



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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**Committee against Torture**

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**Written replies by the Government of Moldova to  
the list of issues (CAT/C/MDA/Q/2) to be taken up  
in connection with the consideration of the second  
periodic report of Moldova (CAT/C/MDA/2)\***

[14 September 2009]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

## **List of issues to be taken up in connection with the consideration of the second periodic report of Moldova (CAT/C/MDA/2)**

### **Articles 1 and 4**

1. The purpose of the penalties imposed for inhuman treatment and violence is to restore social balance, compel offenders to recognize the gravity of their acts and ensure their return to and integration in society. In addition, the imposition of a penalty of imprisonment is intended to prevent the commission of new offences, first and foremost by perpetrators of violations of this type (social prevention); this is in keeping with the goals of criminal legislation.
2. When the lengths of the penalties for this kind of offence — as envisaged in article 3 of the European Convention on Human Rights (“No one shall be subjected to torture or to inhuman or degrading treatment or punishment”) — were set, the principles of humanity and reform of the convicted person were taken into account.
3. Thus, in determining the punishment for the above-mentioned offence, the court will give consideration to the circumstances in which it was committed and the character of the perpetrator.
4. Offences are categorized as minor, moderate, serious, especially serious or exceptionally serious, depending on the severity of the penalty imposed for the act and in accordance with article 16 of the Criminal Code.
5. The offence specified in article 309/1, paragraph 1, is categorized as moderate.
6. The penalties imposed for inhuman treatment, also a moderate offence, are commensurate with those imposed for other offences in the category.
7. Conditional punishment entails discharging the convicted person from serving his or her sentence.
8. Article 90 of the Criminal Code stipulates that if, when imposing a penalty of imprisonment for a term of up to five years for the intentional commission of an offence or of up to seven years for the commission of an offence through negligence, the court, taking into account the circumstances of the case and the character of the perpetrator, comes to the conclusion that the enforcement of the penalty would serve no purpose, it may issue a decision suspending the sentence; the decision must indicate the reasons for the suspended sentence and the length of the probation period, which may be from one to five years. In such cases, the court hands down a judgement providing for the non-enforcement of the penalty imposed on condition that the convicted person does not commit any new offences during the probation period and proves himself or herself worthy of the court’s trust through exemplary behaviour and honest labour.
9. Article 4 of the Constitution states that the constitutional provisions on human rights and freedoms are to be understood and applied in accordance with the Universal Declaration of Human Rights and the covenants and other treaties to which the Republic of Moldova is a party. In article 8, the Republic of Moldova pledges to respect the Charter of the United Nations and the treaties to which it is a party and to observe in its relations with other States the universally recognized principles and norms of international law.
10. The legal basis for the undertaking to observe the principles and norms of international law is the primacy of these norms over domestic law. Thus, it is possible *de jure* for the Convention against Torture to be applied directly in the Moldovan courts.

## Article 2

11. In response to the supplementary questions concerning the second periodic report of the Republic of Moldova on implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, we wish to inform the Committee that officials of the Ministry of Internal Affairs have taken specific measures to uncover cases of unjustified use of physical force by police officers in the performance of their duties, torture and restriction of complaints and to ensure strict observance of the principles of objectivity and confidentiality and human rights and freedoms in the conduct of investigations.

12. (a) We wish to emphasize that the first step towards fulfilling the pledge made to transfer responsibility for places of temporary detention is the application of articles 323 and 324 of the Enforcement Code, under which persons subject to pretrial detention must be held in penitentiary institutions. However, places of temporary detention, along with their staff and technical equipment, remain entirely under the jurisdiction of the Ministry of Internal Affairs for the custody of persons subject to administrative detention and persons detained pursuant to article 166 of the Code of Criminal Procedure.

13. Appropriate conditions have yet to be established in semi-open penitentiary institutions for detention under the initial regime in accordance with chapter XXIV of the Corrections Code (letter No. 2/3374 from the Department of Penitentiary Institutions, Ministry of Justice, of 5 August 2009).

14. Given the pressing nature of the problem, it was initially decided to carry out the transfer of responsibility for places of temporary detention from the Ministry of Internal Affairs to the Ministry of Justice in the context of the implementation of the Plan of Action for Human Rights for 2004–2008 (chap. 7, para. (2)), approved by decision No. 415 of the Parliament of the Republic of Moldova of 24 October 2003. Subsequently, owing to objective reasons, including a lack of State budget funds, the transfer did not take place.

15. It was decided to build eight remand centres, as provided for in the penitentiary system reform policy and the plan of action for the implementation of the policy for 2004–2020, approved by Government decision No. 1624 of 31 December 2003.

16. The issue was mentioned as a priority in discussions between the Ombudsmen and the Council of Europe Commissioner for Human Rights, Mr. Thomas Hammarberg; the head of the parliamentary delegation on cooperation between the European Union and the Republic of Moldova, Ms. Marianne Mikko; and representatives of the United Nations Development Programme (UNDP), including Mr. Claude Cahn, human rights adviser at the UNDP office in the Republic of Moldova.

17. From these negotiations it became clear that, initially, the Government must take responsibility for funding the building of the remand centres, but the possibility of financial support from the international community will be discussed in further talks. Construction of the first remand centre was to have started in early 2008, but the process is still getting under way.

18. The Ministry of Justice has expressed its readiness to assume responsibility for pretrial custody by means of the transfer of places of temporary detention from the jurisdiction of the Ministry of Internal Affairs. It would be essential, however, to ensure that their administrative structures were separate from those of police stations.

19. In this regard, it should be noted that, without the observance of minimum requirements in respect of detention, the notional transfer of responsibility for pretrial custody from the Ministry of Internal Affairs to the Ministry of Justice will not resolve the

substantive problem of ensuring appropriate conditions of detention and eradicating the use of torture and inhuman or degrading treatment.

20. The construction of remand centres, however, will guarantee proper and continuous respect for human rights by providing minimum conditions of detention as envisaged in the relevant European standards.

21. This activity, which is provided for in the penitentiary system reform policy and the Plan of Action for Human Rights, was included in the medium-term expenditure plan for 2010–2012 (priority No. 1: Strengthening of a democratic State based on the rule of law and human rights) and the list of priorities for European integration.

22. The Department of Penitentiary Institutions launched an invitation for bids, as a result of which Urbanproiekt drafted a remand centre blueprint. As at March 2008, the company was reporting to the board of construction project control and evaluation of the Ministry of Construction and Territorial Development.

23. In addition, on 29 June 2007 the Government approved decision No. 738 amending and supplementing Government decision No. 1624 of 31 December 2003 to bring the penitentiary system reform policy into line with the new provisions of the legislation on enforcement by including a section on remand centres.

24. It should be observed that the development of the blueprint is now in its final stage, involving verification and assessment by the board of construction project control and evaluation of the Ministry of Construction and Territorial Development.

25. (b) According to the State party's report (para. 9), the Code on Administrative Offences was reviewed by the Parliament in 2007. Please inform the Committee whether a new Code on Administrative Offences has been adopted and, if so, whether the practice of "administrative police detention" was abolished, as recommended by the Committee in its concluding observations on the State party's initial report (para. 6 (d)). If the practice of "administrative police detention" was not abolished, please provide information on the measures taken to ensure that the fundamental safeguards against torture and ill-treatment of detainees subjected to administrative police detention are available in practice.

26. The new Code of Offences was approved by Act No. 218-XVI of 24 October 2008 and entered into force on 31 May 2009. The Code provides for imprisonment as an exceptional penalty, imposed, as a rule, for the commission of an act which jeopardizes or poses a real threat to a person's health or physical integrity.

27. Moldovan law stipulates that, when a person is imprisoned for the commission of an offence, the application of other legislative provisions to the person's detriment is prohibited, as is the application by analogy of the law on offences. No one may be subjected to torture or cruel, inhuman or degrading treatment or punishment (article 5 of the Code of Offences).

28. Code of Offences No. 218-XVI was adopted on 24 October 2008 and entered into force on 31 May 2009.

29. Article 433 of the Code states that arrest consists in the short-term restriction of a natural person's liberty. It is imposed in the following circumstances: in the case of blatant offences the penalty for which under the Code is imprisonment; where the identity of a person against whom proceedings have been instituted in connection with an offence cannot be established and all measures to that end have been exhausted; and in the case of offences which, in accordance with the Code, trigger the application of a security measure, specifically deportation. Under article 376 of the Code, a person subject to liability for the commission of an offence may only be taken into custody or have coercive measures imposed on him or her in exceptional cases and providing that his or her dignity is

respected. Thus, the period of detention may not exceed three hours. The detained person must be informed promptly, in a language he or she understands, of his or her rights, the reasons for the arrest, the circumstances of the case and the actions imputed to him or her. Where a person is detained illegally or the reasons for his or her detention no longer obtain, that person must be released without delay. During proceedings, no one may be subjected to physical or mental coercion, and the use of any actions or methods which may jeopardize the life or health of a person, even with consent, is prohibited. In addition, under article 378, section 4, of the Code, where a person is liable to imprisonment for the commission of an offence and has no defence counsel, counsel must be appointed for him or her within no more than three hours of arrest. Moreover, a person against whom proceedings have been instituted has the right to a public defender within three hours of arrest if the penalty for the offence committed is imprisonment; also, the person may inform two people of his or her choosing of his or her arrest and the place of detention.

30. (c) The purpose of preventive detention is to forestall the evasion of criminal liability.

31. Act No. 1226-XIII of 27 June 1997 on Preventive Detention was repealed on 24 December 2004, when the Enforcement Code came into force.

32. **Preventive detention** is institutional deprivation of liberty imposed on the basis of a final reasoned decision of a judicial body (or a judge in the case of criminal prosecutions), adopted in accordance with the Code of Criminal Procedure. **The purpose of such detention** is to prevent a suspect, accused person or defendant from obstructing the conduct of criminal proceedings or the enforcement of a sentence. Preventive detention is used as an exceptional measure, when other preventive measures will not achieve the aforementioned purpose. Under article 176 of the Code of Criminal Procedure, preventive detention may be imposed if there are sufficient reasonable grounds for suspecting a person of committing an offence punishable under the law by imprisonment for a period of more than two years or an offence punishable under the law by imprisonment for a period of less than two years if the suspect, accused person or defendant has concealed himself or herself from prosecutors or from a judicial body, impeded the establishment of the truth in criminal proceedings or committed other offences.

33. Preventive detention may also be imposed by a judicial body if the suspect, accused person or defendant has no permanent residence in the Republic of Moldova, if he or she cannot be identified, or if he or she has breached the conditions of other preventive measures applied to him or her. The judicial body considers relevant and sufficient circumstances relating to the case with a view to determining whether there are grounds for imposing preventive detention and establishing its duration. In accordance with the legislation currently in force, preventive detention and preventive custody are one and the same.

34. A person may not be held in preventive detention for more than 30 days before his or her case is referred to a judicial body; this period may be extended, if necessary, by another 30 days (article 186, sections (2) and (5), of the Code of Criminal Procedure).

35. Accused minors may be held in preventive custody for up to four months (article 186, section (4), of the Code of Criminal Procedure).

36. In exceptional cases, depending on the complexity of the criminal case and the gravity of the offence, and also where there is a risk that the accused will abscond, pressure witnesses, or destroy or tamper with evidence, preventive custody may last for:

(a) Up to 6 months, if the person is accused of committing an offence for which the penalty under law is imprisonment for a term of up to 15 years;

(b) Up to 12 months, if the person is accused of committing an offence for which the penalty under law is imprisonment for a period of up to 20 years or life imprisonment (article 186, section (3), of the Code of Criminal Procedure).

