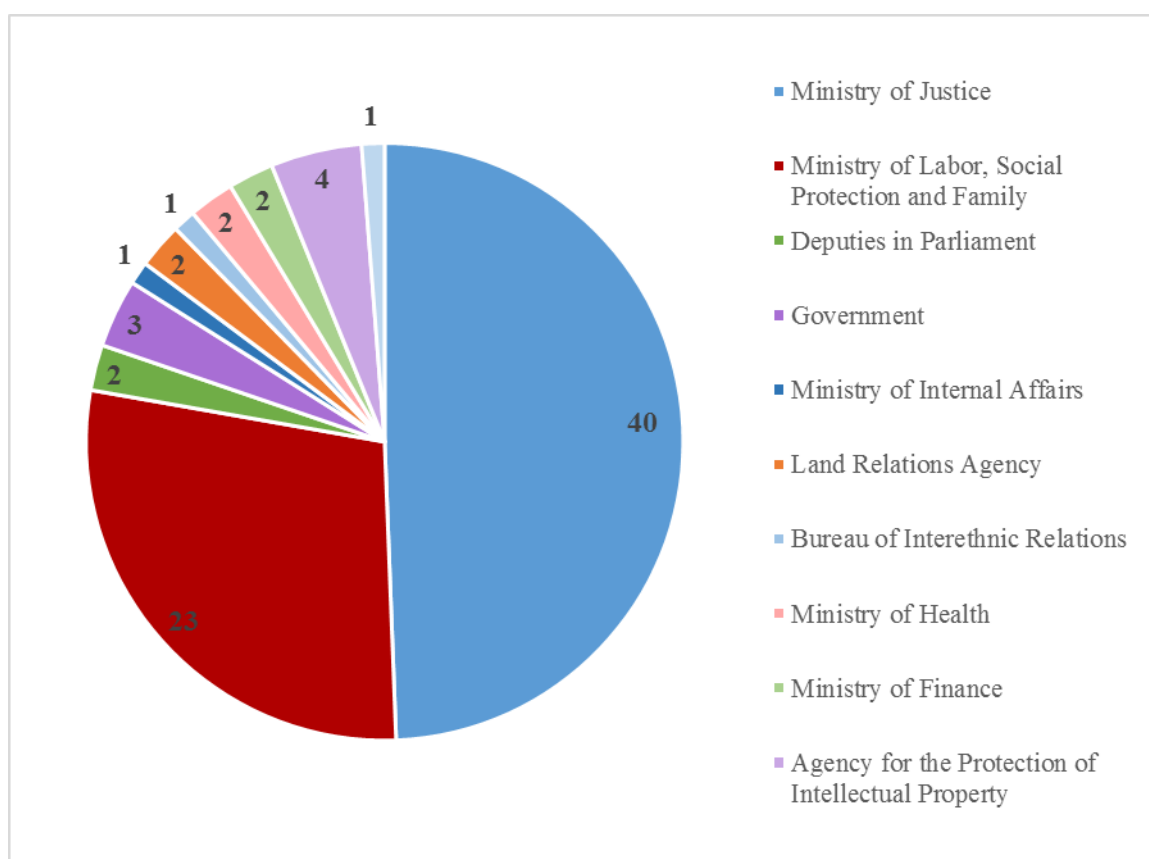
	2015	2016
Opinions on draft normative acts	60	80
Proposals to improve the legislation	8	15
Referral to the Constitutional Court	2	3

¹⁷¹ The Principles on the Status of National Institutions for the Promotion and Protection of Human Rights (the Paris Principles) adopted by the United Nations General Assembly resolution 48/134 of December 20, 1993 regulates the standards of activity of the National Institutions for the Protection of Human Rights.

¹⁷² Article 27 of the Law on the Ombudsman no. 52 of 03.04.2017.

According to the diagram below, we find that the opinion of the Ombudsman was most frequently requested by the Ministry of Justice and the Ministry of Labor, Social Protection and Family.

Distribution of draft regulatory acts, depending on the requested authority



As it can be seen, the number of approved normative acts is large enough. It is noteworthy, however, that much of them were not in the field of human rights. At the same time, some draft normative acts that have a very important impact from the point of view of respecting human rights have not been sent to the Ombudsman for expertise.

Therefore, we have found that, although most of the recommendations were accepted by the authorities concerned, drafts for amending and completing the normative acts were drafted not in all cases.

At the same time, we have determined that the majority of authorities do not ensure the publication of the tables of divergences in order to be able to follow what were the proposals submitted during the consultation process. We consider it very important for the authorities to ensure a transparent process in this regard.

Regarding the exercise of the constitutionality control, in 2016 the Ombudsman filed a petition to the Constitutional Court on some provisions of the Code of Civil Procedure¹⁷³, which, in the view of the Ombudsman, would have stipulated an excessive limitation of the right to free access to justice for persons with mental disabilities.

Thus, the free access to justice of a person declared incompetent by a court decision is an intervention by the legislator in the content of this right, which affects its very substance, contrary to the Article 16 in conjunction with the Article 20 and 54 of the Constitution of the Republic of Moldova, and is incompatible with the covenants and treaties on fundamental human rights, in particular the UN Convention on the Rights of Persons with Disabilities.

In conclusion, by the Constitutional Court Decision no. 33 of November 17, 2016, the Ombudsman's complaint was accepted for consideration, and the contested provisions being declared unconstitutional.

In another petition, the Ombudsman asked for the constitutionality of the *Law no. 235 on the issuance of state bonds for the execution by the Ministry of Finance of the payment obligations derived from the state guarantees no. 807 of November 17, 2014 and no. 101 of April 1, 2015 no. 235 of 03.10.2016*.

In the Ombudsman's view, this law damages the fundamental rights of citizens, in particular the right to a decent living guaranteed by the article 47 and 126 paragraph (2) letter g) of the Constitution of the Republic of Moldova, articles 1, 2, 9 and 11 of the International Covenant on Economic, Social and Cultural Rights, articles 22, 25 of the Universal Declaration of Human Rights and 4, 12 and 13 of the European Social Charter* (revised).

The Constitutional Court resigned the Ombudsman's notification, for the identity of the object, mentioning that the Law no. 235 of October 3, 2016 was the subject of the Decision No. 77 of October 12, 2016 on inadmissibility.

The Ombudsman notified the Constitutional Court on the control of the constitutionality of some provisions of the Law no. 162 of 22.07.2005 on the status of the military that forbids the multiple citizenship for the military by contract. The Ombudsman considered that the contested provisions were discriminatory and contrary to the fundamental rights to work and education of the military by contract.

At the time of drafting this report on January 31, 2017, the Constitutional Court ruled on the control of the contested rules and concluded that these limitations were not proportionate to the purpose of ensuring loyalty to the state, affecting the right to work and study, contrary to the Article 16 combined with the Articles 35 and 43 of the Constitution.

¹⁷³ <http://www.constcourt.md/ccdocview.php?tip=sesizari&docid=434&l=ro>

The Court ruled that the military oath given towards the Republic of Moldova is the assumption of responsibility for the observance of military laws and regulations and the breach of the constitutional and legal duty entails legal liability. Thus, the military can be held accountable for: homeland betrayal, disclosure of state secrecy, surrender voluntarily to captivity, abandonment of the battlefield or refusal to act with the weapon.

RECEPTION AND EXAMINATION OF COMPLAINTS

One of the duties of the Ombudsman is to receive and examine applications for violations of human rights and freedoms.

The Ombudsman reviews the complaints of the individuals, no matter of the citizenship, age, gender, political or religious beliefs, living permanently, being or having been temporarily on the territory of the country, whose rights and freedoms were allegedly violated by the Republic of Moldova. The Ombudsman doesn't substitute by his/her competencies the public authorities, legal bodies or courts and reviews the complaints on the decisions, actions or inactions of the public authorities, organizations and companies, no matter of the type of property and legal organization form, of the non-commercial organizations and responsible officials at all levels who, in the petitioner's opinion did violate his/her rights and freedoms.

In order to notify the Ombudsman, the person must comply with a few conditions: the complaint is submitted before the expiry of one year from the day of the alleged violation of the rights of the petitioner or from the day when the petitioner did learn of the alleged violation; In the complaint are indicated the name, surname and domicile of the petitioner, brief description of the matter circumstances, the name of the authority or the name and surname of the person or the name and surname of the responsible official following whose actions and/or inaction took place the violation of the rights and freedoms, in the case when this person is known; in the case when the facts invoked in the complaint were subject to other authorities review, the complaint is annexed also with copies of the respective authorities' replies.

Under the conditions of the Law no. 52, the Ombudsman cannot receive for review the complaint which is under court trial for substantive examination, except complaints on actions and/or inactions of the judge; the review of which is in the competence of other bodies (initiation of a criminal investigation, explanation of the court decision); on a tried matter, for which there is a sentence or a substantive court decision; which contains calumnies and insults, discredits the state authorities in general, local authorities, citizens' associations and their representatives, instigating to national, racial, religious and other types of hate and other actions for which liability by law is provided.

Thus, the Ombudsman is an out-of-court (ex officio) mechanism for ensuring respect for human rights and is an alternative to settling amicably conflicts between petitioners and public authorities, organizations and businesses, irrespective of the type of ownership and form of organization, by non-commercial and by people with positions of responsibility at all levels.

In his work, the Ombudsman is governed by the national normative framework and the acts adopted by the bodies of the UN system and the Council of Europe. One of the most

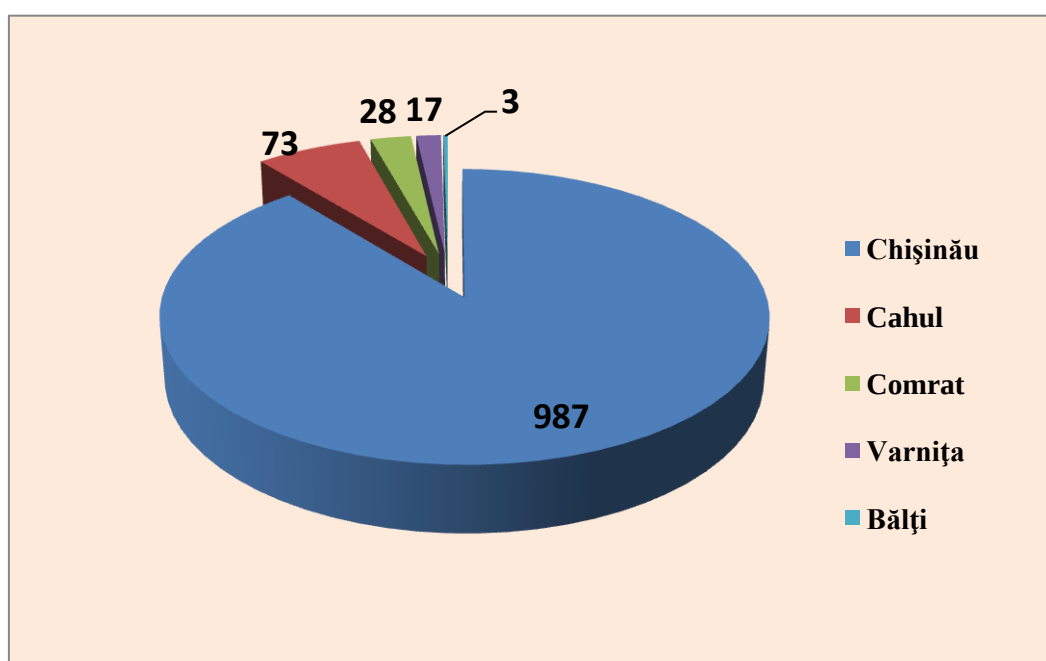
important documents in this respect is the Principles on the Status of National Institutions for the Promotion and Protection of Human Rights (the Principles of Paris), adopted by the United Nations General Assembly Resolution 48/134 of December 20, 1993, which are developed and interpreted in several UN information sources. According to these principles, independence, impartiality and confidentiality are key-elements in the work of the National Institutions for the Protection of Human Rights.

As a result of the cited legal provisions and the above-mentioned principles of activity, for the Ombudsman is of the utmost importance that the person who is considered to be infringed in his / her rights by a public authority manifests unilateral will for the intervention of the Ombudsman in solving the problem.

Thus, by the Law on People's Advocate (Ombudsman) no. 52 of 03.04.2014 the possibilities of intervention at the request of the petitioners were considerably limited, which led to a decrease in the number of applications filed with the Ombudsman's Office.

From January 1 to December 31, 2016, the Ombudsman received 1108 complaints of which: 987 complaints - the central office of the Ombudsman's Office in Chisinau, 73 complaints received at the Cahul Representation, 28 - at the Comrat Representation, 17 - at Varnita and three at Balti.

The statistical data presented were collected in the electronic file system developed in 1998. For this reason, some classifications under the allegedly injured right do not correspond to the current situation within the institution, the system will be revised with the development of an efficient electronic complaints tracking system.



In line with the applications received, the most frequently violated petitioners' rights are free access to justice, security and personal dignity, and the right to social assistance and protection as follows:

- **Free access to justice** – 296 (27%) complaints, in which were raised issues concerning: non-enforcement of judgments, the delay in the examination of cases in the courts, disagreement with the sentence / judgment given by the courts, access to lawyers, the presumption of innocence, the right to compensation for the damage;
- **Security and personal dignity** - 230 (20,8%) complaints, in which the petitioners complain: poor prison conditions in penitentiaries, restricting the access to medical services in the places of detention, application of ill-treatment, violation of the detention or arrest procedure, lack of access to information;
- **Social assistance and protection** - 133 (12%) complaints, which concerns the violation of the right to a decent living, irregularities in the way of calculating the benefits.

