

CENTRUL PENTRU DREPTURILE OMULUI DIN MOLDOVA



ЦЕНТР ПО ПРАВАМ
ЧЕЛОВЕКА В
МОЛДОВЕ

THE CENTER FOR
HUMAN RIGHTS
OF MOLDOVA



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Dear Colleagues,

On 16 September 2005 Republic of Moldova signed and by the Law nr.66 on 30 March 2006 ratified the Optional Protocol to the UN Convention against the torture and other cruel treatments, inhuman or degrading, adopted by the UN General Assembly on 18 December 2002.

Most of the National Mechanisms of preventing of torture of Europe are the Offices of Ombudsmen. An advantageous feature of national institutions for human rights (Offices of Ombudsmen) is that usually have a broad mandate in monitoring and promoting respect for human rights, to have possibility to visit any penitentiary place as well as to present public reports to the Parliament and their recommendations have authority because they are bodies with an official statute.

Art. 11 of Law 1349 on 17.10.1997 on Parliamentary Advocates: “While exercising their mandate, parliamentary advocates are independent from the parliamentarians, the President of the Republic of Moldova, the central and local public authorities and officials of all levels.”

Till the moment, the Protocol was ratified by 23 European states, only 15 of them, one of which is the Republic of Moldova, designated or established independent national mechanisms to prevent the torture at national level, actually considered as a great success for this.

Complying with the requests of Protocol, the parliament of Republic of Moldova adopted on 26.07.2007 the Law nr.200 on amending and supplementing Law RM nr.1349 of 17.10.1997 on parliamentary advocates, thus assigned mandate of National Mechanism of Torture Preventing to the parliamentary advocates.

Ensuring civil society participation in the process of prevention and eradication of ill treatment, in order to provide advice and assistance to the parliamentary advocates in exercising the preventive mechanism powers, it was created an Advisory Board whose members are entitled to exercise the powers of the Parliamentary Advocate provided by Article 24 of the Law on Parliamentary Advocates:

- have free access to institutions, organizations and enterprises, regardless of the type of ownership, to public associations, police commissariats and detention facilities within them, to penitentiary institutions, to pre-trial detention centers, to military units, to placement centers for immigrants or asylum seekers, to the institutions that provide social assistance, health care or psychiatric care, to special schools for the under-age with behavior disorders and to other similar institutions;

- request and receive the information, documents and materials required while exercising the powers, from the central and local public authorities, and from officials of all levels;

- have unrestricted access to any information on the treatment and the conditions of detention of the persons deprived of liberty;

- receive explanations from officials of all levels in matters to be elucidated in the course of the check-up;

- have unrestricted meetings and personal conversations, without witnesses, or with the assistance of an interpreter, when necessary, with the person kept at the facilities specified in clause b) as well as with any other person, who, in his/her opinion, might furnish the required information;

- attract independent specialists and experts in various spheres, among them lawyers, physicians, psychologists, representatives of public associations, while making preventive visits to the facilities, where persons deprived of liberty are or might be kept; (Annex: Extract from the Law)

The current wording of the law offers the opportunity to ambiguous interpretation of the membership of the Advisory Board which on one hand has powers for achieving one of the purposes of the optional protocol – the regularly checking of the treatment of persons deprived of their liberty and on the other hand does not match to the organizational and operational criteria dictated by the Protocol (lack of funding, location, appointment and dismissal guarantees, immunity).

For further identification of non-governmental organizations legally constituted with activity of defense of rights of persons with mental disabilities, detainees and preventive arrested persons, the Centre for Human Rights together with their representatives and the representatives of OCSE in Moldova, initiated the process of elaboration of the Regulation on organization and functioning of Advisory Council.

On 31 January 2008, according to the procedure established in art. 23² of Law RM on parliamentary advocates 1349 of 17.10.97, having positive opinion by the Commission for human rights, the Regulation on organization and functioning of Advisory Council was adopted by the Chief of the Centre of Human Rights.

According to the art.5 of the Regulation, its consists of 11 members, including the president (ombudsman), responsible for the implementation and good functioning of national mechanism of preventing of torture, designed by order of the Chief of Centre for Human Rights.

For assuring the transparency of selection of Advisory Council members and following the provisions of the Regulation on organization and functioning of Advisory Council, was initiated a commission composed by 5 persons: 2 parliamentary advocates, a representative of academia and 2 representatives of non-governmental organizations.

First Advisory Council working session held on 29.04.2008. From the November of 2009, the function of President of Advisory Council is exercising by the parliamentary advocate Anatolie Munteanu. For assuring the rate character of the activity of visiting and/or monitoring of detention places, at the work session held on 19.11.2008, the members of Advisory Council were devised in 4 mobile groups, which were equipped with devices audio video, computers, mobile phones, devices for measuring humidity and lighting (in process of standardization) during the support program of NMPT. At the same time was decided the visiting of each mobile group of determined institutions and agreed that each member of Advisory Council is free to visiting unannounced any institution on his/her choice, preparing and presenting to the President of Advisory Council during 72 hours a report.

Taking into account that the members of Advisory Board, due to the lack of the necessary training are not sufficiently aware of conducting preventive visits and / or monitoring, by the employees of ombudsman office were elaborated the methods, forms which could increase the efficiency of done visits.

