



Civil society report for the Review of the Third Periodic Report of Moldova
(CAT/C/MDA/3) at the 62th session of the
UN Committee Against Torture
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JOINT SUBMISSION

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Joint Submission prepared by the Promo-LEX Association, Rehabilitation Centre for Torture Victims (RCTV) “Memoria”, World Organization Against Torture (OMCT) and International Rehabilitation Council for Torture Victims (IRCT) after a close monitoring of situation of persons subjected to torture and other cruel, or to inhuman or degrading treatment or punishment in Republic of Moldova.

AUTHORS OF THE JOINT SUBMISSION

Promo - LEX

Advancing democracy and human rights

The Promo-LEX Association¹ is a non-governmental organization that aims to advance democracy in the Republic of Moldova, including in the Transnistrian region, by promoting and defending human rights, monitoring the democratic processes, and strengthening civil society through a strategic mix of legal action, advocacy, research and capacity building. Promo-LEX Association has NGO consultative status with ECOSOC.



The Rehabilitation Centre for Torture Victims “Memoria” (RCTV Memoria)² is the only Moldovan NGO dealing with the rehabilitation of torture victims, including from the Transnistrian region. RCTV Memoria is registered with the Ministry of Justice (7.12.99) and has been granted Certificates of Public Utility (2008-2012-2015). RCTV Memoria is a plenipotentiary member of the General Assembly of IRCT and had an elected representative in IRCT Council from the European region (2003 - 2006, 2012 - 2015). So far, comprehensive rehabilitation services have been provided annually in about 450-600 cases. However, the number of beneficiaries is much higher when indirect ones are considered, including relatives of victims, their lawyers, and various professionals dealing with investigation, legal defense or assistance of cases. We have also experience in conducting research studies on torture prevention against juveniles.

OMCT
SOS-Torture Network

The World Organisation Against Torture (OMCT)³ is today the main coalition of international non-governmental organisations (NGO) fighting against torture, summary executions, enforced disappearances and all other cruel, inhuman or degrading treatment. With 311 affiliated organizations in its SOS-Torture Network and many tens of thousands correspondents in every country, OMCT is the most important network of non-governmental organisations working for the protection and the promotion of human rights in the world.

irct
International Rehabilitation
Council for Torture Victims

International Rehabilitation Council for Torture Victims⁴ (IRCT) is the world’s largest membership-based civil society organization working in the field of torture rehabilitation and prevention, with a network of 144 torture rehabilitation centers across 74 countries. Its key distinctive feature lies in its holistic health-based approach to torture rehabilitation. In addition, the organisation defines itself as private, non-partisan, and not-for-profit, as well as governed by democratic structures.

1 "Promo-LEX." <https://promolex.md/>. Accessed 9 Oct. 2017.

2 "RCTV Memoria." <http://www.memoria.md/>. Accessed 9 Oct. 2017.

3 "World Organisation Against Torture." <http://www.omct.org/>. Accessed 9 Oct. 2017.

4 "International Rehabilitation Council for" <http://irct.org/>. Accessed 9 Oct. 2017.

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ACRONYMS

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CRC	Convention on the Rights of the Child
CESCR	United Nations Committee on Economic, Social and Cultural Rights
CED	International Convention for the Protection of All Persons from Enforced Disappearances
HRC	Human Rights Committee
CRPD	Convention on the Rights of Persons with Disabilities
CE	Council of Europe
ECHR	European Convention on Human Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CPEDEE	Council on the Prevention and Elimination of Discrimination and Ensuring Equality
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CTPF	Center for Temporary Placement of Foreigners
ECtHR	European Court of Human Rights
SAFPD	Social Assistance and Family Protection Division
DPI	Department of Penitentiary Institutions
UPR	Universal Periodic Review
MoF	Ministry of Finance
MoJ	Ministry of Justice
MLSPF	Ministry of Labour, Social Protection and Family
MoH	Ministry of Health
MoHLSP	Ministry of Health, Labor and Social Protection (The MoH and MLSPF have been merged in 2017)
NGO	Non-Governmental Organization
UN	United Nations
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
JSRS	Justice Sector Reform Strategy
NHRAP	National Human Rights Action Plan
NAPIAA	National Action Plan for the Implementation of the Association Agreement
RM-EU	between the Republic of Moldova and the European Union
UNDP	United Nations Development Programme
AIDS	Acquired immune deficiency syndrome
JSRS	Justice Sector Reform Strategy
EU	European Union

I. EXECUTIVE SUMMARY

1. As a state party to numerous international instruments prohibiting torture and ill-treatment, like UN Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment⁵; Optional Protocol of the UN Convention against Torture⁶, the Republic of Moldova has the obligation to prohibit torture and ill-treatment and to undertake a number of specific actions to this effect. These include, among others: #prompt, impartial and effective investigation; #ensuring adequate conditions of detention for prisoners, including the requisite medical assistance and #implementing the right to rehabilitation for victims.
2. Since the last review process, some progresses have been achieved in the field of prevention of torture, due to joint efforts of civil society, international institutions, State authorities and their external partners. Some actions in this field have been taken as part of the National Action Plan on Human Rights adopted in 2011, for 2011-2014 years⁷.
3. For example, in 2012, the Criminal Code was amended in order to introduce the separate definitions for crimes of #torture and #ill-treatment, as per Art 166/1⁸.
4. In 2016 the Republic of Moldova undertook to implement outstanding actions provided by the National Human Rights Action Plan (NHRAP) for 2011-2014 , pending actions provided by the Justice Sector Reform Strategy (JSRS) for 2011-2016⁹ , pending actions provided by National Action Plan for the Implementation of the Association Agreement between the Republic of Moldova and the European Union (NAPIAA RM-EU)¹⁰ for 2014-2016 and other documents that expressly state that the top-priority task is preventing and combating torture or inhuman and degrading treatment. The degree of fulfillment of such actions is reflected herein.
5. However, in spite of the efforts made, torture and impunity persist, while victims' access to justice is difficult and limited. In practice, many of these problems are related to ineffective investigations of torture allegations and the inability and/or unwillingness to identify perpetrators for prosecution. These problems are recognised by decision of the European Court of Human Rights (ECtHR) but even its decisions are not followed up with effective investigation and prosecution.
6. According to statistics from 15 July 2017, prisons held a total of 7868 inmates, including 2672 persons held in preventive detention isolators (IDP). The total number of female in detention is 420, including 379 in the penitentiary for women (No. 7, from Rusca)¹¹.
7. The detention conditions remain under the international standards in almost all prisons in Moldova (except P10, Goian, for juveniles). Currently the majority of inmates are held in precarious detention facilities which worsen their physical and mental health conditions. The access to medical assistance is limited because of inadequate infrastructure and policies, insufficient human and financial resources, as well as because of other impediments¹². We registered cases in which access to the needed medical

5 (n.d.). OHCHR | Convention against Torture. Retrieved October 9, 2017, from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

6 (n.d.). OHCHR | Optional Protocol to the Convention against Torture. Retrieved October 9, 2017, from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>

7 "cu privire la aprobarea Planului național de acțiuni în domeniul" Accessed October 9, 2017. <http://lex.justice.md/md/339395/>.

8 "Codul penal." <http://lex.justice.md/md/331268/>. Accessed 9 Oct. 2017.

9 "Justice Sector Reform Strategy 2011-2016." <http://srsj.justice.gov.md/>. Accessed 9 Oct. 2017.

10 "Association implementation report on the Republic of Moldova - 2017." 10 Mar. 2017, https://eeas.europa.eu/sites/eeas/files/association_implementation_report_on_the_republic_of_moldova_2017_03_10_final.pdf. Accessed 9 Oct. 2017.

11 "Statistica - | Departamentul Instituțiilor Penitenciare." <http://www.penitenciar.gov.md/ro/statistica>. Accessed 9 Oct. 2017.

12 "The CPT publishes response of the Moldovan authorities - 2017 News." 16 Mar. 2017, <https://www.coe.int/el/web/cpt/-/the-cpt-publishes-response-of-the-moldovan-authorities>. Accessed 9 Oct. 2017.

services was restricted even if the family of the detainee wanted to pay for the required specialized treatment.

8. The situation of women is of particular concern, since they are not being provided the necessary medical assistance and because the prison system (especially preventive detention facilities) is not fully adapted to the specific needs of female prisoners¹³.
9. The state response to the needs of victims and their rights to comprehensive rehabilitation, as stated by this Committee's General Comment No 3 of CAT (2012)¹⁴ to art. 14 UNCAT, has been ineffective until present. The Ministry of Justice drafted the Law on Rehabilitation of Victims of Crimes (including torture), which was approved by the Parliament as Law Nr 137 (29.07.2016)¹⁵. Unfortunately, the law is not consistent with the requirements for right to rehabilitation for torture victims as outlined in Article 14 of the UNCAT and General Comment Nr. 3 of the Committee against Torture (2012) in particular in relation to the scope and length of services offered and the lack of an effective implementation mechanism.
10. Currently, the central administrative authority that develops, promotes and participates in the implementation of Government policy in the field of rehabilitation of victims of crimes (including torture) is the Ministry of Health, Labor and Social Protection¹⁶ (The MoH and MLSPF have been merged in 2017). But the MoHLSP face difficulties in the integrating of the principles of trauma and holistic torture rehabilitation, a task that is further complicated by the fact that the standards of General Comment No 3 was not taken into account in the adoption of Law No. 137.
11. Identifying and presenting a comprehensive rehabilitation response tailored to the realities of the Republic of Moldova, require from the authorities to adopt first of all an integrated and victim-centered approach and to put in place a mechanism for effective rehabilitation of the victims of torture and ill-treatment. This mechanism should acknowledge and draw on the extensive rehabilitation expertise already existing with the NGO RCTV Memoria to ensure that services are holistic and adequately addressing victims needs.
12. Finally, the Moldovan authorities should promote a comprehensive response to torture that acknowledges the role of comprehensive rehabilitation and documenting of cases of torture, in the tackling impunity, punishing perpetrators, preventing future violations and facilitating victims' access to justice, reparation and compensation.
13. The report we produced focuses on four issues: 1) effective investigation of torture and ill-treatment; 2) implementation of victims' right to rehabilitation; 3) detention conditions in prison and 4) domestic violence;

13 "Reports, research, studies | The Norwegian Mission Experts ... - Norlam." <http://norlam.md/doc.php?l=en&idc=289&id=909>. Accessed 9 Oct. 2017.

14 "Convention against Torture and Other Cruel, Inhuman or ... - OHCHR." 19 Nov. 2012, http://www2.ohchr.org/english/bodies/cat/docs/GC/CAT-C-GC-3_en.pdf. Accessed 9 Oct. 2017.

15 "cu privire la reabilitarea victimelor infracțiunilor." 9 Sep. 2016, <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=366518>. Accessed 9 Oct. 2017.

16 "Ministerul Sănătății, Muncii și Protecției Sociale | Guvernul Republicii" <http://msmps.gov.md/>. Accessed 9 Oct. 2017.

II. GENERAL BACKGROUND

1. The Republic of Moldova is located in the south of Eastern Europe shares a border with Romania to the west, and with Ukraine in the north, east and south. Moldova covers an area of 33,800 square kilometres, and has a population of 3.6 million of whom 25% live in the capital city, Chisinau¹⁷.
2. After the collapse of the Soviet Union, the Republic of Moldova declared its independence in August 1991, alike other former Soviet republics.
3. Moldova is currently organised into 32 districts (“raions”), 5 municipalities (Chisinau, Balti, Tighina, Tiraspol, Comrat) and 2 regions with special status (Autonomous Territorial Unit Gagauzia, and Territorial administrative units from the left part of Nistru river, generically known as Transnistria region)¹⁸. Although the Constitution guarantees the autonomy of Transnistria region, tensions remain since the local administration auto-proclaimed the entity as a republic, whose independence from Moldova remains unrecognized by all states so far. Since signing a ceasefire in 1992, the Republic of Moldova, Transnistria region, the Russian Federation, the Ukraine, the OSCE, the USA and the European Union have tried to negotiate an end to the crisis and the territorial dispute.
4. Gradually, the new independent state - Republic of Moldova made several international commitments with European and the UN structures and started to reform its judicial system. New laws were adopted in accordance with international treaties. Moldova designates the respecting of human rights as a fundamental principle of its legal framework.
5. The Constitution of the Republic of Moldova was adopted on 27 July 1994 and established a semi-presidential system¹⁹. In 2000, the Moldovan Parliament amended the Constitution to become a parliamentary republic in which the president is elected by Parliament rather than by direct popular vote. Vladimir Voronin of the Party of Communists of the Republic of Moldova (PCRM) was elected as President for two terms, between 2001 and 2009. With the election of Voronin, Moldova became the first post-Soviet state to elect an unreformed Communist party to power.
6. The elections from April 2009 ended with allegations against the PCRM of electoral fraud, interference with the press and misuse of public funds. Violent protests followed in the capital and a recount was called²⁰. Parliament was dissolved and series of elections failed to secure a majority vote for the role of President, until the politically neutral Nicolae Timofti became President on 16 March 2012. The most recent parliamentary elections were held on 30 November 2014, in which the pro-Russian Party of Socialists of the Republic of Moldova won the majority of votes²¹.
7. The overall human rights situation in Moldova is mixed. In 2015, Freedom House considered Moldova to be “partly free”, receiving an overall freedom rating of 3.0 (with specific ratings of 3 for civil liberties and 3 for political rights)²². As a result of ineffective implementation, the initiated reforms have not significantly improved the human rights

17 "About Republic of Moldova | Republic Of Moldova." <http://www.moldova.md/en/content/about-republic-moldova>. Accessed 9 Oct. 2017.