37. (d) The officials of the criminal prosecution institutions comply with the standards specified in articles 64, 69 and 169 of the Code of Criminal Procedure, which are guaranteed by the Ministry of Internal Affairs and prosecutor's offices. The appointment of defence counsel is provided for in Act No. 198-XVI on State Legal Aid. In addition, the Code of Criminal Procedures stipulates legal safeguards for suspects, accused persons and defendants in criminal proceedings.

38. The observance of suspects' rights and freedoms is monitored both internally, through checks conducted by the Central Criminal Prosecutions Department of the Ministry of Internal Affairs, and externally, through prosecutorial supervision of criminal proceedings. A number of measures have been taken to help ensure that suspects are informed promptly of their rights: there has been wide publicity within the criminal prosecution bodies, and all persons in this category are now provided with leaflets setting out their rights. In addition, the procedure for appointing a lawyer is laid down in Act No. 198-XVI of 26 July 2007 on State Legal Aid, while the Code of Criminal Procedure contains provisions to protect the legal safeguards for suspects, accused persons and defendants in criminal proceedings.

39. A person has the *right to a lawyer* from the moment that he or she is declared a suspect or from the time of his or her arrest. Thus, article 64 of the Code of Criminal Procedure states that a person has the right to receive confidential legal advice from defence counsel from the moment that he or she is declared a suspect and to meet in private with defence counsel, with no restriction as to the number or duration of such meetings.

40. Furthermore, the State guarantees the right to a defence to all persons, irrespective of their status in proceedings. Article 17 of the Code of Criminal Procedure provides that, throughout criminal proceedings, the parties (suspects, accused persons, defendants, victims, civil plaintiffs and civil respondents) have the right to be assisted by defence counsel or to be represented by defence counsel or lawyers of their choosing, with legal aid being guaranteed by the State.

41. As to the legal safeguards provided for detainees in articles 69 and 167 of the Code of Criminal Procedure, we wish to point out that article 167 has been supplemented by Act No. 89-XVI of 24 April 2008; the new provisions have improved the guaranteeing of these safeguards. Specifically, following a person's arrest, the criminal prosecution body must request the local office of the National Council for State Legal Aid or persons authorized by the office to nominate a duty lawyer to provide urgent legal assistance. The detained person is informed promptly of the reasons for his or her arrest; the lawyer chosen by him or her or the duty lawyer providing urgent legal assistance must, however, be present. The criminal prosecution body is obliged to ensure that the detained person can meet privately with counsel before the first hearing.

42. Regarding the right of detainees to request to be examined by an independent doctor, domestic legislation (article 5, paragraph (e), of Act No. 263-XVI of 27 October 2005 on the Rights and Responsibilities of Patients) guarantees the right of patients to a second medical opinion and to obtain recommendations from other specialists at their own wish or at the request of their legal representative or a close relative. A similar guarantee is provided in article 251, section (4), of the Enforcement Code, which states that convicted prisoners may use the services of a private doctor at their own expense. Furthermore, for the purpose of uncovering cases of torture, the Enforcement Code stipulates (in article 251, section (3)) the duties incumbent on a doctor who, on performing a medical examination, observes signs of torture and the duty of the administrations in places of detention to inform

the Parliamentary Advocate of detainee deaths owing to the use of violence. Convicted prisoners have the right to request that they be examined in the place of detention, at their expense, by a doctor of their choosing not employed in the penitentiary system or by a forensic doctor. The findings of the independent doctor are entered in the prisoner's medical record, while the forensic report is annexed to the record once the prisoner has read and signed it.

43. With regard to the issue of status, the Code of Criminal Procedure in article 64, section 2, paragraph (15), and article 66, section 2, paragraph (18), establishes the right of suspects, accused persons and defendants to submit requests, including for independent medical assistance.

44. In addition, article 187, paragraph (2), of the Code obliges the administration responsible for the custody of detainees and remand prisoners to guarantee their access to independent medical assistance.

45. In this connection, any concerns identified are investigated by officials and referred to the competent authorities where appropriate.

46. Frequently, the investigations fail to confirm that the alleged victims in the criminal cases have been subjected to ill-treatment by police officers. No evidence is produced to show that the officers are guilty of using force, physical violence or torture against the persons concerned. In such instances, the prosecutor's office halts the criminal prosecution on the grounds of lack of evidence that an offence has been committed.

47. Statistical data:

48. In 2008, 34 complaints from citizens of ill-treatment by police officers were examined (18 in the first half of 2009). In 2 cases, administrative offences were officially recorded; 12 cases (4 in the first half of 2009) were referred to the prosecution bodies. Of these, five were criminal cases. Instructions were issued to initiate criminal investigations in four cases, and in the remaining case administrative proceedings were brought against one employee. Following the examination of the allegations made in the complaints, three internal affairs officers were dismissed, four had disciplinary measures taken against them and two appeared before the Conduct Board.

49. According to the information available as at 27 July 2009, 97 complaints of ill-treatment by police officers were received in connection with the events of 7 April 2009. In 48 cases, citizens reported that they had been subjected to ill-treatment in the street and in 49 cases at police stations. To date, prosecutor's offices have registered 23 category R-1 cases, 8 category R-2 cases and 12 criminal cases.

50. In addition, during the examination of the materials, 54 draft decisions not to bring criminal prosecutions were prepared. Of these, 35 have been handed down, while 19 are being checked.

51. Furthermore, following the forensic medical examination of citizens who reported sustaining bodily injuries, findings were issued in 60 cases. There were 7 findings of moderate bodily injury, 9 of minor bodily injury and 26 of bodily injury not causing harm to health. In a further 14 cases, no bodily injury was identified, and in 4 cases additional medical examinations were requested.

52. (e) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 18 December 2002, was signed by the Republic of Moldova on 16 September 2005, ratified by Act No. 66 of 30 March 2006 and has been in force for the Republic since 24 July 2006. Article 17 of the Protocol states that each State party must maintain, designate or establish,

at the latest one year after the Protocol's entry into force, one or several independent preventive mechanisms for the prevention of torture at the national level.

53. To comply with the Protocol, on 26 July 2007 the Parliament passed Act No. 200 amending and supplementing Act No. 1349 of 17 October 1997 on the Parliamentary Advocate so as to endow the Advocate with the powers of a national mechanism for the prevention of torture.

54. In addition, an 11-member Consultative Council was set up to provide advice and support to parliamentary advocates on carrying out the duties of a national preventive mechanism.

55. In accordance with article 23/1 of Act No. 1349, in order to protect individuals against torture and other cruel, inhuman or degrading treatment or punishment, the Parliamentary Advocate, members of the Consultative Council and other persons accompanying them make regular visits to places where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent. For the purposes of the Act, deprivation of liberty means any form of confinement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority, whether as a punishment, a preventive measure, a protective measure, owing to their dependence on the assistance provided in such a setting or for any other reason.

*The goals of the national preventive mechanism are as follows:*

56. The periodic review of the treatment of persons detained, either by virtue of an order given by a public authority or at its instigation or with its consent, with a view to strengthening the protection of such persons against torture and other cruel, inhuman or degrading treatment or punishment, where necessary.

57. The making of recommendations to departments or officials in order to improve conduct towards detained persons and conditions of detention, and to correct mistreatment.

58. The investigation of reports of cases of torture or other cruel, inhuman or degrading treatment or punishment, either in the course of its duties or at the request of any individual.

59. The prompt uncovering of cases of torture and other cruel, inhuman or degrading treatment or punishment and of other violations that infringe on the rights of detained persons.

60. The submission of proposals for the refinement of current legislation protecting citizens' rights and freedoms.

61. The drafting and publication of semi-annual and annual reports on the visits undertaken.

62. The making of recommendations to enhance the activities of the national preventive mechanism.

63. The establishment of cooperation with government departments and national and international non-governmental organizations working in the area of torture prevention and having a mandate in the sphere of activities of the national preventive mechanism.

64. The pursuit of cooperation and constant interaction with the Subcommittee on Prevention of Torture.

65. The Parliamentary Advocate is responsible for the activities of the national preventive mechanism, while the members of the Consultative Council organize their own work. The Council's regular meetings take place weekly on Wednesdays, beginning at 8.30 a.m., in the building of the Centre for Human Rights.



66. These arrangements are based on the need to ensure that the Council operates in a smooth and organized manner and is thus able to promote the efficient and fruitful functioning of the national preventive mechanism as a whole and to give regular consideration to the treatment of persons held in penitentiaries, places of detention and pretrial detention and in social and medical establishments for the mentally ill.

67. In order to fulfil its duties, the Consultative Council has divided itself into four peripatetic groups. Each group is tasked with carrying out preventive visits and/or inspections, which may take place at any institution. In addition, officials of the Centre for Human Rights and of its local offices in Bălți, Cahul and Comrat are invited to take part in the preventive visits.

68. Furthermore, a timetable has been established for the visits to ensure that at least two are carried out each week. At the same time, each group may carry out additional visits to any place of detention it chooses. In the first half of 2009, the parliamentary advocates, officials of the Centre for Human Rights and members of the Consultative Council made 87 visits, compared with 60 during the whole of 2008.

69. Within 72 hours of each visit, a report is completed setting out all the established facts and making recommendations concerning improvements to conditions of detention and further action to be taken by the parliamentary advocates in response to petitions from the relevant bodies.

70. Under article 39 of the regulations on the Centre for Human Rights and article 35 of the regulations on the organization of the work of the Consultative Council, the expenses incurred in carrying out visits to places of detention, including payments to experts, are borne by the Centre.

71. The Ministry of Internal Affairs organizes and conducts unannounced visits to places of detention under its jurisdiction.

72. The Ministry is responsible for 38 places of temporary detention: 36 in local police stations, 1 at the General Police Commissariat in Chişinău and 1 in the Ministry's own Department of Operational Services. Seven of these facilities (Ialoveni, Străşeni, Criuleni, Ştefan-Vodă, Donuşeni, Glodeni and Ciadâr-Lunga) are no longer operational.

73. Optimal sanitary conditions have been established, and exercise yards and medical stations have been built for detainees.

74. In addition, appropriate facilities have been provided to enable detainees to meet with their lawyers in confidence, and without restriction as to the number and duration of the meetings. Measures have been taken, in conjunction with the local authorities, to improve detainees' diets.

75. Currently, each place of temporary detention has:

- (a) A room for interviews and visits;
- (b) A toilet and washbasin;
- (c) A room for preparing food, provided with an electric cooker, a kettle and a cupboard with three compartments for dish-washing equipment;
- (d) Storage for detainees' personal effects;
- (e) A washroom fitted with a bathtub and shower;
- (f) A steam disinfection room;
- (g) A medical station;
- (h) An exercise yard.

76. Detainees are guaranteed at least one hour of exercise per day, and minors two hours.

77. Detainees are held in cells lit with natural light and providing a minimum of 4 square metres per person. Pregnant women and women with children are held in well-lit cells offering better conditions.

78. Inspections of places of temporary detention are undertaken by the Centre for Human Rights and other organizations working in this area.

79. (f) The Department of Penitentiary Institutions takes numerous measures to prevent cases of sexual violence against arrested and detained persons.

80. To this end, it has drafted and sent to all penitentiary institutions directive No. 12/618s of 28 November 2008 in order to inform the governors of such institutions about correct implementation of article 241 of the Enforcement Code and of departmental order No. 168 of 2 September 2005 on implementing the strategy to combat violence in penitentiaries.