- a) Guidelines on the control method in the preventive detention isolators and detention places of police Stations, referring to:
 - treatment of detained persons (Criminal)
 - treatment of persons for who was applied the arrest as the preventive measure;
- b) Guidelines on the control method in the preventive detention isolators and detention places of police Stations, referring to:
 - treatment of detained persons (administrative)
 - treatment of persons for who was applied the administrative arrest;
- c) Guidelines on inspection features in cases of detention and/or of arresting of minor.

Advisory Council makes weekly sessions in the Office of Ombudsman where communicate the results of done visits, as well as the plan of new visits.

Because of incompatibility of some functions with the membership of AC, 5 members resigned. At the moment of report preparing it is released announce for participation in the competition for a replacement vacancies. It is necessary to mention that members of AC develop activity exclusively on the voluntary principles. All the expenses of the organization and realization of visit are supported by themselves, except those of transport to and from the place of visit which are assured by CHRM.

Preventive Visits (2008)

For full implementation of the tasks and objectives of NMPT, during of 2008, were organized and done preventive visits in:

Institutions subordinated to the Ministry of Internal Affairs -28 institutions;

Institutions subordinated to the Ministry of Justice -13 institutions;

Institutions subordinated to the Ministry of Health -2 institutions;

Institutions subordinated to the Ministry of social Protection, Family and Child -1 institution;

The missing practice in this area, as well as a number of objectives factors made possible imposition of a strict omission of the number of visits and acts of reaction, but taking in account that some institutions were visited few times or number of visits is around of 60 visits.

The graphics - annex 1.

Preventive Visits (10 months 2009)

Institutions subordinated to the Ministry of Internal Affairs -66 visits;

Institutions subordinated to the Ministry of Justice -41 visits;

Institutions subordinated to the Ministry of Health -7 visits;

Institutions subordinated to the Ministry of social Protection, Family and Child -1 visit;

Graphics – annex 2.

Being forced to perform management activities of NGO's, whose leaders are, some members of Advisory Council were absent in the work of 2.6 working meetings and shirked from 5-8 preventive visits, which has conditioned a relatively low participation of AC members to the preventive visits of monitoring. An index which determine the fullness of the activity of preventing and eradication of torture and ill treatments, undoubtedly, is the timeliness of preparation of the report agreed and of course the quality of this one.

Thus, 112 of total number of done visits during the period of 9 months of 2009, the Parliamentary Advocates and employees of the Centre for Human Rights done 73 visits, Parliamentary Advocates, employees of the Centre for Human Rights and members of AC – 11 visits and members of AC – 31 visits.

Graphics – annex 3.

Visits done in the Institutions subordinated to the Ministry of Internal Affairs

Visits done during the NMPT in 2008 as well as in 2009 permitted to the parliamentary advocates and members of Advisory Council to accumulate information and details concerning the detain conditions and compliance of procedural rights of persons in police custody. At the same time, the information showed the main features which characterized the situation in general.

From the degree of importance, one of the most important deficiencies in the activity of MIA faced to the functionality of NMPT is:

Knowledge and or application failure by some employees of subdivisions of MIA, of their functional powers and of Law on parliamentary advocates, expressed by restricting unconditional access to places of detention in police stations or other subdivisions.

During the visit instead of preventive detention under the Transport Commissioner of the Railway Station Chisinau (12.01.2008), the access of parliamentary advocate was restricted. At the visit of 29.05.2008, was restricted the access of parliamentary advocate and members of AC on the territory of patrol and sentinel Regiment "SCUT" in General Police Station of Chisinau. At the same time the employees of police from guard unit threatened performance of his duties of National mechanism of

torture preventing, have suggested to the parliamentary advocate and members of AC to go to the General Police Station of Chisinau for obtaining the write permission from the Commissioner. (notes from the report of 2008 – were restricted visits in the Police Stations from Bălți, Bender, Hîncești, Singerei, CGP, Ohei, Cimișlia; Department of Operational Services – visit of employees of CHRM on 28.05.09 was possible only after 40 min; the Police Station Rîșcani sector of Chisinau – visit of parliamentary advocate and members of AC was restricted for 15 min; not allowed access: 09.04.09 the Police Stations Rîșcani, Buicani sectors, 11.04.09 the General Police Station, the Police Station Centre sector.

On the fact of restrictions and delayed access inside of police stations, parliamentary advocate repeatedly referred to the leadership of Ministry of Internal Affairs, but all was limited to submitting a circular to the heads of subordinate subdivisions of MIA, accompanied by the full version of the Law on Parliamentary Advocates RM nr.1349 on 17.20.1997, as well as the attention to the guilty persons. But note that such cases occurred after the measures taken by the Ministry of Internal Affairs, which indicates their inefficiency. This fact shows that the implementation of national mechanism of torture preventing in Republic of Moldova encountered some shortcomings dictated by slow compliance of authorities to the requirements of Optional Protocol to the UN Convention against the torture and inhuman or degrading treatment or punishment.

Informing relatives or others close persons about the place and time of detain, some detainees reported to the parliamentary advocate that they were informed and used this right. But, there were cases when detainees complained that their relatives were not informed of their detention, or they were informed after some days of their retention, detention of persons for a period more than 3 hours. But in the Police Station of Botanica and Centre sectors of Chisinau were detected detainees for a period exceeding the essential term.