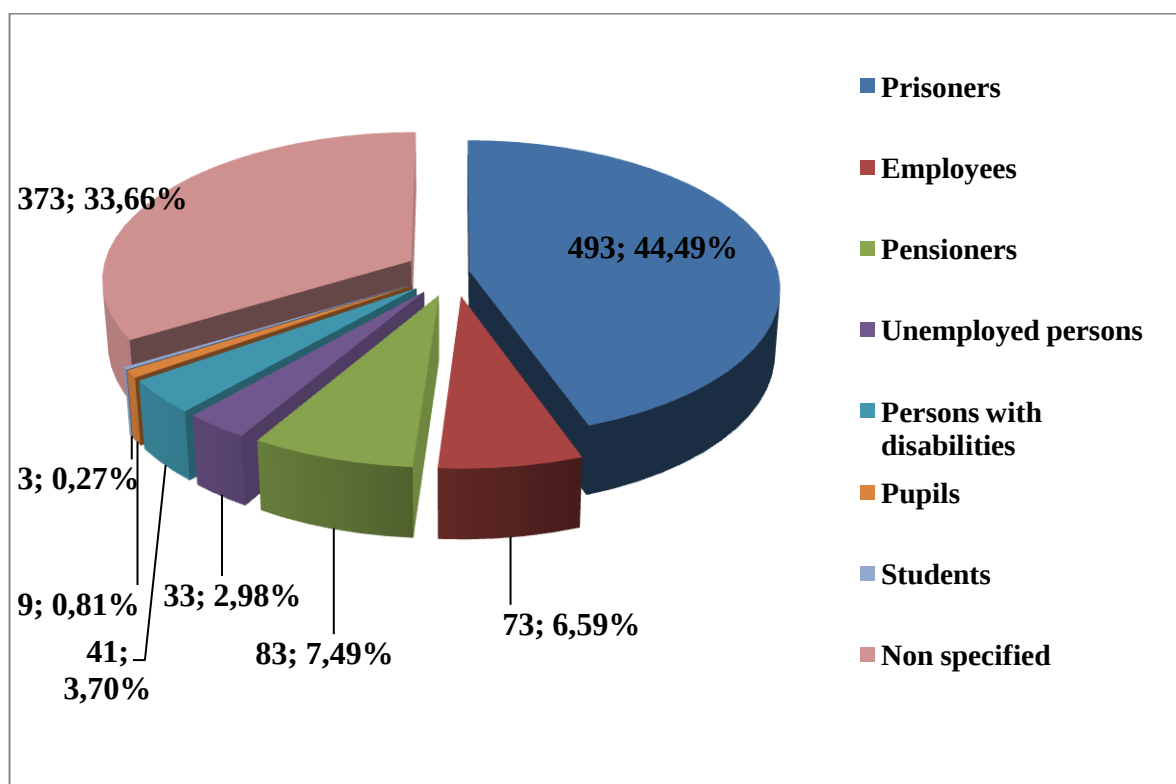
**Classification of appeals according to the allegedly injured right,
compared to 2015 and 2014**

Theme	2016	2015	2014
Free access to justice	296	259	265
Security and personal dignity	230	195	190
Right to social assistance and protection	133	91	154
Private property	49	80	148
Access to information	116	75	78
Right to work	74	48	70
Family life	72	65	92
Right to defense	35	35	40
Intimate and private life	6	3	6
Right to training	20	4	20
Right to petition	8	19	21
The right to free movement	2	8	6
Right to health care	40	33	49
Personal freedoms	5	7	8
Right to administration	6	6	7
Right to citizenship	2	2	9
Right to vote and to be elected	-	-	-
The right to a healthy environment	6	4	-
Others	8	9	147

Note. The column „Others” includes complaints where no violation of a constitutional right is invoked and cannot be included in the automated evidence system of the People’s Advocate Office addresses such as consumer rights, solicitation of legal advice, interpretation of normative acts, and complaints for alleged violations that took place outside the territory of the Republic of Moldova.

Of the total number of persons who reported to the Ombudsman’s Office 493 (44.49%) are detainees, 73 (6.59%) - employees, 83 (7.49%) - pensioners, 33 (2.98%) - unemployed persons, 41 (3.70%) - disabled persons, 9 (0.81%) - pupils, 3 (0.27%) - students, as well as other less numerous categories, data percentage reflected in the chart below:

Analyze of the complaints according to the categories of petitioners



Detainees / Employees / Pensioners / Unemployed persons / Disabled persons / Pupils / Students / Not specified

The examination of complaints is aimed at identifying the allegedly damaged right, verification of the soundness of the application in relation to the national and international legal and normative framework, examination of the possibility of involvement of the Ombudsman, and if the complaint is out of the mandate, the institution competent to resolve the case is identified.

According to the provisions of the article 21 of the Law No. 52 on the People's Advocate (Ombudsman) of 03.04.2014, after receiving the complaint, the Ombudsman has the right to accept the complaint for review, to return the complaint without review, explaining to the petitioner the procedure he/she is entitled to use to protect his/her rights and freedoms; to remit

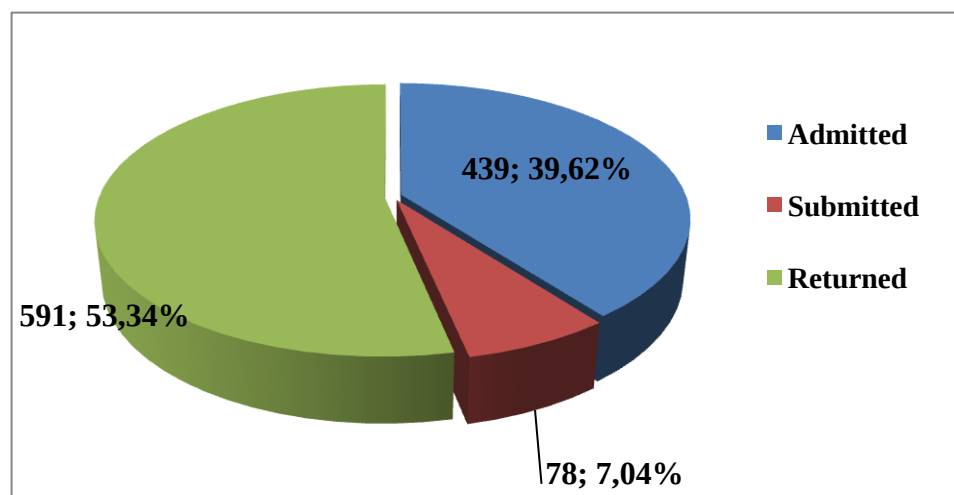
to the competent bodies to be reviewed conformity with the provisions of the legislation on petitions.

Of the 1108 registered complaints, 439 (39.7%) were accepted for examination, with the undertaking of the procedural actions under the article 25 of the Law no. 52. During the examination process, were issued acts of reaction, was requested the contest of the institutions and the responsible persons, were requested the necessary information, documents and materials, were made monitoring visits, were submitted proposals for amending the legislation, etc. Of the 439 complaints, 157 (35.8%) were solved, 47 (10.7%) of the complaints being solved partially.

78 complaints (7.1%) were sent to the competent authorities to be examined in accordance with the legislation on petitions. According to the Law on People's Advocate (Ombudsman) no. 52 of 03.04.2014, the Ombudsman is obliged not to divulge confidential data, as well as personal data which were communicated to him/her within the professional activity, without the consent of the individual it refers to, not to divulge the state secret and other information protected by the Law, therefore, the petitioner's consent in writing is required for the complaints to be handed over to the competent authority.

Another 591 complaints (53.2%) were rejected under the provisions of the articles 18, 19, 20 of the Law no. 52, indicating to the petitioners the procedures they are entitled to use to defend their rights and freedoms. The rejected complaints either revealed issues that are beyond the reach of the Ombudsman, either have been abusive.

Classification of complaints according to the decision taken



Admitted / Remise / Refund

During the year 2016, have become more and more frequent the cases when Deputies in Parliament, central public authorities, local public authorities and other institutions, on the basis of the Article 9 of the Law no. 190-XII of 19.07.1994 on petitions, refund for examination, by competence, to the Ombudsman individual complaints of the citizens to be examined.

It is worth mentioning that in his activity, the Ombudsman is entitled to examine the complaints of individuals whose rights and freedoms are presumed to have been violated, but in the Article 19 of the Law on the People's Advocate (Ombudsman) no. 52 of 03.04.2014 it is expressly provided, the complaints are submitted in person or by a representative of the person whose rights were violated, by nongovernment organizations, trade unions and other representative organizations on his/her behalf.

As a result of the cited legal provisions and the above-mentioned principles of activity, it is important for the Institution that the person who considers that his / her right is violated by a public authority or by a person with a responsible position, to manifest the unilateral will for the intervention of the Ombudsman in solving the problem which he / she is facing. For this reason, the Ombudsman does not accept for consideration the complaints submitted by the authorities or submitted by other persons contrary to the requirements set out in the article 19 paragraph (2) of the Law no. 52. Alternatively, the Ombudsman is an out-of-court mechanism for ensuring the protection of all human rights and freedoms by the public authorities, by the organizations and companies, no matter of the type of property and the legal organizational form, by the non-commercial organizations and by decision-makers at all levels.

This principle of activity as regards the admissibility of complaints from persons claiming to have their rights violated is characteristic for the National Institutions for the Protection of Human Rights from all the countries.

In this context, we consider it necessary to recall the content of the Article 3 of the Law on People's Advocate (Ombudsman) no. 52 of 03.04.2014 which provides that „The Ombudsman institution is autonomous and independent from any public authority, legal entity, no matter of the type of property and legal organization form, and any individual in the decision making position at all levels. The Ombudsman cannot be subject to an imperative or representative mandate. No one can oblige the Ombudsman to comply with one's instructions or provisions. The Ombudsman cannot be obliged to explain cases reviewed or being reviewed, except situations when they are in the interest of the represented party or contain information of public interest. The interference into the activity of the Ombudsman, the deliberate ignoring by the responsible officials at all levels of the intimations and recommendations of the Ombudsman, as well as the impeding in any form of his/her activity involve liability in conformity with the legislation”.

In the process of investigating the complaints accepted for examination, the Ombudsman is empowered to undertake certain procedural actions and to issue certain types of acts, specific to the mandate as follows:

Types of documents	2016	2015	2014
Notice covering the recommendations on measures to be undertaken for the immediate restoration of the petitioner's rights (article 24 of the Law no. 52)	65	62	99
Demarche (to initiate a disciplinary or criminal procedure against the responsible official who did commit violations which did generate the violations of the human rights and freedoms (article 25 paragraph (1) letter b) of the Law no. 52)	9	4	19
Referral on the cases of violation of professional ethics, delay and bureaucracy (article 25 paragraph (1) letter d) Law 52)	19	11	13
A court action / intervention into the trial for conclusions (article 25 paragraph (2) and (3) of the Law no. 52)	9/7	2/2	12/12
Conciliation agreement (article 23 paragraph (3) of the Law no. 52)	2	1	3
Proposals on improving the functioning of the administrative apparatus under the under point 6 of point 7 of the Chapter II of the Regulation on the organization and functioning of the Ombudsman's Office	1	2	13
Request a judiciary expertise (article 11 letter m of the Law no. 52)	1	1	3
Proposals and recommendations to improve the legislation (article 27 letter a) of the Law no. 52)	15	8	7
Intimation of the Constitutional Court in order to control the constitutionality of the laws (article 26 of the Law no. 52)	3	2	4
Opinions on the draft normative documents (article 27 letter b) of the Law no. 52)	80	60	60
TOTAL	211	155	245

Notice with recommendations (article 24 of the Law No. 52 on the People's Advocate (Ombudsman))

According to the article 24 of the Law no. 52, in the situations when are found violations of the petitioner's rights or freedoms, the Ombudsman presents to the authority or responsible official whose decisions, actions or inactions, in his/her opinion violate the human rights and freedoms, a notice covering the recommendations on measures to be undertaken for the immediate restoration of the petitioner's rights.

The authority or responsible official who did receive the notice is obliged to review it in a 30 day term and to communicate in writing to the Ombudsman on the measures undertaken in order to remedy the situation.

In the case when the Ombudsman disagrees with the undertaken measures, he/she has the right to address to a hierarchically superior body to undertake measures necessary to enforce the recommendations covered by his/her notice and/or inform the public opinion. The hierarchically superior body is obliged to communicate on the measures undertaken in a 45 day term. In the year 2016, the Ombudsman did not use the right to address to the hierarchically superior body, given that the approved authorities followed the recommendations.

In this respect, 65 Notices with recommendations were issued, which were sent to the central and local public authorities as follows:

The institutions concerned in the Notices

The institution concerned	2016
Government of the Republic of Moldova	1
Ministry of Labor, Social Protection and Family, including the subordinate institutions	11
Ministry of Education and the subordinate institutions	10
Ministry of Internal Affairs, including the subordinated subdivisions and deconcentrated services	4
Ministry of Justice, including the subordinate institutions	18
Judicial System	1
Local public authorities	14
General Prosecutor's Office, including the subordinate institutions	1
Ministry of Health	1
Ministry of Defense	1
Chamber of Commerce and Industry	1
The Ministry of Finance	1
Union of Authorized Administrators	1
Total	65

Of the total number of notices with recommendations, 11 were submitted to the Ministry of Labor, Social Protection and Family and its subordinated institutions. The proposed recommendations refer to: ensuring the physical access of disabled persons to public bodies in the social sphere, ensuring the right to a decent living, ensuring respect for citizens' right to

information, guaranteeing the protection of persons with disabilities, observance of the right to private property, non-payment of paternal indemnity, ensuring adequate conditions for study in the educational institutions, reinstatement of minor children, ensuring the right to social protection of children at risk and children separated from parents.

The Ministry of Justice and the subordinated institutions have received recommendations on improving the conditions of detention and ensuring minimum standards of detention, the right to health protection, the violation of the right to a fair trial.

The notices sent to the local public authorities were focused on: respecting the right to property, ensuring the right to social assistance and poor living conditions, ensuring the access to information, ensuring the access of people with disabilities to the physical environment, special protection for children at risk and of children separated from their parents, etc.

In most cases, the institutions concerned took into account the recommendations of the Ombudsman and took the recommended measures, within the limits of the financial resources allocated, or ensured that they would endeavor to meet the recommendations made.