18 "privind organizarea administrativ-teritorială a Republicii Moldova." <http://lex.justice.md/viewdoc.php?id=334884&lang=1>. Accessed 9 Oct. 2017.

19 "Constituția Republicii Moldova." http://lex.justice.md/document_rom.php?id=44B9F30E:7AC17731. Accessed 9 Oct. 2017.

20 "Human rights were violated in Moldova, concludes Commissioner" https://www.coe.int/en/web/commissioner/country-monitoring/republic-of-moldova/-/asset_publisher/MBu2Q6Y0L5pw/content/human-rights-were-violated-in-moldova-concludes-commissioner-hammarberg?inheritRedirect=false&desktop=false. Accessed 9 Oct. 2017.

21 "Parliamentary Elections in the Republic of Moldova / alegeri.md." <http://www.e-democracy.md/en/elections/parliamentary/>. Accessed 9 Oct. 2017.

22 "Moldova | Freedom House." <https://freedomhouse.org/country/moldova>. Accessed 9 Oct. 2017.

situation. There are also overarching concerns about endemic corruption and the lack of independence of the judicial system and the impact these both have upon Moldova's ability to respect, protect and promote the human rights.

III. OVERVIEW OF TORTURE IN MOLDOVA

1. The crimes of torture committed by state representatives (mainly law enforcement) remain of serious concern. Most acts of torture and ill-treatment are not investigated or prosecuted and go unpunished despite Article 166/1 of the Criminal Code that criminalizes torture in compliance with the UN Convention against Torture. The methods of torture alleged by victims, as well as registered, monitored and documented by Promo-LEX and RCTV Memoria are diverse and include:

Methods of torture	Short description
BEATING (BLUNT TRAUMA)	Beating over the whole body, but mostly over the head; Striking over one or both ears ("telephone" method); Beating with wires or truncheons; dragged on the ground until the entire back surface was torn;
POSITIONAL TORTURE	long-lasting forced positions/standing (near the wall with hands up), being handcuffed and beaten;
CHEMICAL EXPOSURE	chlorine vapors; smoke, etc.;
SEXUAL TORTURE	(including rape, with forced performance of particular sexual acts);
HUMILIATION	Verbal abuse; humiliating acts;
THREATS WITH	death; further torture; rape; long-term imprisonment;
PSYCHOLOGICAL TECHNIQUES	Forced betrayals; induced feelings of helplessness; being forced to sign false testimonies, including written and/or audio/video recorded; blind obedience; Exposure to ambiguous situations or to violence from other inmates; Misinformation, non-information and/or contradictory messages; Sensorial stimulus (dark cells without natural light / light during the night); Witnessing torture of others;
CONDITIONS OF DETENTION	could be described as following, but not limited to: detention in small, narrow, cold, with poor ventilation or even unventilated, overcrowded humid cells with poor illumination; restriction of mobility in cells; transportation in overcrowded cars; No/ limited access to toilet facilities or the toilet is a hole in a corner of the cell; Denial of privacy; Solitary confinement; Lack of access to medical assistance, in spite of injuries and needs; Lack of food for several days/insufficient caloric food; Water restriction; Exposure to infections: unsanitary conditions/ contaminated food, water or pots; Excessive exposure to disinfectants, detergents; Limited involvement in socio-educational or cultural programs; inefficient pre-releasing programs, among others;

2. The exceeding of legal limits on the use of physical force and special means was also reported in many cases²³. It's important to mention, that during the reference period, the number of such allegations had increased, even if within previous UPR review²⁴, the State was recommended to adopt policies and measures to prevent such abuses against detainees.
3. Thus, even if a law regarding the application of physical force and special means and firearms was adopted (in 2012)²⁵, a number of 165 complaints have been recorded during 2015 by the Prosecutor General office²⁶. For example, in the case B. (assisted by Promo-LEX), the unjustified physical force and special means were applied against the detainee even in front of surveillance cameras from the corridor of the penitentiary.
4. In its decision, the Appellate Court found that national law does not regulate in detail the conditions under which physical force and special means can be applied.
5. The information collected by Promo-LEX and RCTV Memoria, other NGOs and Government bodies reveals that the number of severe cases of torture had decreased after the visit by the UN Special Rapporteur on Torture in 2008, although this trend was halted during the mass arrest and terror from April 7, 2009, when hundreds of persons were arrested and tortured.
6. However, during the last 4 years, the police abuse of detained persons continues to be prevalent, particularly outside the capital Chisinau. In addition to forcing confessions in order to obtain quick results in the investigation of crimes, physical abuse was reportedly used also as a method of intimidation or "preventive deterrent" to impose authority and to increase obedience²⁷.
7. Most cases of ill-treatment in the context of criminal investigation were attributed to the police during arrest and the preliminary investigation period, and fewer cases were linked to the criminal investigators. At the same time, the continuing lack of effective sanctions against perpetrators of the April 7, 2009 (dramatic events characterized by mass torture) had reinforced public distrust in the accountability of law enforcement services, in the independence of the prosecution services and the judiciary. As a result of actions of torture and inhuman treatment from April 7, 2009, more than 600 victims suffered and four persons have been killed, including Valeriu Boboc²⁸. From 108 complaints registered by the Prosecutors, only 58 cases were opened in the first stage. Other cases were re-opened after the ECtHR's decision in the case Taraburca vs. Moldova (regarding using of psychological torture). However, less than 10 perpetrators were held accountable, but no one was punished with detention.
8. An example that proves the perpetuation of impunity is the well-known case of officials (Botnari and Papuc, former Commissar of Chisinau and former Minister of Interior) who were responsible for ensuring of public order during the dramatic events following the

23 "TorTura și relele TraTamenTe în republica moldova ... - FIDH.org." <https://www.fidh.org/IMG/pdf/moldavie611roumain2013.pdf>. Accessed 9 Oct. 2017.

24 "UPR Moldova (Republic of) - Session 26 / November 2016 - Review in" 4 Nov. 2016, <https://www.upr-info.org/en/review/Moldova-%28Republic-of%29/Session-26---November-2016/Review-in-the-Working-Group>. Accessed 9 Oct. 2017.

25 "privind modul de aplicare a forței fizice, a mijloacelor speciale și a" 14 Dec. 2012, <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=345846&lang=1>. Accessed 9 Oct. 2017.

26 "torture and ill-treatment: state obligations and rights of ... - Promo-LEX." https://promolex.md/old/upload/publications/en/doc_1463467970.pdf. Accessed 9 Oct. 2017.

27 "Raport - Promo-LEX." https://promolex.md/wp-content/uploads/2016/04/doc_1456848315.pdf. Accessed 9 Oct. 2017.

28 "Perju was ACQUITTED! Valeriu Boboc's Father: It is a Shocking" <http://zdg.md/eng/social/perju-was-acquitted-valeriu-bobocs-father-it-is-a-shocking-decision>. Accessed 9 Oct. 2017.

protests and riots from April 7, 2009. After long-term investigations and trials, they have been absolved from punishment by the Supreme Court.

IV. IMPUNITY FOR TORTURE AND ILL TREATMENT

9. For many years, the culture of impunity and lack of accountability of perpetrators has been identified by international and regional torture monitoring bodies, as key factors contributing to the prevalence of torture and ill-treatment in Republic of Moldova²⁹. In the period 2011-2016, impunity continued to prevail not only in relation to the absence of effective investigation and prosecution of the police abuse in the context of the April 7, 2009 dramatic events, but also in relation to ill-treatment in the "ordinary" context of the criminal justice process and the penitentiary institutions.
10. The problem of impunity and lack of accountability of law enforcement staff and other public officials is caused by multiple factors and systemic deficiencies. These include: #the lack of effective and independent investigation mechanisms; #the lack of expedient and impartial prosecution and trial proceedings; #insufficient legal safeguards to protect victims and witnesses; and #limited access to independent medico-legal (forensic) documentation of physical and psychological trauma.
11. With regard to torture investigations on the whole, analyzing the data for 2015 issued by Prosecutor General Office (PGO) in their press release³⁰, we find that criminal investigations were initiated in relation to torture and ill-treatment only in 17.9% (113 cases) from a total number of 633 recorded complaints. This fact raises questions. Even though in over 82% of complaints, criminal investigations were not initiated, there was no qualitative analysis of the complaints and the circumstances which led citizens to file such complaints. In 2015 alone, prosecution was not initiated in 365 cases where the person's body had visible injuries. In 174 cases the injuries were qualified as *minor (insignificant)*, without conducting diagnostic tests or consultations of other medical doctors to exclude damage on internal organs and systems.
12. Among the apparent causes are that Moldovan prosecutors are reluctant to initiate criminal proceedings due to existing performance indicators for staff working in investigation of alleged cases of torture³¹.

The table below presents relevant data about complaints of torture and ill-treatment, registered in the period of 2009 – 2016 according to official statistics³².

TABLE 1: TORTURE AND ILL-TREATMENT IN THE STATISTICS OF THE PROSECUTOR GENERAL OFFICE.

Year	Registered complaints	Criminal proceedings initiated	% of the registered complaints	Nr of closed Criminal proceedings	% from the initiated criminal proceedings	Cases sent to court	% from the initiated criminal cases
2009	992	159	16,0%	75	47,0%	36	23,0%
2010	828	126	15,0%	72	57,0%	65	52,0%
2011	958	108	11,0%	92	85,0%	36	33,0%
2012	970	140	14,0%	68	49,0%	46	33,0%
2013	719	157	22,0%	121	77,0%	49	31,0%
2014	663	118	18,0%	92	83,0%	46	39,0%
2015	633	113	17,9%	75	66,4%	38	33,6%

29 "Report of the Special Rapporteur on the rights of ... - UN Moldova's." 2 Feb. 2016, <http://md.one.un.org/content/dam/unct/moldova/docs/pub/A%20HRC%2031%2062%20Add.2.E.pdf>. Accessed 9 Oct. 2017.

30 "Procuratura Generală a evaluat situația la capitolul adresări privind" <http://procuratura.md/md/newslst/1211/1/6532/>. Accessed 9 Oct. 2017.

31 "Primul raport al CRJM cu privire la executarea hotărârilor CtEDO." <http://crjm.org/wp-content/uploads/2014/04/Executarea-hotararilor-CtEDO-de-catre-RM-1997-2012.pdf>. Accessed 9 Oct. 2017.

32 "Rapoarte publice de activitate a Procuraturii ... - Procuratura Generală." <http://www.procuratura.md/md/d2004/>. Accessed 9 Oct. 2017.

2016	622	107	17,2%	-	-	31	29,0%
average	798	126	16,4%	85	66%	45	34,1%

13. According to the above presented statistics, in 2012 970 complaints about ill-treatment were recorded, which is the highest number of the period. We conclude that it was an after-effects of the April 7, 2009 events which catalyzed the filing of complaints. However, during 2013 and 2014 the number of complaints of ill-treatment decreased (633 in 2015). Lawyers working with torture victims observe that in recent years, cases of physical abuses by police have decreased, but the psychological pressure on detained persons has increased. In this context, the lower number of complaints in 2013, 2014 and 2015 could be linked to a decrease in public trust in justice after the events.
14. From the total number of cases sent to courts in 2015, on basis of Art. 166/1, 13 judgments of conviction have been issued and 5 persons have been acquitted.

Case M. D. (Application no. [7816/13/ECHR](#))

On 20 July 2012 the victim together with M. were driving next to the Codru police station when plain-clothed persons exited a police car and stopped the applicant's car. The applicant was pulled out of the car, hit and then taken to the Centru police station, where he was ill-treated. According to the applicant, M. had witnessed the ill-treatment. On 24 July 2012 a medical examination confirmed multiple bruises on the applicant's face, thorax and right limbs.

On 25 July 2012 the applicant submitted a criminal complaint to the General Prosecutor's Office seeking the investigation of his ill-treatment by the police officers. The complaint was redirected to the Centru Prosecutor's Office which by a decision of 29 August 2012 refused to institute criminal proceedings. The prosecutor argued that the injuries resulted from the immobilization carried out by police officers when the applicant tried to dispose of incriminating evidence (syringes with drugs). He relied on the statements of three police officers and noted that M. was not heard because he failed to come when summoned.

On 18 September 2012 the applicant appealed the prosecutor's decision, arguing that the eye-witness M. had not been heard and that the investigation was superficial.

On 28 September 2012 the hierarchically superior prosecutor upheld the decision of 29 August 2012. The applicant appealed.