Medical assistance – was established that some requests of detainees addressed to the police employees for calling a doctor are without answers. Parliamentary advocate (notes of 2008 y.) in some situations on detainees requests who had pains, asked the employees of police to call doctor. Referring to the “drunk” detain persons, the practice shows that the police bodies don’t have sufficiently financial resources for bringing drunk person to a narcological examination for checking. This fact, usually, is established by the police employee and fixed in the Minutes of retaining.

The detention of persons during the night time in the police stations of Chisinau remains to be a problem. It is necessary to mention that these places have only one chair and detain conditions existing don’t correspond to the national and international standards in the domain: lacking natural light, artificial light is inadequate, lacks ventilation, not given due consideration to ensure minimum surface area, fact which in the light of Justice of European Court for Human Rights, may result an adverse consequences. These kinds of cases were attested at the Police Stations from Riscani and Ciocana sectors of Chisinau.

A deficiency targeted in the Report of National Mechanism of Torture Preventing for 2008 is referring to the execution of the sanction of arrest by the offenders. These kinds of cases were not identify till the period after 07.04.09 when the persons subject to the administrative sanctions expiate the punishment in the detain places of the police stations.

A problem which concerns the non-uniform application of legislation, approached and in the Report on the activity of National Mechanism of Torture Preventing for 2008, targets the transfer of the persons with the detainee statute, for a period, to do the procedural actions from the institutions subordinated to the Ministry of Justice to those subordinated to the Ministry of Internal Affairs. It necessary to mention that according to the art.217 of Execution Code and p.16 of Government Decision nr.583 of 26.05.2006 referring to the approval of execution status of punishment by the detainees, the transfer in these cases are done only in the isolators of preventive detention subordinated to the Ministry of Justice, and only in the case when there exists a judicial decision in this sense.

As a result of parliamentary advocate intervention to the Superior Council of Magistrates (the supreme body of autoadministration of judges) this practice was stopped.

In this context, the parliamentary advocate insists on the vulnerability of persons detained in the institutions subordinated to the Ministry of Internal Affairs because these are becoming full dependent of the authorities of the detection places, and does not exists a strictly control, as well as some restrictions regarding the access of other police employees in the isolators of preventive detention.

The detention of persons to whom were issued an arrested mandate, according to the legislation, in the institutions subordinated to the ministry of internal affairs, is another serious deviation from the law

provisions (art.175 of Government Decision reminded) is determined and/or encourages the application of violence.

During the visits parliamentary advocate detected people with visible injury. Such cases were in the Police Stations of Centre sector of Chisinau and Police Station of Botanica sector of Chisinau. Most of persons invoked that were subjected to physical and mental pressures immediately after their detention, during the first interrogations which take place usually on the upstairs floors of the police stations. Here we can mention the Police Station of Centre sector of Chisinau and Department of Operational Services of the Ministry of Internal Affairs. (notes from the report of 2008)

A majority of detainees, being in preventive arrest have complained that they were ill-treated by the police officers in order to determine them to admit their guilt in committing the crimes for which they were detained, or to plead guilty and in other crimes, which were not committed by them. Those that were stating that they have not been ill-treated have declared that it is due to the fact that they initially agreed to make statements.

Recently, the parliamentary advocate, verifying the communications of the Department of Penitentiary Institutions concerning the transfer from the institution subordinated to the Ministry of Internal Affairs in an institution subordinated to the Ministry of Justice of a prevent with injuries, have started in the respect of the provisions of Law an own investigation to attract a medical expert, in which were accumulated sufficient data for a reasonable suspicion that the B. during his stay in police station of city Straseni was committed an act of torture, and after the magistrate issuing the arrest warrant, B. not been transferred to penitentiary institution No. 13 subordinated to the Ministry of Justice but in the insulator of custody of the General Police Commissioner- subdivision to the Ministry of Internal Affairs. All documents from the investigation were sent to the General Prosecutor with a request to begin a penal action would allow effective control and enough of the allegations about torture.

During 2009, following the intervention of the Parliamentary advocate as the national mechanism for the prevention of torture, were started 3 penal actions:

- **Approach** to the General Prosecutor on 17. 03. 2009 regarding the lack of reaction within an act of torture. In case Chiriac Vadim and Mantea Vladimir was started the penal actions on the base of the art. Article 152. (2). e) and i) Penal Code of Republic of Moldova, and in case of Drojdei Mihail – on the base of the art. 309 / 1 par. (3). b) and c) Penal Code of Republic of Moldova, the proceeding of the penal actions in both cases were taken to control;
- **Approach** to the Prosecutor of Chisinau Municipality on 17. 04. 2009, regarding the providing for investigation in penal aspect of the case of maltreatment of the citizen Matasaru Anatol, Cusnir Valentina and Oleg Brega-satisfied;
- **Approach** to the Prosecutor's Office Leova on 10. 08. 2009, regarding the providing for penal action as part of the case of maltreatment of minor Mascaliuc Basil – the penal action was started under the Article 328. (2). a) Penal Code of Republic of Moldova;
In other cases were concluded deviations in the police officers' activity that led to application of the disciplinary sanction;
- **Approach** to the Prosecutor's Office Basarabasca on 17. 07. 2009 regarding the providing for investigating cases of alleged ill-treatment of minor Liuboseev Eugene – the police officers have been strictly warned;
- **Notification** to the Police Station Rezina on 20. 03. 2009 regarding the misconduct of a police officer – the police officer was warned;