Demarche to initiate a disciplinary or criminal procedure (article 25 letter b of the Law on the People's Advocate (Ombudsman))

According to the article 25 letter b) of the Law no. 52, after the examination of the notice, the Ombudsman is entitled to intervene with the competent authorities with a demarche to initiate a disciplinary or criminal procedure against the responsible official who did commit violations which did generate the violations of the human rights and freedoms. In 2016, the Ombudsman requested the opening of disciplinary or criminal proceedings in nine cases involving officials whose actions led to the violation of human rights:

- General Prosecutor's Office and district prosecutor's offices – 5 demarches (4 – to initiate a criminal procedure and 1 – a disciplinary procedure);
- Ministry of Justice, including the subordinate institutions – 3 demarches in which the disciplinary proceedings were requested.
- Ministry of Internal Affairs – 1 demarche on the initiation of disciplinary proceedings.

Out of the 4 demarches for the initiation of criminal proceedings filed with the General Prosecutor's Office and the District Prosecutor's Office, one was satisfied, with a criminal case. In one case was issued an order not to prosecute and two other demarches are under examination.

Concerning the initiation of the disciplinary proceedings sent to the Ministry of Justice, including the subordinated institutions, the Ministry of Internal Affairs and the General

Prosecutor's Office and the District Prosecutor's Offices, two demarches to initiate disciplinary proceedings were initiated and 3 other cases are under examination.

Intimation (article 25 letter d) of the Law on the People's Advocate (Ombudsman))

According to the article 25 letter d) of the Law no. 52, the Ombudsman has the right to intimate the public officials of all levels on the cases of negligence at work, violation of professional ethics, delay and bureaucracy. Referring to this provision, 19 notifications were submitted in 2016 to the:

- Ministry of Labor, Social Protection and Family - 5
- Ministry of Education -4
- Local public authorities -10

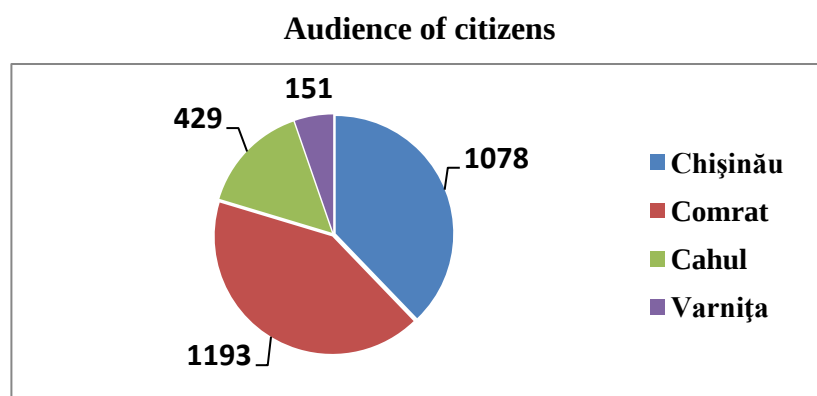
In these complaints, the Ombudsman warned the authorities concerned about the actions / inactions that are related to: child victimization; ensuring the child's right to grow in a favorable environment for harmonious physical and mental development; ensuring the right to social assistance and protection, including of orphaned children; ensuring the right to education; disturbing public order at night; of the right to work and protection of work.

The Ombudsman also found that serious violations of human rights were admitted as a result of the negligence and irresponsibility manifested by the persons with responsibilities. Children, disabled people and the elderly are most affected in such cases. In the responses to the 4 complaints addressed to the Ministry of Education, the Ombudsman was informed that the Ombudsman's recommendations were taken into account and that they were put into education practice.

The Ministry of Labor, Social Protection and Family was notified on: violation of the right to education and protection of family and child; impairing the child's right to grow in a favorable environment for harmonious physical and mental development, violation of the right to social assistance and protection, domestic violence against children by parents. The public authorities listed above have complied with the notifications received and reacted after their examination.

According to the Article 19 paragraph (5) of the Law no. 52, the Ombudsman reviews also verbal complaints, during audiences organized at least once a month. Although the new law does not provide for audience activity by the Ombudsman's Office, during 2016, the citizens were heard by the Ombudsman's Office staff in Chisinau and those of the representations of Cahul, Comrat and Varnita.

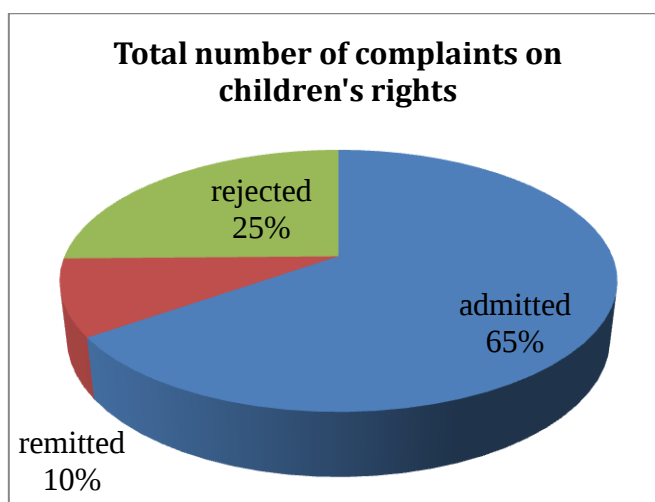
In this regard, it is necessary to mention that the Ombudsman's Office has proposed to change the procedure of hearing the citizens, so as not to substitute the activity of the licensed lawyers, by offering legal consultations. Individuals who will address to the Ombudsman's Office will be helped to file a complaint to the Ombudsman if the matter is within its competence. In other cases, visitors will be directed to address to the competent authorities to resolve the issue.



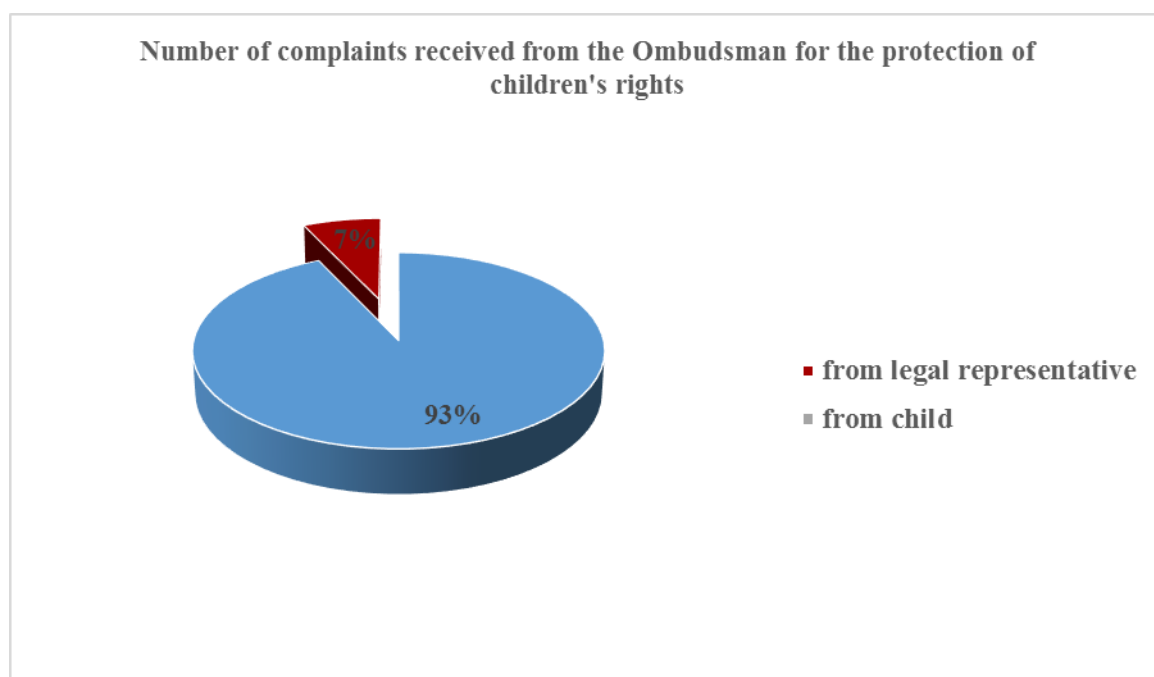
Throughout 2016, the Ombudsman's Office received for audience 2851 people. At the headquarters of the Ombudsman's Office from Chisinau addressed 1,078 citizens (38%), at the Comrat Representation of the Ombudsman's Office - 1193 by citizens (42%), Cahul Representation of the Ombudsman's Office received in audience 429 persons (15%), and the Varnita Representation – 151 de citizens (5%).

Petitions submitted to the Ombudsman for the child rights' protection in 2016

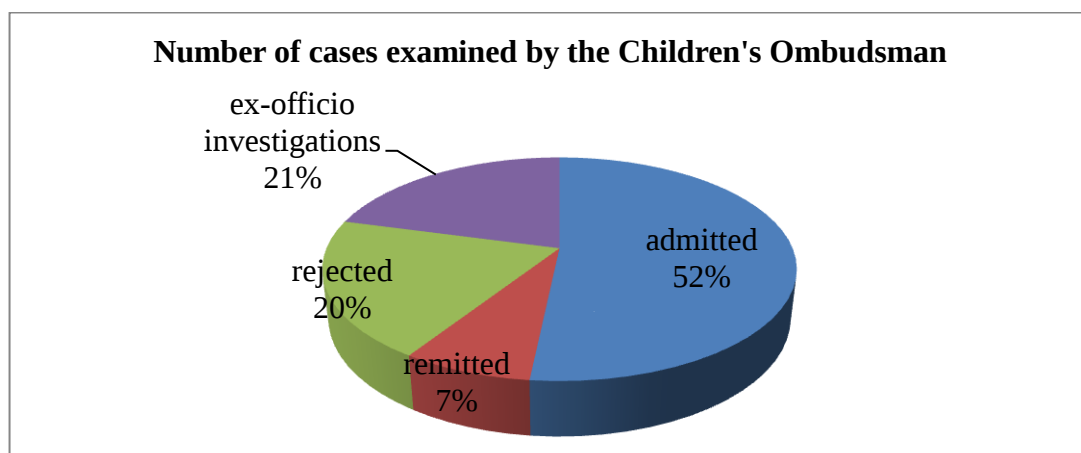
From January 1, 2016 to December 31, 2016, the Ombudsman for the child rights' protection received 95 applications. Of the total number of addresses, 65% were admitted for examination.



The rate of legal / children petitioners representatives who have addressed to the Ombudsman for the protection of the children's rights against the total number of complaints, 7% of the petitioners are children, the rest are their legal representatives. The Children's Ombudsman welcomes and encourages children to address the Ombudsman directly to protect the rights of the child if they need help in defending their rights.



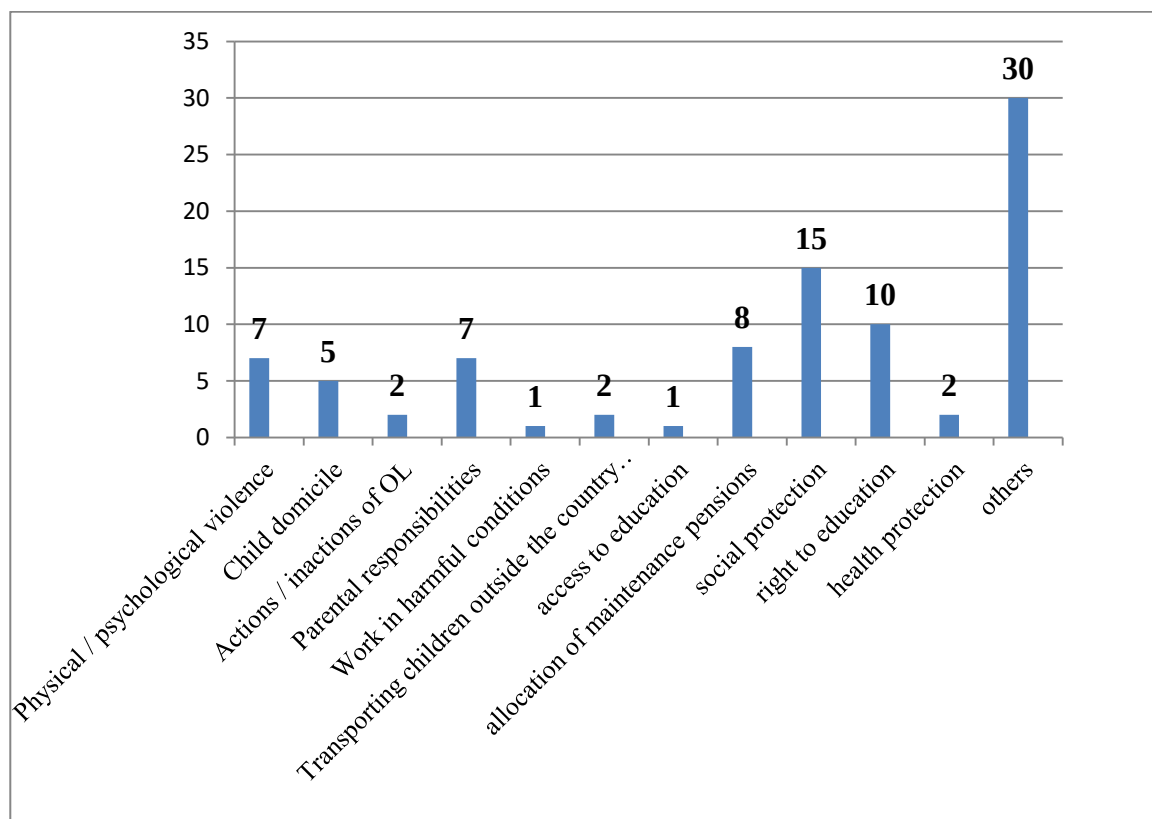
It is necessary to mention that out of the total number of cases examined by the Children's Ombudsman 21% are ex officio complaints. The Children's Ombudsman has been self-indicted as a result of the publication of information about minors and / or the involvement of minors in media, social networks and on the basis of information obtained from the Hot Line „Child's Phone”.



One of the possibilities to notify the Ombudsman for the protection of children's rights is the Hot Line „Child's Phone”.