On 8 November 2012 the Centru District investigating judge upheld the previous decisions and rejected the applicant's appeal reiterating the reasons provided by the prosecutor before.

On 18 December 2014, the European Court of Human Right communicated the case to the Government. ECHR asked the Government if the investigation conducted by the national authorities in the present case was effective for the purposes of art. 3³³.

15. A central problem experienced by RCTV Memoria and Promo-LEX is the lack of effective implementation of the UN endorsed *Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (the Istanbul Protocol).³⁴ RCTV Memoria implemented the Istanbul Protocol in Moldova since 2003 and made the IP available for all interested professionals, with support of the UNHCR Moldova which paid for printing of 4000 copies in 2010. UNDP

33 "HUDOC - European Court of Human Rights." <https://hudoc.echr.coe.int/>. Accessed 9 Oct. 2017.

34 "Istanbul Protocol - OHCHR." 9 Aug. 1999, <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>. Accessed 9 Oct. 2017.

Moldova later initiated trainings for various professionals, including the forensic doctors, on using the Istanbul Protocol in daily practice, to document torture.

16. However, torture victims continue to have problems accessing independent quality documentation of their torture allegations. Some victims receive medico-legal reports issued by government authorities, which contain conclusions focused mainly on visible signs of torture neglecting the post-traumatic psychological symptoms related to torture. In some of the cases a psychological evaluation, within the "Psychological-psychiatrist forensic expertise" is performed by two authorized Psychologists-experts (one in Chisinau and another in Balti). Usually such evaluations are performed within one or two visits, which isn't enough. In this way some of the psychological after-effects of torture could be unidentified and undocumented. The statements and conclusions of such cursory reports could not reveal all the psychological after-effects of torture and may create severe impediments for victims to access justice, reparation and compensation.
17. RCTV "Memoria" remains the only non-state institution where it is possible to obtain a medical certification of torture allegations, in accordance with the Istanbul Protocol, where physical and psychological trauma is documented and correlated to the victim's allegations of abuse to reach a conclusion on the level of consistency. Nevertheless, national courts primarily accept medico-legal reports provided by government officials. Many prosecutors and judges rejected the certificates released by RCTV Memoria, even if such documents were accepted as evidence by the ECtHR and were taken into consideration in about 15 judgments including: Colibaba³⁵, Gurgurov³⁶, Taraburca³⁷, Treteacov, and Repesco.
18. An important problem related to the effectiveness of investigations is that the role of the investigative judge in detecting and following up on cases of ill-treatment is weak, which means that judicial control over torture investigations often does not function in practice³⁸. From the very beginning, the institution of investigative judges was created as a separate category of judges, with specific criteria for appointment. They were appointed for an unlimited tenure. Due to the specifics of the requirements for appointment, in November 2013, 87% of the investigative judges were former prosecutors or criminal investigative officers. It seems that their professional profile has determined a pronounced pro-accusatory attitude.³⁹

35 "HUDOC - European Court of Human Rights." <https://hudoc.echr.coe.int/>. Accessed 9 Oct. 2017.

36 "HUDOC - European Court of Human Rights." <https://hudoc.echr.coe.int/>. Accessed 9 Oct. 2017.

37 "EuroCases - CASE OF TARABURCA v. MOLDOVA, no. 18919/10" <http://freecases.eu/Doc/CourtAct/4525963>. Accessed 9 Oct. 2017.

38 "Baseline 10 mai final - UNDP in Moldova." <http://www.undp.md/publications/doc/Baseline%2010%20mai%20final.pdf>. Accessed 9 Oct. 2017.

39 "Reforming the institution of the investigative judge in the Republic of" 20 Oct. 2013, <http://crjm.org/wp-content/uploads/2013/10/CRJM-Raport-reforma-JI-en.pdf>. Accessed 9 Oct. 2017.

RECOMMENDATIONS:

1. In order to end all forms of torture in Moldova, all relevant professionals must be trained on the definition of torture and what practices are prohibited under national and international legislation;
2. The Prosecutor General shall ensure that complaints regarding acts of torture and ill-treatment that are not *prima facie* unfounded receive a prompt, impartial, and effective investigation in accordance with the Istanbul Protocol - the UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
3. The Istanbul Protocol should be integrated in the training programs of legal, forensic, medical, psychosocial and mental health professionals, in order to secure an earlier identification, appropriate documentation of torture by the medical, psychosocial and legal professionals and effective investigation of the cases;
4. The Moldovan authorities should ensure that detainees have prompt access to qualified medical professionals who are also trained in detecting physical and psychological evidence of torture and inhuman treatment, in accordance with the Istanbul Protocol;
5. The medico-legal reports, the medical findings and reports produced by non-state actors should be afforded equal evidentiary value to those provided by government officials;
6. The Government shall ensure that Article 15 of UNCAT is respected and that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings;
7. The Supreme Court of Justice should standardize the judicial practice related to trial of crimes of torture, which will allow to convict the guilty persons by applying sanctions that are proportionate to severity of the crime;
8. Government and Parliament must work together to amend the legislation regulating the activity of law enforcement by establishing clear conditions for the use of force and special means, also an unconditional obligation of reporting excessive use of force;
9. The institutions that have the right to use physical force and special means should adopt institutional and departmental regulatory acts that would detail the procedures and the algorithm for applying physical force and special means.

V. HEALTH CARE INTERVENTIONS AND FORCED MEDICAL TREATMENT IN PSYCHIATRIC INSTITUTIONS

19. The Republic of Moldova has not ratified the Optional Protocol to the Convention on Rights of Persons with a Disability (CRPD) yet⁴⁰. Although the ratification of the Protocol was planned for 2016, this wasn't achieved. The development of the legislation on disability progressed following the Covenant ratification. Nonetheless, there is no specific legislation or an adopted institutional regulatory framework for the protection of people with mental disabilities, in the context of medical interventions and forced medical treatment in psychiatric institutions.
20. The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, examining the need to apply protection standards against torture in the health care institutions, set out that any involuntary treatment or other psychiatric interventions in the health care psychiatric institutions are a form of torture and inhuman or degrading treatment.
21. Authorities commit numerous abuses and violations under the pretence of good intentions. In most cases, the administration, the health or auxiliary workers think that their deeds are in the best interest of patients and are not aware about the seriousness of their actions or use it as justification. In both cases, regardless of the intention and awareness of committed abuses, these can be a form of torture or inhuman and degrading treatment if they had as effect the humiliation and punishment of the persons in a way contrary to the torture definition.
22. Article 11(1) of the Law on Mental Health⁴¹ establishes that providing persons with psychiatric disorders with treatment is only possible upon their free written consent.
23. Nevertheless, the Article also sets forth certain exceptions in Article 11(4): (a) applying coercive medical measures in compliance with the Criminal Code⁴²; and (b) in case of admission to hospital without free consent in compliance with Article 28. Article 28 also establishes the conditions for the hospitalization of a person with psychiatric disorders without his/her free consent or that of a representative until a court judgement is issued. Thus, to admit to hospital persons without their free consent, certain conditions need to be met: (a) the possibility of out-patient treatment has to be ruled out; (b) the psychiatric disorder is severe; (c) direct social danger; and (d) severe damage to own health unless psychiatric care is provided. The first two conditions have to be met cumulatively, whereas the law does not require the last two of them to be met cumulatively. Accordingly, if it is found that a person is a danger to oneself or other persons and has a severe condition that cannot be treated through out-patient care, the person can be admitted to a psychiatric institution by force. The Criminal Code sets forth in Article 99 the medical coercive measures, which can be of two types: (a) the hospitalisation in a psychiatric institution with ordinary supervision and (b) hospitalisation in a psychiatric institution with strict supervision.
24. According to Article 33, the request of hospitalisation in the psychiatric inpatient institution without the free consent is examined by the judge within 3 days of receipt. Thus, a person with psychological disorders can be 'legally' deprived of freedom during 72 hours until the notification is issued by the commission of psychiatrist and 3 more days, during which the judge will examine the forced hospitalisation request. During this time,

40 "United Nations Convention on the Rights of Persons with Disabilities." https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-15&chapter=4&lang=en.

Accessed 9 Oct. 2017.

41 "privind sănătatea mentală." <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=312970&lang=1>. Accessed 9 Oct. 2017.

42 "Codul penal." <http://lex.justice.md/md/331268/>. Accessed 9 Oct. 2017.

- the person hospitalised without his/her free consent will be treated by force and even though at the end he/she can persuade the court that the forced hospitalisation is unneeded, the damage to the physical and psychical condition can be irreversible.
25. In 2016, Article 33(3) saw some positive amendments: the participation of the legal representative or other interested persons (the representative of the public association that defends the interests of the persons suffering from psychiatric disorders, the lawyer) in the examination of forced hospitalization is mandatory.
 26. Articles 152 and 490 of the Code of Criminal Procedures lay down the possibility of forced hospitalisation of the suspect, accused or defendant under arrest in the health care institution to execute the psychiatric examination without a check and control mechanism. Thus, if the suspect, accused or defendant who is already under arrest rise suspicion of suffering from certain mental problems, he/she is transferred to the psychiatric institution for an indefinite period of examination until the medical institution finds improvement in his condition. These provisions are contrary to Article 5 of the Convention for the Protection of Human Rights and Article 14 of the Convention on the Rights of Persons with Disabilities.
 27. The legislation of the Republic of Moldova does not regulate expressly how drugs used for psychiatric treatment are administered. According to Article 11 of the Law on Mental Health, the final decision on the type of drugs and their administration belongs to the doctors. Several studies found cases of abusive application of drugs. In such situation, there is a risk that the person is given sedatives, neuroleptics or other powerful drugs with side effects that may affect the health condition and awareness. In this way, there is a risk that until the court examines the case, the person is physically unable to present or is fully or partially unaware of what is happening. The Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona recommended expressly the review of standards that allow detention of people in mental health institutions and that regulate coercive interventions or treatment in a mental health institution, without the free and informed consent of the treated person.
 28. In addition, the Committee on Economic, Social and Cultural Rights (E/C.12/MDA/CO/2, para. 6)⁴³ and the Commission for Elimination of all Forms of Discrimination against Women (CEDAW/C/MDA/CO/4-5, para. 37)⁴⁴, raised concern about the lack of disaggregated data related to persons with disabilities in the Republic of Moldova. The only available data relate to the sex and age, on the basis of administrative records of the National Social Insurance House. Due to the lack of data, the total number of persons with disabilities in the country is unclear, and the socio-economic situation, the employment status, specific conditions, family context and residence area, as well as the impediments faced by the society, are very unclear.

Investigation of Torture and Ill-Treatment In Psychiatric Institutions

29. At the national level, there are no special provisions related to the investigation of cases of torture and inhuman or degrading treatment in health care or residential institutions of any type, including in the psychiatric institutions. In case of ill-treatment actions committed in the psychiatric institutions, the investigation takes place on the basis of the general regulatory framework, constituted mainly of the Criminal Code and Code of Criminal Procedures and other special laws.
30. Some regulations linked to the observance of the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment in the psychiatric institutions are

43 "5 - Treaty bodies Search - OHCHR." http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=En&CountryID=142&ctl00_PlaceHolderMain_radResultsGridChangePage=5. Accessed 9 Oct. 2017.

44 "Convention on the Elimination of All Forms of Discrimination against ..." 9 Nov. 2011, <http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW.C.MDA.4-5.pdf>. Accessed 9 Oct. 2017.

included in the Law on Mental Health. Nonetheless, just some of the provisions of the law are related to the prevention or fight against torture in the penitentiary institutions and only Article 5 sets out general guarantees on the rights of persons who suffer from psychical disorders.