In 3 cases the approaches submitted by the parliamentary advocates were not rejected, and 4 other approaches are under examination;

The facts established after monitoring visits, allow concluding that the key problem in the manifestation of the phenomenon of torture in subdivisions of the Ministry of Internal Affairs has a complex character determined by several components:

- lack of advanced equipment useful for carrying out effective investigations that would allow to investigate the case of the evidence to a suspect and not vice versa;

- psycho-emotional climate of police officers conditioned by the subject to “chase” after the discovery criminal offences;
- the tolerance by the heads of subdivisions of some approaches from subordinates which favors the development of the phenomenon of torture;
- the imperfect character of tactics and methods in investigation the cases of torture by the authorities empowered with this mission;
- the existence of too little repressive practices of the judiciary in relation to cases of torture or other cruel or degrading treatment.

Events of April 7, 2009

The parliamentary advocates vehemently condemn the violent actions and acts of vandalism admitted during the manifestations of 7 April, 2009, considering them to be intolerable for a state of law, democratic, in which human dignity, rights and freedoms, free development of human personality, justice and political pluralism represent supreme values and which are guaranteed.

According to the duties and limits of the National Mechanism for Torture Prevention’s competences, were carried out preventive visits, and it intervened with acts of reactionary after the investigation of the circumstances of these events, on their own initiatives. On the background of the events of April 7, 2009, Parliamentary advocates and the staff of the Center for Human Rights have carried out 52 preventive visits.

The Parliamentary advocate responsible for the implementation of the Mechanism has requested the involvement of other Parliamentary advocates and of the Heads of the Center for Human Rights’ Representatives of Cahul, Balti and Comrat to carry out preventive visits in the Penitentiary institution No.13, Chisinau Municipality, the Preventive detention isolator of the General Police Station of Chisinau Municipality, the Police Stations from Chisinau Municipality, the Preventive detention isolator of the Department of the Operative Units of MIA, the Police Stations of Drochia, Vulcanesti and Taraclia. In fact, these are the places where the persons detained were arrested in connection with the events of April 7, 2009. Excepting the nominated institutions, on the base of the mandate issued to the Heads of the Center for Human Rights’ Representatives, were carried out preventive visits in the Police Stations of Cahul, Cantemir, Comrat, Anenii Noi, Leova, Falesti, Edinet, Singerei, Balti, Glodeni, Briceni, Floresti, Ocnita, Rîscani, Donduseni, Soroca, Drochia.

In the results of the visits carried out in the Penitentiary institution No.13, Chisinau Municipality, there were preventive arrested 105 persons in connection with the events of April 7, 2009, including 3 minors. It was established, that during the medical examination within the penitentiary, were founded 27 persons with visible injuries.

Studying their personal records has been found that the verbatim records of 9 persons were made after the statutory period of 3 hours, and in the verbatim records of 24 persons was not shown either time, or date of detention, which contravenes with the provisions of the Article 167 of the Criminal Procedure Code. However, 2 persons during the detention were assisted by a defendant.

In this context, it should be mentioned the effective cooperation with the administration of the Penitentiary institution No.13, Chisinau Municipality with the Parliamentary Advocates, the actions taken by the administration of the penitentiary who informed the relatives of the persons detained about the place of detention, and offered adequate medical assistance and medical examination of these persons.

In the result of the visit of the parliamentary advocate at the same Penitentiary institution it was held a meeting with a group of prosecutors who at that period questioned the persons who invoked the ill-treatment towards them by the police officers.

During the visit to the Preventive detention isolator of the General Police Station of Chisinau Municipality it was established that there were detained 45 persons, among 35 were arrested on administrative detention and 10 were arrested on criminal detention in connection with the mentioned above events. In general, to these persons have been guaranteed the right of defense by the possibility to choose a lawyer or to receive legal assistance guaranteed by the State. In this context, only the citizen B.I. (year of birth 1964) made reference to restricting the access of the lawyer chosen by him to defend and

represent his rights and interests, being provided with a public defender. At the same time, the citizen B.I. still insisted on the fact to offer confidential meeting with the attorney Vitalie Nagacevski.

Regarding the access of the detained persons to a lawyer, parliamentary advocate established that most people were questioned before drafting the verbatim records on detention without a lawyer. The results of the preventive visits showed that the appointed counsels didn't fulfill their obligations, by giving inadequate assistance and manifesting a lack of initiative in protecting the rights and legal interests of the defendants.

Another legal framework which have been applied defectively by the police officers it was the according the possibility of the detainees to inform their relatives or other persons about the place of detention, which is contrary to art. 173 of the Code of Criminal Procedure and the Article 247 of the Code on administrative contraventions. The detainees affirmed that their relatives found out about the place of detention from the colleagues, friends, district inspectors. In the case of the citizen V.A. (year of birth 1983), detained in Preventive detention isolator of the General Police Station of Chisinau Municipality, his place of detention was not communicated until the time of the visit of parliamentary advocate.