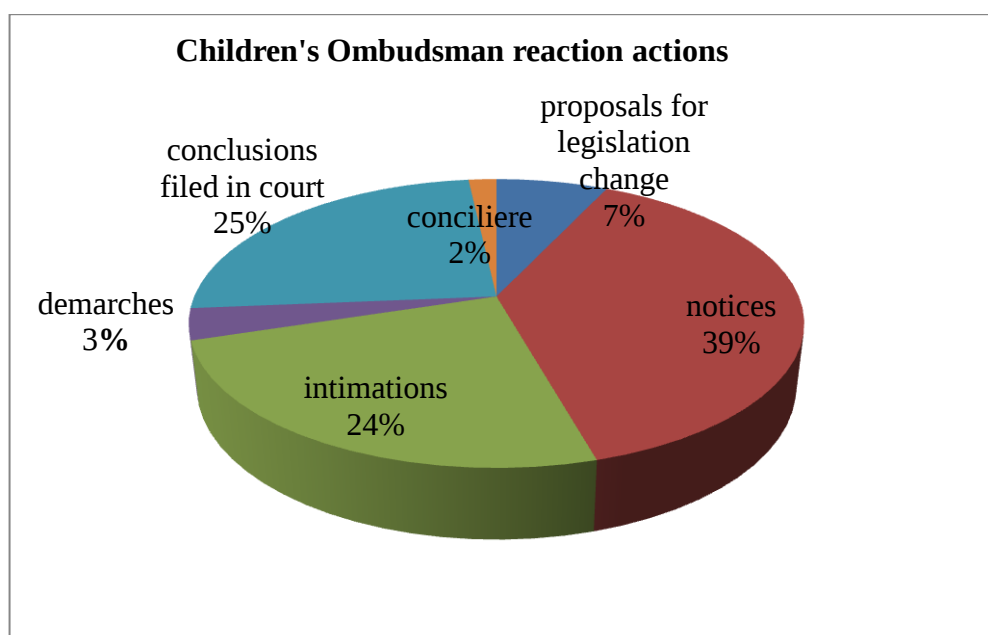
During the year 2016, there were registered at the Hot Line of the Child within the Ombudsman's Office, 90 phone calls. By gender, out of the total number of calls, 67 were from women and 23 from men. Four cases were taken into consideration (family violence / refusal to enroll the child in the 5th grade / non-compliance with the parent's schedule of interviews by one of the parents / refusal to support the child / stopping the tutelage benefit payment).

Phone calls to the Hot Line „Child's Phone”



The statistical data show that the majority of the population is requesting legal advice to protect the child in case of violence against him / her, the right to the necessary social assistance or issues related to the right to a maintenance pension.

In the process of investigating applications accepted for examination, the Ombudsman for the protection of children's rights is empowered to undertake certain procedural actions and to submit recommendations for action to be taken for the immediate restoration of rights of petitioners. Thus, during the reported period of the total number of acts of reaction (57) 39% are notices with recommendations, 24% - notifications and 25% - conclusions filed in court.



Therefore, most acts of reaction are acts of notices, notifications and actions.

Basically, in all the cases examined the recommendations were met. While monitoring the way for respecting children's fundamental rights and freedoms, it has been identified that often the subjects responsible for ensuring the rights of the child require systematic training on the issue of respect for children's rights, something the Ombudsman for the protection of children's rights has taken notice of.

PROMOTION OF HUMAN RIGHTS

In 2016, the Ombudsman organized 135 promotional and training activities, compared to 125 in the previous year. The novelty element is the predominance of the training actions compared to the promotion ones - 98 trainings and 37 promotion events. And this was because in the reference period, on the one hand, the emphasis was placed on more complex actions, being organized four national conferences, an international one, three roundtables, a children's forum, and, on the other hand, the training activities of the population and the professionals have been done according to the new rules and principles, which resulted in better results in the relevant field.

The promotional activities have as main themes: Regular Evaluation of the Republic of Moldova, promotion of children's rights, promotion of the right to health, promotion of the Ombudsman recommendations on improving the human rights situation in our country in the context of the public presentation of the conclusions of the Report on respect for human rights and freedoms in the Republic of Moldova in 2015, of the „Human Rights Perceptions in the Republic of Moldova” study, conducted by the Ombudsman’s Office with the support of the OHCHR (Oversees major programs in protecting human rights and implementing international rights agreements).

In the year 2016, 14 informative materials were elaborated and edited to ensure the co-ordination of the printing process of eight books published with UNDP and OHCHR.

Actions for the child rights' promotion

In 2016, the activities of promoting the child rights' took place with the participation of the Ombudsman for the protection of children’s rights, Maia Banarescu, appointed in this position in April last year.

On the occasion of the International Children's Rights Day, the Ombudsman’s Office hosted several Ombudsman meetings with children, for which was organized the presentation of the Ombudsman’s Office, the information on the human rights group, their functional attributions. Maia Banarescu has spoken to children and parents about the objectives and mission of the Ombudsman for the protection of children’s rights, about its competences.

On the International Children's Day, in the context of the „Open Doors” ceremony, at the Ombudsman’s Office came pupils from three Chisinau municipal community centers for children and youth, accompanied by their teachers. At a discussion with the Ombudsman, there were also students from community centers for children and youth from the Ciocana sector – „Speranta” and „Convorbitorul” and from the Rascani Sector – „Zorile”.

Also on June 1, the Ombudsman for the protection of children rights took part in the actions that took place in the „Stefan cel Mare” Public Garden in the capital, in the organization of the Municipal Direction for the Protection of the Rights of the Child and the Republican Center for Children and Youth ARTICO. Within this event, Maia Banarescu invited the children to take part in a „Know Your Rights!” raffle, all the participants being mentioned with small gifts.

The Ombudsman consulted the children's view of respecting their rights in numerous meetings with them: with adolescents and children from the diaspora, participants in the IVth edition of the DOR program; with the members of the Reflection Group monitoring the respect of children's rights in the light of the The United Nations Convention on the Rights of the Child (UNCRC), set up by the Child Rights Information and Documentation Centre; with the children who rested in the rest and health camps „Ciresarii”, „Camping” „Zambetul”, „Perlele Nistrului” from the Vadul lui Voda Boulevard, Chisinau and „Viisoara” from the Ciobanovca village, Anenii Noi district; with the minors who serve their sentence in the Penitentiary no. 12 Goian; with the pupils from the Theoretical High School „Principesa Natalia Dadiani”, Special School no. 12 for the hearing-impaired and late-deaf children in Chisinau, With the members of the National Council of Pupils; with the beneficiaries of the Temporary Placement Center for Children and Young Orphans in the post-institutional period „Vatra”.

Maia Banarescu informed her /him about the work of defending children's rights, about their main rights - life, family, identity, health, opinion. At the same time, Child Advocate has first documented the problems of children, has known their way of thinking, perceiving their rights and defending these rights. Children's Ombudsman announced that direct, collective or individual dialogue with the children will be a priority in the work of the Ombudsman.

In order to achieve this, on November 16, 2016, Children's Ombudsman organized a first Discussion Forum with pupils and teenagers from Romania on "Child and adolescent participation - a catalyst for the promotion and monitoring of children's rights in Moldova”. The purpose of this meeting was to initiate a constant dialogue between the Ombudsman for the protection of children's rights and adolescents in Moldova regarding the observance of their rights, the establishment of permanent cooperation relations. This event took place with the support of UNICEF Moldova and brought together 50 children and adolescents.

In November, three television stations (Jurnal TV, Moldova 1, Gurinel) broadcast a social spot, developed by the Ombudsman's Office for the child rights' protection.

The spot was also promoted on Facebook, with the Romanian version recording 29,195 views, and the one in Russian - 27,772 views. Also in 2016 the concept of a new child's page was developed on the site www.ombudsman.md, to be finalized in 2017.

The Ombudsman for the protection of children rights has promoted the interests and rights of the child at numerous meetings with the representatives of public authorities of different levels: with decision-makers from the Chisinau Municipal Directorate for the Protection of Child's Rights, of the Ministry of Labor, Social Protection and Family, the Ministry of Health, the Ministry of Internal Affairs, the DPI (Department of Penitentiary Institution). Mainly have been addressed the issues of informal payments; children's nutrition in schools and kindergartens; of violence against children; respect for the rights of children in detention; issues relating to prevention and combating juvenile delinquency, assistance to children at risk, the role of police officers in ensuring respect for children's rights; the quality of the emergency medical service; inclusion of children with autism.

The protection of children's rights in risk situation living in abandoned buildings in Chisinau was the topic of a working meeting called by the Children's Ombudsman as a reaction to the media-related signals on this subject. The meeting was attended by the representatives of the Ministry of Education; Ministry of Labor, Social Protection and Family; of the Ministry of Health; the Ministry of Justice and the Ministry of Internal Affairs, representatives of the Children's Rights Protection Departments in the Ciocana and Botanica sectors, representatives of the Child Rights Information and Documentation Center (CRIDOC) in Moldova, the Alliance of NGOs active in the field of Social Protection of Children and Family, Association for Child and Family Empowerment „AVE Copiii”, of the Center for the Rehabilitation of Torture Victims „Memoria”, of the National Center for Child Abuse Prevention (NCCAP).

The Ombudsman insisted on resolving the situation of „street children” as a matter of urgency, for which there are no systemic solutions for inter-institutional approach, such as, for example, the intervention of the emergency teams, since such a service does not exist in Moldova.

Promoting the right to health - a new direction in the work of the Ombudsman

In 2016 the Ombudsman expanded his scope of action to promote human rights. This is because the Ombudsman has established from 2016 as one of the priorities for activity for the next years the monitoring and evaluation of the respect of fundamental human rights in the context of the medical services rendered in the medical institutions of the Republic of Moldova. The activities proposed in this segment will have a different character: monitoring, analyzing the legislation in the field in order to improve it, training actions for patients and health professionals, as well as raising awareness of the situation in the given field.

A first action to improve the situation regarding the observance of the right to health protection in the Republic of Moldova was the **Workshop „Evaluation of the level of observance of human rights in the medical institutions of the Republic of Moldova”**. The meeting aimed to establish contacts with the most important actors in the field of health care, announcing the intention to address health care issues and inviting to dialogue and collaboration, taking into account the common objective of providing people with access to quality medical services and in full volume. The meeting was attended by the representatives of the Ministry of Health, CNMS (The National Center for Health Management), CNAM (National Pay Office of Medical Assistance), the National Council for Evaluation and Accreditation of Hospitals, the WHO Country Office, the UN Population Fund, the GIZ Project and the Center for Health Policies and Analyzes, and UNDP and OHCHR, of the Ombudsman’s Office, a total of 26 people.

Respect for the right to health protection was the topic of the 2016 **Decade of Human Rights, which included over 10 activities**.

On December 6, a public **presentation of the study „ Respect for human rights in the provision of pre-hospital emergency medical services in the Republic of Moldova”, conducted by the Ombudsman’s Office with the support of the OHCHR**. More than 40 people attended the roundtable: representatives of public authorities, deputies, representatives of the scientific community and of the development partners.

In the context of the thematic decade, a social spot on the right to health care services was developed, broadcast on three TV stations: Jurnal TV, Moldova 1, RTR Moldova.

Respecting the right to health was the theme of the Drawing Competition „Your Health, Your Right, Your Future”, organized by the Ombudsman’s Office, attended by about 500 children.

The children's best works were vindicated on December 10 on the International Day of Human Rights at the Republican Children's and Youth Center „Artico”, an event in which were awarded 51 pupils.

The 40 winning works of the Children's Drawing Competition entitled „Your Health - Your Right, Your Future” were later exhibited at the premises of the Parliament of the Republic of Moldova.

The drawing contest and the organization of the prize event were made with the financial support of UNICEF and OHCHR Moldova, and the Ministry of Health and the National Anti-Corruption Center were partners of the Ombudsman’s Office in their deployment.

In addition to the prizes handed out on December 10, more than 100 gifts will be sent to children in 2017 in the framework of visits by the employees of the Department, promotion of human rights, international relations and communication at the educational institutions attended by several students at the drawing contest. All the participants were mentioned with encouraging awards.

**Promoting the Ombudsman 's Conclusions and Recommendations
in the Report on respect for human rights and freedoms in the
Republic of Moldova in the year 2015**

In accordance with the Article 19 of the Law on the People's Advocate (Ombudsman), before the 15th of March each year, the Ombudsman submits to the Parliament the report with regard to respect for human rights, and its draft is subject to public debates at least one month before its submission to the Parliament and published on the Ombudsman's Office website.

Starting with February 15, the chapters in the draft annual report were placed on the institution's website. Moreover, the opinion of the civil society members was consulted long before the annual report process. The Ombudsman offered to the representatives of the non-governmental sector the opportunity to put forward proposals on the issues which will be included in the annual report at its meeting with representatives of NGOs on December 3, 2015.

The Ombudsman's vision of human right in the area of respect for human rights in our country was presented at a national conference, held on March 29, which brought together representatives of the associative sector, of public authorities with attributions in the field, international partners.

During the public presentation of the Report on the observance of human rights in the Republic of Moldova in 2015, it was announced the change of the logo of the National Human Rights Protection Institution, which was publicly presented.



The central elements of the logo are:

Letter O – the first letter of the word Ombudsman, which is the symbol of a democratic state;

Open eye – symbol of continuous supervision, basic function of the Ombudsman;

The left hand raised by the person taking the oath, this being the public promise invoking respect for moral values recognized by all.

The change of the institution logo is in the context of the process of reorganization of the institution from the Center for Human Rights in the Ombudsman's Office, in accordance with the provisions of the Law no. 52 on the People's Advocate (Ombudsman). The launching of a new visual identity was determined not only by the need to signal the change of the institution's name, ombudsmen, but also by the willingness, firm intention to make a change not only in form but also in content so that to be changed the general public's perception of the activity and performance of the Ombudsman.

With the support of UNDP Moldova, in 2016, several promotional materials with the new logo of the institution, already distributed or already used in the promotion activities have been already elaborated and made.