31. Many studies and reports were produced over the last years, analysing the national legal framework on the investigation of torture and inhuman or degrading cases in the psychiatric institutions⁴⁵. The main issues in these reports have also been confirmed by the UN Special Rapporteur on the rights of persons with disabilities, Catalina Devandas Aguilar, who visited the Republic of Moldova during 10-17 September 2015⁴⁶.
32. In addition to the problems with the legal framework, victims face a number of more practical challenges in having their complaints investigated and brought to trial. These include refusal to start investigations following the submission of complaints by the mentally disabled persons and the inefficient hearing of victims, witnesses and other persons; the impossibility of assessing psychological suffering of victims of torture and inhuman or degrading treatment in the psychiatric institutions; refusal of the criminal prosecution body to start a criminal case following the submission of complaints by persons held in psychiatric institutions.
33. Many of these problems appear to be based on stereotypes and prejudice about persons in the psychiatric institutions. Most of the complaints and declarations of persons hospitalized in psychiatric institutions are deemed false, invented or exaggerated. In such cases, some prosecutors declare that they cannot check the allegations about the possible abuses invoked in the psychiatric institutions due to the lack of credibility of victims, lack of credibility of witnesses or the lack of other evidence.
34. The prosecutors and investigators are currently lacking a special training program on how to investigate acts of torture in psychiatric institutions. Consequently, the prosecutors and investigators lack sufficient knowledge about the peculiarities of the work with persons with psychosocial and intellectual disabilities. For most prosecutors and investigators it is practically impossible to understand which of the declarations are real and which are not, and this issue is aggravated by the stereotypes and prejudices related to the mentally disabled persons.
35. Furthermore, due to the incomplete legal framework, the prosecutors and investigators are lacking clear instructions on how they should investigate these cases and as the general provisions they operate by are not suited to these specific cases.
36. Getting an expert report by a psychologist in the criminal prosecution of cases of torture against persons with psychosocial and intellectual disabilities is very difficult. There is no regulation offering the investigators assistance of a psychologist in hearings or assessment of the victims' condition and the credibility of information provided. This is only available in in the hearing of minors (Article 110/1 of the Code of Criminal Procedures⁴⁷). However, even if such legal provisions existed, there is a significant lack of specialists to do the work.
37. A legislative impediment in the investigation of acts of torture and inhuman and degrading treatment in the psychiatric institutions is the erroneous interpretation of Articles 58 (51), 60 (11) and 143 (31) of the Code of Criminal Procedures, stating that the person in respect of whom an act of torture, inhuman or degrading treatment is claimed, must be subjected to an expertise to evaluate the psychological or physical condition. The purpose of those provisions was to offer the victims the opportunity to assess their

45 "De la vorbe la fapte: Combaterea discriminării și inegalității în Moldova" 9 Feb. 2017, <https://issuu.com/promo-lex/docs/vorbe>. Accessed 9 Oct. 2017.

46 "OHCHR | UN expert on the rights of persons with disabilities launches" <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16390&LangID=E>. Accessed 9 Oct. 2017.

47 "Cod de Procedură Penală." <http://lex.justice.md/md/326970/>. Accessed 9 Oct. 2017.

physical and psychological suffering. However, in practice the psychological condition is assessed in order to determine a person's legal capacity rather than the trauma suffered.

Case I.I.

I.I. is a beneficiary of the Balti psycho-neurological institution. He is a person with mental disabilities and he is living in the internat. In February 2016, he was maltreated by a security officer of the institution on the basis that he is a person with mental disabilities. Immediately after the incident, he informed the personnel of the institution and asked them to call police and ambulance. In addition, he complained immediately to the director of the institution. The personnel and director of the institution refused to call the police and ambulance. He asked other private persons to call police and ambulance. After 2 hours, the police officers and ambulance services arrived at the institution. The police officers did not collect any evidences regarding the situation, also treated the victim discriminatory the applicant by laughing to him and by saying that is not good for a sickly person to call police. After the incident, the police officer and the administration of the institution did not inform the prosecutor office about the maltreatment of the applicant.

I.I. complained to the Prosecutor office. He asked the prosecutor to start a criminal investigation taking into consideration the ill treatment actions committed to him by the security officer. In April 2016, the Balti prosecutor's office refused to start a criminal investigation. He stated that the security officers cannot be the subject of the crime of ill treatment, according to the definition of the art. 166/1 of the Criminal Code. In March 2017, the Balti Appellate Court annulled the decision of the Prosecutor. The case is under investigation.

38. As a result, a large part of the complaints lodged by the persons hospitalized in the psychiatric institutions are not taken seriously, are ignored or examined superficially.
39. The new Law on Forensic Examination⁴⁸ and the Statute of the Expert Review do not provide for psychological forensic examination either. Although, the Code of Criminal Procedures offers the victim the opportunity to ask for an examination by a psychologist or private expert, the insufficiency of legal provisions in the area and the practice exclude the psychological reports as a means of proof in judicial processes, or attributes low value. Thus, victims of torture in the psychiatric institutions could theoretically obtain a report of a psychological assessment from a private expert or specialized centers providing such services, however such reports are not seen as equivalent to forensic examinations and the impact of such reports is lower.
40. In terms of monitoring, following the Decision No 384 of 2012 of MoH, the Independent Service for the Protection of Human Rights in the Psychiatric Institutions became operational in 2014. However, it has not been operational since 2016 and the MoH has not yet announced a public competition for selection of a new ombudsperson.
41. All the loopholes require the legal framework on the forensic examination to be adjusted, the psychological examination to be enacted as forensic examination, the psychological examination by a single state authority to be de-monopolized, the alternative forensic examination to be regulated and the regulatory framework on the specter of testings and evaluations that are to be applied to victims to be adopted.

48 "cu privire la expertiza judiciară și statutul expertului judiciar." 10 Jun. 2016, <http://lex.justice.md/md/365259/>. Accessed 9 Oct. 2017.

RECOMMENDATIONS:

1. The Ministry of Justice should review the laws and practices on forced detention on the grounds of mental or intellectual disability, with a view to ensuring that detention is applied, if at all, as a measure of last resort and for the shortest appropriate period of time, and that the existence of a disability shall never in itself justify a deprivation of liberty;
2. The Government of Moldova shall develop independent mechanisms to protect persons with disabilities from further abuse and ill-treatment, including by adopting a comprehensive, effective and independent monitoring system in all residential institutions and psychiatric hospitals according to the Paris Principles and Article 33 para. 2 of the Convention on the Rights of Persons with Disabilities, and ensure the full participation of civil society, especially of organisations for persons with disabilities in monitoring and reporting processes;
3. The Government should ensure the review of standards that allow to detain people in mental health institutions due to their mental health and to subject them to coercive interventions or treatment in a mental health institution, without the free and informed consent of the treated person.
4. The Government should ensure the professional training of public servants at national, regional and local level, including the training of the judicial and legislative system members regarding the rights of persons with disabilities and regarding the obligations arising from the Convention on the Rights of Persons with Disabilities that actively involve the organisations that represent the persons with disabilities with focus on observing the right not to be subject to torture or to ill-treatment.
5. The National Preventive Mechanism against Torture should prioritize the monitoring of psychiatric hospitals and of residential institutions taking into account the findings of the Special Rapporteur of UN on the rights of persons with disabilities, Catalina Devandas Aguilar;
6. The Ministry of Health, Labor, and Social Protection should promote psychiatric care aimed at preserving the dignity of patients, both adults and juveniles, and ensure that non-consensual use of psychiatric treatment is generally prohibited and applied, if at all, in exceptional cases as a measure of last resort where absolutely necessary for the benefit of the person concerned, provided that he or she is unable to give consent, for the shortest possible time and without any long-term impact;
7. The Government and the Parliament shall ensure that women with disabilities are able to enjoy their right to sexual and reproductive health, including by repealing legislation that allows for the non-consensual termination of pregnancy;
8. The General Prosecutor Office should establish a special training program for prosecutors and investigators on how to investigate the acts of torture in psychiatric institutions.
9. The General Prosecutor Office should develop clear instructions on how to investigate crimes of torture committed in psychiatric institutions.

VI. TORTURE CONSEQUENCES AND RIGHTS OF VICTIMS TO REHABILITATION, COMPENSATION AND REPARATION

1. The UN Convention against Torture, Article 14 provides victims of torture and ill-treatment with an explicit right to rehabilitation. This is further clarified in the Committee against Torture's General Comment No 3 (2012) which explains the content and scope of the obligations under article 14.
2. Despite the changes and measures taken to adjust the Moldovan legislation in line with international and European standards, torture and ill-treatment in state custody remain an alarming issue, including because of the lack of clear mechanisms to respond to the needs and problems of victims and their families.
3. The Moldovan anti-torture policy focuses on preventing torture and combating impunity, mainly through the strengthening of state institutions. However, it ignores victims' need for rehabilitation, reintegration and for access to justice.
4. Torture consequences can be individual or collective, acute or chronic, immediate or belated, visible or invisible at first sight, but they are always devastating for victims, their families, communities and society as a whole. Torture affects all the domains of human beings: a) physical state; b) mental health; c) social life; d) spiritual; e) legal. Torture changes the whole life perspectives, moral values and social functionality of victims. For this reason rehabilitation should present a response to their needs with a holistic approach of victims' problems and consequences which are correlated to torture.
5. From a total number of 419 victims (189 female and 230 male), assisted by RCTV Memoria in 2015, the following main after effects of torture, have been registered:

PHYSICAL/Diseases	#Cranio-cerebral traumas: 73 cases or 17,71%; #Cardio-vascular: 121 cases or 29,36%, #Genitourinary diseases: 235 cases or 57,03%; #Chronic digestive diseases: 191 cases or 46,35%; #locomotor system: 91 cases or 22% (including 3 cases of bones' fractures); #Chronic respiratory: 59 or 14,32% # Endocrine: 39 cases or 9,46%; #ENT diseases, including post-traumatic deafness: 24 cases or 5,82%; #Eyes' pathology: 54 cases or 13,1%; #Cancer diseases: 5 cases or 1,21%;#Metabolic: 26 cases or 6,31%.
PSYCHOLOGICAL	From the total number of assisted beneficiaries, 392, or 95.1 % are suffering from psychological troubles or mental disorders: 1) Organic disorders: 257 cases, or 65,5%, including: #Mental disorders caused by brain damage and dysfunction: 112 cases or 28,5%; #Personality and behavioral disorders caused by brain diseases, damage or dysfunction: 145 cases or 37%; 2)Neurotic, stress-related and somatoform disorders:317 cases or 80,9%. From this number, 289 cases (or 70,1%) are patients with Post Traumatic Stress Disorders (PTSD) among recent victims of torture, refugees; 3) Experiencing personality changes after catastrophic experience: 42 cases or 10,5%; 4. Other diseases – 11 cases or 2,8%.

SOCIAL consequences:	1) decreased functionality with limited capacities to start or continue their studies, to find and to keep a job; 2) communication and interpersonal problems; 3) social isolation and withdrawal; 4) increased reticence and lack of trust in others; 5) affected marital status; 6) behavioral problems, etc.
LEGAL status	many victims faced a huge pressure from their perpetrators or representatives of the state institutions, so many of them were forced: 1) to change their testimonies during the investigation process, 2) to withdraw their complaints; 3) to leave the country, because of fear and of the lack of trust in the justice system. More than 60 survivors of the dramatic events from April 7, 2009 and other recent victims of torture who were assisted by RCTV Memoria are now living abroad.

6. The state response to the needs of victims and their rights to a comprehensive rehabilitation, as it is stated by General Comment No. 3 of CAT (2012) to art. 14 UNCAT, has so far been ineffective. Rehabilitation and social reintegration of victims of torture, as a vulnerable group with special needs, has not been the object of activity and priority for the Ministry of Health nor the Ministry of Labour, Social Protection and Family (merged in 2017) or other state institutions despite previous recommendations contained in various country reports.
7. The Ministry of Justice drafted the Law on Rehabilitation of Victims of Crimes (including torture), which was approved by Government on March 4, 2016 and Parliament as Law No. 137 (29.07.2016)⁴⁹. Unfortunately, the law is not consistent with the requirements for right to rehabilitation for torture victims as outlined in Article 14 of the UNCAT and General Comment Nr. 3 of the Committee against Torture (2012). Specifically, Art. 2 of the Law states that the victims will receive support only in form of information about existing services, psychological and legal counseling and compensation thus disregarding the need for medical and social assistance. Further, Art. 9 of the Law restricts the length of psychological counseling to three months or maximum 6 months. In relation to torture victims, this raises a number of concerns including the fact that the law fails to take a holistic and long term approach to rehabilitation. The survivors of torture need comprehensive mental health services, not only the psychological counseling, as the Law 137 stipulates. RCTV Memoria contributed with comments and recommendations to the working group of the Ministry of Justice but unfortunately those recommendations did not make it into the final text of the law.
8. However, more importantly there are no existing state services that are capable of effectively addressing the complex needs of torture victims in a way where victims can trust that the services they are receiving are independent. No State institution has been assigned responsibility for developing rehabilitation programs and no financial resources have been allocated to non-State services to do the work. Furthermore, the existing state institutions do not have staff with the necessary professional skills to be able to deal with traumatic after-effects of torture.
9. Even if a common inter-ministerial and inter-departmental document, the "*Rules on the procedure for the identification, registration and reporting of alleged cases of torture, inhuman and / or degrading treatment*" has been created and approved on 31.12.2013 by the most relevant institutions - the General Prosecutor's Office, the Ministry of Health, the Ministry of Internal Affairs, the Customs Service, the National Anti-Corruption Center and the Ministry of Justice (by Order no. 969 of 20 March 2014), the referral system for

⁴⁹ "cu privire la reabilitarea victimelor infracțiunilor." 9 Sep. 2016, <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=366518>. Accessed 9 Oct. 2017.

rehabilitation of torture victims has not been created and in practice no referrals are taking place to RCTV Memoria which is the only existing specialised rehabilitation center in Moldova.