At the same time, the issue on assuring the rights of detainees to inform their relatives about the place of detention was noted a positive situation in the Police Stations of Drochia, Vulcanesti and Taraclia, where police officers together with the prosecutors have taken all necessary measures to achieve this right.

In this context, have been noted cases when parliamentary advocates and the members of the Advisory Board, established for the purpose of providing advice and assistance in exercising the parliamentary advocates' liabilities as a National Mechanism of Torture Prevention, have been restricted the access to some Police Stations.

Thus on:

1. **09.04.2009, 12 a.m.** - the member of the Advisory Board, ***Radita Nicolae was prohibited the access to the Police Station Riscani, Chisinau Municipality***, on the ground that was not allow anyone to enter;
2. **09.04.2009, 10³⁰p.m.** – the member of the Advisory Board, ***Radita Nicolae was prohibited the access to the Police Station Buiucani, Chisinau Municipality***, on the ground that the officers of the guard unit received the order to do not allow anyone to enter;
3. **11.04.2009, 18⁰⁰p.m.** – the members of the Advisory Board ***Ostaf Serghei, Vanu Jereghi and Radita Nicolae have been prohibited the access to the General Police Station of Chisinau Municipality and as well to the Preventive detention isolator within this institution***, on the ground that the responsible persons were not at that moment and there were no permission of the Minister of Internal Affairs in this regard;
4. **11.04.2009, 21³⁰ p.m.** – the members of the Advisory Board ***Ostaf Serghei, Vanu Jereghi and Radita Nicolae have been prohibited the access to the Police Station Center district of Chisinau***, on the ground that the responsible persons were not at that moment and there were no permission of the Minister of Internal Affairs in this regard;
5. **14.04.2009, 12⁰⁰a.m.** – the parliamentary advocate ***Anatolie Munteanu*** and the members of the Advisory Board ***Ostaf Serghei, Gheorghe Cutitaru and Radita Nicolae have been prohibited the access to the Police Station Riscani district, Chisinau Municipality***, on the ground that the police officers didn't know the provisions of the Law on parliamentary advocates and invoked the fact that the Head of the Police Station wasn't at the moment, he is at a meeting. Further, after the intervention of the parliamentary advocate to the responsible persons of MIA, the access has been allowed.

Certainly, beside the described measures, parliamentary advocates have undertaken a number of other measures (39 acts of reactionary) as a result of the incoming requests and their own initiative. Unfortunately, trying to call the representatives of the Ministry of Internal Affairs, empowered with

authority to take final decisions, particularly with reference to cases of prohibition the access to staff of the Center and to members of the Advisory Board in places of detention under the jurisdiction MIA, it was not possible because of very simple reasons given by officials of the Ministry.

On the infringements stated, parliamentary advocate, being guiding by the provisions of the Article 27 of the Law on parliamentary advocates No. 1349 of 17.10.1997, have presented on 17.04.2009 to General prosecutor, an advice regarding the measures which should be taken for immediate reinstatement of violated rights of the detained persons in connection with the events of April 7, 2009.

Another notification, grounded on the base of the provisions of the Article 27 of the Law on parliamentary advocates No. 1349 of 17.10.1997 was sent on 21.04.2009 to Ministry of Internal Affairs.

On the fact of the alleged mistreatment of the citizen Matasaru Anatol and the citizen Damian Hîncu was started the penal action under Article 309 / 1 par. (3). c) Penal Code of Republic of Moldova, and as well on the fact of death of the citizen Boboc Valeriu was also started the penal action under the Article 151. (4) Penal Code. As well was started a penal action in case of abusing the citizens Cusnir Valentina and Oleg Brega. In result, at the moment of reporting inquired the authorities examine 32 allegations of torture cases.

Conclusions

We consider that the violation of the right to life and physical and mental integrity as well as the violation of the right to liberty and security of the person, could be anticipated if the authorities would took into account the recommendations included in the Reports on human rights observance in the Republic of Moldova in 2003, 2004, 2005, 2008 of the Center for Human Rights, as well as the recommendations included in the Report on the activity of the National Mechanism for Torture Prevention, which target the problem related to the transmission of the Temporary detention isolators of the Ministry of Internal Affairs in the subordination of the Ministry of Justice. Only in this way would be possible the exclusion of the cases of detention of persons in the institutions subordinated to the Ministry of Internal Affairs, where it was ascertained that the persons cannot be subjected to medical examination, the conditions of detention represent an imminent risk of being assessed as non-compliant with international requirements in this field, the persons are detained by violating the fundamental guarantees, and most of them claim to have been subjected to ill treatment during the first hours of detention.

In these conditions, the creation of the houses of detention becomes an urgent necessity. That problem was often tackled by the parliamentary advocates within the meetings with Mr. Thomas Hammarberg – Commissioner for Human Rights of the Council of Europe, Mrs. Marianne Mikko – head of delegation to the Parliamentary Cooperation Committee European Union-Moldova, representatives of United Nations Development Program in Moldova, including Mr. Claude Cahn - human rights adviser for the Organization United Nations in Moldova, representatives of OSCE mission in Moldova, Mr. Remi Doflot - responsible for external affairs Moldova-European Union.