A remarkable event in 2016 was the realization, with the support of ONCHR and UNDP Moldova, and the public presentation on July 19 of the „Human rights perceptions in the Republic of Moldova” Study. The study was elaborated on the order of the Ombudsman's Office, accepting the concept idea, proposed by the Ombudsman's Institution, in order to identify from the perspective of the ordinary citizen the existing problems in the field, measuring the developments in the field in recent years.

Previously, a general study on the protection of human rights in the Republic of Moldova was developed in 2004 with the assistance of UNDP Moldova. Since then, two action plans have been implemented in the field of human rights, but the impact of these policy documents on the human rights situation in the country has not been assessed. From this point of view, the results of the study are very important for estimating the impact of state policies on the human rights situation in the Republic of Moldova and the planning of new strategic actions in order to improve the existing situation. It also provides an opportunity to verify the adequacy of the

Ombudsman's views on the human rights situation, as well as the reassessment, if necessary, of the priorities set in the activity.

In general, in big lines, the perceptions of the respondents coincided with those of the Ombudsman, similar findings being made on the basis of petitions, appeals, but also following the monitoring of the situation in the field.

Representatives, officials and civil servants with human rights responsibilities, development partners, representatives of civil society and diplomatic missions accredited in the Republic of Moldova participated in the discussion on the findings of the study.

Promotion of the Council for the Prevention of Torture

On December 2, 2016, the Ombudsman, with the support of the Council of Europe's Office in Moldova, organized an event of public presentation of the members of the Council for the Prevention of Torture, established under the Law no. 52.

The meeting was attended by the representatives of the Ministry of Internal Affairs, the Department of Penitentiary Institutions, the Ministry of Health, the Ministry of Labor, Social Protection and Family, the Prosecutor's Office, heads of penitentiaries, of psychiatric hospitals, of psycho-neurological hospitals, of boarding houses for children with mental deficiencies, representatives of UNDP, OSCE.

The Ombudsman presented to the assistance the members of the Council for the Prevention of Torture, Mihail Gorincioi, Svetlana Doltu, Radu Nicoara and Ceslav Panico, who in their turn provided data on their previous work. The Ombudsman stressed the importance of establishing the Council for the Prevention of Torture and of starting its work.

Attending the event, the head of the Council of Europe's Office of the Republic of Moldova, Jose-Luis Herrero, welcomed the fact that the Council for the Prevention of Torture had been created and launched, expressing his hope that it would be functional and that it would contribute according to its competencies to the improvement of the conditions of detention, preventing and combating torture and ill-treatment.

Jose-Luis Herrero also said that the Council of Europe is ready to continue supporting the Ombudsman's Office of the Republic of Moldova and the new Council for the Prevention of Torture, in order to strengthen their capacities to implement their functions to effectively prevent torture and ill-treatment in Moldova, in compliance with European and international standards.

Deputy Minister of Justice, Anatolie Munteanu, Commended MNPT assistance and announced the opening of authorities to ensure free and unhindered access to the places of detention by the members of the Council for the Prevention of Torture. Following an effective

MNPT activity, our country has only gained because the MNPT provides an X-ray of the situation in the places of detention and of the key issues that need to be resolved, said Deputy Minister of Justice.

The editorial activity of the Ombudsman's Office

In 2016, the Ombudsman's Office has published the Human Rights Report : on respect for human rights in 2015, the booklet „Who is the Ombudsman?” in the Romanian, Russian and Gagauzian languages; „Who is the Ombudsman for the child rights' protection?” In Romanian and Russian; bilingual editions of the brochures, „ Ombudsman's Office in figures. Year 2015” and „The Adolescent”. In the context of activities promoting the right to health protection, were developed and published the leaflets „Patient Right to Correct Information” and „Patient's Right to Informed Consent”. The officials of the Ombudsman's Office coordinated the process of editing the following book titles, funded by the OHCHR: the EPA Report on the IInd of the EPU, the Study „on Human Rights Perceptions in the Republic of Moldova” and the Study „on Human Rights Respect in Urgent pre-hospital Healthcare Services” in the Republic of Moldova „in Romanian, Russian and English.

A new edition of the brochure „Legal guide for the victims of domestic violence” has been elaborated and printed, in accordance with the modifications introduced by the Law no. 45 and more than 10 legislative acts, as well as the UN Convention on the Rights of the Child was reedited.

Training activities / information on human rights

In 2016, the staff of the Ombudsman's Office had **89 training activities**.

41 activities were organized by the officials of the Central Office of the institution, of which 11 were organized by the employees of the Child Rights Directorate and 48 by the employees of the Ombudsman's Office. Most of the training activities were organized by the officials from the Comrat Representation: **34 activities attended by 940 participants**.

About **2730 people** participated in the training activities: 1631 are pupils, 290 - are young persons or students, 113 are civil servants, about 180 prison workers, mayors, social workers, parents, teachers, policemen, paramedics, representatives of national minorities.

The themes of the training activities

The purpose of the training activities carried out by the Ombudsman's Office was to inform about the human rights, to promote the values of respect for the fundamental freedoms and human dignity.

Within the training activities, were discussed the themes: human rights and how the ombudsman defends them, discrimination, the rights of people with disabilities, prevention of torture, combating domestic violence, school and society, electoral rights, etc.

The participants in **12 trainings** were informed about the **activity of the Ombudsman, the Ombudsman for the protection of children's rights and the Ombudsman's Office**, about the duties provided by the Law No. 52 on the manner in which the Ombudsman cooperates with various institutions, with NGOs and citizens, how the Ombudsman defends the rights of pensioners, people with disabilities, how they monitor human rights, and the Ombudsman for the protection of children's rights – the children's rights. As support for such activities, were issued by the institution the leaflets „Who is the Ombudsman?», «Кто такой Народный Адвокат?», „Who is the Ombudsman for the protection of children rights?», «Кто такой Народный Адвокат по защите прав ребенка?», „Office of the Ombudsman in figures. Year 2015” In Romanian and Russian, brochure about the Ombudsman in Gagauzian language.

During the pre-election campaign, in **13 trainings**, especially among young people who participated for the first time in the elections, these ones were informed about the electoral rights, the voting procedure, examples of violations of electoral rights. The brochure "I want to vote" has been used within these activities.

The practice of previous years has demonstrated the need for **training in combating violence**. This theme was discussed in **11 training activities**.

Taking into account various aspects of the phenomenon of violence, the themes of the training were selected according to the target audience: the pupils' pedagogues and parents discussed the causes and consequences of the phenomenon of violence in school and in the family. Such activities took place with the involvement of psychologists, representatives of non-governmental organizations.

The „Legal Guide for Victims of Domestic Violence” brochure was used within the activities, including the revised version of 2016, after the amendment of the Law on Combating Domestic Violence.

Violence in school and society, types of violence, methods of combating violence among pupils were discussed within the students of the high school (Lyceum) „Principesa Natalia Dadiani”, „Ion Creanga”, „Spiru Haret” of Chisinau, as well as from the Lyceum „Mihai Eminescu” of Cimislia, from several educational institutions in Comrat.

This theme has been addressed both within the traditional Campaign for Combating Domestic Violence that the Ombudsman's Office carries out annually, in the second half of November, as well as throughout the year.

Children's rights, the rights of young people, the content of the UN Convention on the Rights of the Child, how children's rights are being realized, how children can defend their rights, what role in this process the Ombudsman for the protection of children's rights and how it works were the themes addressed in **19 training activities** organized with young people and children. In this training, the children discussed about the rights and obligations, tried to understand what discrimination is, how violence can be avoided, other issues specific to different ages, including of the adolescence. To these activities were distributed the informative materials edited by the Ombudsman's Office: „I am a child - I have rights”, „The UN Convention on the Rights of the Child”, „Who is the child's Advocate?”, „The Adolescent” in Romanian and Russian.

This year's training in the field of **combating and preventing torture, ill-treatment, inhuman and degrading treatment** has continued, in co-operation with the Training Center of the Department of Penitentiary Institutions. Within **9 training activities** more than 180 employees of the penitentiary system, officers and non-commissioned officers, newly employed persons have been trained over.

Were discussed the themes: the causes and consequences of ill-treatment and torture, the fight against discrimination, guarantees against torture and ill-treatment, national and international instruments in the fight against torture, Moldova's cases of torture and ill-treatment. The aim of these activities was to raise the awareness among DPI employees working in places where the deprived persons are held that torture, ill-treatment is incompatible with a justice system where human rights are at the head of the table. Similar trainings were organized with the police and carabinieri.

The training activities also focused on combating discrimination, the rights of people with disabilities, labor law, the right to insurance and social protection, the rights of representatives of national minorities.

For the first time in 2016, the subject of patient rights was addressed in the training activities.

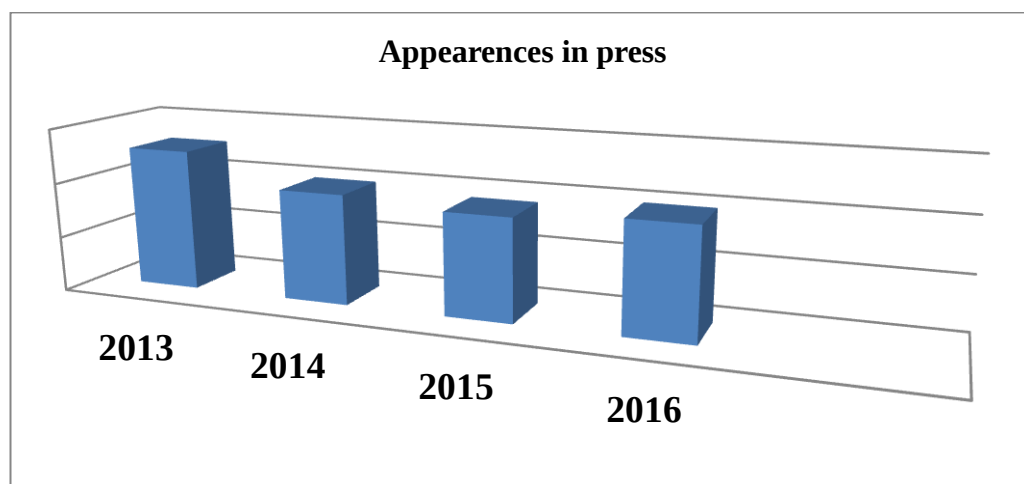
In 2016, the Ombudsman's Office changed the approach to how training activities were organized under the conditions in which some of the institution's employees attended special training courses in the field of human rights. As a result of increasing the training of trainers, the quality and number of trainings increased.

For the first time in 2016, after the training, was requested the opinion of the participants in these activities. For this purpose, a standard questionnaire (adapted according to necessity: objectives, target group, categories of participants, themes, etc.) was developed and applied, which was proposed at the end of each training. In this way, trainers within the institution understand the extent to which the objectives proposed in the training have been achieved, but also the needs for future courses. The questionnaire implemented also mirrors the level of public satisfaction, which in 2016 remained high.

Altogether, during the training activities, 5310 informative materials were published, edited by the Ombudsman's Office, and in the libraries were transmitted 1570 copies of book titles, leaflets and brochures.

External communication and relations with media

In 2016, the relationship of the Ombudsman with the media has not been substantially improved. The number of press appearances concerning the activity of the Ombudsman, the reactions of the people's lawyers to certain human rights events have increased insignificantly compared to 2015, with 399 in the past year compared to 371 in 2015.



During the reporting period, six media events were held: two press conferences, three press clubs and an informal meeting with the journalists.

At a press conference, shortly after his appointment, the Ombudsman for Children's Rights presented his priorities as an ombudsman. The second press conference was held on the occasion of the World Mental Health Day. In 2016, it was rejoined the experience of organizing press clubs on „Human Rights in the Republic of Moldova in the context of the Universal Periodical Review (EPU): the vision and recommendations of the Ombudsman Institution”;

Respecting the right to life of the child in the Republic of Moldova; Respect for the right to health in our country.

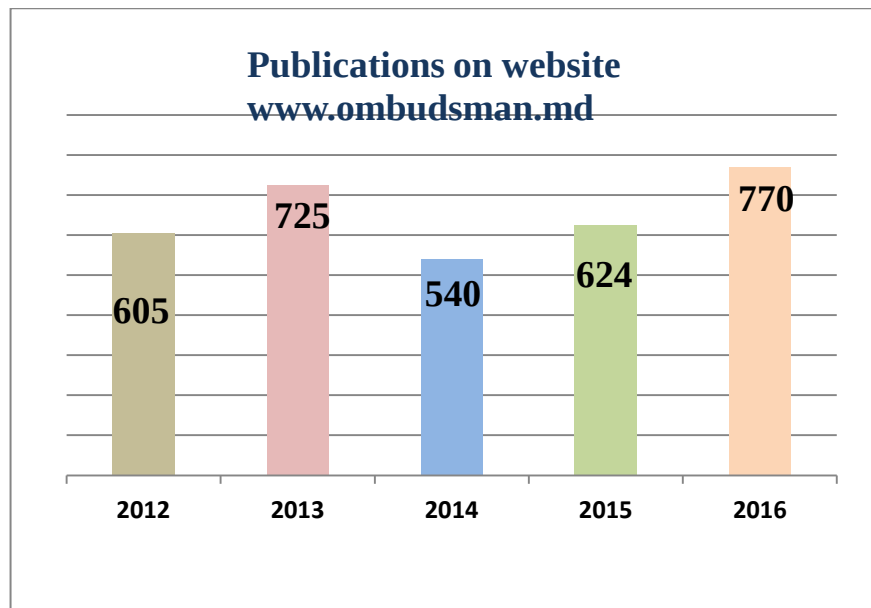
And even if not all of these media events have attracted enough attention from journalists, for example, press clubs have not met a large number of participants, then the reactions of the ombudsmen s to various press releases on stringent and up-to-date issues in the sphere of human rights were actively taken over by the media institutions in the country. Altogether, more than 30 out-of-office statements and complaints were made public.