10. Non-State rehabilitation services (provided by RCTV "Memoria") are insufficiently resourced and thus not able to cover the existing needs of all victims. RCTV Memoria aids annually around 450 beneficiaries even though its team is solely composed of 7 (5 full-time and 2 part-time) medico-social staff including the Executive Director. Treatment is comprehensive as the centre provides social, medical, legal, psychological and mental health support. However, many victims in the country do not have access to these services, including because of lack of references from the state institutions, which are identifying and registering the cases (as are also the Prosecutor offices). Those who do not access rehabilitation services often suffer continuing devastating physical and mental health consequences.
11. In addition to the lack of access to rehabilitation, there are concerning trends where victims who speak out about their torture experience face very repressive attitudes from the investigators in the criminal cases opened against them. E.g. a survivor of torture from April 2009, who was more open to give interviews to journalists, lately have been punished more harshly – about 3 years of detention for a pretended infraction, i.e. for stealing a mobile phone. Furthermore, there are examples of victims testimonies obtained through torture used against them, in contradiction with art. 15 of UNCAT. The most relevant case is of brothers Repesco⁵⁰, assisted by Memoria and Promo-LEX

RECOMMENDATIONS:

1. Considering the connection between access to justice and rehabilitation, authorities shall ensure that complaints about acts of torture and ill-treatment that are not *prima facie* unfounded receive a prompt, impartial and effective investigation in accordance with the Istanbul Protocol.
The State of Republic of Moldova should,
2. Secure the access of torture victims to medical and psychosocial rehabilitation services in the context of respect for human rights, which requires a *trauma and victim centered approach* and increased attention from the authorities, with allocation of the necessary resources for the effective implementation of rehabilitation programmes;
3. Amend the national legislation, including the Law 137, to include explicit provisions on the right of victims of torture and ill treatment to redress, including fair and adequate compensation and the means for as full rehabilitation as possible, in accordance with article 14 of the Convention and GC N3;
4. Establish or support rehabilitation programmes that are adequately funded and offer holistic rehabilitation services to all torture victims without temporal limitations on the services offered.
5. Develop an effective cooperation and referral mechanism between all relevant institutions in order to unify efforts in early identification and rehabilitation of torture victims. This should include relevant amendments to the "*Rules on the procedure for the identification, registration and reporting of alleged cases of torture, inhuman and / or degrading treatment*".
6. Within the national system for rehabilitation of torture victims to be created, the Ministry of Health, Labor and Social Protection should develop institutional policies that will provide the victims of sexual abuses in psychiatric hospitals and residential institutions (especially Psycho-Neurologic Institution from Balti municipality) with all the needed support and rehabilitation services.

50 "Promo-LEX: CtEDO continuă să comunice noi cauze cu privire la" 11 Dec. 2012, <http://www.civic.md/stiri-ong/19173-promo-lex-ctedo-continuu-s-comunice-noi-cauze-cu-privire-la-aplicarea-torturii-in-comisariatele-de-poliie.html>. Accessed 9 Oct. 2017.

7. The authorities of the Republic of Moldova should take measures to prevent torture in the Transnistrian region as well as to ensure the right of the victims from the left bank of the Dniester to the necessary rehabilitation.
8. The Moldovan authorities should report regularly on the implementation of the UNCAT, taking into account also the provisions of the paragraphs 45 and 46 of General Comment No 3 to art. 14 of UN CAT.

VII. CONDITIONS OF DETENTION IN PENITENTIARIES

A. General Information

1. Currently the prison system consists of the Department of Penitentiary Institutions, 19 prisons, including 2 prisons with suspended activity, 4 specialized institutions (Guard, Surveillance and Escort Troops Division, Training Center, Special Intervention Team, Center for Technical and Material Supply) and 9 state enterprises of the penitentiary system⁵¹.
2. In the penitentiary system, the prisoners are held in closed penitentiaries (11 institutions, of which 5 have the status of Criminal Prosecution Pre-Trial Detention Facility); semi-open penitentiaries (3 institutions); one penitentiary for women; one penitentiary for minors; a prison hospital⁵².
3. The current regulatory framework allows to create in a penitentiary system several distinct detention sectors, respecting the requirements provided in the Enforcement Code of the Republic of Moldova No 443-XV of 24 December 2004⁵³.
4. According to the information provided by the Department of Penitentiary Institutions, the

The incarceration rate	
Andorra	53
Finland	55
Denmark	61
Norway	70
Austria	97
Belgium	98
France	103
Bulgaria	125
Armenia	130
European average	140
Romania	142
Estonia	221
Azerbaijan	236
Republic of Moldova	263
Russian Federation	450

2.3% in 2015.

total number of employees in the penitentiary system is of 2,920 persons, with an annual work remuneration fund within the allocations, approved by the State Budget Law for the corresponding year.

5. The penitentiary system budget for 2016 accounted for about MDL 488.0 million, which is 0.40% of the GDP or 1.05% of the national public budget. During 2006-2016 the share of the national public budget varied from 0.76% to 1.08%⁵⁴.

6. During the last nine years, the expenses for the penitentiary system sector had a fluctuating trend, reaching a peak in 2014, when the amount of expenses grew up to about MDL 488.0 million, by MDL 344.6 million more than in 2006⁵⁵.

7. Most of the budget expenses, which in 2010 reached 66.35%, relate to the staff. Expenses for the food provided to prisoners ranged between 7-11% during 2006-2014. The share of capital investments in the total expenses during the last nine years was between 0.20% in 2009, 6.41 – in 2014 and

51 "Departamentul Instituțiilor Penitenciare." <http://penitenciar.gov.md/>. Accessed 9 Oct. 2017.

52 "Structura organizațională - | Departamentul Instituțiilor Penitenciare." <http://www.penitenciar.gov.md/ro/structura-organizationala>. Accessed 9 Oct. 2017.

53 "Codul de executare." http://lex.justice.md/document_rom.php?id=7815EB1B:E68465D1. Accessed 9 Oct. 2017.

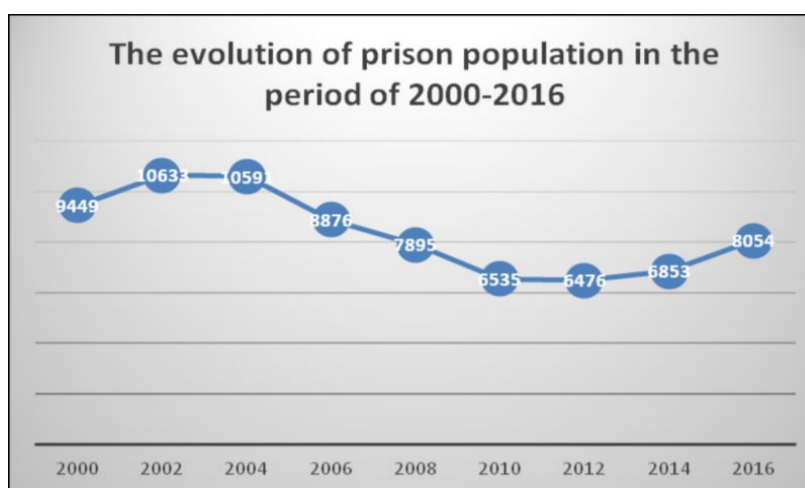
54 "Promo-LEX | Raport – Dreptul de a nu fi supus torturii și relexor" <https://promolex.md/9008-raport-dreptul-de-a-nu-fi-supus-torturii-si-relexor-tratamente/>. Accessed 9 Oct. 2017.

55 "cu privire la aprobarea Strategiei de dezvoltare a sistemului" <http://lex.justice.md/md/368928/>. Accessed 9 Oct. 2017.

8. According to the situation as of 1 April 2017, the detention ceiling was of 8,654 places. As of this date, the penitentiary institutions held 7,876 persons, compared to 8,121 persons during the same period of the last year⁵⁶.

B. Overcrowded penitentiary system

1. Despite all the efforts to humanise the criminal legislation regarding the decrease in sentences, the rate of population imprisoned in the Republic of Moldova in 2016 constituted 263⁵⁷ prisoners to 100,000 inhabitants, which largely exceeds the European average, by about 140 prisoners⁵⁸. In January 2016 this rate exceeded the level of 2008, with 8,054 prisoners, of which 1,720 were in remand.
2. During the period of 14 years (2003-2016), the dynamics of people from penitentiaries has seen diverse variations. From 10,925 persons in 2003 to 6,324 in 2010. With growth trends by about 300-500 persons annually since 2011 until now.
3. Given the constant trend of increasing of the number of the penitentiary population in relation to the actual hosting capacity of the penitentiary system by about 5,500 places, we register an overcrowding of over 40% of detention facilities. Respectively, most prisoners are detained in overcrowded conditions, which is the main factor leading to detention under conditions contrary to the national standards and contrary to the purpose of the deprivation of liberty.
4. About 8,000 citizens of the Republic of Moldova are now in the custody of the penitentiary system, of which about 20% are remanded, 6% are women and 1% – minors. Only 3 of the 17 functional penitentiary institutions were renovated and correspond to the minimal standards of detention (Rusca Prison No 7, Goian Prison No 10 and Taraclia Prison No 1).
5. The obsolete infrastructure unadapted to the system of cells does not allow to separate prisoners in small sectors, and the insufficient number of custodial staff, lead to continued violence and subculture in penitentiaries. The European Committee for the Prevention of Torture (CPT) criticised intensively the phenomenon of bullying and ill-treatment of some categories of prisoners. In addition, the unofficial hierarchy, ruled by its own rules and its interaction with criminal groups outside the penitentiary system threatens the safety of the entire society.
6. Overcrowding is caused by the fact that the national legislation does not provide for alternative means of punishment Alternatives to imprisonment proved to be much more efficient for the offenders with a medium to low risk. In most of the European countries, various forms of execution of sentence are implemented, such as the execution of the full or partial term in the open penitentiaries, in treatment centers, at home with or without the electronic monitoring and in the community under special conditions. Besides the long period of imprisonments, the overcrowding is caused by the reduced number of conditionally released persons. In the



56 "Statistica - | Departamentul Instituțiilor Penitenciare." <http://www.penitenciar.gov.md/ro/statistica>. Accessed 9 Oct. 2017.

57 "Biroul Național de Statistică // Recensăminte - Statistica.md." <http://www.statistica.md/map.php?l=ro&idc=205>. Accessed 9 Oct. 2017.

58 "Moldova (Republic of) - International Centre for Prison Studies." <http://www.prisonstudies.org/country/moldova-republic>. Accessed 9 Oct. 2017.

Republic of Moldova is found a significant drop in the number of persons on probation, from 1,570 in 2007 to 335 in 2016, even though the Council of Europe promotes this solution to enhance the public safety and reduce the prisoners' de-socialisation.

7. The rate of admissibility of requests from instances decreased from 73% in 2007 to 41% in 2016, which can be explained by the additional conditions that the prisoners must meet to be eligible for the probation before term, introduced in the legislation during the last years for the release on probation before term⁵⁹.
8. In the European countries, on average, one person in three is released on probation. In Moldova, the rate of releases on probation dropped in total from 40% in 2008 to 18% in 2016, compared to Romania, where, during the last five years, over 75% of the total number of releases are on probation. Releases from the penitentiary, replacing the non-executed party of the sentence with a lighter sentence represented only 1-2% of the total releases during 2008-2016 in Moldova.
9. Although the humanisation of the criminal policy is a goal provided for in the Pillar II of the Justice Sector Reform Strategy, the changes introduced during the last years, however, had an adverse effect⁶⁰. A number of 35 new crimes were introduced, over 100 of crimes – reclassified, and most of the changes to the Criminal Code led to punitive punishments.

In the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), published following the visit of September 2015, the delegation noted: *'the national standard of at least 4m2 of space for a prisoner was far from being observed in most of the penitentiaries we visited, especially in the penitentiaries in Chisinau and Soroca, the level of overcrowding reached concerning proportions. Material detention conditions in these two penitentiaries were inadequate, in many respects (for example: bad or very bad repair and hygiene, limited access to natural light, unsanitary facilities; parasitic infestation, worn and dirty mattresses, etc.) and according to CPT, these can be deemed the same as inhuman and degrading treatment.'*

10. The situation related to the penitentiary population degrades. In the Council of Europe Expertise Report, Moldovan authorities mentioned the legislative changes that were introduced in the Criminal Code in 2008, which led to the constant decrease in the penitentiary population, reaching 6,500 in 2013. In the same year, the whole penitentiary system detained 7,890 prisoners. The penitentiary population, in general, is currently exceeding the number of existent places, which is confirmed by the last CPT report as well. Committee noted that since the last visit in 2011, the penitentiary population grew up by about 1,300 prisoners and that the rate of imprisonment in the Republic of Moldova, of 220 prisoners per 100,000 inhabitants, is one of the highest in Europe⁶¹.
11. Under these circumstances, the investment of considerable amounts in the penitentiary infrastructure is not a solution. First of all, the legislations and the practices in force related to the temporary detention, to the sentence delivering, as well as to the multitude of non-custodial punishments available, need to be revised. This method is indicated by the Recommendation No R (99) 22 of the Committee of Ministers of the Council of Europe concerning prison overcrowding and prison population inflation⁶².
12. This is also confirmed in the last report of the CPT, which requires from the 47 Council of Europe Member States to use the remand detention only as a measure of last resort and in adequate conditions. The finding is made in the context of the fact that during the visits

59 "Raport - AGENȚIA DE ADMINISTRARE A INSTANȚELOR" <http://aaij.justice.md/ro/rapoarte/rapoarte-generale>. Accessed 9 Oct. 2017.