81. Since 1 January 2007, one criminal case has been brought under article 171 of the Criminal Code (Rape) in which the victim was a female detainee.

82. In the same period, four criminal prosecutions have been instituted under article 172 of the Criminal Code (Sexual assault) for offences against the following detainees:

<i>Year</i>	<i>Victim</i>
2007	Shepeleva, Evgenia Petrovna, born on 19 April 1976, a Moldovan national with a prior conviction, sentenced under article 122, section 3, and articles 39 and 85 of the Criminal Code to 14 years' imprisonment to be served in a women's facility
2008	-
2009	Gritsyk, Andrei Vasilevich, born on 1 September 1987, a Moldovan national, sentenced under article 195, section 2, of the Criminal Code to 13 years' imprisonment to be served in a closed-type penitentiary  Drumya, Konstantin Mikhail, born on 23 August 1992, a Moldovan national, sentenced under article 171, section 3 (b), and article 79 of the Criminal Code to 3 years' imprisonment to be served in a juvenile facility  Bogos, Ruslan Viktor, born on 12 January 1992, a Moldovan national, sentenced under article 171, section 3 (b), and article 79 of the Criminal Code to 5 years' imprisonment to be served in a juvenile facility

83. In all the above-mentioned cases, internal investigations were conducted into the factors and circumstances that contributed to the commission of the offences, as well as to assess the penitentiary system employees.

84. Other measures taken by the Department to prevent sexual violence against detainees are as follows:

- (a) Separation of criminal ringleaders from other detainees;
- (b) Breaking up of groups of convicted prisoners displaying negative tendencies;
- (c) Tackling of hierarchies among convicted prisoners;
- (d) Denunciation of hardcore offenders who repeatedly breach prison rules;

(e) Transfer of convicted prisoners from one penitentiary institution to another.

85. Article 1, section (1), of Act No. 514-XIII of 6 July 1995 on the Organization of the Judicial System stipulates that the judicial branch is independent, separate from the legislative and executive branches and has its own powers, which it exercises through the courts in accordance with the principles and provisions of the Constitution and other enactments.

86. Under article 116 of the Constitution and article 11 of Act No. 544-XIII of 20 July 1995 on the Status of Judges, judges sitting in courts of law, including specialized courts, criminal court judges and appeals court judges are appointed to their posts by the President of the Republic at the recommendation of the Higher Council of the Judiciary from among candidates selected on the basis of a competitive examination. Candidates who are chosen in this manner and who meet the established requirements are appointed to a post of judge for an initial term of five years. On the expiry of this term, judges are reappointed and remain in their posts until they reach the upper age limit of 65 years. The President of the Republic may reject the candidate recommended by the Higher Council of the Judiciary — whether for appointment or reappointment — only once, and only then if there is incontrovertible proof that he or she is not suitable for the post, has broken the law or has breached the legal procedures for his or her selection or promotion.

87. If a recommendation is resubmitted by the Higher Council of the Judiciary, the President of the Republic issues a decree appointing the candidate concerned for a five-year term or until he or she reaches the upper age limit, within 30 days of receiving the resubmitted recommendation.

88. Judges' appointment for an initial term of five years is an important factor in encouraging them to develop their abilities, give proper consideration to cases and hand down reasoned decisions.

89. Ultimately, it is the Higher Council of the Judiciary, consisting for the most part of judges elected by a general meeting of their peers (5 out of 12 members), and the President of the Supreme Court of Justice who take the final decision on the appointment and reappointment of judges. This guarantees respect for the principle of judicial independence.

90. The Police Code of Ethics, approved by Government decision No. 481 of 10 May 2006, stipulates in article 16 that: "It is prohibited for police officers to use, incite or allow torture or inhuman treatment or punishment under any circumstances."

91. In accordance with article 10 of the Code of Criminal Procedure, during criminal proceedings, no one may be subjected to torture or cruel, inhuman or degrading treatment, be held in degrading conditions, or be compelled to participate in procedural actions that diminish human dignity. Article 4 of the Criminal Code and article 5 of the Code of Offences state that no one may be subjected to torture or cruel, inhuman or degrading treatment or punishment. Under article 40/1 of the Criminal Code, it is not an offence under criminal law to commit an act if directly ordered to do so by a superior, providing that the order was not manifestly illegal and the person who carried out the order did not know it was illegal. It is the person who gave the illegal order who is criminally liable for the commission of the act. Given that, under the Criminal Code, torture is an illegal act, the fact that a person used torture on the order of a superior would not absolve him or her of criminal liability.

92. The Disciplinary Statute for officials of the penitentiary system of the Ministry of Justice and the internal affairs agencies is governed by Government decisions Nos. 308 and 2 of 19 March 1998 and 4 January 1996, respectively. Pursuant thereto, officers of penitentiary institutions and internal affairs agencies who breach regulations may be

subjected to the following disciplinary measures: warning, reprimand, severe reprimand, reduction in grade, loss of seniority, demotion by one rank and dismissal.

93. The European Court of Human Rights has adopted 22 judgements against the Republic of Moldova establishing violations of article 3 of the European Convention on Human Rights; 3 of these judgements are not final in accordance with article 44 of the Convention. In the judgement in *Guțu v. Moldova*, the applicant's complaints under article 3 taken alone and in conjunction with article 13 were declared inadmissible.

94. In addition, the Court has issued five decisions in which it held that complaints of violations of article 3 were inadmissible; two applications were not taken up as friendly settlements had been reached.

95. The main violations of article 3 were as follows:

- (a) Conditions of detention or treatment deemed inhuman or degrading;
- (b) Ill-treatment of detainees;
- (c) Omissions by the national authorities in conducting effective investigations into complaints of alleged ill-treatment by police;
- (d) Failure to provide basic medical assistance and lack of appropriate medical facilities for detainees;
- (e) Other forms of ill-treatment (treatment that infringes on human dignity);
- (f) Force-feeding of detainees and the procedures employed for that purpose.

96. In this connection, in the case of *Ilascu and Others v. Moldova and Russia*, the conditions of detention or, in some cases, the treatment of the applicants were declared inhuman or degrading. The Court found that there had been violations of article 3 by the Republic of Moldova since May 2001 on account of the ill-treatment inflicted on Mr. Ivanțok, Mr. Leșko and Mr. Petrov-Popa, Mr. Ostrovar, Mr. Becciev, Mr. Istratii and others, Mr. Ciorap, Mr. Paladi, Mr. Malai, Mr. Popovici, Mr. Țorkan Dorel and Mr. Modarca, or the conditions in which they had been detained.

97. In particular, in *Ostrovar v. Moldova*, the Court decided that, taking into account the cumulative effects of the conditions of detention, the lack of full medical assistance, the exposure to cigarette smoke, the inadequate food, the time spent in detention and the specific impact that those conditions could have had on the applicant's health, the resulting suffering went beyond the threshold of severity under article 3 of the Convention.

98. In the *Becciev v. Moldova* case, the Court considered that, given the harsh conditions in the cell, the lack of outdoor exercise, the inadequate provision of food and the fact that the applicant was detained in these conditions for 37 days, the hardship he had endured went beyond the unavoidable level inherent in detention and reached the threshold of severity contrary to article 3.

99. In *Istratii and Others v. Moldova*, the Court considered that the applicants' conditions of detention, principally the overcrowding and insufficient quantity and quality of food, the lack of adequate bedding and the very limited access to daylight, as well as the insufficient sanitary conditions in the cell, amounted to inhuman and degrading treatment within the meaning of article 3.

100. In the *Ciorap v. Moldova* case, the Court found that the conditions of Mr. Ciorap's prolonged period of detention had been inhuman, in particular as a result of extreme overcrowding, unsanitary conditions and the low quantity and quality of food. In the same case, the Court concluded that the applicant's force-feeding had been prompted not by valid medical reasons but rather by the intention of forcing him to stop his protest and that the

procedure employed had been extremely painful and humiliating, such that it could be considered torture.

101. In *Paladi v. Moldova*, the Court's Grand Chamber noted that the applicant had a serious medical condition, a fact confirmed by a number of medical specialists. It was clear from the facts of the case that the applicant had not been provided with the level of medical assistance required by his condition. The Grand Chamber confirmed that, in view of the applicant's medical condition and the overall level of medical assistance he received while in detention, the treatment to which he had been subjected was contrary to article 3 of the Convention.

102. In the *Modarca v. Moldova* case, the Court noted that the applicant was detained in extremely overcrowded conditions with little access to daylight, limited availability of running water, especially during the night, and in the presence of heavy smells from the toilet, while being given insufficient quantity and quality of food or bed linen. Moreover, he had had to endure those conditions for almost nine months. In the Court's opinion, the cumulative effect of the above conditions of detention and the relatively long period of time during which the applicant had had to endure them amounted to a violation of article 3.

103. As indicated above, article 3 also covers the prohibition on the use of torture or ill-treatment and the duty of the State to conduct effective investigations into complaints of alleged ill-treatment by police, issues raised in the *Corsacov*, *Boicenco*, *Pruneanu*, *Colibaba*, *Levința*, *Savițchi*, *Breabin*, *Gurgurov* and *Buzilov* cases (the judgements in the *Breabin*, *Gurgurov* and *Buzilov* cases are not final). The Court found that the applicants had been ill-treated or tortured by the national police and that there had been omissions by the national authorities in conducting effective investigations into the applicants' complaints of ill-treatment.

104. For example, in the case of *Corsacov v. Moldova*, the Court noted, in particular, the intensity of the blows inflicted on the applicant, which had resulted in very serious injuries (he was hospitalized for 70 days) and which, like the ill-treatment to which he was subjected, had had further repercussions on his health. The Court also noted the applicant's young age (17 years at the time of the events), which had made him particularly vulnerable in the face of his aggressors. However, it found that the decisive element in determining the form of ill-treatment was the practice of *falaka* (beating of the soles) to which the applicant had been subjected. The Court found that the violence inflicted on the applicant by the police was especially reprehensible and capable of causing severe pain and suffering and could therefore be considered torture within the meaning of article 3.

105. In *Pruneanu v. Moldova*, the Court considered that the Government had not provided a plausible explanation for the applicant's injuries and concluded that they were the result of inhuman and degrading treatment while in police custody. Accordingly, there had been a violation of article 3 in that the applicant had been subjected to inhuman treatment.

106. In the *Colibaba v. Moldova* case, since the Government did not provide any explanation concerning the origin of the applicant's cranial trauma, and given the strong presumption that arises in such matters, the Court concluded that the Government had not satisfied the burden on it to persuade the Court that the injury was caused by anything other than ill-treatment while in police custody. Accordingly, there had been a violation of article 3 in that the applicant had been ill-treated.

107. Concerning the failure to provide basic medical assistance and the lack of appropriate medical facilities for detained persons, which constitutes a violation of article 3, the Court established that there had been such violations in the *Sarban*, *Boicenco*, *Holomiov* and *Istratii and Others* cases, in the latter case only in relation to Mr. Istratii.

108. Other forms of ill-treatment and degrading treatment, in addition to those described above, were identified by the Court in the *Sarban* and *Istratii and Others* cases.