The most important notifications ex officio or attitudes from 2016:

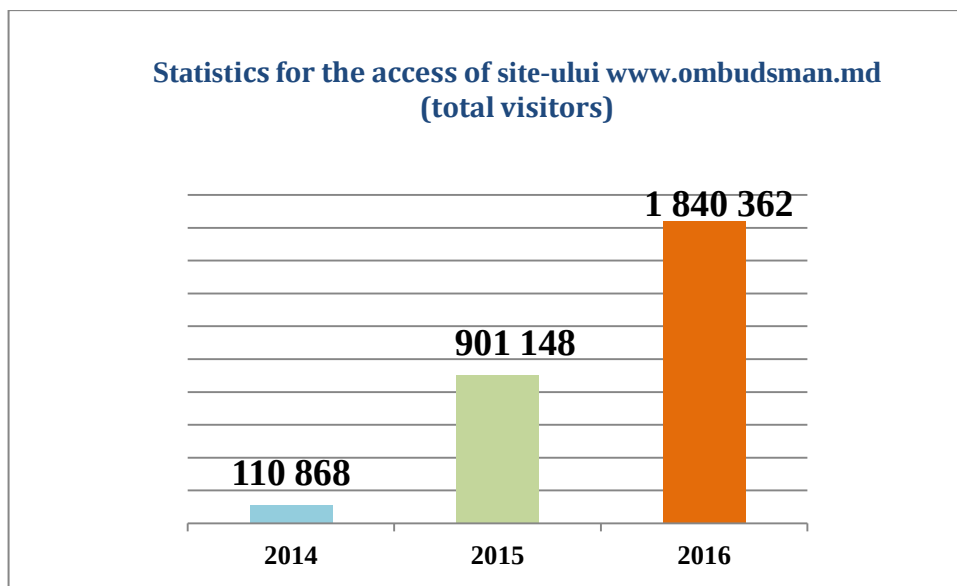
- The reaction to the Bastovoi case in which it has been alerted to the situation created in the Emergency Medicine System;
- The reaction to the draft law, called Big Brother, that allowed sites to be blocked and electronic messages read;
- Reaction to the Government's assumption of the responsibility for the package of laws on the banking system;
 - Opinion on the unfolding on May 22 of the current year of the march, „No fear”;
 - Reaction to press reports on the creation of impediments to the participation of people from the country's districts in the protest demonstrations organized by DA Platform;
 - The reaction to the irregularities admitted in the second round of presidential elections (the failure of the state to ensure the constitutional right to vote to the Moldovans from the diaspora).

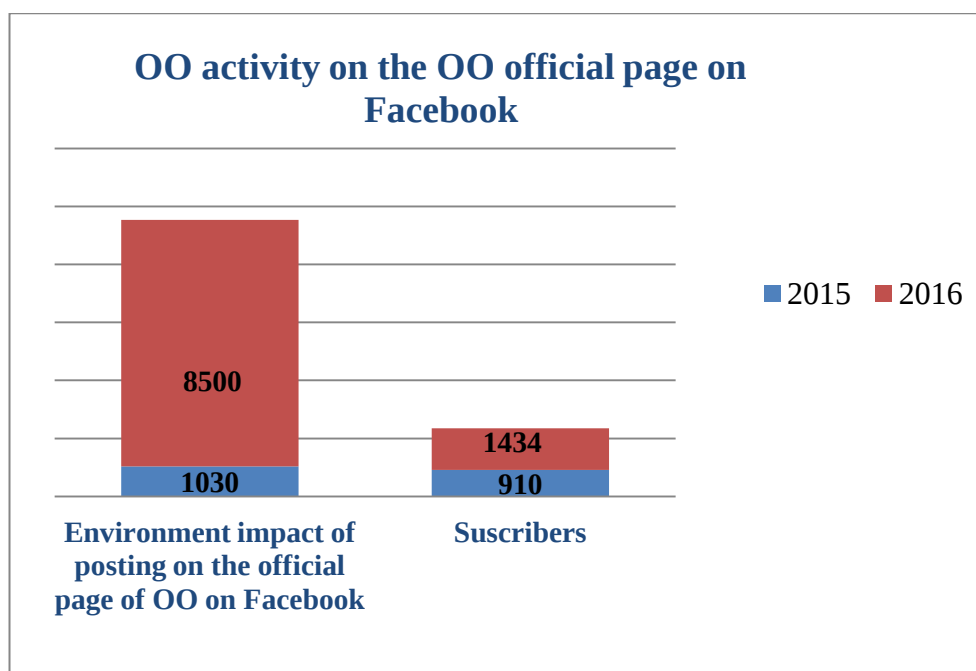
At least two attitudes have been taken over by mass media and widely commented on in society. In the case of Bastovoi, following the recommendation of the Ombudsman, a joint order was issued between the Ministry of Health and the Ministry of Internal Affairs to regulate the common actions in various cases where there are certain obstacles to the provision of emergency medical assistance.

An important external communication tool of the Ombudsman continues to be the official website ombudsman.md, as well as the pages on Facebook. In the year 2016, 770 materials were placed on the site of the Ombudsman's Office, a record number over the last five years.



The number of visitors to the official page has increased from 110,868 in 2014 to 1,840,362 in 2016. The average impact of posts on the Facebook Ombudsman's Office page was 8500 in 2016 compared to 1,030 in 2015.





Collaboration of the Ombudsman with the civil society

In 2016 the relations of the Ombudsman with the civil society were strengthened, cooperation reanimated in the previous year.

The Ombudsmen s continued the practice of consulting the representatives of the associative sector in the most important issues in the field of respecting human rights, organizing joint events or inviting NGOs to participate in the activities of the Ombudsman (over 20 of the organized activities took place jointly or with the participation of representatives of the non-governmental sector).

During the reference period there took place two ombudsmen discussion forums with the representatives of the civil society. On June 6, the Ombudsman for the protection of children rights met with the civil society representatives working in the area of child rights (27 participants), inviting them to dialogue and collaboration.

On December 23, another ombudsman meeting with the civil society took place, where were made the balance sheets of 2016 and discussed the directions of cooperation in 2017.

Last year it was an important one for strengthening the collaboration of Ombudsman s with the society, including because the Independent Monitoring Mechanism for the implementation of the UN Convention on the Rights of Persons with Disabilities, consisting of representatives of civil society, which is a council Experts set up within the Ombudsman's Office has started its activity. A first initiative was to advance **the proposal to amend the Electoral Code to grant voting rights to people who lacked the capacity to exercise and to approve a package of laws that would ensure the implementation of Article 12 of the UN**

Convention on the Rights of Persons with Disabilities. On this subject, but also in the context of the World Mental Health Day, the Ombudsman and a representative of the Council of Experts held a press conference on October 10, 2016 on „Respecting human dignity, adequate and effective protection of people with mental disabilities - Between the commitment assumed by the state and reality”.

Following the notification of the Ombudsman and the Promo-LEX Association, the Constitutional Court declared unconstitutional the provisions in the Code of Civil Procedure that set the ban on persons declared as incapable of exercising their right to free access to justice. This topic was also dealt within a joint press conference of representatives of the Ombudsman and Promo-LEX Association.

Also in 2016 the Council for the Prevention of Torture, consisting of independent experts and representatives of the civil society, launched the National Mechanism for Prevention of Torture, created under Law no. 52.

An effective collaboration was established between the Ombudsmen and the non-governmental sector in the process of Universal Periodic Review of the Republic of Moldova.

In the IInd round of the EPU, alternative reports were produced by the two national human rights institutions in the country, as well as over 30 NGOs. Thus, the concerted effort of presenting different visions of the authorities regarding the developments in the sphere of human rights has allowed a broader and more complex information of the international community about the realities in the Republic of Moldova in the field of respect for human rights. The joint action of the Ombudsman and civil society within the EPU has resulted in the drafting by the UN member countries of an impressive number of recommendations on current and sensitive issues in the field of human rights.

An example of effective cooperation of the Ombudsman is the organization of mobile teams moving within the territory of the International Campaign „16 Days of Activism against Violence against Women”. Already for the third consecutive year, the officials of the Ombudsman’s Office, representatives of Promo-LEX Association, Association „Memoria”, have shared several lectures on this very sensitive topic in our country.

More Effective Collaborations the Ombudsman had with the Independent Press Association.

This year, the **Ombudsman** signed cooperation agreements with the Non-Discrimination Coalition and the Institute for Human Rights (IDOM). In December 2016, the Ombudsman’s Office was a partner of IDOM in organizing the Human Rights Film Festival, V-th edition, with the slogan „Know Your Rights through Film!”

External Collaboration of the Ombudsman

In 2016, the Ombudsman ensured a good international presence and visibility, the ombudsmen attending important events on the agenda of international human rights institutions.

When establishing the external agenda of the people's lawyers, priority was given to the activities organized by the international institutions as well as to the European and international structures.

Thus, the Ombudsman participated in the Annual Meeting of the European Network of National Institutions for the Protection of Human Rights (ENNHRI) (October 27 - 28, Zagreb, Croatia).

The Ombudsman also took part in the Annual Meeting of the International Institute of Ombudsmen, the largest organization of national human rights institutions, held in Bangkok, Thailand, on November 13 - 19, 2016.

At Monte-Carlo, between October 19 - 21, 2016, the Ombudsman attended the Annual Meeting of members of the Association of Ombudsmen and Francophone Mediators. The event organized a seminar on „National Ombudsmen and National Institutions for Human Rights - Relationship with the United Nations Mechanisms for Human Rights”.

On March 15-16, 2016, the Ombudsman participated in two simultaneous events in Brussels - the Ombudsman Summit of the Eastern Partnership and Ombudsmen of the European Union.

On April 26 and 27, 2016, the Ombudsman attended a workshop organized by his counterpart in Catalonia Province, Spain, Rafael Ribó, President of the European Subdivision of the International Institute of Ombudsmen.

Between May 26 - 27, 2016, the Ombudsman took part in a seminar organized by the European Commission on tolerance and non-discrimination, held in Strasbourg from 14 to 15 June 2016.

On 8 June 2016, the Ombudsman intervened at the Republic of Moldova - EU dialogue platform meeting held in Brussels, Belgium.

Between 28 and 29 November 2016, the Ombudsman attended a meeting of human rights experts whose purpose was to strengthen the capacity and functional independence of national human rights institutions. The meeting was held in Warsaw, Poland, at the initiative of the Polish Ombudsman.

The Ombudsman also participated in the meeting of the representatives of the National Mechanism to Prevent Torture (NPM) in the OSCE region, held on October 13-14, 2016, in

Vienna, Austria. The meeting, being at the first edition was organized 10 years after the entry into force of the Optional Protocol to the Convention on the Prevention of Torture (OPCAT) and is to be held annually in various OSCE countries in order to strengthen the capacity of National Mechanisms to Prevent Torture in the fight against the prevention of torture and inhuman and degrading treatment.

The Ombudsman for the Protection of the Rights of Children took part in the annual meeting of the members of the European Network of Children's Rights Ombudsmen, which took place in Vilnius, Lithuania, on September 20-22, with the theme „Equal Opportunities in Education”.

In the framework of a project of UNDP Moldova to support the national institutions for the protection of human rights, a study visit of officials of the Office in Finland, at the Ombudsman's Institution in Finland was held. Another documentary visit to the European institutions in Strasbourg was organized for the staff of the institution with the support of the Council of Europe's Office in the Republic of Moldova.

The representative of the Ombudsman's Office attended the joint meeting of the CoE-ENNHRI-FRA-EQUINET Economic and Social Rights Joint Platform on 10-12 October in Belgrade, Serbia. The Office of the Ombudsman was also represented at the International Conference on the Right to Information, which took place in Kiev between September 21 - 23, 2016.

Overall, during 2016, representatives of the Ombudsman's Office carried out 15 travels abroad to representations, trainings, reunions and study visits.

Challenges and goals / targets for 2017 in the field of promotion and communication

Priority directions in the work of the Ombudsman will continue to promote and protect the rights of people with disabilities, combat torture and ill-treatment, promote the rights of the child and the right to health protection. In 2017, the status of things in another segment of the health system will be monitored to highlight the system problems and to propose solutions for them.

A new direction in the work of the Ombudsman will be the prevention of corruption through the leverage of the Ombudsman, such as promotions: organizing activities with anticorruption message and explaining the link between this negative phenomenon and violation of human rights, editing and distribution of informative materials on this topic.

The Ombudsman aims to become better known to the general public, especially in rural areas, through activities to promote and educate the population about their attributions and competences.

In 2017, the Ombudsman aims to prepare and present the file to the International Committee for the Coordination of National Human Rights Institutions (ICC) for accreditation with the status A. In 2009, the Center for Human Rights of Moldova, whose successor is Ombudsman's Office, was accredited with B status.

Accreditation with the A status requires the full compliance of the human rights institution with the Principles of Paris, adopted by United Nations General Assembly Resolution (UN), no. 48/134 of December 20, 1993, standards guiding the establishment and proper functioning of national institutions for the protection of human rights.

Accreditation with the status A will have beneficial effects for the institution's image and will offer multiple benefits to capitalize on all the opportunities that membership of international organizations has, but also to make public its views on various issues of respect of the person's rights at the tribunals of international organizations. It concerns the exercise of the right to attend and take part in the sessions of the UN Human Rights Committee, to make statements and reports at the meetings of the United Nations mechanisms. Institutions with the status A have the right to vote at international and regional meetings of ombudsmen organizations and the right to be a member of the Bureau of the International Steering Committee.

ANALYSIS OF HUMAN STRUCTURE AND POTENTIAL OF THE TEAM OF THE OMBUDSMAN

At the end of 2016, 36 people worked in the Ombudsman's Office.

As far as the dynamics of human resources is concerned, in 2016, compared to 2015, there is an increase in the number of employees, by 6%. The causes of the increase are: the institution's reorganization process in 2016, the change in the organizational structure of the Ombudsman's Office, and the increase in the number of staff from 55 (in 2015) to 65 units (in 2016).