60 "Strategia de reformă a sectorului justiției pentru anii 2011–2016." <http://lex.justice.md/md/341748/>. Accessed 9 Oct. 2017.

61 "Criminal Justice Responses to Prison Overcrowding in Eastern ... - Coe." 26 Jan. 2017, <https://rm.coe.int/168063e13a>. Accessed 9 Oct. 2017.

62 "(99) 22 concerning prison overcrowding and prison population inflation." <http://pjp-eu.coe.int/documents/3983922/6970334/CMRec+%2899%29+22+concerning+prison+overcrowding+a+nd+prison+population+inflation.pdf/1d28cea8-31d2-4e2f-911c-870119b189c9>. Accessed 9 Oct. 2017.

to the prisons in Europe, the CPT has often found that prisoners have very poor conditions and a poor regime⁶³.

C. Health care in the penitentiary system

13. Health care in the penitentiaries is guided by the same ethical principles as in the community. The main principles are set by the World Medical Association's Declaration of Geneva (1948, the last version in 2006), the International Code of Medical Ethics (1949, last version in 2006), Decision No 37/194 (of 18 December 1982) of the United Nations General Assembly and the Recommendation No R (1998) 7 of 8 April 1982 of the Committee of Ministers of the Council of Europe on aspects of ethics and organisation of the health care in the penitentiaries⁶⁴.
14. The State is in charge of providing health care services for prisoners. Prisoners should benefit from the same health standards as the community does and dispose of free access to the necessary health care services without discrimination based on their legal status⁶⁵.
15. In the national penitentiary system, the health care is provided under the general health care legislation and under the Regulation on Ensuring Health Care to Persons from Penitentiaries⁶⁶. According to this Regulation, any penitentiary should ensure health care at least by a general doctor, a dental doctor, a gynecologist (in the penitentiaries for women) and a psychiatrist. In penitentiaries with at least 100 places there must be permanent, inpatient rehabilitation center for the provision of health care to each detainee. The medical exam of prisoners should be compulsory when entering the penitentiary. In case a prisoner is found to have some bodily injuries or torture traces, a doctor should examine him or her, providing the necessary medical aid. The institution administration must notify, as soon as possible, the Department of Penitentiary Institutions and the territorial body of the Prosecutor's Office in whose constituency the penitentiary is located, in written form, about the existence of bodily injuries or torture traces to prisoners that came in the penitentiaries.
16. Nonetheless, it was found that the medical staff from the national penitentiary system, that works in the penitentiaries and provides healthcare to prisoners, often perform roles that have nothing in common with their activity. The penitentiary administration obliges them to participate in various searches together with the guards, to escort the prisoners and even take decisions of use of disciplinary sanctions. Although the reform of the penitentiary system was initiated during the reform of the justice system, it seems that the health workers are not sufficiently independent in taking decisions or providing healthcare to prisoners and face a lot of bureaucratic issues⁶⁷.
17. Health care services for prisoners are important to prevent ill-treatment. An inadequate level of health care can lead rapidly to situations entering the scope of the 'inhuman and degrading treatment' term.
18. Obliging the prisoners to stay in a space, where they cannot receive an adequate treatment due to the lack of appropriate units or due to the fact that such units refuse to receive them, is unacceptable. In many similar situations, the ECtHR found a violation of Article 3 of the European Convention on Human Rights (ECHR).
19. In 2016, the situation related to the health care of prisoners didn't change much. According to the information provided by the Department of Penitentiary Institutions, the

63 "Anti-torture committee urges European states to hold persons in" 20 Apr. 2017, <https://www.coe.int/en/web/portal/-/anti-torture-committee-urges-european-states-to-hold-persons-in-remand-detention-only-as-a-measure-of-last-resort-and-in-adequate-conditions>. Accessed 9 Oct. 2017.

64 "Compendium of the Council of Europe Documents on Preventing" <https://www.pinterest.com/pin/345792077619230132/>. Accessed 9 Oct. 2017.

65 "Resolutions of the 70th Session - UN General Assembly." <http://www.un.org/en/ga/70/resolutions.shtml>. Accessed 9 Oct. 2017.

66 "privind aprobarea Regulamentului cu privire la modul de asigurare a." <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=319608>. Accessed 9 Oct. 2017.

67 "Știri interne-„Ambulatoriul din anul 1980, cu elemente ... - e-sanatate.md." 5 Jan. 2015, <http://e-sanatate.md/News/4385/ambulatoriul-din-anul>. Accessed 9 Oct. 2017.

funds allocated for the health care for 2015 – 2016 amounted to MDL 2,519,700, which represents an average of MDL 330 per prisoner⁶⁸.

Case M.T. (Application no. [69086/14/ECHR](#))

M.T is a person with a physical disability who requires a wheelchair for mobility. She has been imprisoned in Moldova's prison No. 13 since 14 February 2011. She alleges that she has been kept in overcrowded cells, with no adjustments made to enable her to access her bed without assistance from other prisoners, the toilet/bathing facilities, the daily walk area or the room for legal counsel. She has contracted hepatitis "C" whilst in detention and also suffers from a number of other health problems and complains she has not been provided with adequate medical care.

M.T. alleged that the conditions in which she has been housed and the way in which she has been treated constitute a violation by the state of her right to be free from discrimination on the grounds of disability (Article 14 of the ECHR) in conjunction with her right to be free from torture and inhuman and degrading treatment and punishment (Article 3 of the ECHR).

The case was communicated by ECHR to the parties. The case is pending for a decision.

D. Women in detention

20. Women's rights in national prisons are the same as men's, but women seldom enjoy implementation of their rights. Although women represent a small percentage of the total prison population, the number of women in detention is increasing (probably due to impact of other negative phenomenon from society, like domestic violence, poverty, social inequality, etc). The rate of female imprisonment is mounting much greater than that of men (11 % in 2015).
21. Women's prisons require a gender-specific approach and framework for health care that could pay special attention to reproductive health, mental illness, substance use problems, physical and sexual abuse, among others. However, a timely access to medical services outside prison is practically not available for women in detention.
22. National prison policies often overlook the special needs of women and their health problems. Issues arising from gender-specific health care needs and family responsibilities are also frequently neglected. Based on assisted and documented cases, many women in prison have in their medical history chronic diseases and severe consequences of sexual and physical abuse, domestic violence, mental illness, and drug abuse or alcohol addiction. Many of them have chronic and bad health conditions resulting from living in poverty, premature pregnancy, malnutrition and poor health care before detention. Drug-dependent women inmates have a higher prevalence of tuberculosis, hepatitis, toxemia, anemia, hypertension, diabetes, obesity and other diseases than male inmates.
23. The national prison environment does not always take into account the specific needs of women. This includes the need for adequate nutrition, healthy life, fresh air and exercise for pregnant women and greater hygiene requirements such as regular showers and sanitary items.
24. However, in national prisons, especially in prison nr. 13 the possibility to shower is provided once per week, and sanitary items are not provided free of charge, in disregard of gender-specific physiological needs, such as those arising from menstruation;
25. The alarming situation of women in detention is confirmed also by ECtHR decisions. In less than ten cases, the ECtHR found that the detainees, including women, have not been given the necessary medical assistance. For example, in the case *Greco vs Moldova*, the Government has admitted being responsible for the applicant's health problems (including cardio-vascular, urogenital) which was caused by the poor prison conditions and lack of appropriate medical care. In other complaints sent to the ECtHR which are still pending, the applicants claimed lack of adequate medical assistance in connection with

68 Answer of the Department of Penitentiary Institutions of 20 January 2017, no 10/280

- such diseases, as: cancer , viral hepatitis, chronic cardiovascular and pulmonary disease as well as physical disabilities , etc.
26. At the international level, standards on detention were originally developed to address the needs of male prisoners rather than the ones of women. The developed standards focused at a higher extent on the conditions of detention rather than on the consequences of prison punishment. To address the lack of standards related to women in detention, that would take into account the specific needs of female prisoners, in 2010 the UN General Assembly adopted the set of Measures for Women Offenders ('the Bangkok Rules')⁶⁹.
 27. The Bangkok Rules together with other international standards oblige states to develop specific measures reducing the serious consequences caused by women imprisonment, taking into account their specific needs. According to the Bangkok Rules States must further counter the causes contributing to women's imprisonment (for example – the issue of domestic violence); consider the specific needs of women and the obligation to give priority to non-custodial sentences for women; and draft rehabilitation programmes;
 28. In the special Report of the Rapporteur on Violence against women, its causes and consequences, Rashida Manjoo, it was found that the global imprisonment rate of women continues to grow⁷⁰. The Report indicates the existence of a strong relation between the violence against women and the imprisonment rate of women. Issues described in the Report are relevant for the Republic of Moldova as well.
 29. In the NORLAM Mission study conducted in partnership with the Center for Qualitative Research in Anthropology of the Moldova State University it was mentioned that discussions with women detained in Rusca Prison revealed the will of women – victims of domestic violence, to stop violence, the trend to protect children from violence and the negative emotions accumulated over the years, resulted from the violence acts on the behalf of persons who a priori should be close to them, served as the triggering factor for them to commit crimes⁷¹.
 30. One of the study findings is that before going to prison, 129 of questioned women (43%) were victims of domestic violence. All 129 interviewed women admitted that they have been victims of domestic violence, and also admitted that their husbands/cohabiting partners, and parents mistreated them in the past. Many also experienced violence in their childhood and adolescence. Because of the lack of confidence that they could benefit from real help, 35.7% of women victims of domestic violence refused to talk about this with someone. 42.6 % of women called the police. Most of the 55 women who called the police said that the aggressor was not punished or was retained only for a few days. 109 of 129 women subjected to domestic violence have been convicted for violent crimes against either their husbands/cohabiting partners or one parent, or other person.
 31. Women experience post-traumatic stress, which is manifested by the permanent reliving of the intensive fear, by hyper-vigilance, refuse of the support offered by someone else and the commitment of crimes. Experts found that abuses are linked directly to the further violent behavior. Abuse and exposure to the uncontrollable stress environment are precursors to the behavioral problems of female criminals. Any malfunction of the mechanisms used to overcome the stress may further worsen the negative effects of childhood trauma and of victimization.
 32. Conditions in Rusca Prison are appraised as good. Conditions were appraised by the CPT during the visit in the Republic of Moldova between 14 and 25 September 2015. According to the report, the cells were repaired, bright, airy and clean. Generally, there

69 "Women and Detention - OHCHR." http://www.ohchr.org/Documents/Issues/Women/WRGS/OnePagers/Women_and_Detention.pdf.

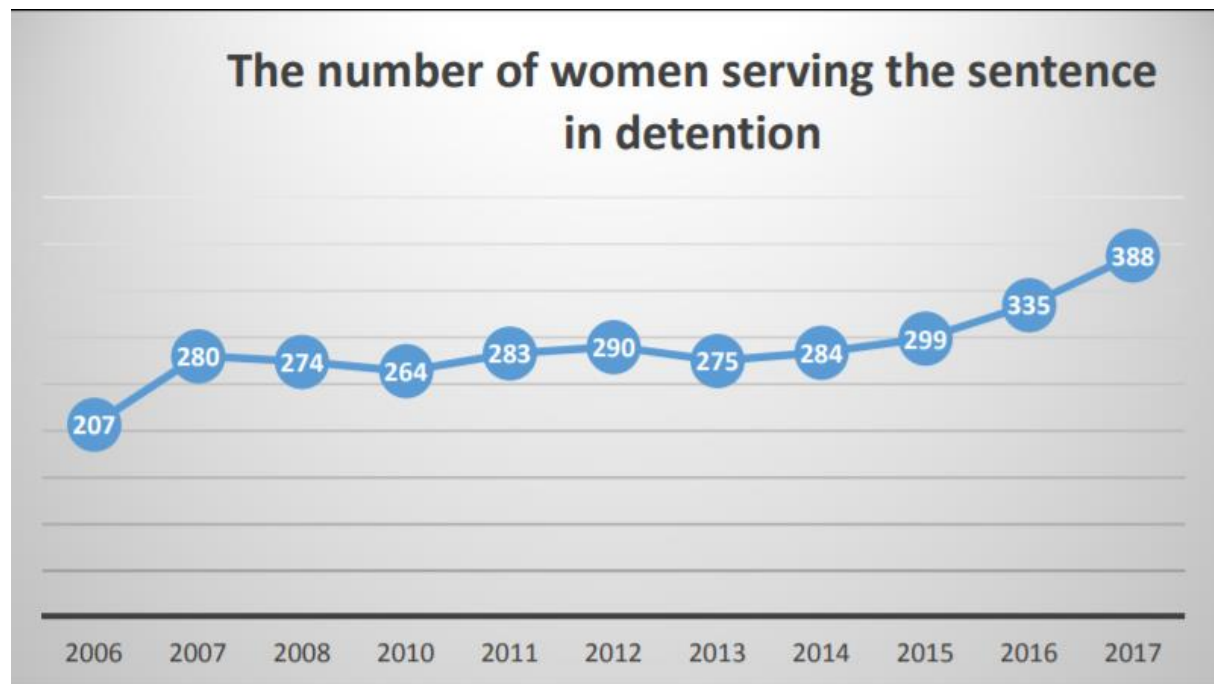
Accessed 9 Oct. 2017.