109. In the former case, in examining the complaints concerning the provision of medical assistance, the Court noted several additional factors, notably that the applicant was brought to court in handcuffs and placed in a metal cage during the hearings, even though he was under guard and was wearing a surgical collar around his neck. His doctor had to measure his blood pressure through the bars of the cage in front of the public. The Court then drew attention to the absence of any criminal record or other evidence giving serious grounds to fear that the applicant might resort to violence during the court hearings. It found that the aforementioned safety measures were not justified by the circumstances of the case and that they contributed to the humiliation of the applicant.

110. The Court also took due account of the fact that the case was of a high-profile nature and that the above-mentioned acts were — predictably — in full view of the public and the media.

111. In the *Istratii and Others* case, it was the Court's view that the failure to provide urgent medical assistance to the applicant and his transfer to another hospital before he could recover sufficiently, together with his humiliation by being handcuffed while in hospital, amounted to inhuman and degrading treatment within the meaning of article 3.

112. In the judgement in *Guțu v. Moldova*, concerning the applicant's conditions of detention, the Court considered that, in the particular circumstances of the case, her alleged suffering did not attain the threshold of severity required by article 3.

113. The Court has issued five decisions of inadmissibility in respect of complaints of violations of article 3 on the basis that the complaints were unfounded (in the *Lupascu, Russu* and *Pentiacova and Others* cases); that it lacked jurisdiction to examine the complaint *ratione temporis* (in the *Meriakri* case); or that the applicant lacked victim status (in the *Duca* case).

114. In addition, following the reaching of friendly settlements in the *Lipcan* and *Trohin* cases, in which the applicants alleged ill-treatment and inhuman conditions of detention, the applications were struck out of the list of cases.

115. To execute the Court's judgements, the national authorities take a plethora of *individual* and *general measures* to prevent similar violations in the future.

116. By way of *individual measures*, the Court generally orders States to pay compensation. Depending on the circumstances, individual measures may include the conduct of new investigations at the national level into complaints of the use of torture with a view to prosecuting the perpetrators. In addition, in accordance with article 17 of Act No. 353-XV of 25 October 2004 on the Government Representative, the General Prosecutor has the right of recourse against persons whose intentional acts or serious offences form the basis for a decision ordering the payment of a sum fixed in a judgement of the European Court of Human Rights or in a friendly settlement.

117. In the case of *Ilascu and Others v. Moldova and Russia*, the Republic of Moldova was required to pay the following sums:

(a) To Mr. Ivanțoc, Mr. Leșco and Mr. Petrov-Popa, €60,000 each in respect of pecuniary and non-pecuniary damage;

(b) To each applicant, €3,000 in respect of non-pecuniary damage sustained on account of a breach of article 34 of the Convention;

(c) To the applicants, the overall sum of €7,000, less €1,321.34 already received in legal aid, in respect of costs and expenses, made up of amounts of €1,454.33, €1,320 and

€2,904.33, respectively, for their legal representatives Mr. Dinu, Mr. Gribincea and Mr. Tanase.

118. In *Ostrovar v. Moldova*, the Republic of Moldova was obliged to pay the applicant the sum of €3,000 for non-pecuniary damage and €1,500 for costs and expenses.

119. In the *Sarban* case, the State had to pay the applicant €4,000 for non-pecuniary damage and €3,000 for costs and expenses.

120. In *Becciev v. Moldova*, the sums awarded by the Court were €1,000 for pecuniary damage, €4,000 for non-pecuniary damage and €200 for costs and expenses.

121. In *Corsacov v. Moldova*, the Court deemed it just to order the payment of €20,000 for non-pecuniary damage and €1,000 for costs and expenses.

122. In the *Boicenco* case, the Republic of Moldova was obliged to pay the applicant €40,000 for non-pecuniary damage and €6,823 for costs and expenses.

123. In *Holomiov v. Moldova*, the Court ordered the payment of €25,000 for non-pecuniary damage and €800 for costs and expenses.

124. In the *Pruneanu* case, sums of €8,000 and €1,400 were awarded for non-pecuniary damage and for costs and expenses, respectively.

125. In *Istratii and Others v. Moldova*, the Court ordered the State to pay €4,000 to Mr. Burcovschi, €5,000 to Mr. Luțcan and €6,000 to Mr. Istratii for non-pecuniary damage and €4,000 for costs and expenses.

126. In the *Ciorap* case, the Court ordered the payment of €20,000 for non-pecuniary damage and €1,150 for costs and expenses.

127. In *Paladi v. Moldova*, €2,080 was awarded for pecuniary damage, €15,000 for non-pecuniary damage and €7,000 for costs and expenses.

128. In *Colibaba v. Moldova*, the applicant was granted €14,000 for non-pecuniary damage and €2,500 for costs and expenses.

129. In the *Levința* case, sums of €8,000 were awarded to each applicant for non-pecuniary damage, as well as €1,150 for costs and expenses.

130. In *Malai v. Moldova*, €3,500 was awarded for non-pecuniary damage and €1,500 for costs and expenses, less €850 already paid in legal aid.

131. In the judgement in the *Popovici* case, €8,000 was awarded as compensation for non-pecuniary damage and €7,500 for costs and expenses.

132. The judgement in the *Țurcan Dorel* case awarded the applicant €9,000 for non-pecuniary damage and €2,000 for costs and expenses.

133. In *Savițchi v. Moldova*, the applicant was granted compensation of €6,000 for non-pecuniary damage, plus €2,000 for costs and expenses.

134. In its judgement in *Modarca v. Moldova*, the Court awarded the applicant €7,000 for non-pecuniary damage and €1,800 for costs and expenses.

135. In the judgement in the *Straisteanu* case, the applicant was granted €10,000 for non-pecuniary damage and €100 for costs and expenses.

136. The following *general measures* may be cited:

137. In order to raise awareness among a significant group of officials of the jurisprudence of the European Court of Human Rights and to prevent similar violations in the future, all judgements and decisions of the Court are translated and sent to all concerned

national bodies, and are also made available to the public on the website of the Ministry of Justice at [www.justice.gov.md](http://www.justice.gov.md). In addition, extracts are published in the Official Gazette of the Republic of Moldova in both the State language and Russian.

138. If a judgement adopted reveals shortcomings in national legislation, national bodies take steps to amend it.

139. Thus, article 309/1, "Torture", was added to the Criminal Code, criminalizing any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity, with the exception of pain or suffering arising only from, inherent in or incidental to lawful sanctions. Penalties that may be imposed include imprisonment for a term of from 2 to 10 years, depending on the gravity of the offence committed, and, as an additional penalty, forfeiture of the right to hold certain offices or engage in certain activities for a particular period.

140. Furthermore, section 3/1 was added to article 10 of the Code of Criminal Procedure, in accordance with which the burden of proof in cases of torture or other cruel, inhuman or degrading treatment or punishment rests with the institution in which a person deprived of their liberty is confined, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence.

141. Article 298 of the Code of Criminal Procedure was also amended. Under the new formulation, complaints regarding actions or omissions by a criminal prosecution body or a body carrying out operational and investigative activities are submitted to the prosecutor supervising the criminal prosecution in the case in question. If a complaint involves the prosecutor supervising or directly undertaking the prosecution, he must refer the complaint transmitted, together with his explanations, to his superior within no more than 24 hours. Section 4 was added to the same article, stipulating that any evidence, complaints or other circumstances giving grounds to suppose that a person has been subjected to torture or cruel, inhuman or degrading treatment must be examined by a prosecutor as a separate case, in accordance with the procedure set out in article 274.

142. Government decree No. 481 of 10 May 2006 confirmed the Police Code of Ethics. Under article 16, police officers are forbidden from:

(a) Performing, sanctioning or tolerating an act of torture or inhuman or degrading treatment or punishment, whatever situation they might find themselves in;

(b) Resorting to the use of force, except in cases of absolute necessity, and only if it is the sole possible means of carrying out their lawful duties.

143. Amendments were made to the regulations governing the operation of the penitentiary system, including conditions of detention in penitentiary institutions and, at the same time, a number of laws were passed, in particular the new Enforcement Code.

144. With regard to overcrowding in prison cells, the new Code provides for a minimum of 4 square metres per prisoner.

145. Detention conditions in cells. In 2005, 1,500 blankets, 2,000 towels, 2,000 sheets, 1,000 mattresses and 1,000 pillows were procured and distributed. New rules were introduced prohibiting smoking in cells and other parts of penitentiary institutions. Inmates are permitted to smoke in specially equipped areas.



146. New minimum standards were established for inmates' daily rations in order to improve the quantity and quality of food. Penitentiary institutions are provided with all necessary medicines, in particular for the treatment of tuberculosis.

147. Educational, cultural and sporting programmes have been developed and introduced to organize inmates' leisure time.

148. The duties of parliamentary advocates are set out in Act No. 1349 of 17 October 1997 on Parliamentary Advocates. Their activities are intended to ensure that constitutional human rights and freedoms are respected by central and local authorities, institutions, organizations, companies irrespective of the form of ownership, civil society associations and officials at all levels.

149. Any citizen of the Republic of Moldova may serve as a Parliamentary advocate if he or she has a degree in the field of law, a high level of professional competence, no less than five years' experience of working with the law or pursuing higher legal education, and an unblemished reputation.

150. Under the Act on Parliamentary Advocates, the Parliament must appoint four advocates with equal rights, one of whom deals with children's rights issues. Nevertheless, Act No. 56 of 20 March 2008, which amended and supplemented certain legislative acts, amended the Act on Parliamentary Advocates to create the post of parliamentary advocate for children's rights. The division of labour among parliamentary advocates (apart from the children's advocate) is decided collectively by the advocates and confirmed by an order of the Director of the Centre for Human Rights, who is appointed by the Parliament from among the parliamentary advocates.

151. Parliamentary advocates are appointed for a five-year term, and no one person may serve in the role for more than two consecutive terms.

152. Parliamentary advocates defend human rights, prevent human rights violations, refine human rights legislation and provide people with legal training in implementing the procedures set out in Act No. 1349 of 17 October 1997 on Parliamentary Advocates.

153. In fulfilling their mandate, parliamentary advocates are independent of members of Parliament, the President of the Republic of Moldova, the central and local authorities, and officials at all levels.

154. Parliamentary advocates examine complaints from citizens of the Republic of Moldova, foreign nationals and stateless persons residing permanently or temporarily in its territory whose rights have been violated in the Republic of Moldova. However, in order to protect the rights of children, the ombudsman concerned examines complaints concerning children's rights and, within the limits of his competence, is entitled to act on his own initiative. Parliamentary advocates also examine claims submitted by members of Parliament, if the issue falls within their terms of reference.

155. Parliamentary advocates examine matters relating to decisions and actions or omissions by central and local authorities, institutions, organizations, enterprises irrespective of the form of ownership, civil society associations and officials at all levels who, according to the complainant, have violated rights or constitutional freedoms. Complaints to be examined under criminal or civil procedure law, legislation on administrative offences or labour law do not fall within the remit of the parliamentary advocates.

156. If there is reliable evidence of widespread or serious violations of citizens' constitutional rights and freedoms, if a case is of particular social importance, or if it is necessary to defend the interests of people who are unable to use legal protection mechanisms without assistance, parliamentary advocates act on their own initiative, taking

the appropriate measures within the limits of their competence. An ombudsman has the right to institute proceedings on his own initiative in respect of violations of human rights and freedoms that come to light as a result.

157. On 24 July 2006, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment entered into force for the Republic of Moldova. In order to comply fully with the requirements of the Protocol, on 26 July 2007 Parliament passed Act No. 200 amending and supplementing Act No. 1349 on Parliamentary Advocates to establish a national mechanism for the prevention of torture.