Preventive visits to the institutions subordinated to the Ministry of Justice

Republic of Moldova inherited the prison infrastructure from the former Soviet regime. We are aware that despite the process of Europeanization, the conditions have not changed essentially arbitrarily for prisoners, which would correspond to international regulations on institutional detention. In this context, with the ECHR becoming part of the national legal system, especially on 12.09.1997, from the start it is created an eminent threat to international condemnation of Moldova at this section.

Also, it was observed a trend of organizing and planning of the prisons, aimed at ensuring the conditions necessary for the arrangements implementation for the enforcement of custodial penalties, conduct of the educational activities and social reintegration, employment or other gainful activities, accommodation, food, insurance of the medical appropriate care, individual and collective hygiene, and achieving of all the safety measures in relation to the legal provisions applicable to each category of persons deprived of liberty.

In the penitentiary institution No.16 are ongoing the opening of the institution's medical center, which has undergone reconstruction this year, and includes a special area equipped for the sentenced-mothers with children up to three years and a medical district with a gynecological, medical, dental , therapeutic offices, etc., which will be equipped with powerful technical apparatus for medical investigations.

However, some facts found in the preventive visits give sufficient grounds to conclude that the state of things existing in Moldova requires a boost of undertaken measures to exclude the risks of admission of ill-treatment.

During the visits the detainees complained repeatedly on the denial of the adequate and timely medical care, and the lack of medicines. In particular, the detainees referred to the inappropriate behavior of the medical staff and the fact that every time for different diseases they received the same pills, even though the pharmacy had all the necessary medicines. This may be referred to the penitentiary institutions no.13, Chisinau, No.4, Cricova; No.9, Chisinau, No.17, Rezina; No.18, Brănești.

- Refusal or granting of inadequate medical care in cases of Sarban v Moldova (application No.3456/05), Boicenco v Moldova (application No.41088/05), Stepuleac v Moldova (application No.8207/06), Istria, Burcovschi and Luțcan v Moldova (applications No.8721/05, 8705/05, 8742/05), Palade against Moldova (application No.39806/05), etc.;

As a result of the preventive visit to the penitentiary institution No.3, Leova, the Ombudsman noted the deplorable state of the dental clinic on which he had notified the head of MJ but the problem remained unsolved until now, whereas notifying the MJ on the same subject following the visit to prison No.6 Soroca the situation was remedied in the penitentiary institution being installed 2 dental devices.

In the penitentiary institutions, as previously mentioned the most frequently encountered problem faced by the Department of Penitentiary Institutions, are the conditions of detention.

Things are pretty bad in the case of the penitentiaries' lockups, where cells are equipped with a sanitary corner, which also constitutes a veritable outbreak of infection. In these cells, the top of the water closet is a valve, which serves simultaneously as water leakage and a source of water for washing. (The judgment of Becciev v Moldova of 04.10.2005).

The statements of the plaintiff

“According to the applicant, the conditions of detention were inhuman and degrading. The cell was damp, the window was closed with metal plates and electric light was always burning. The cells were not equipped with ventilation system. Instead of a water closet it was a bucket, which was not divided from the rest of the cell. Instead of beds were wooden shelves without mattresses, pillows, blankets or sheets. The prisoners were denied in the opportunity to have daily walks. There were no means of maintaining hygiene in the cell. There was no shower,...

Assessment of the Court

“The State must ensure that the person is detained in conditions that are compatible with respect for his human dignity, as the manner and method of execution of sentence should not cause to the person suffering or pain ..., the health and integrity of the person must be adequately insured, among others, by providing necessary medical care (see Kudla v.Poland). When the conditions of detention are assessed, it should be taken into account the cumulative effects of these conditions and the length of detention (see Dougoz v. Greece, No. 40907/98, § 46, ECHR 2001-II and Kalashnikov v. Russia, no. 47095/99, § 102, ECHR 2002-VI)”.

In this sense we can illustrate with a simple case at first, but which grew with the Court's rule on this file (Decision of April 19, 2001, Peers v Greece), where the prisoner was forced to use the toilet in the presence of other prisoners. The Court considered that the alleged conditions of detention degraded the human dignity of the prisoner and has caused feelings of inferiority capable of humiliating him. Such terms were ultimately interpreted as inhumane treatment under Article.3 of the Convention. Here can be

mentioned the lockups from the penitentiary institution no.17, Rezina, the penitentiary institution No.6, Soroca, the penitentiary institution No.18, Branești, the penitentiary institution No.13, Chisinau.

The detainees continue to be in narrow, dark, damp and without ventilation spaces. Except the newly built or thoroughly repaired pavilions, where each room has its own bathroom with shower, the penitentiaries have one or two bathrooms, in which are brought by turns, all the detainees.

Also following the visits, were visited institutions in which was noted the improvement of the conditions of detention: Taraclia, Rusca, Cahul, Rezina phthisical block, the block for mothers and children in the penitentiary institution No.16.

The relations sentenced – detainee

Following the monitoring visits it was found that in some cases the relationships between staff and prisoners are of a formal and distant nature, the penitentiary employees adopting a very severe attitude and considering the verbal communication with inmates as a secondary aspect of their performed service.

In this context on 18.03.2009 it was organized a training visit with the staff of the penitentiary institution No.1, Taraclia. During the meeting it was discussed the practical case studies of art.3 and 5 of the European Convention on Human Rights, as well as the relations between the prisoners and the prison staff.