70 "Report of the Special Rapporteur on violence against women, its ..." 2 May. 2015, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Documents/A_HRC_29_27_Add_3_ENG.doc. Accessed 9 Oct. 2017.

71 Survey: Domestic Violence and women in Rusca Prison. Past, present, future conducted by the Center for Qualitative Research in Anthropology of the Moldova State University on the request of NORLAM, Web source: <http://norlam.md/libview.php?l=ro&idc=96&id=908#.WPwHE9J95PY>

was enough space for the women prisoners (2-6 prisoners in the cell). Nonetheless, some cells were overcrowded (cells with four and six prisoners held in an area of 9 and 14m²).⁷²

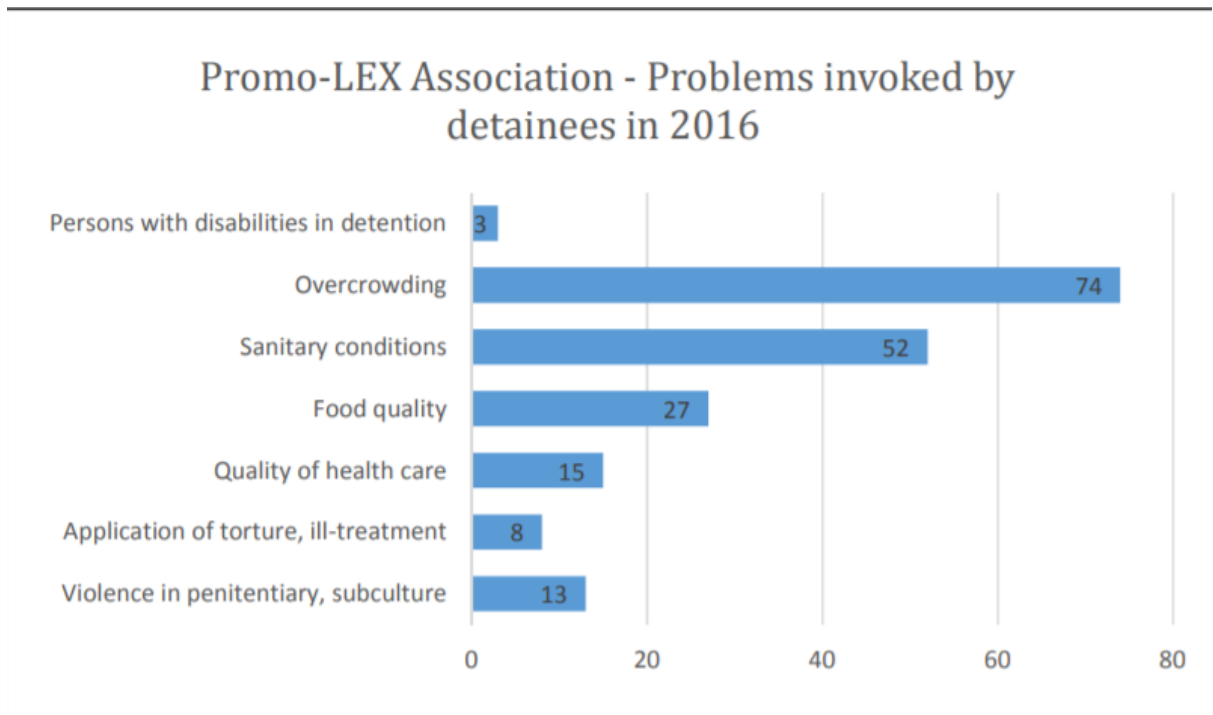
33. In 2016, 335 women were imprisoned in Rusca Prison No 7. Compared to 2016, the number of prisoners increased significantly in 2017.



⁷² Report for the Government of the Republic of Moldova on the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visits in the Republic of Moldova between 14 and 25 September 2015.

E. Observance of other standards in the penitentiary system

34. Promo-LEX Association received 205 petitions from prisoners in 2016. In the petitions, several issues have been raised that indicate possible deficiencies in the standards of the CPT. They included but were not limited to the following:



35. 74 petitions invoked overcrowded, 52 bad sanitary conditions, 27 deficient food quality, 15 deficient health quality 8 torture and abused by the prison employees and 13 – inter-prisoner violence due to the subcultures and hierarchies.
36. Promo-LEX Association continues to monitor the evolution of situations invoked in the petitions. In some cases, given the case’s potential of strategic litigation, the Association brought and documented several cases to be litigated at the national and international level. Based on information obtained from other sources, the following specific problems exist:

People with disabilities

37. Rights of people with disabilities in the penitentiary system are protected by the general international standards. Many persons with mobility impairments are imprisoned in the national penitentiary system. Ignoring the disabled persons that are held in the penitentiary system and the failure to take measures to adapt the infrastructure to the needs of persons with disabilities is an inhuman, degrading and discriminatory treatment, which is contrary to the national and international legislation.
38. According to data provided by the Department of Penitentiary Institutions, over 200 disabled persons are currently imprisoned in the national penitentiary system, of which over 30 have mobility impairments and over 40 have hearing or sensory impairments.
39. Issues invoked by the disabled prisoners relate mainly to the failure to adapt reasonably the penitentiary infrastructure, the bad health care, the limited right to social protection, limited participation in socio-educational, lack of training, lack of psychological assistance, rehabilitation, and lack of other activities compared to other prisoners.
40. No rehabilitation programmes for prisoners with other disabilities seem to exist either.

Large common capacity cells

41. Prisoners from many penitentiaries invoked that they are held in large common capacity cells, which also serve as: the area for sleeping, living and for the sanitary needs.
42. The petitioners stated that they live crammed into extremely dirty and insanitary areas. The CPT criticised in its last report the non-observance of this standard in the national penitentiaries.

Violence between prisoners

43. Prisoners from most of the national penitentiaries described situations where prisoners used violence, including sexual violence. Although the penitentiary administration is liable for the physical integrity of prisoners, it seems that it cannot always protect them against other prisoners that might cause them harm. Prisoners described a wide range of phenomena, from subtle forms of harassment to obvious bullying and serious physical abuse.
44. There is no current efficient strategy against the violence between prisoners, that would help the penitentiaries representatives, including all the staff members, to be able to efficiently exercise their authority and supervision function. The penitentiary staff does not pay attention to the signs of agitation and it seems that they are not always decided and trained sufficiently to be able to intervene when necessary.
45. It thus seems that, based on the petitions received, not all the staff has relevant abilities in terms of inter-personal communication. It is unclear if specific security measures are developed and adapted to the particular characteristics of the situation (including efficient search procedures). The last CPT report confirmed the violence between prisoners.

Access to natural light and fresh air

46. Many prisoners invoked that the access to natural light and fresh air in the cells is problematic. Access is limited due to some equipment, such as the shutters, blinds, metal plates that cover the windows.
47. According to CPT standards, this type of measures should be an exception, not a rule. This means that authorities in charge of examining the case of each prisoner, should determine if the special security measures are genuinely justified in this case. In addition, when such measures need to be taken, they should never deprive prisoners of natural light and fresh air. It is about the core elements of life, to which all the prisoners are entitled. In addition, the lack of these elements generate favorable conditions for the spread of diseases and, particularly, of the tuberculosis. CPT admits that setting living conditions inside the penitentiaries may be costly and that in many countries the improvement of conditions is hampered by the lack of financial means. However, taking off the equipment that covers the windows of cells (and installing appropriately, in exceptional cases where needed, other security equipment) should not suppose too many investments and, at the same time, it will have positive effects on all these persons.

Material conditions of detention

48. It seems that material conditions of detention are still a serious issue. Prisoners invoked bad conditions of detention, especially in the Penitentiary No 13 of Chisinau municipality, Penitentiary No 15 of Cricova town and Penitentiary No 6 of Soroca town.
49. *Inter alia*, the beneficiaries described the detention cells as follows:
 - The cells are unrepaired, dark, humid, without ventilation, with a persistent cigarette smoke;
 - The cells have a single sanitary block, which is a genuine source of infection. Usually, the water is supplied via a faucet that doesn't have a sink, but is merged with the toilet. The toilet is also used to discharge both waste and toilet water. The

prisoners use this faucet, which is right above the toilet, to take drinking water, to wash themselves and do the laundry and to satisfy their physiological needs.

- One sector of the Penitentiary No 15 holds about 60 persons, distributed in two large capacity bedrooms, one – of 20 persons and the other one – of 40 persons.
- Prisoners are not provided with clean bedding;
- Some cells are infested with parasites;
- The humidity level in the cells is very high. Prisoners invoke very high temperatures during the summer and very low – during the winter;
- They can walk only one hour per day (in Penitentiary No 13), and have a bath once in 7 days (in the rest of penitentiaries).

The described detention conditions have also been confirmed in the latest report of CPT.

RECOMMENDATIONS:

1. The Government should bring prison conditions in line with the Standard Minimum Rules for the Treatment of Prisoners and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), (CAT/C/AUS/CO/4-5, CAT/C/UKR/CO/6, CAT/C/LUT/CO/3);
2. The Government and the Parliament should take concrete steps to improve conditions in prisons and detention facilities in line with the Convention against Torture and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Article 16 of UNCAT and Article 3 of the European Convention on Human Rights. In that regard, the State party should consider not only the construction of new prison facilities, but also the wider application of alternative non-custodial sentences, such as electronic monitoring, parole and community service.
3. The Department of Penitentiary Institutions should implement the recommendations given by the CPT after its visit in September 2015 like reducing the levels of violence and reducing the overcrowding in cells;
4. The Government of the Republic of Moldova should increase the budget allowances for prisoners' food by at least 30%;
5. The Ministry of Justice and the Ministry of Health, Labor and Social Protection should follow the recommendations given by UN Committee for Prevention of Torture and the recommendations made under the UPR and to develop a public policy ensuring the transfer of health workers subordinated to the Department of Penitentiary Institutions under the subordination of the Ministry of Health;
6. The Government should reduce overcrowding, particularly through the wider application of non-custodial measures as an alternative to imprisonment, in the light of the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules);
7. The Government should ensure that adequate somatic and mental health care is provided for all persons deprived of their liberty
8. The Government should ensure that all incidents of death in custody are promptly, effectively and impartially investigated and, on a finding of criminal responsibility, lead to a penalty proportional to the gravity of the offence.
9. The Government should ensure living space in accordance with existing international norms;
10. The Government should provide appropriate and effective medical care of prisoners and detained persons, including adequate medicines;
11. The Government should enhance steps to reduce inter-prisoner violence, including that resulting from the active approval and solicitation of prison officials, by launching prompt,

- impartial, thorough and effective investigations into all allegations of such incidents, and prosecute and punish those responsible;
12. The Government should ensure the recruitment of qualified medical personnel;
 13. The Government should improve the quality and quantity of food and water provided to detainee;
 14. The Government should ensure that all reports of excessive use of force by prison staff are investigated promptly, effectively and impartially by an independent mechanism with no institutional or hierarchical connection between the investigators and the alleged perpetrators;
 15. The Government should ensure that mothers detained with their babies are placed in more appropriate settings;
 16. The Government should increase the budget allocated for health care in penitentiary institutions, including by developing the capacities and the infrastructure of the Pruncul Prison Hospital.
 17. The Department of Penitentiary Institutions should use in practice the provisions of Bangkok Rules regarding the women in detention by reducing the causes that contribute to the imprisonment of women (for example the problem of domestic violence), it also must consider the specific needs of women and the obligation to give priority to non-custodial sentences for women; to develop rehabilitation programs for convicted women victims of violence;
 18. The Ministry of Justice and the Department of Penitentiary Institutions should ensure that the Government is implementing the principles and recommendations of the Kyiv Declaration on Women's Health in Prison;
 19. The Department of Penitentiary Institutions should ensure that the infrastructure in penitentiaries is adapted to persons with mobility impairments according to the international standards and that these people benefit of rehabilitation programs.
 20. Detention conditions and places of detention, including those for detention in isolation, should be thoroughly assessed by taking the necessary measures to minimize the destructive and degrading effect on the physical and mental health of detainees;
 21. It is important for the Republic of Moldova to pay more attention to detention in isolation, which should become a separate study object for a detailed analysis of the situation, taking steps to respect all procedural safeguards and the rights of individuals from state custody. Also, the conditions and places for detention in isolation must be kept constantly within the scope of the National Mechanism for Torture Prevention.
 22. It is necessary to change the paradigm and approach of the penitentiary system by switching from "closed", to "open" practice, from "punishment" to correctional, educational, resocialization and rehabilitation, focusing on cooperation based on the rights and needs of torture victims, on outcomes of assistance and on impact;
 23. The medical and psychosocial services in the penitentiary system require a greater degree of independence from the prison administration and should be subordinated only directly to the DIP, if not to the Ministry of Health, which should be more involved in health care persons in detention;

VIII. DOMESTIC VIOLENCE

A. General Issues

1. Promo-LEX and RCTV Memoria appreciates the fact that during the reporting period the authorities have taken some actions in the field of preventing and combating domestic violence by completing and amending certain legislative acts in this field and by adopting a national action plan in the field of human rights .
2. Also, a series of decisions and acts aimed to explain the mechanism of implementation of legislation on domestic violence were adopted:
 - Decision of the Plenum of the Supreme Court of Justice No.1 dated 28.05.2012 which provides for recommendations to judges on how to examine applications for protection orders⁷³.
 - Order no.155 of the Ministry of Health of the Republic of Moldova from 24.02.2012 providing for the Guidelines of intervention of medical institutions in cases of domestic violence with reference to the actions of medical workers in cases of domestic violence.
 - Order no. 22 from 09.02.2012 issued by the Ministry of Labour Social Protection and Family, which provides for the Instructions on actions to be taken by the sections/divisions of social assistance, law enforcement bodies and medical institutions in cases of domestic violence.
 - Order no.105 from 02.08.2012 issued by the Ministry of Labour Social Protection and Family, approving a set of instructions for local authorities on how to enforce their obligations in relation to preventing and fighting domestic violence by establishing cooperation agreements with local social assistance bodies, educational institutions and health protection institutions.
 - Order No. 275 from 14.08.2012 issued by the Ministry of Internal Affairs, approving the Instruction on response of police to prevent and combat cases of domestic violence.
3. Despite this comprehensive normative framework, Promo-LEX Association found a number of key problems related to the implementation of legal provisions on preventing and combating domestic violence. These problems mainly refer to the refusal to issue restraining orders in cases of psychological violence, uneven practices of criminal prosecution for acts of domestic violence, uneven application of the law and the perpetrators' impunity to the violation of restraining orders.