158. In examining complaints, checking for signs of violations of human rights and freedoms at their own initiative, and undertaking preventive visits to places where persons deprived of their liberty are or may be detained, parliamentary advocates are entitled to:

(a) Have access to all central and local authorities in order to attend their meetings, including meetings of their central administrative boards;

(b) Have free access to institutions, organizations, companies irrespective of the form of ownership, civil society associations, police stations and detention facilities, penitentiary institutions, temporary holding facilities, military units, holding centres for immigrants and asylum-seekers, institutions providing social protection or psychiatric care, special schools for children with behavioural disorders and other similar facilities;

(c) Request and obtain information, documents and materials needed to carry out their duties from central Government, local authorities and officials at all levels;

(d) Have unrestricted access to all information on the treatment and detention conditions of persons deprived of their liberty;

(e) Receive explanations from officials at all levels in order to clarify issues arising as they check for violations;

(f) Approach State institutions in order to investigate and prepare conclusions on matters requiring examination;

(g) Meet and converse, without witnesses, but if necessary through an interpreter, with individuals held in places of detention or with any person who, in the advocates' opinion, might be a source of necessary information;

(h) Invite specialists and independent experts in a variety of fields, including lawyers, doctors, psychologists and representatives of civil society associations, to participate in preventive visits to places where persons deprived of their liberty are or may be confined;

(i) Work with the media and non-governmental human rights organizations, both within the country and abroad.

159. In carrying out their duties, ombudsmen are entitled to be seen immediately by supervisors and other officials in central and local authorities, law enforcement agencies, institutions, organizations, enterprises irrespective of the form of ownership, police stations and their detention facilities, penitentiary institutions, temporary holding facilities, military units, holding centres for immigrants and asylum-seekers, institutions providing social, medical or psychiatric care, special schools for children with behavioural disorders and similar facilities.

160. Based on their analysis of the human rights situation, ombudsmen are entitled to submit proposals for enhancing current legislation to the Parliament, lodge objections with the central and local authorities and make general suggestions on guaranteeing citizens' constitutional rights and freedoms, in order to improve the operation of the State administration. If widespread or serious violations of constitutional human rights and

freedoms are revealed, an ombudsman may present a report to a sitting of the Parliament and also propose the establishment of a parliamentary commission to investigate the cases in question.

161. Parliamentary advocates are entitled to request the Constitutional Court to examine whether laws and decisions of the Parliament, decrees of the President of the Republic of Moldova and Government decisions and resolutions comply with the Constitution and conform to generally recognized principles and international legal instruments in the field of human rights.

162. At the start of each year, by 15 March, the parliamentary advocates present a report to the Parliament on respect for human rights in the Republic of Moldova over the previous year. This report contains a chapter on the situation with regard to children's rights.

163. Together with colleagues, the ombudsmen have founded a State institution known as the Centre for Human Rights. The Centre for Human Rights has legal personality and its own budget, which is part of the State budget. The draft budget for this institution, which receives preliminary approval from the Ministry of Finance, is then confirmed by the Parliament at the same time as the State budget.

164. The Centre for Human Rights was allocated financial resources in the amount of 1,746,000 Moldovan lei for 2007, 3,050,500 Moldovan lei for 2008 and 3,155,900 Moldovan lei for 2009.

165. In this context, it is important to point out that, at the international level, an international institution such as an ombudsman's office is valued as an indispensable tool for a democratic society. States should be concerned not only to have such an organization but also to ensure that its activities are effective.

166. There are many problems relating to the field of human rights. Accordingly, wider support must be given to and more confidence placed in the Centre. The institution of ombudsman needs adequate financial support from the State (it is very difficult to find other sources of funding for the activities of the Centre for Human Rights, as it is a State institution and donors prefer to support programmes in the non-governmental sector).

167. In the opinion of the parliamentary advocates, it should not be the case that, when the Ministry of Finance prepares the draft act on the State budget, it simply determines the amount needed to finance the Centre using its own judgement. The annual budget for the Centre for Human Rights is prepared using this figure, but in practice it does not provide the financial resources needed for the Centre to carry out its activities.

168. As stated above, the Centre's draft budget, with preliminary approval from the Ministry of Finance, is confirmed by Parliament together with the State budget. Thus, the annual estimates of expenditure for the Centre for Human Rights must be examined as part of the "Expenditure" chapter of the draft act on the State budget. In accordance with its own targets for activities and tasks in the draft, the Ministry of Finance is entitled to propose its own figures for this item. It must provide a rationale for the predicted expenditure, which will then be discussed in Parliament.

169. Unfortunately, to date the Ministry of Finance has set the annual level of funding for the Centre for Human Rights in the light of its own activities.

170. The staff of the Centre provide organizational, information, research and other support for the activities of the parliamentary advocates. The parliamentary advocates delegate part of their duties to the professional staff, in accordance with legislation.

171. Until 2008, the staff of the Centre for Human Rights comprised 37 people. Under the regulations on the Centre for Human Rights and its structure, staffing and funding,

confirmed by parliamentary decree No. 57 of 20 March 2008, the number of staff was increased to 55.

172. The permanent location of the Centre for Human Rights is in Chişinău. At present, it has three local offices, in Bălţi, Cahul and Comrat.

173. In this context, we wish to inform you that the number of incoming reports and complaints received by the Centre for Human Rights mentioning alleged acts of torture or inhuman or degrading treatment can be disaggregated as follows:

2003 – 199 complaints and 206 incoming reports

2004 – 249 complaints and 54 incoming reports

2005 – 264 complaints and 111 incoming reports

2006 – 481 complaints and 333 incoming reports

2007 – 319 complaints and 37 incoming reports

2008 – 264 complaints and 58 incoming reports

174. Act No. 45-XVI on Preventing and Combating Domestic Violence was passed on 1 March 2007 and entered into force on 18 September 2008. It sets out the organizational and legal framework for activities to prevent and combat domestic violence, defines the bodies and institutions charged with carrying out such activities, and establishes a mechanism for the submission and resolution of complaints of violence. With the aim of improving current legislation in accordance with the Act on Preventing and Combating Domestic Violence, the Ministry of Social Protection, the Family and the Child has prepared draft legislation to amend and supplement several normative acts (the Act on the Police, the Family Code, the Criminal Code, the Code of Civil Procedure and the Enforcement Code), agreed with the Ministry of Justice in letters Nos. 03/832 of 4 February 2009 and 03/4869 of 28 July 2009. Under this draft legislation, the Criminal Code will criminalize acts of sexual harassment, domestic violence and deliberate violation of a protection order. It also provides for the addition of an article 215/1 to the Code of Criminal Procedure, establishing protection measures for victims of domestic violence.

175. In this regard, we wish to provide the following statistical data on domestic violence:

**Administrative practice and trends in family crime from 2004 to the first seven months of 2009 within the country**

	2004	2005	2006	2007	2008	7 months of 2009
Complaints examined by supervisors: cases relating to violence in the family and total number of complaints	3 707 (24 864)	3 083 (23 521)	2 855 (25 475)	2 519 (28 966)	2 992 (28 236)	1 550 (15 159)
Reports prepared by supervisors and their staff on the basis of article 78 of the Code of Offences (Deliberate infliction of minor bodily harm)	3 440	2 551	2 121	1 632	1 746	1 026
	19 101	18 055	19 453	19 815	21 404	11 464

	2004	2005	2006	2007	2008	7 months of 2009
Offences committed within the family, including:	63	39	50	30	63	26
Murder (article 145 of the Criminal Code)	35	16	20	14	30	11
Grievous bodily harm (article 151 of the Criminal Code)	28	23	30	16	33	15
Violent family offenders under police supervision	5 292	5 468	5 345	5 449	4 681	4 280

176. Act No. 45-XVI of 1 March 2007 on Preventing and Combating Domestic Violence (in force since 18 September 2008) defines the circumstances of violence in the family and the potential victims thereof, specifically *where people cohabit* – individuals who are married, divorced or live together, persons under their tutorship or guardianship, their direct relatives, spouses of relatives, and other individuals in their care, and *where people do not cohabit* – individuals in common-law marriages, their children and other persons in their care. On this basis, proposals were submitted to amend the primary registration lists, which are used to record and provide objective information on trends and developments in and the extent of the phenomenon.

177. An analysis of the causes of family crime reveals that 7 cases of murder and 11 cases of grievous bodily harm were committed as a result of hostile relations between family members.

178. Over a period of seven months in 2008, 4,751 violent offenders were under police supervision, and at present the public order police are taking violence prevention measures in respect of 4,280 people with a history of aggressive behaviour towards their families.

179. In the period covered in the report, local operational officers within police stations examined 15,159 complaints, of which 1,550 involved cases of violence within the family, representing 10.22 per cent of all reports examined. Likewise, in the same period in the previous year, 15,891 reports were examined, of which 1,632 complaints or 10.2 per cent concerned family violence.

180. Thus, it can be seen that the number of complaints made to the authorities by victims of violence in the family has remained the same. This can be explained principally by the lack of high-quality information on the existence of laws and on the services offered by relevant bodies (social work network) and non-governmental organizations to victims of family violence.

181. At the same time, 11,464 cases of violations under article 78 (Deliberate infliction of minor bodily harm) of the Code of Offences (No. 218-XVI of 24 October 2008) were recorded, of which 1,026 or 8.94 per cent occurred as a result of family conflicts. Pursuant to decisions taken by the competent courts in disposition of cases, 686 offenders who admitted committing acts of violence in their families were fined, 77 people were sentenced to short-term rigorous imprisonment and 214 cases were dismissed because of reconciliation between the parties. For the same period in 2008, of the 12,025 offenders documented under article 471 of the Code of Offences (of 29 March 1985), 953 or 7.92 per cent faced proceedings for offences relating to the deliberate infliction of minor bodily harm on a family member.

182. An analysis of this aspect of the issue reveals that 20.86 per cent of cases examined in court are dropped because of reconciliation between the parties. This shows that the majority of women, despite being victims of violence, wish to save their families.

183. During the period under review, a number of steps were taken to implement measures under the National Plan to Prevent and Combat Trafficking in Human Beings for 2008–2009.

184. In 2008, as a result of the organizational and preventive measures carried out, the Centre for Combating Trafficking in Persons of the Ministry of Internal Affairs detected 542 human trafficking offences (an increase of 5 per cent on the same period in 2007 (516 offences)), as follows:

**Trafficking in persons** (article 165 of the Criminal Code): 215 cases (a decrease of 14.3 per cent compared to the same period in 2007 (251 cases)). Of those, 164 cases (76.3 per cent) were referred to a prosecutor, and 96 (44.7 per cent) to a court;

**Trafficking in children** (article 206 of the Criminal Code): 31 cases (down 22.5 per cent compared to the same period in 2007 (40 cases)). Of those, 22 cases (71 per cent) were referred to a prosecutor, and 12 (38.7 per cent) to a court;

**Illegal removal of children from the country** (article 207 of the Criminal Code): 18 cases (an increase of 157.1 per cent on the same period in 2007 (7 cases)). Of those, 7 cases (38.7 per cent) were referred to a prosecutor, and 3 (38.9 per cent) to a court;

**Procuring** (article 220 of the Criminal Code): 161 cases (an increase of 5.2 per cent on the same period in 2007 (153 cases)). Of those, 151 cases (93.8 per cent) were referred to a prosecutor, and 115 (75.7 per cent) to a court;

**Organization of illegal migration** (article 362/1 of the Criminal Code): 117 cases (up 80 per cent on the same period in 2007 (65 cases)). Of those, 74 cases (63.2 per cent) were referred to a prosecutor, and 56 (47.9 per cent) to a court.