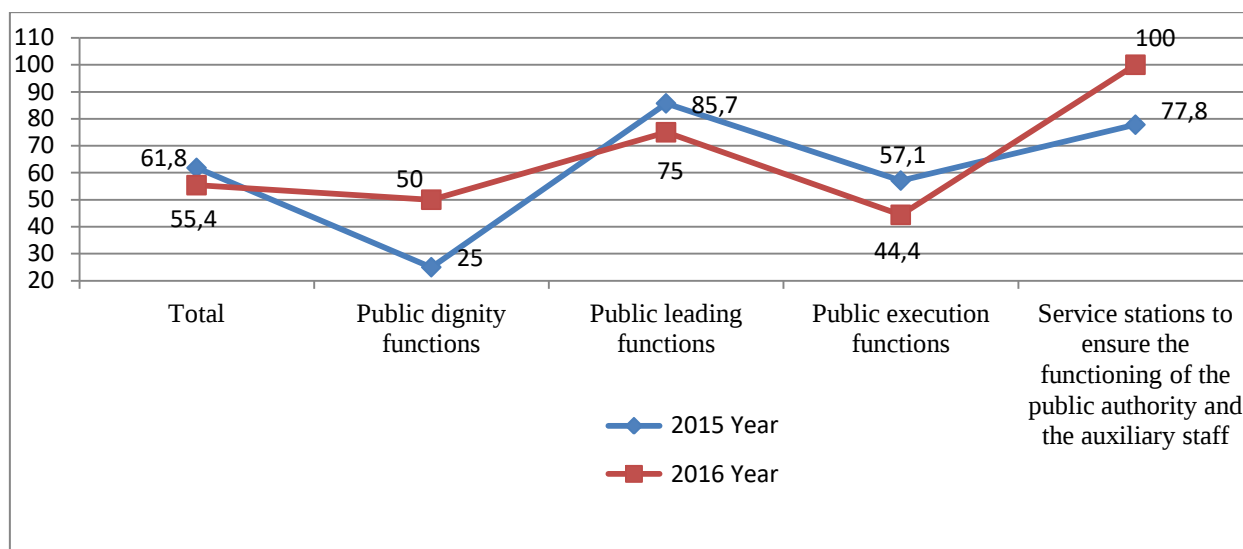
Dynamics of staff

Indicators	Year 2015	Year 2016	Absolute Dynamics, 2015/2016 (persons)	Relative Dynamics, 2015/2016 (%)
Units approved under the staff regulations	55	65	-	-
Actually, people	34	36	+2	106

The degree of occupation of public offices and posts

The occupancy rate of the personnel units was calculated as a ratio between the number of employees to the staff category limit.

The occupancy rate of personal units, percent



The analysis of the data reveals a high degree of occupancy of the public leading positions and of the technical servicing stations that ensure the functioning of the public authority.

In 2016, public execution positions hold the highest weight in the structure of vacant positions (55.6%) due to a higher weight in the number of positions and a higher fluctuation of civil servants for execution.

Depending on the position occupied within the Ombudsman's Office, the structure of the staff, according to the data at 31.12.2016, is the following:

- officials holding positions of public dignity - two people
- superior level civil servants with leading positions - one person
- civil servants with leading positions - 12 people
- civil servants for execution - 16 persons
- technical service staff to ensure the functioning of public authorities and auxiliary staff - five people.

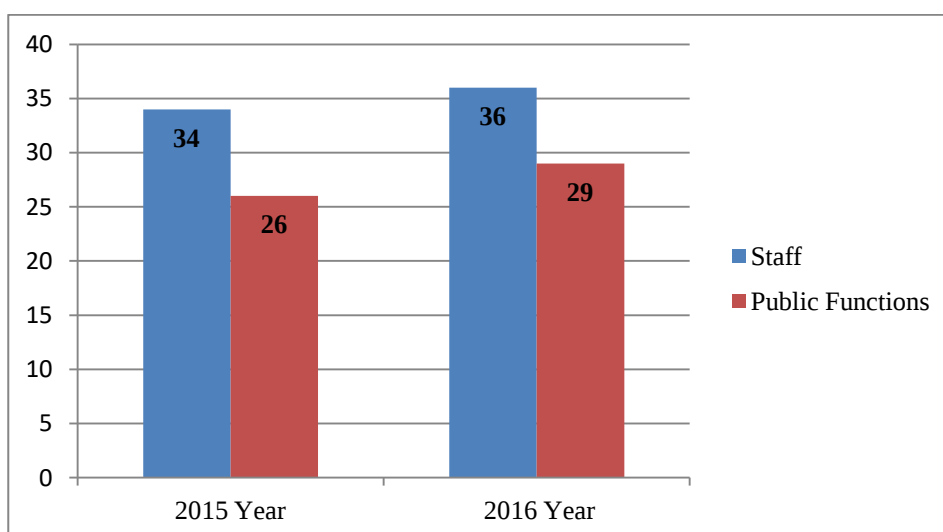
Dynamics and staff structure by the position held

Indicators	Year 2015	Year 2016	Absolute Dynamics (persons)	Relative dynamics (%)	Structure (%)	
			2016/2015	2016/2015	2015	2016
Units approved under the staff regulations	55	65	-	-	-	-
Effectively, persons, of whom:	34	36	+2	106	100	100
Officials holding functions of public dignity	1	2	+1	200,0	2,9	5,6
Civil servants with statute established according to the Law no. 158-XVI of 4.07.2008, out of which:	26	29	+3	111,5	76,5	80,5
Civil servants with leading positions of superior level	-	1	-	-	-	2,7
Civil servants with leading positions	6	12	+6	200,0	17,6	33,3
Civil servants of execution	20	16	-4	80,0	58,8	44,4

Service staff to ensure the operation of public authorities and auxiliary staff	7	5	-2	71,4	20,6	13,9
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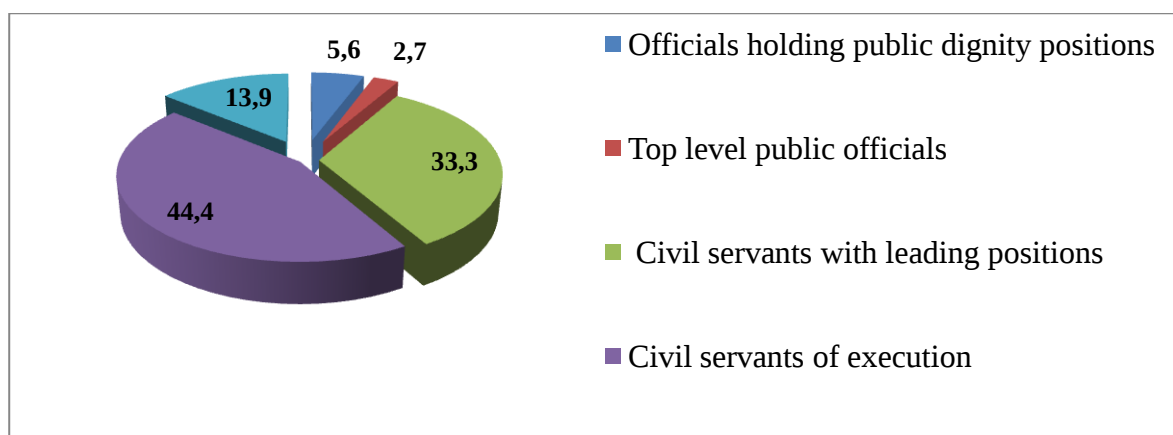
The public positions have the majority weight in the personnel structure of the Moldovan Ombudsman's Office, representing 80.5% (as of 31.12.2016) of the total number of posts and positions within the institution. The weight of posts represents 13.9%, these being three units of technical servicing stations that ensure the functioning of the public authority and two auxiliary personnel units. All the posts within the institution are funded from the budget.

The staff of the Ombudsman's Office, people



Within the structure of the number of public offices in the Ombudsman's Office, the share of public execution positions is 44.4% as of 31.12.2016. The number of civil leading positions (including top-level leading public functions and public dignity functions) is 41.6%.

Staff structure according to function

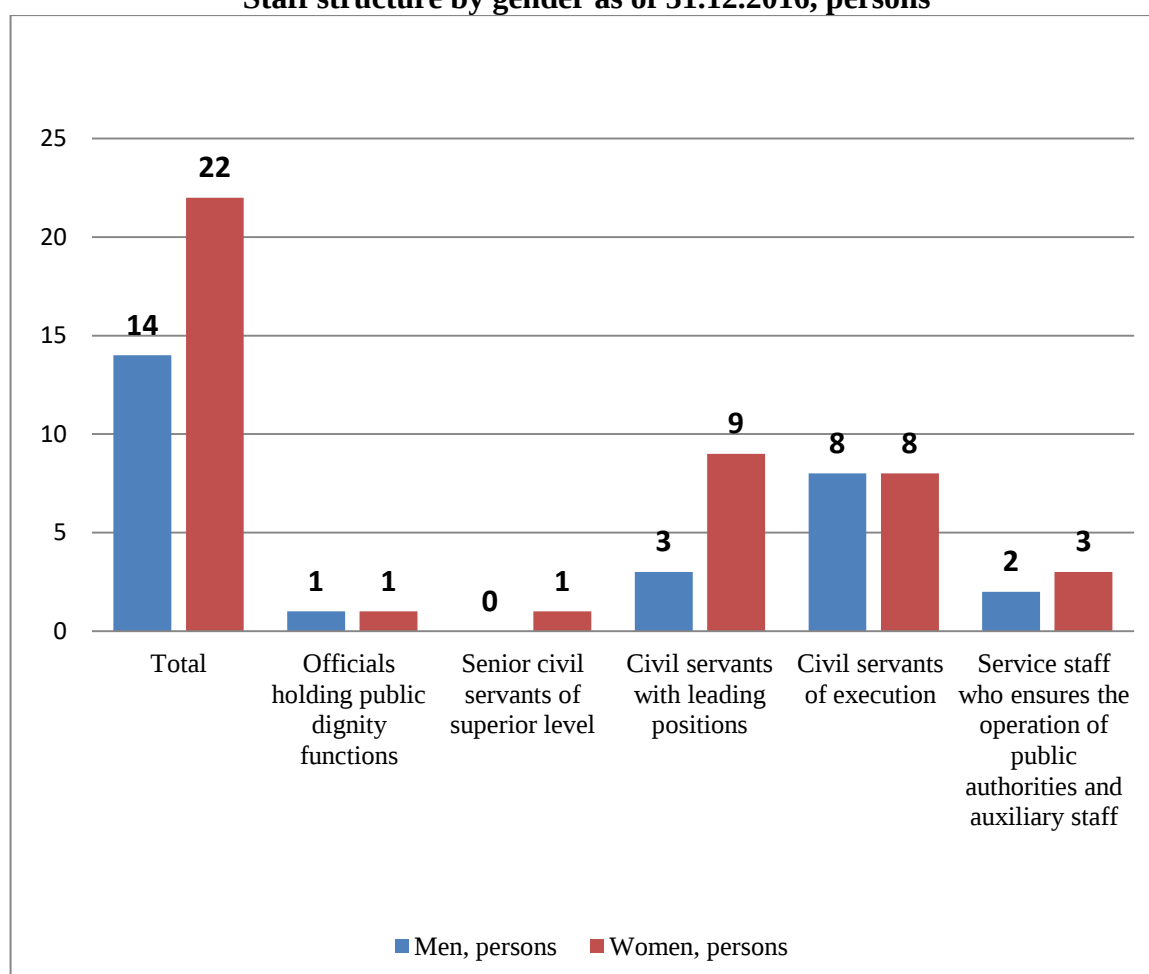


Gender analysis of civil servants and other categories of employees

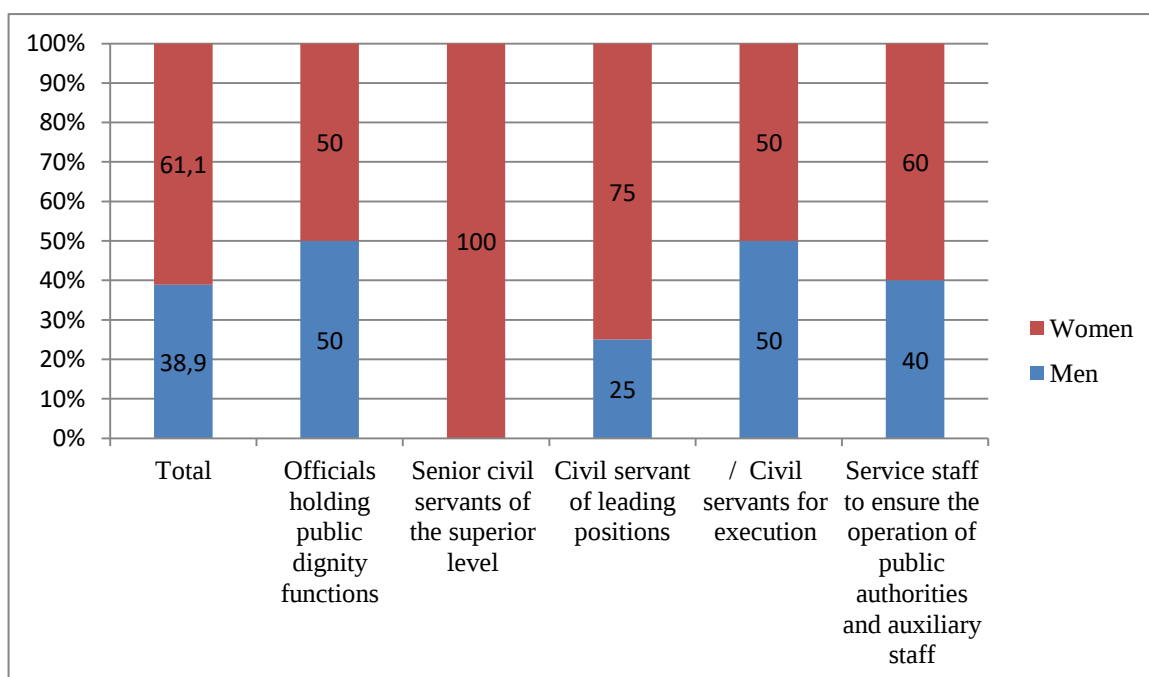
An important place in the analysis of human resources is the analysis of the staff structure by age and gender.