The cases noted as a result of the visits have found its reflection in the ombudsmen acts of reaction:

- approach to the Department of Penitentiary Institutions of 24.07.2009 on instituting disciplinary proceedings in respect of staff of the penitentiary institution No.17, Rezina who negligently admitted violent demonstrations between the sentenced, and the worker who has not informed the Ombudsman on this incident – the medical worker, the specialist of the regime and supervisory service sanctioned;
- approach to the Department of Penitentiary Institutions of 19.09.2009 on instituting disciplinary proceedings in respect of staff of the penitentiary institution No.2, Lipcani who negligently admitted violent demonstrations between sentenced, and the worker has not informed the Ombudsman on this incident – it is examined;

The detainees' daily food norms are provided in the Government Decision No.609 of 29.05.2006. The penitentiary institutions currently are unable to provide prisoners with food that includes all the product names listed in the Annexes to the nominated normative act. The problem of ensuring the penitentiary institutions with food exists at the country level despite the efforts made by the DPI.

In addition to the prisons' problem for the supply shortages of food in some institutions it has been established the maintenance of the unfavorable conditions of places where the food is prepared – the penitentiary institution No.5, Cahul, the penitentiary institution No.6, Soroca, the penitentiary institution No.18, Branești.

Cases are found when the administration with insufficient resources obtains the order, and one example is the penitentiary institution No.11, Balti municipality, the penitentiary institution No.16, Chisinau municipality.

It is clear that in 2008 and 2009 compared with previous years it has reduced the number of cases of violence against people who run penalty.

However, during this year there were discovered and investigated several cases of torture that took place in prisons.

Carrying out the tasks of the National Mechanism for the Prevention of Torture on 05.02.2008 it was visited the penitentiary institution No. 4, Cricova. During the visit the convicts L. P. and L. V. claimed the application of ill treatment by security service's head of the prison, Mr. Sergiu Perdeleanu. It should be note, that both sentenced had visible injuries.

On the same day, the Ombudsman asked the head of the penitentiary institution No.4, Cricova and the Department of Penitentiary Institutions to perform medical examination of both sentenced to fix the existing injuries and grant the necessary medical assistance, but during the repeated visit of 06.02. 2008 it was found that these actions were not implemented.

Eventually the case was documented by the Ombudsman including by photography, by performing at his request, a medico-legal expertise on both convicted, so that subsequently the materials could be submitted to the General Prosecutor for investigating the case under criminal aspect.

On this case at 21.02.2008 the Prosecutor's Office of Chisinau municipality issued an order to commence the criminal proceedings under Article 309 / 1 of the Criminal Code of Republic of Moldova with regard to the head of the security service of the penitentiary institution No.4 - Mr. Sergiu Perdeleanu and the case is currently pending before the Chisinau Court of Appeal.

Within the verification of alleged maltreatment of I. A. prisoner signal, which took place on 15. 09. 2009, the staff of the Center for Human Rights' Representative of Cahul, visited the nominated penitentiary, to document the case. As result, it was established that the prisoner I. A. indeed had injuries, and that which have been caused by the convicts from the same cell. In the opinion of parliamentary advocate, the administration of the penitentiary is obliged to take the preventive necessary measures to protect bodily integrity and health of persons deprived of liberty. Therefore, the employees of the penitentiary institution didn't do what they should to do reasonably to prevent the materialization of the real and immediate risk to the physical integrity of prisoners, which it is a risk that they were aware.

As a result, regarding the fact on ill-treatment of the prisoner I. A. , the Prosecutor' s office of Cahul district, started penal action on the base of the proceedings of the Article 151 (1) Penal Code of Republic of Molodva, on prisoners who have been abused. However, parliamentary advocate has expressed his disagreement with the application of disciplinary sanctions on employees of the penitentiary institution who are guilty of acceptance and tolerance of violence between detainees, requesting that their actions and omissions to be verified under criminal aspect.

The situation of the witnesses during the criminal trial of accusation of the chief of security service of penitentiary institution nr.4, Cricova city – Mr. Sergiu Perdeleanu. During the visit on 14.09.09 done in the Penitentiary Institution nr.13, Chisinau – 4 convicted persons invoked that they were are subjected to psychological pressures from other condemned, and intimidated by the application of disciplinary unfounded sanctions by the administration of the Penitentiary Institution nr.13, Chisinau for determine them to waive their testimonies which they done on the criminal case where the guilty was the chief of security service of penitentiary institution nr.4 Cricova city – Mr.Sergiu Perdeleanu. To mention is that for these sentenced were applied state protection measures according to the Law RM nr.1458 of 28.01.1998 (in force at that moment) regarding the state protection of injured part, witnesses and other persons which are helping in the criminal case. But the data collected during the visit of 14.09.09 in penitentiary institution nr.13, Chisinau, as well as during that on 13.02.09 in the penitentiary institution nr.18, Branesti village Orhei district permitted to decide on the poor realization of provisions of nominated law, as well as of Law RM regarding the witness's protection and other participants of criminal process nr. 105 of 16.05.2008.

Also for these convicted persons were found deficiencies faced to the legality of the transfer of those from the penitentiary institution where expiate their punishment to the prosecution isolator.