185. In the same year, operations conducted by subdivisions of the Ministry of Internal Affairs in cooperation with foreign law enforcement agencies led to the closure of 29 channels, as follows:

**Sexual exploitation:** 10 channels (Turkey – 8, Cyprus – 2);

**Organ transplantation:** 1 channel (Turkey);

**Organization of illegal migration:** 16 channels (Italy – 11, Austria – 1, Cyprus – 1, United Kingdom – 1, and Romania – 2);

**Illegal removal of children from the country:** 2 channels (Italy and France).

186. Comparative analysis shows a decrease in the number of human trafficking offences in the Republic of Moldova (507 cases in 2007 compared to 542 in 2008, representing a reduction of 215 cases (or 14.3 per cent)).

187. In 2008, the courts completed consideration of 202 cases involving human trafficking and related offences against 253 defendants. These included:

(a) 48 cases of trafficking in persons against 63 defendants;

(b) 4 cases of trafficking in children against 5 defendants;

(c) 150 cases against 185 people accused of related offences (illegal removal of children, procuring, initiation or organization of begging, and illegal migration).

188. Also in 2008, prosecutors appealed against 53 judgements that they considered unlawful and unfounded in cases involving human trafficking and related offences.

189. Of 34 appeals filed by prosecutors in human trafficking cases (articles 165 and 206 of the Criminal Code), 22 were accepted for consideration by higher judicial authorities.

The original judgements were overturned, and perpetrators were either convicted or sentenced to a realistic term of imprisonment in line with the Criminal Code.

190. At the same time, the appeals courts rejected 24 appeals filed by defendants and their lawyers in such cases, upholding the original convictions and sentences.

191. An analysis of criminal cases involving human trafficking in 2008 showed that 28 (10 per cent) of the total number of victims were **men**, 206 (76 per cent) were **women** and 37 (14 per cent) were **children**.

192. The average age of victims was 20 for women and 25 for men. Men represented 40 per cent of all human traffickers, and women 60 per cent.

193. Women accounted for 65 per cent of individuals convicted of human trafficking offences in 2008, and men for only 35 per cent.

194. The average age of individuals convicted in cases of human trafficking for the purpose of sexual exploitation was 30, while in labour exploitation and begging cases the average ages were 34 and 47, respectively.

195. The youngest known trafficker, a female, was 17 when the offence was committed. She was prosecuted for human trafficking for the purpose of commercial sexual exploitation. The oldest trafficker, a 55-year-old male, was prosecuted for the same offence.

196. The most common forms of human trafficking for exploitation in 2008 were:

**Commercial sexual exploitation:** 205 cases (83 per cent);

**Labour exploitation:** 38 cases (16 per cent);

**Begging:** 3 cases (1 per cent).

197. In 2008, cases of commercial sexual exploitation, labour exploitation and begging fell by 76 per cent, 20 per cent and 4 per cent, respectively, compared to 2007 levels, thus demonstrating that measures to prevent and combat human trafficking have been effective.

198. This improvement was the result of multiple factors, including:

(a) The detection and punishment of individuals who directed human trafficking and illegal migration channels;

(b) Harsher punishments at the national level for human trafficking offences, including life imprisonment (for trafficking in children, under article 206, section 3, of the Criminal Code);

(c) Cooperation between Moldovan law enforcement agencies and those of States members of the Commonwealth of Independent States (CIS), the European Union and other States, and the exchange of information required to combat human trafficking;

(d) Implementation of broad social prevention measures to address the root causes of such offences and the conditions that give rise to them (drafting of legal instruments to refine crime prevention measures, development of comprehensive programmes to prevent crime, closer monitoring of the activities of organizations used as a cover to commit such offences, and so on);

(e) Implementation of specific prevention measures to address the root causes of such offences and the conditions that give rise to them (awareness-raising campaigns, including legal education initiatives aimed at the general public).

199. The destination countries for **human trafficking** in 2008 were as follows: Turkey – 101 cases (47 per cent), Russian Federation – 56 cases (26 per cent), other countries – Italy, Ukraine, United Arab Emirates and Cyprus – 36 cases in all (26 per cent).

200. The destination countries for **illegal migration** were as follows: Italy – 96 cases (82 per cent), Czech Republic – 3 cases (2 per cent), Ukraine – 3 cases (2 per cent), Greece – 4 cases (3 per cent), Spain – 4 cases (3 per cent), other countries – 8 cases (8 per cent).

201. In the first seven months of 2009, the Ministry of Internal Affairs instituted criminal proceedings in 307 cases directly or indirectly related to human trafficking, representing a decrease of 13.3 per cent on the previous year.

202. **Trafficking in persons:** 140 criminal cases (a decrease of 17.2 per cent). Of those, 115 (82.1 per cent) were referred to a prosecutor, and 70 (50 per cent) to a court.

203. **Trafficking in children and illegal removal of children from the country:** 31 criminal cases (a decrease of 8.8 per cent), 16 of which related to trafficking in children and 15 to the illegal removal of children from the country. Of the 31 cases, 29 (93.5 per cent) were referred to a prosecutor and 15 (48.4 per cent) to a court.

204. **Procuring:** 101 criminal cases (a decrease of 12.9 per cent). Of those, 88 (87.1 per cent) were referred to a prosecutor and 72 (71.3 per cent) to a court.

205. **Organization of illegal migration:** 75 criminal cases (an increase of 1.4 per cent). Of those, 55 (73.3 per cent) were referred to a prosecutor and 39 (52 per cent) to a court.

206. During the period under review, the Centre for Combating Trafficking in Persons detected and intercepted 27 human trafficking and illegal migration channels, as follows:

- (a) **Human trafficking:** 6 channels (Turkey – 4, Cyprus – 2);
- (b) **Procuring:** 8 channels (Turkey – 4, Cyprus – 2, United Arab Emirates – 1, Republic of Moldova – 1);
- (c) **Illegal removal of children from the country:** 6 channels (Italy – 3, France, Greece and Portugal – 1 each);
- (d) **Organization of illegal migration:** 7 channels (Italy – 6, Spain – 1).

207. In the past seven months in 2009, officials from the Ministry of Internal Affairs have halted an operation involving the transportation of 30 people outside Moldovan territory for subsequent sale.

208. In the cases referred to a court in 2009, 190 people (59 men and 131 women), including 6 minors aged between 17 and 18, were prosecuted for the following offences:

- (a) **Trafficking in persons:** 68 people (45 women and 23 men), including 2 minors aged between 17 and 18;
- (b) **Procuring:** 65 people (55 women and 10 men), including 2 minors aged between 17 and 18 and 3 officials;
- (c) **Trafficking in children and illegal removal of children from the country:** 19 people (16 women and 3 men), including 3 officials;
- (d) **Organization of illegal migration:** 38 people (15 women and 23 men), including 2 minors aged between 17 and 18 and 2 officials.

209. In 2009, officers from the Centre for Combating Trafficking in Persons completed training courses at the International Training Centre on Migration and Combating Trafficking in Human Beings, part of Belarus's Ministry of Internal Affairs Academy, and participated in 42 seminars, 27 meetings and working sessions, 2 round tables and various presentations attended by governmental and non-governmental organizations and the media. The officers organized two information campaigns for young people and children aimed at preventing human trafficking and illegal migration. Three training courses and a



range of other measures were organized in cooperation with the Police Academy in order to raise awareness of human trafficking.

210. To facilitate the implementation of the recommendations of the Committee on the Elimination of Racial Discrimination, a plan of action was adopted for 2008–2010 setting out numerous initiatives to raise awareness, consolidate capacity, ensure free access to justice, improve mechanisms for protecting human rights and freedoms, establish working methods for criminal investigation bodies to examine the causes of crime and facilitate consideration of complaints from Muslim, Roma and other ethnic minorities, as stipulated by law.

### Article 3

211. (a) With reference to articles 546 and 552 of the Code of Criminal Procedure, transfer and extradition may be refused by the competent authorities of the Republic of Moldova if there is deemed to be a risk that the person to be transferred or extradited may be subjected to torture or inhuman or degrading treatment. Even if a court has agreed to an extradition request, the person concerned has the right, under article 544 of the Code of Criminal Procedure, to lodge an appeal with a higher court, on the grounds mentioned above. Extradition may be refused if the person sought has been granted refugee status or political asylum. If the application for refugee status or political asylum is under review, extradition is suspended pending a final decision on the application. The Ministry of Justice is currently considering the extradition of a convicted person from the Republic of Moldova to Romania to serve sentence during the suspension of the extradition procedure pending the outcome of an application for refugee status. The Ministry has yet to refuse another State's extradition request because of the risk of torture or inhuman or degrading treatment.

(b) Act No. 270-XVI on Asylum in the Republic of Moldova was adopted on 18 December 2008. The Act establishes the legal status of foreign nationals, stateless and protected persons in the Republic of Moldova, as well as the procedure for granting, ceasing and removing such protection.

212. The Directorate for Refugees under the Bureau for Migration and Asylum, a subdivision of the Ministry of Internal Affairs, deals with administrative matters and problems affecting asylum-seekers, refugees and beneficiaries of humanitarian or temporary protection, and applies the provisions of the Act on Asylum.

213. The Directorate for Refugees cooperates with government bodies to implement regulations and procedures for safeguarding the rights of asylum-seekers, refugees and beneficiaries of humanitarian or temporary protection. To this end, the staff of the Directorate have the means to communicate with such persons irrespective of their location in the Republic of Moldova. The head of the Directorate for Refugees takes decisions and issues orders, and other instruments relating to the outcome of asylum applications.

214. Pursuant to article 28, subparagraphs (e) and (f), of the Act on Asylum, asylum-seekers are entitled to have the services of an interpreter free of charge and to receive legal aid at any stage of the asylum procedure.

215. According to statistical data, between 2003 and 2009, 128 people (43 cases) returned to their countries of origin, which included the Russian Federation (Chechnya), Afghanistan, the Sudan and Serbia (Kosovo), under a voluntary return programme.

216. **In the first eight months of 2009, the judicial authorities, acting on the information available to them, took decisions to return 131 foreign nationals** to the following countries: Turkey – 49, Russian Federation – 87, Ukraine – 15, Georgia – 8,

Romania – 8, Uzbekistan – 5, Syrian Arab Republic – 4, Italy – 3, Azerbaijan – 2, Armenia – 2, Belarus – 1, Bulgaria – 1, France – 1, Germany – 1, Sudan – 1, and others.

217. In addition, **it was decided to curtail the stay of 112 foreign nationals** from the following countries: Russian Federation – 33, Turkey – 21, Ukraine – 14, Uzbekistan – 8, Syrian Arab Republic – 9, Georgia – 6, Jordan – 1, and others.

218. During this period, 28 offences were recorded in the Republic of Moldova by nationals of the following countries: Ukraine – 9, Russian Federation – 3, stateless persons – 2, Romania – 2, Georgia – 2, Pakistan – 2, Israel – 1, Turkey – 1, Italy – 1, and others. Three offences were committed against foreign nationals from the following countries: Greece – 1, Saudi Arabia – 1, Russian Federation – 1.

219. (a) The number of asylum-seekers and the number of returnees, including the countries of return

220. **In the first eight months of 2009, confirmations of repatriation were issued to 1,216 foreign nationals and 65 minors**, as follows: Russian Federation – 539, Ukraine – 466, Israel – 60, United States of America – 55, Germany – 27, Belarus – 13, Romania – 14, Georgia – 3, Poland – 2, Austria – 1, and other countries.