The number of employees by gender, by category of personnel, in the Ombudsman's Office is shown in the diagrams below.

Staff structure by gender as of 31.12.2016, persons



Cumulative staffing by gender by 31.12.2016, percentage



Generalized data reveals that the share of men in the total number of employees (38.9%) is lower than that of women, which is 61.1%. At the same time, both men and women, who hold public positions of public dignity and execution functions, account for 50%.

Staff structure by age, people

Function category	Under 25 years of age	Between 25 and 54 years	55 years and over	Total
Effective (in total)	1	30	5	36
Officials	1	26	4	31
Technical service staff to ensure the operation of public authorities and ancillary staff	-	4	1	5

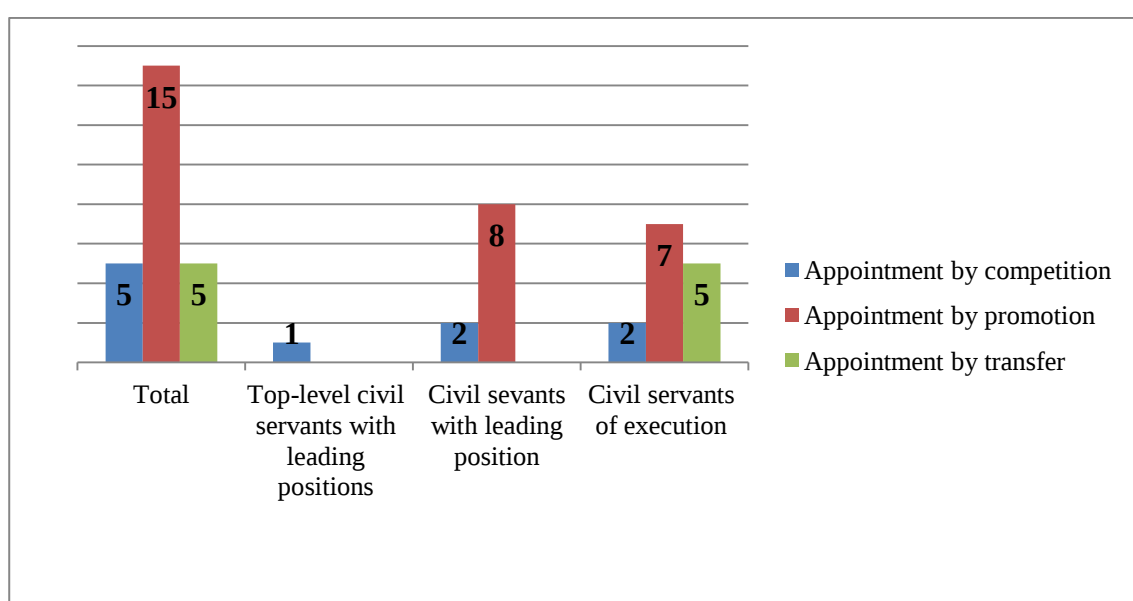
Occupation of public office

Occupation of public office (holidays and temporary vacancies) is made on the basis of the Law no. 158 of 04.07.2008 on the public function and the status of civil servant; occupying the position of public dignity - under special laws; occupying other positions - according to the Labor Code. Occupation of the public service (vacancies and temporary vacancies) is done through the following ways: through competition based on the principles of open competition, transparency, competence and professional merits; by promoting a public position in a higher

rank based on merit, including the evaluation of professional performance; by transfer between public authorities or subdivisions of the institution.

In the Ombudsman's Office, in 2016, recruitment and appointments were made to 28 public and vacant positions (a public dignity position, a top-level public office, ten public management positions, 14 public execution positions and two technical service posts ensure the functioning of the public authority). The number of appointments in public positions classified according to the method of occupying the public office is shown in the diagram below.

Number of appointments in public office at the Ombudsman's Office in 2016, persons

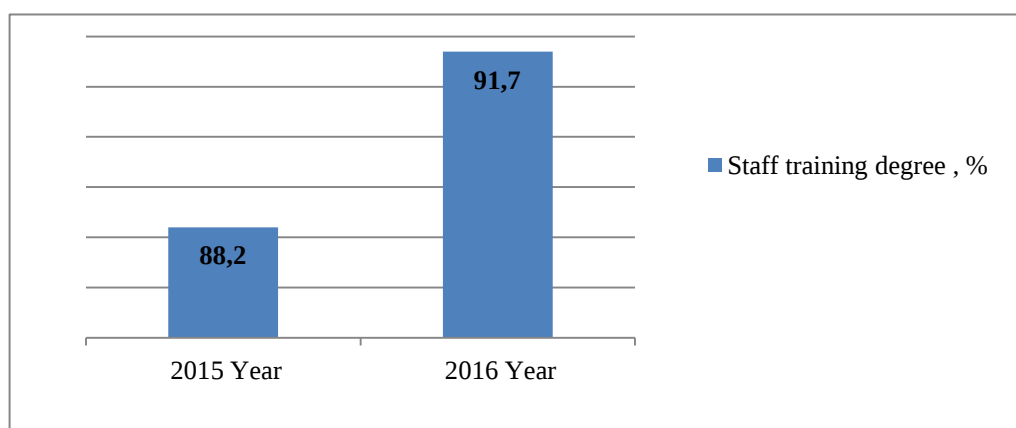


The analysis of the data shows that the way of appointment in public position through promotion was applied in 60% of the total number of appointments in public positions.

Data on employee professional development

In the year 2016, 33 people were trained (out of which civil servants accounted for 28 persons), who benefited from 7,996 training hours in total. The capacity of civil servants in public authority has been developed in both internal and external training. It should be noted that internal training has started to make a more significant contribution to the training of civil servants in the Ombudsman's Office.

The degree of training of the staff in dynamics



In 2016 there was noted an increase of 3.5% compared to 2015 in the level of training of the staff, which highlights that one of the priorities of the personnel policy within the institution is the professional development of the personnel.

Training is a planned process that allows the provision of information, knowledge, skills needed to perform a performing activity by any employee on the job he / she occupies. According to the article 37 of the Law no. 158 of 04.07.2008 on the public function and status of the civil servant, the public authority must ensure the professional development of the personnel or to take actions to meet these needs. Thus, one of the key priorities in the activity of the institution in the short and medium term is to increase the managerial and professional capacities of the staff. This objective is achieved by developing training programs for different categories of staff in relation to their needs and the requirements imposed by the standards in the field.

In the case of persons with management positions, a managerial training program was developed that aimed at developing managerial skills and will have a positive influence on the internal management system (activity planning, organization and coordination of work, monitoring and evaluation of the activity).

For civil servants of execution a professional training program was applied to develop the professional skills necessary for the exercise of the duties by fields.

MATERIAL AND BUDGETARY RESOURCES OF THE OMBUDSMAN'S OFFICE IN 2016

I. Budget resources and their management

This section describes the amount of financial resources allocated to the institution and how they have been used.

According to the limits of the budget approved for the year 2016, 7844.9 thousand MDL were allocated for financing the activity of the Ombudsman's Office.

The institution is funded from two sources:

- control over the respect for human rights - allowances amounting to 7408.3 thousand MDL
- realization of the reform in the field of justice - allowances amounting to 436.6 thousand MDL.

At the end of the year, the institution benefited from 66,661 MDL, according to a donor-funded partnership agreement (UNICEF).

The level of execution of the budget on the component „Control over the observance of human rights” represents 89%, making a saving of 884.5 thousand MDL. The percentage of budget component execution is:

Name, Expenses	Specified plan, thousands MDL	Executed, thousands MDL	Budget execution, %	Deviation ,%
Remuneration of employees' work according to the staff regulations	4183,6	4085,2	97,6	2,4
Compulsory State Social Insurance Contributions and Mandatory Health Insurance Premiums	1084,7	1068,8	98,5	1,5
Communal services, rental, heating, electricity, water	397,4	375,2	94,4	5,6
Information, telecommunication and postal services	178,3	169,6	95,1	4,9
Transport services, current repairs, editorial services, of security	462,7	462,7	100	-
Services not assigned to others lines	669,6	127,9	19,1	80,9

Allowances for termination of employment and allowances for temporary incapacity for work	172,0	171,2	99,5	0,5
Business trips	204,2	176,1	86,2	13,8
Contributions to international organizations and other current expenses	200,3	116,2	58,0	42,0
Procurement of machinery and equipment, production and household inventory	196,7	188,4	95,8	4,2
Purchasing supplies for the current needs of the institution (household materials, office supplies, materials for teaching, scientific and other purposes, fuel, building materials, other materials, food, clothing, footwear)	297	220,7	74,3	25,7
TOTAL	8046,5	7162	89,0	11,0

Analyzing the share of assimilation of the allocated funds or the rate of execution of the budget, we note that there have remained unexecuted means to: **Services not assigned to other alignments** and in the **Purchasing supplies for current needs**. This is explained by the fact that at the end of 2016, the ombudsman institution concluded a Cooperation Agreement with UNICEF amounting to 686,833 MDL. The Ministry of Finance was informed about this, so that the budget of the institution for the year 2016 was increased to the income side by 638 200 MDL. De facto, the agreement extends over two years - 2016-2017. The first tranche of 66,661 MDL was paid into the institution's account in December 2016. The institution spent only the funds actually entered as incomes, according to the agreement, i.e. 66,661 MDL. The difference in the amount will be to the extent of income from donors.

Other savings on budget execution are on spending related to:

- business trips abroad - part of the trips were paid by the organizers.
- other current expenditure - the late creation of the National Mechanism to Prevent Torture, only in October 2016, which led to the financial savings of this component.

The overall level of execution of the budget on the component „Carrying out reform in the field of justice” is 100%.

Name, Expenses	Specified Plan, thousands MDL	Executed thousands MDL	% Budget execution	Deviation ,%
Professional training	84,5	84,5	100	-

Services not assigned to others lines	352,1	352,1	100	
Total	436,6	436,6	100	-

At the beginning of 2016, the institution had debts to the economic agents in the amount of 94 thousand MDL, in February 2016 they were paid, and during the year the financing of the institution's needs was carried out in normal manner, so that the invoices submitted for payment to the Ministry Finance was funded in no more than 30 calendar days.

The actual debts of the institution as at January 1, 2017 are the current debts of December 2016, which were paid in January 2017, but there is no limitation period expired debts.

The share of the salary costs of the employees and payment of the contributions and bonuses to the state budget represents 70.4% of the total amount of the budgetary allocations. Payment of salary and contributions is made regularly, so the Ombudsman's Office has no payroll and no delays in payment of contributions and bonuses to the state budget.

With regard to the reform of the institution, the creation of new subdivisions, the planning of material needs on subdivisions has been improved. In the institution's budget planning process for 2017, all Heads of Subdivisions have been involved, who have put forward real proposals for the management of financial means and for the procurement of goods and services to improve the working conditions for employees and the work of the institution. Following the negotiation with the Ministry of Finance of the institution's budget for 2017, it was accepted to increase it from 8912.8 thousand MDL to 10932.7 thousand MMDL, i.e. an increase of 2019.9 thousand MDL.

II. Material Resources - Patrimony Analysis of the Ombudsman's Office

By the Decision of the Permanent Bureau of the Parliament of the Republic of Moldova no. 21 of 29.07.2016 and based on the Government Decision dated July 14, 2016, the Ombudsman's Office was transmitted to the building located in Chisinau, 16 Sfatul Tarii Street, and the land related to it. This is an old building from 1901, which, according to the results of technical expertise, needs to be demolished because it is built of construction materials lacking the technical characteristics of durability. Both the walls and the ceiling of the building are covered by a lot of cracks, so that the further exploitation of this building from the perspective of potential seismic high intensity and magnitude threatens the life and health of both the institution's employees and of its the beneficiaries.

Once the building was receiving in management and the hiring of specialists to fill the vacancies, as a result of the reformation of the institution, construction materials and inventories were purchased for the current repair and job creation for new employees.

During 2016, the computing technique required for job creation for new employees was procured in connection with the increase in the number of staff according to the staff regulations up to 10 units.

According to the annual procurement plan, furniture was purchased for the Cahul Representation and the shutters for the repair of the repaired offices.

In September, the telephone station was broken, and it could not be repaired, so a telephone ministry was purchased. Were caught two cameras that will be used by the MNPT members during visits to places of detention and other fixed assets necessary for the institution's activity.

During the year, the institution was insured with the necessary fuel, with household materials, with office supplies and other consumables necessary for the good performance of the institution's activity.

Were printed promotional materials with the human rights thematic that were later distributed to the service recipients because one of the functions of the institution is to promote respect for human rights.

In October 2016, the Council for the Prevention of Torture was established as the National Mechanism to Prevent Torture. Under the provisions of the Law on the People's Advocate, the institution is obliged to provide the members of the Council with the necessary means for their activity. For this purpose, special clothing was purchased for visits to places of detention.

Throughout 2016, the institution has benefited from financial and material support from international organizations - the United Nations Development Program, UNICEF, the Council of Europe, and others. Ombudsman's Office received technically free of charge two servers - worth 241.0 thousand MDL, a book lot for the library of the institution and a lot of instructive materials for the promotion of human rights to be distributed to the beneficiaries of the Ombudsman's institution, in an estimated value of 121.5 thousand MDL.

All these development partners have funded professional training courses for institution employees, organized and funded trips abroad to get acquainted with the work of human rights institutions in European countries and to take good practice.

From the part of UNICEF there have been allocated financial resources for organizing the Annual Ombudsman Forum for Children's Rights with the Children from the Republic and the Drawing Competition with the topic „The Right to Health”. UNICEF donated 66,661 MDL for the organization of these cultural activities and other needs of the institution.

All the purchases of goods and services during the year 2016 were made through direct purchase, not exceeding the threshold set in the Law on Public Procurement.

In November 2016, there took place the auction for the sale of the transport means GAZ 2410 transportation vehicles from 1991 and GAZ 3102 from 1993, unused by the institution. Revenues from these transport means were transferred to the state budget. During the year, the fixed physical and moral means were destroyed: defective computer equipment, faulty furniture, and so on.