B. Problems Related to Restraining Orders in Cases of Psychological Violence

4. The national legislation regulates five forms of domestic violence, including psychological violence⁷⁴. According to Article 117 of the Civil Procedure Code, the factual elements established by the experts' conclusions shall be admitted as evidence in civil cases. At the same time, as per *Law No 1086/2000 on Judicial Expertise*, the technical-scientific and forensic findings do not regulate psychological judicial expertise, and psychologists are not accredited as judicial experts⁷⁵. Accordingly, in order to prove that he/she is a victim of psychological violence, the person must present evidence that it is difficult to acquire a priori, if not impossible. The psychiatric institutions issue *de facto* reports on psychiatric and psychological examination, which focus on the psychiatric rather than psychological aspects. In practice, psychologists who provide services to domestic violence victims may issue only psychological reports, which, according to the law, are not mandatory for law enforcement bodies. This can be used only as indirect evidence.

73 "Hotărârile explicative ale Curții Supreme de Justiție." http://jurisprudenta.csj.md/db_hot_expl.php. Accessed 9 Oct. 2017.

74 Article 2 of Law No 45 of 01.03.2007 on Preventing and Combating Domestic Violence.

75 "Forensics_Feasibility_External_Audit_Report_EN - UNDP in Moldova." 1 Jul. 2011, http://www.undp.md/publications/Forensics_Feasibility_External%20Audit_Report_EN.pdf. Accessed 9 Oct. 2017.

5. As a result, although the national legislations classifies psychological violence as a form of domestic violence, the State provides neither practical and affordable solutions to victims, nor possibilities for an efficient investigation of complaints by law enforcement bodies.

C. Uneven Application of the Legislation in Cases of Restraining Order Violation

6. The national legal framework stipulates a fine for perpetrators who violated the restraining order for the first time and criminal liability for perpetrators who violated the restraining order for the second time, but enforcement of these sanctions is problematic.
7. In this respect, the competence of determining violation of protective measures and conducting administrative offence proceedings belongs to bailiffs. At the same time, the policeman and social worker should ensure execution and oversight over the domestic violence restraining orders, except for measures obliging the perpetrator to support dependent minor children and/or compensate the damages caused by violence, which shall be enforced by the bailiff.
8. In practice, in cases of protective measures violation, the bailiff, though obliged to initiate an administrative proceeding, refuses to develop the administrative offence protocol at the request of the policeman, because the procedure does not stipulate execution of the restraining order.
9. Another aspect that deals with the sanctioning of perpetrators for violation of restraining order is the procedure of case examination in courts of law. When official examiners send the protocols to the court of law for review, this process can take along time as there are no timeframe for the examination of such cases. Thus, if the perpetrator repeatedly or continuously violates the protective measures, he/she cannot be brought to criminal liability in the absence of a final judgement on administrative sanctioning.

D. Uneven Practices of Criminal Prosecution for Acts of Domestic Violence

10. It was determined that courts of law apply in a different way the provisions of criminal and administrative offence legislations in respect to domestic violence cases, which are resulting in slight or negligible bodily injury, and to psychological violence. Although Article 201/1 (1) of the Criminal Code⁷⁶ is applied correctly in some cases and the perpetrators are held liable, there are still such practices when authorities apply administrative sanctions either from the very beginning when ascertaining the offence, or subsequently, by terminating the criminal proceedings and bringing to administrative liability.
11. In general, Articles 69 and 78 of the Code of Administrative Offences⁷⁷ are applied in cases of domestic violence acts resulting in minor injuries, physical/psychical pain or psychical violence acts. Note that Article 69 of the Code of Administrative Offences regulates the injuria, for example words or actions humiliating the honor and dignity of the person. At the same time, Article 78 of the Code of Administrative Offences regulates the deliberate slight bodily injury, maltreatment, beating and other violent actions that cause physical pain. In this context, the perpetrators are not held liable for domestic violence acts and while determining the sanctions, no specific features of this phenomenon are considered, respectively the punishment for these actions is low and the social impact is missing.

76 "Codul penal." <http://lex.justice.md/md/331268/>. Accessed 9 Oct. 2017.

77 "CONTRAVENȚIONAL." <http://lex.justice.md/md/330333/>. Accessed 9 Oct. 2017.

12. Law no. 45 on the Prevention and Fight against Domestic Violence does not require the government to fund shelters for victims of domestic violence⁷⁸. Moreover, in 2012 the Ministry of Labor, Social Protection and Family began allocating funding to maternal centers but that funding was contingent on maternal centers becoming public institutions. Maternal centers thereby lost their independent status as NGOs. At present, there is no legal mechanism that would enable the state to fund shelters operated solely by NGOs. A recent accreditation framework contains many technical requirements that may constitute barriers for a civil society-sponsored shelter.
13. The United Nations standards recommend that one dedicated shelter should exist for every 10,000 citizens. The population of Moldova is 3,545,000. There are only approx. 106 shelter beds, including maternal centre beds, which are not dedicated for victims of domestic violence - for the entire country. There is only one NGO shelter in Moldova dedicated to the needs of victims of domestic violence, and its capacity has been limited due to lack of financial support. The eight maternal centres in Moldova primarily serve mothers with very young children who have no place to live, regardless of whether they are victims of domestic violence. There is no common standard of assistance for domestic violence victims in the maternal centres; services available for domestic violence victims therefore vary by location. And if NGOs or maternal centre shelters are full, victims of domestic violence are referred to community centres, centres for homeless people, or to other institutions, all of which lack services for and the capacity to counsel victims of domestic violence.
14. Victims of domestic violence are not provided with sufficient legal assistance. Law no.45 on the Prevention and Fight against Domestic Violence states that victims may receive legal assistance pursuant to the Law on state-guaranteed legal aid, but that specific Law restricts critical access to legal assistance for victims of domestic violence as it does not apply to victims who are applying for a protective order before having started a civil or criminal case because it requires victims to be a party to a legal case. Moreover, financial eligibility requirements are included for access to legal aid. United Nations standards state that free legal assistance in all legal proceedings should be available to victims of violence to ensure access to justice and avoid secondary victimisation. In addition, paralegals in Moldova are not part of the National Referral System, a primary source of assistance for victims of domestic violence. The few NGOs that provide free legal assistance are concentrated in urban areas.
15. The problem of violence against women is deeply rooted in gender stereotypes, gender-based discrimination and social norms that inhibit a woman's access to rights and freedoms. Efforts to combat such violence must focus on prevention, protection and rehabilitation of victims with appropriate documentation of their cases. Prevention of and quick response to domestic violence is one of the most important aspects of the regulatory framework that needs to be changed. This is an important responsibility of government, police, social services, and civil society. By seeking guidance from and partnering with civil society organizations working on the issue, the government can take the necessary actions to prevent cases of domestic violence and make efforts to protect and assist victims.
16. Insufficient awareness of the forms of domestic violence and obligations of responsible authorities affect the correct identification, qualification and punishment of cases of domestic violence. According to a report issued by Promo-LEX Association, social workers and police officers are not fully aware of the provisions of the Law on Prevention and Combating of Domestic Violence: 44% of the social workers interviewed by Promo-LEX, and every 5th police officer is not aware of his duties and obligations under the Law and

78 "cu privire la prevenirea și combaterea violenței în familie." <http://lex.justice.md/md/327246/>. Accessed 9 Oct. 2017.

how to respond to cases of domestic violence . Additionally, the level of understanding of specific forms of domestic violence on behalf of relevant authorities is also problematic: 44% of social workers, 40% of police officers and 75% of judges interviewed by Promo-LEX could not provide an explanation of the term psychological violence, while 56% of social workers and 63% of prosecutors could not provide an explicit definition of what sexual violence means. Further on, 20% of police officers and 38% of prosecutors could not provide a definition of economic violence. Similarly, the judges also do not have a well-defined opinion on economic violence. The only type of violence univocally defined by all actors involved in prevention and combating domestic violence is physical violence.

17. The victims of domestic violence from Transnistrian region do not yet have access to an effective protection ensured by the constitutional authorities. Although de jure persons from Transnistria can ask for protection and have a restraining order issued by the national institutions of the Republic of Moldova, such measures cannot be provided de facto because of the lack of control over the Transnistrian region by the constitutional authorities. As long as the breakaway administration does not provide any mechanism to protect domestic violence victims, and the constitutional authorities do not have any control over the respective region, the victims of domestic violence are subjected to a permanent risk of suffering from violence - for which the perpetrators will not be held liable according to the international standards.
18. At the same time, we note that domestic violence victims from the Transnistrian region have the de jure possibility to contact the placement centers under the control of constitutional authorities in order to ask for assistance and protection. The victims can seek for help in centers located near Causeni or Drochia, or in centers from Chisinau Municipality. But this is not an easy but rather a costly process, requiring frequent and expensive travels, which finally prevents victims from asking for such services.
19. Every fourth woman in the Transnistrian region (in relationship of marriage or cohabitation) was subjected to physical violence in the family. Nevertheless, the administration of the region does not recognize this as a social phenomenon and does not make efforts to combat and prevent it. In the first nine months of 2012, 134 victims of domestic violence who called the regional hotline for help were not provided protection from the legal authorities. The Moldovan legal authorities don't make any efforts either as they have no access to this area .
20. Despite the fact that during the reporting period the authorities have taken some actions in the field of preventing and combating domestic violence, Promo-LEX Association found a number of key problems related to the implementation of legal provisions on preventing and combating domestic violence. Psychologists do not have the status of legal experts and their conclusions set out in psychological assessment reports are not regarded as judicial expert reviews, being accepted with reluctance by authorities. Thus, the victims of psychological violence cannot yet benefit from protective measures. The bodies in charge of documenting and ascertaining the violation of protective measures apply unevenly the legislation and perpetrators are not sanctioned due to purely procedural reasons. Authorities continue applying administrative norms rather than Article 2011 of the Criminal Code in cases of domestic violence. The number of placement centers for domestic violence victims is still insufficient, and the existing ones are underfunded due to the lack of a clear mechanism for funds allocation. As a result, the victims of domestic violence do not benefit from sufficient and qualitative assistance. Authorities have failed so far to secure state-guaranteed legal aid for domestic violence victims during the procedure of obtaining a restraining order.

21. However, it should be noted that since September 2016 the situation has changed, some of the problems encountered during the reporting period have been resolved by the amendments to 12 normative acts. Since 2013, the State has been working on amendments that would harmonize national legislation with provisions of the Council of Europe Convention on preventing and combating violence against women and domestic violence. After a lengthy and difficult three year process, on 28 of July 2016, the amendments were adopted by the Parliament and on 16 of september 2016 the Law was published in the Official Monitor.

RECOMMENDATIONS:

1. Prevent and eradicate all forms of gender based violence, in particular, domestic violence;
2. Improve judicial practices in cases of domestic violence;
3. Investigate and prosecute allegations of domestic violence;
4. Strengthen public awareness-raising activities to combat violence against women and gender stereotypes;
5. Guarantee that all victims benefit from protection and have access to sufficient and adequately funded medical and legal aid, psychosocial counselling and social support schemes with taking into account their special needs and appropriate documentation of their cases in order to facilitate their access to justice;
6. Provide access to safe shelters;