221. During this period, **8,806 applications for invitations** were accepted for consideration:

(a) **7,261 invitations were issued to foreign nationals**, as follows: Romania – 4,448, China – 132, Serbia – 118, India – 90, Australia – 75, Albania – 62, Lebanon – 50, Republic of Korea – 46, Bosnia and Herzegovina – 42, Syrian Arab Republic – 39, Turkmenistan – 36, Jordan – 36, Brazil – 18, Argentina – 14, Islamic Republic of Iran – 13, Turkey – 12, South Africa – 10, Nigeria – 2, and other countries;

(b) **298 foreign nationals were refused invitations**, as follows: Romania – 43, Bangladesh – 33, Lebanon – 28, Syrian Arab Republic – 18, Serbia – 19, India – 15, Egypt – 15, Pakistan – 12, China – 10, Albania – 8, Jordan – 4, and other countries;

(c) **2,169 visas, including 1,752 exit visas, were issued**: Turkey – 507, Romania – 349, Israel – 353, Syrian Arab Republic – 130, India – 35, Jordan – 33, Lebanon – 28, Iraq – 14, Serbia – 3, and other countries;

(d) **387 visas were extended**: Turkey – 118, China – 23, Israel – 8, Syrian Arab Republic – 5, Nigeria – 3, Cameroon – 1, and other countries;

(e) **123 exit visas marked “deportation” or “repatriation” were issued to foreign nationals, as follows**: Turkey – 88, the former Yugoslav Republic of Macedonia – 2, Afghanistan – 1, Turkmenistan – 1, Bangladesh – 1, and other countries.

222. As stated in article 38 of the Act on Asylum, repatriation is a procedure involving the voluntary return of a refugee to his or her country of origin. When carrying out voluntary repatriations, the Directorate for Refugees is required to observe the following conditions:

(a) Repatriation must be of a voluntary nature, without the exertion of any pressure on the refugee by the authorities;

(b) The refugee’s wish to be repatriated must be expressed in writing;

(c) To facilitate the refugee’s decision regarding repatriation, the refugee must be provided with all the available information on his or her country of origin, the assurances it has offered and conditions in the country;

(d) The refugee must be provided with travel papers and other necessary documents to simplify the repatriation process;

(e) Where necessary or as part of voluntary repatriation programmes, every measure must be taken to ensure that the official assurances offered by countries of origin regarding refugees' safe return are fully upheld and that repatriation takes place in a safe and dignified manner;

(f) The procedure for reviewing asylum applications at borders must be followed, as must the appeals procedure.

223. In accordance with the principle of non-refoulement, no person who has requested or been granted asylum may be forcibly returned or expelled from the border or territory of the Republic of Moldova, and no protected person may be forcibly returned or expelled to a country or territory where his or her life or freedom is under threat, or where he or she is at risk of being subjected to torture or inhuman or degrading treatment or punishment.

224. Under article 41 of the Act on Asylum, the competent authorities must ensure that every foreigner in the territory of the Republic of Moldova or at its border has access to the asylum procedure on his or her written or oral request for protection by the Republic of Moldova.

225. Asylum applications are assessed individually, objectively and impartially by qualified staff familiar with asylum law. Accurate and up-to-date information from various sources regarding the general situation in the country of origin is taken into account when evaluating the personal situation of the applicant. The grounds for granting one of the forms of protection available under the Act are assessed successively in a single procedure to check whether the criteria for refugee status and humanitarian protection can be met.

226. Asylum applications may be submitted in person by foreigners immediately on arrival at a State border crossing point. The competent border control authorities may authorize an asylum-seeker's entry into the territory of the Republic of Moldova only once the Bureau for Migration and Asylum has been informed and its permission obtained. The Bureau must then take responsibility for the asylum-seeker at the border within 24 hours so that his or her application can be considered.

227. Asylum applications are considered under the asylum procedure in accordance with the procedural principles and guarantees set out in the Act on Asylum. Applications are considered for a period of from one to six months. If no decision can be made within the specified time frame for reasons beyond the control of the Directorate for Refugees, the deadline may be extended, providing that all the steps on which the decision depends have been completed. The deadline may be extended on a monthly basis for not more than three months.

228. A total of 175 individuals are currently registered for protection, as follows:

(a) **79 refugees:** Russian Federation (Chechnya) – 26, Armenia – 10, Palestine – 8, Syrian Arab Republic – 8, Sudan – 5, Jordan – 4, Kyrgyzstan – 4, Egypt – 3, Iraq – 3, Afghanistan – 2, Georgia – 2, India – 1, Islamic Republic of Iran – 1, Romania – 1, Sierra Leone – 1, Somalia – 1, Turkey – 1, Turkmenistan – 1, and others;

(b) **57 beneficiaries of humanitarian protection:** Armenia – 10, Azerbaijan – 9, Sudan – 6, Afghanistan – 6, Russian Federation – 6, Palestine – 3, Syrian Arab Republic – 2, Georgia – 2, Angola – 1, Iraq – 1, Kazakhstan – 1, Libyan Arab Jamahiriya – 1, Pakistan – 1, Tajikistan – 1, United Republic of Tanzania – 1, Uzbekistan – 1, Yemen – 1, Zimbabwe – 1, and others;

(c) **39 asylum-seekers:** Armenia – 14, Georgia – 4, Syrian Arab Republic – 3, Pakistan – 3, Afghanistan – 2, Turkey – 3, Islamic Republic of Iran – 2, Romania – 2, Jordan – 2, Azerbaijan – 1, Lebanon – 1, Russian Federation – 1, Mauritania – 1, Nepal – 1, Nigeria – 1, Somalia – 1, Uzbekistan – 1, and others.

## Articles 5, 6 and 7

229. In accordance with article 11, section (3), of the Criminal Code, foreign nationals and stateless persons who are not permanently resident in the Republic of Moldova and who have committed offences outside its territory are criminally liable under the Code and may be prosecuted in the Republic of Moldova if the offences committed were against its interests, against the rights and freedoms of its citizens or against the peace and security of humankind, or if they are war crimes or other offences stipulated in the international treaties to which the Republic of Moldova is a party, providing that such persons have not already been held criminally liable in the State in which the offence was committed.

230. It should be noted that there have been no cases in which extradition requests from third States, which fall within the competence of the Ministry of Justice and are considered by the national judicial authorities, have been refused.

## Article 10

231. The subdivisions and training centre of the Department of Penitentiary Institutions are providing instruction on the code of ethics for staff of penitentiary institutions as approved by Ministry of Justice order No. 307 of 4 August 2005. Training in human rights now includes a seven-hour module on minimum standards of detention, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Universal Declaration of Human Rights and the mechanisms for protecting human rights at the national, regional and international levels. The module is taught to staff of the subdivisions of the Department of Penitentiary Institutions over the course of one year. On the basis of the aforementioned order, curricula incorporating human rights components have been developed for each category of staff. Existing staff receive 6 hours of further training, and new staff 24 hours of training over a three-month period.

232. The following events were held in the first half of 2009:

(a) On 20 May, an information seminar on enhancing psychological and socio-pedagogical methods for the social reintegration of persons deprived of their liberty was held at the Department of Penitentiary Institutions. The event was attended by experts from the Department's Directorate for Education, Psychology and Social [omission], representatives of the civil society organizations Young and Free and New Life, and a special representative from the Moghiliov vocational reform school in Belarus, which specializes in woodworking;

(b) On 23 and 24 June, a seminar on health care in penitentiary institutions was held with the support of the Council of Europe;

(c) On 25 and 26 June, a seminar on improving training for prison staff was held in partnership with the Directorate General of Human Rights and Legal Affairs of the Council of Europe.

233. With regard to training for staff of legal departments and other State employees working in the field of human rights, vocational training sessions were used to familiarize staff of the Bureau for Migration and Asylum with the provisions of the Code of Offences, which entered into force on 31 May 2009.

234. Instructors from the Ștefan cel Mare Police Academy took part in staff training. They highlighted specific provisions governing police officers' conduct with respect to human rights and freedoms, and taught comprehensive courses on national and international legislation on the safeguarding and observance of human rights and freedoms.

235. In 2008, the Ministry of Internal Affairs participated in the implementation of the European Integration Agenda for that year, pursuant to the country's European integration directives.

236. One of the objectives of the Agenda was to improve detention conditions by training the staff of police bodies in respect for the procedural rights of detained persons and persons suspected of committing offences and respect for the principle of proportionality in exceptional cases when it is necessary to use force. Training sessions for subdivisions of the Ministry of Internal Affairs were devoted to those topics. In addition, the criminal investigation department was requested to give further consideration to the application by the courts of the legislative provisions governing pretrial custody and house arrest and to compensation for damage caused by unlawful actions of criminal investigation bodies, prosecutors' offices and the courts.

237. Training in criminal procedure at the Ștefan cel Mare Police Academy now takes account of the need for careful consideration of the principle of proportionality when using weapons, physical force or special instruments; this is also covered in the thematic curriculum of the Department of Criminal Procedure and Criminology.

238. Instructors from the Department of Police law have been appointed to the staff of the Ștefan cel Mare Police Academy to give a series of lectures for staff members developing their skills and those undergoing initial training on the procedural rights of detained persons. Lectures are to be held in the Institute for Staff Training and Applied Research of the Police Academy.

239. In order to structure the work of criminal investigation units and ensure that they comply strictly with the requirements of the law of criminal procedure concerning respect for human rights during criminal proceedings and the prohibition of torture and degrading treatment, the Ministry of Internal Affairs has developed and distributed to all its subdivisions a set of methodological recommendations relating to:

(a) The legality of preventive detention and incarceration in temporary holding facilities;

(b) Respect for the rights of detained accused persons and suspects, and persons in preventive detention.

240. During the period under review, local criminal investigation units were monitored constantly to ensure that the rights of individuals involved in criminal proceedings were respected.

241. In 2008, the Ministry of Internal Affairs, in cooperation with the General Prosecutor's Office, organized 16 training seminars for criminal investigation officers and prosecutors from all over the country, placing particular emphasis on respect for human rights by criminal investigation officers in the course of crime detection.

242. All local criminal investigation units were sent a report and leaflets prepared by Amnesty International on the observance of human rights and the prohibition of torture and other inhuman or degrading treatment.

243. In order to increase the level of vigilance, criminal investigation officers were given a copy of a preliminary report compiled by the Moldovan Institute of Criminal Reforms on monitoring respect for the rights of persons in preventive detention.

244. Representatives of the General Department of Criminal Investigation of the Ministry of Internal Affairs attended an expert session held under the auspices of the General Prosecutor's Office to assist in preparing draft instructions on arranging meetings and telephone conversations for persons in preventive detention centres.

245. In accordance with Ministry of Internal Affairs order No. 500 of 28 December 2007 on the organization of vocational training in the academic year 2008, police officers were to be tested at the end of the year on their knowledge of procedural law, including the provisions concerning preventive detention.

246. From 28 May to 11 June 2009, training was provided to staff at the Ministry of Internal Affairs on such topics as offences which pose a threat to public order and security, the competence of internal affairs bodies in detecting and investigating offences, and means of proof with regard to administrative offences.

247. The Ministry of Internal Affairs is preparing to organize an international seminar on the prevention of torture and inhuman or degrading treatment, to be held on 29 and 30 September under the auspices of the Council of Europe.