On this case, parliamentary advocate notified Ministry of Justice as well as the General Prosecutor, at the same time asking to take all the measures necessary to assure the efficient realization of provisions of Law RM regarding the witnesses protection and other participants in the criminal process nr.105 of

16.05.2008, to cover witnesses and injured person from any action and threat of other sentenced or of administration of penitentiary Institution nr.13, Chisinau, as well as to verify the legality of transfer and of detention of those in the penitentiary institution nr.13, Chisinau.

If a person was caused injuries during the stay in prison, any such damage would give a strong presumption that the person has been subjected to ill treatment and it is for the State to present a plausible explanation for the circumstances in which the injuries were caused.

Statements on the application of ill treatment came from the convicts of the penitentiary institution no. 4, Cricova, penitentiary institution no.17, Rezina and the penitentiary institution no.18, Branesti.

Perdeleanu

The institutions of the Ministry of Health and Ministry of Social Protection, Family and Child

During the year the Ombudsman and the Advisory Board's members have repeatedly visited the Psychiatric Hospital and the psychoneurological boarding Balti.

On March 19th 2009 in a working visit as a national mechanism to prevent torture, the parliamentary advocates Anatolie Munteanu and Aurelia Grigoriu visited the psychoneurological boarding in Balti (hereinafter referred as "Boarding"), monitoring the situation in which the beneficiaries in this institution are held.

The parliamentary advocates held discussions with the chief doctor Mr.Vasile Petic and with the Interim chief doctor Mr.Stanislav Florea, with whom it was discussed at large about the psychoneurological boarding. Then they started the process of monitoring the institution. During the visit, the parliamentary advocates maintained discussions with people who have boarding services as well as with its staff.

The parliamentary advocates have noted that in the room is a bathroom, the hygienic status of which in most cases is less desirable because it's worn out of time and needs major overhaul.

The bath and the bathroom are in good condition. The fact that from 1998 to 2002 the boarding was sponsored by a Dutch Foundation, all common bathrooms and toilets are fixed at an appropriate level.

The bath and bathroom are divided into separate rooms. In one of the rooms are installed only hand washing sinks.

The rooms are lit enough so that during the day it is sufficient the natural light. In the rooms there is electric light, plugs that are in working order, which gives the beneficiaries the opportunity to watch TV or listen radio. In some rooms and corridors of the institution the artificial light is insufficient.

The canteen as well has been visited, there being ascertained some violations: the institution's menu is not displayed in a visible place, indicating the weight and calorificity of the food. Also, the menu is not signed by the doctor in charge of the food's quality. The room where the food is prepared is not compliant with the sanitary-hygienic norms.

At the time of the visit in the rooms it was felt an unpleasant smell, although it is tried in various ways to ventilate the rooms. There is no ventilation system.

On 14.04.2009 - in accordance with Article 27 of the Law on Parliamentary Advocates No.1349 of 17.10.1997, in the boarding's address was sent the opinions containing recommendations appropriate to remove the violations found during the visit. On the repeated visit of 04.08.2009 it has been found that the recommendations were partially met, but some essential changes to remove the violations, detected in the earlier visits were not pursued, a fact motivated by the lack of financial means.

Taking into account the fact that work of the national mechanism for torture prevention has been largely focused on carrying out monitoring visits to institutions within the Ministry of Internal Affairs and Ministry of Justice, the parliamentary advocates have proposed for the fourth quarter of 2009 the monitoring of the institutions subordinated to the Ministry of Labor, Social Protection and Family, which is supposed to be finished with the visit of seven institutions in Moldova, where are held people with mental deficiencies.

March 17, 2009 - The institution of the parliamentary advocates held a press conference on the Report on human rights in Moldova for 2008. The event was publicized by 13 media institutions, including: TRM, Eu TV, N4, TVC 21, Radio Moldova, Vocea Basarabiei, Antena C, Europa Libera, etc.;

June 26, 2009 – The ombudsmen institution conducted a roundtable with the theme: “Prevention of Torture - a priority for the authorities and civil society” within which was presented the Report on the activities of the National Mechanism for the Prevention of Torture in 2008 and first half of 2009. The report was placed on the official website of the institution www.ombudsman.md. Here we may mention the editing of the report, leaflet and poster on the work NMPT. Within the round table it was launched a hotline 0 8001 2222, coming to give all citizens the opportunity to report cases of torture and ill treatment and violation of any right covered by the Constitution of the Republic of Moldova. The Hotline’s promotion was done through the articles published in print and electronic press;

July 20, 2009 – The Center for Human Rights in Moldova announced the institution's activities for the first half of 2009 at a Press Conference. They also presented the results of the National Mechanism for the Prevention of Torture in the first half of 2009, making reference and to the results recorded during 2008.

After the events of April 7, the feedback on the actions undertaken by the parliamentary advocates was placed on the institution's official website www.ombudsman.md: Preliminary Report on the rights of the persons detained in connection with the events of April 7, 2009 and the final Report on the events of April 7, 2009.

Best regards,



Anatolie MUNTEANU
Parliamentary advocate (Ombudsman)
Director

To Mr. Joao M. Nataf
Human Rights Officer and Secretary a.i.
Committee against Torture
Human Rights Treaties Branch
Office of the High Commissioner for Human Rights