## **Article 11**

248. On 26 July 2007, the Parliament adopted Act No. 200-XVI amending and supplementing the Act on Parliamentary Advocates and parliamentary decision No. 201-XVI amending and supplementing the regulations on the Centre for Human Rights, with a view to creating a national mechanism for the prevention of torture.

249. These legal instruments establish the right of parliamentary advocates to visit places of detention, and specify a list of places to be visited, guarantees and duties during visits, and measures to be taken by parliamentary advocates following visits. To ensure that the Ombudsman's duties in respect of torture prevention are effectively carried out, provision was made for the creation of a consultative council attached to the Centre for Human Rights with the authority and mandate to prevent torture and other cruel, inhuman or degrading treatment or punishment and visit places where persons are or may be deprived of their liberty. The Council must include representatives of civil society organizations working in the field of human rights.

250. The conditions of detention and treatment of detained persons are monitored by monitoring commissions, which are standing bodies, without legal personality, established under Act No. 235-XVI of 13 November 2008 in all second-level territorial units where there are places of detention.

251. Act No. 235-XVI of 13 November 2008 on Public Monitoring of Respect for Human Rights in places of Detention, regulates relations arising in connection with such monitoring, the procedure for establishing monitoring commissions, and their basic tasks and powers.

252. Members of monitoring commissions must be upstanding members of society with no criminal record, aged 25 years or over, who have been nominated by a civil society organization which has been active for at least five years and works to protect human rights.

253. In accordance with article 238, section (4), of the Enforcement Code, a commission must be established within each penitentiary institution and one member of the commission must be a representative of a civil society organization. Although the commission's chairman is the director of the penitentiary institution, it performs a monitoring role, helping to improve the process of educating, re-educating and reintegrating detainees in society, bring the enforcement of criminal penalties involving deprivation of liberty into compliance with the legislative framework and increase the flexibility of the detention regime.

254. Pursuant to article 177 of the Enforcement Code (No. 443-XV of 24 December 2004) and parliamentary decision, No. 77 of 23 January 2006 establishing the Complaints

Committee, this Committee considers complaints relating to disciplinary measures imposed on inmates of penitentiary institutions and declarations by inmates of their refusal to take food. The Committee is not empowered to monitor inmates' treatment for the use of torture or inhuman or degrading treatment by penitentiary institution staff.

255. In order bring criminal law into line with the recommendations of experts from the Council of Europe and render it more liberal and to modernize national penal policy so as to make it more humane and more consistent with European standards, the Ministry of Justice prepared a draft law amending and supplementing the Criminal Code, later adopted as Act No. 277-XVI of 18 December 2008. The Act, which draws on the practices of many States, led to **a reduction in minimum and maximum penalties and prompted a more general review of penalties and reoffending**. Thus, the minimum and maximum terms of imprisonment stipulated are now 3 months and 20 years, respectively. The penalties envisaged in the majority of the articles of the Special Part of the Criminal Code were reviewed, as was the classification of offences. This resulted in shorter prison terms and the provision of alternatives to deprivation of liberty, such as fines and unpaid community service.

256. Pursuant to article 64 of the Criminal Code, a fine is a monetary sanction applied by a court in standard units. One standard unit is equal to 20 Moldovan lei. The fine, which for an individual ranges from 150 to 1,000 standard units depending on the nature and seriousness of the offence and the financial situation of the perpetrator, is calculated on the basis of the value of the standard unit when the offence was committed. In cases of malicious evasion of payment of a fine imposed as a main or additional penalty, the court may commute the unpaid sum to a prison sentence, on the basis of one month's imprisonment per 50 standard units.

257. Under article 67 of the Criminal Code, unpaid community service may be imposed for a term of from 60 to 240 hours, to be served for between 2 and 4 hours per day. Unpaid community service may not be imposed on persons with category I or II disability, military personnel under contract, pregnant women and women with children up to the age of 8 years, minors under the age of 16 years, and persons of pensionable age. Unpaid community service is completed within 18 months of the date on which the court's decision becomes legally enforceable. Pursuant to article 88 of the Code, time spent in pretrial detention is deducted from any prison term on the basis of one day per day, and from any term of unpaid community service on the basis of two hours' unpaid community service per day of pretrial detention.

258. Pursuant to article 10/1 of the Criminal Code, if a new law provides for a penalty of deprivation of liberty to be replaced with a lesser penalty of unpaid community service or a fine, the penalty imposed is commuted to unpaid community service, providing that there are no obstacles to the performance of community service and the maximum penalty stipulated in the new law is not exceeded. If the new law provides for a penalty of deprivation of liberty to be replaced with a lesser penalty of a fine, the penalty imposed is commuted to a fine, again providing that maximum penalty stipulated in the new law is not exceeded. If a sentence of deprivation of liberty has been partially served, the replacement sentence of unpaid community service or a fine may be fully or partially rescinded.

259. Under article 55 of the Code, a first-time offender who commits a minor or moderate offence may be absolved of criminal liability if he or she has confessed and provided compensation for the damage caused as a result of the offence, and if it has been established that he or she can be reformed without recourse to criminal prosecution.

260. Amnesty Act No. 188-XVI of 10 July 2008 was adopted in connection with the proclamation of 2008 as International Youth Year. On 1 January 2008, 446 minors were

being held in penitentiary institutions, but as a result of the new Act, only 32 minors were still being held by 1 January 2009.

261. Updated information, including statistics, disaggregated by sex, age, ethnicity and offence, on the number of imprisoned persons and the occupancy rate of the accommodation capacities, is provided in the tables below:

#### Number of imprisoned persons by gender

<i>As at 01.01.2008</i>		<i>As at 01.01.2009</i>		<i>As at 24.08.2009</i>	
<i>Men</i>	<i>Women</i>	<i>Men</i>	<i>Women</i>	<i>Men</i>	<i>Women</i>
7 449	446	6 415	415	6 347	383

#### Number of convicts by age

<i>Age</i>	<i>As at 01.01.2009</i>	<i>As at 01.01.2008</i>	<i>As at 01.07.2008</i>
Up to 15 inclusive	-	1 (0.02%)	1 (0.02%)
Up to 16 inclusive	3 (0.05%)	7 (0.11%)	5 (0.08%)
Up to 17 inclusive	8 (0.15%)	33 (0.51%)	15 (0.24%)
Up to 18 inclusive	13 (0.24%)	53 (0.81%)	50 (0.79%)
18–21 inclusive	369 (6.75%)	702 (10.77%)	432 (6.86%)
21–30 inclusive	2 378 (43.47%)	2 708 (41.53%)	2 579 (40.94%)
30–40 inclusive	1 647 (30.11%)	1 779 (27.28%)	2 025 (32.15%)
40–50 inclusive	677 (12.38%)	775 (11.88%)	741 (11.76%)
50–55 inclusive	206 (3.77%)	283 (4.34%)	249 (3.95%)
55–60 inclusive	102 (1.86%)	104 (1.59%)	121 (1.92%)
Over 60	67 (1.22%)	76 (1.16%)	81 (1.29%)
<b>Total</b>	<b>5 470 (100%)</b>	<b>6 521 (100%)</b>	<b>6 299 (100%)</b>

<i>Number of convicts by offence</i>	<i>As at 01.01.2008</i>	<i>As at 01.01.2009</i>	<i>As at 01.07.2009</i>
Intentional homicide, infanticide, arts. 145, 147 (arts. 88, 89 and 92 of the 1961 Criminal Code)	1 316 (20.18%)	1 211 (22.14%)	1 268 (23.40%)
Intentional grievous bodily harm or other grave injury to health, art. 151 (art. 95 of the 1961 Criminal Code)	408 (6.26%)	465 (8.50%)	512 (9.45%)
Abduction, art. 164 (arts. 64, 1132, 125 and 214 of the 1961 Criminal Code)	9 (0.14%)	13 (0.24%)	9 (0.17%)
Trafficking in persons, art. 165 (arts. 1131 and 1132 of the 1961 Criminal Code)	51 (0.78%)	104 (1.90%)	150 (2.77%)
Offences of a sexual nature, arts. 171–175 (arts. 102 and 103 of the 1961 Criminal Code)	351 (5.38%)	362 (6.62%)	384 (7.09%)
Theft, art. 186 (art. 119 of the 1961 Criminal Code)	1 368 (20.98%)	843 (15.41%)	752 (13.88%)
Robbery, art. 187 (art. 120 of the 1961 Criminal Code)	426 (6.53%)	431 (7.88%)	479 (8.84%)
Robbery with violence, art. 188 (art. 121 of the	479 (7.35%)	448 (8.19%)	461 (8.51%)



<i>Number of convicts by offence</i>	<i>As at 01.01.2008</i>	<i>As at 01.01.2009</i>	<i>As at 01.07.2009</i>
1961 Criminal Code)			
Misappropriation of property on a large or especially large scale, art. 195 (art. 1231 of the 1961 Criminal Code)	984 (15.09%)	754 (13.79%)	561 (10.35%)
Trafficking in persons, art. 206 (art. 1131 of the 1961 Criminal Code)	9 (0.14%)	11 (0.20%)	13 (0.24%)
Illegal removal of children from the country, art. 207 (art. 1123 of the 1961 Criminal Code)	-	1 (0.02%)	1 (0.02%)
Illicit trafficking in narcotic drugs, psychotropic substances or precursors not for sale, arts. 217–219 (art. 2251 of the 1961 Criminal Code)	256 (3.93%)	248 (4.53%)	255 (4.71%)
Economic offences, arts. 236–258	25 (0.38%)	30 (0.55%)	36 (0.66%)
Theft of a vehicle, art. 273 (art. 182 of the 1961 Criminal Code)	73 (1.12%)	71 (1.30%)	75 (1.38%)
Banditry, art. 283 (art. 74 of the 1961 Criminal Code)	28 (0.43%)	38 (0.69%)	43 (0.79%)
Acts that undermine penitentiary institutions, art. 286 (art. 741 of the 1961 Criminal Code)	4 (0.06%)	3 (0.06%)	3 (0.06%)
Hooliganism, art. 287 (art. 218 of the 1961 Criminal Code)	100 (1.53%)	102 (1.86%)	100 (1.85%)
Illegal use of arms and ammunition, arts. 290–292 (art. 227 of the 1961 Criminal Code)	28 (0.43%)	5 (0.09%)	11 (0.20%)
Attempt on the life of a judge or police officer, arts. 305 and 350 (art. 2061 of the 1961 Criminal Code)	28 (0.43%)	9 (0.16%)	10 (0.18%)
Offences committed by officials, arts. 324–332 (arts. 184–189 of the 1961 Criminal Code)	4 (0.06%)	5 (0.09%)	7 (0.13%)
War crimes, arts. 364–392 (arts. 238–270 of the 1961 Criminal Code)	8 (0.12%)	5 (0.09%)	9 (0.17%)
Other offences	566 (8.68%)	311 (5.69%)	280 (5.17%)
<b>Total</b>	<b>6 521 (100%)</b>	<b>5 470 (100%)</b>	<b>5 419 (100%)</b>

### Occupancy

<i>Name of institution</i>	<i>Number of places</i>	<i>As at 01.01.2009</i>	<i>As at 01.01.2008</i>	<i>As at 01.07.2009</i>
Penitentiary institution No. 1 – Taraclia (closed-type)	350	240	190	240
Penitentiary institution No. 2 – Lipcani (for minors, with a sector for former government employees)	250	84	202	84
Penitentiary institution No. 3 – Leova (closed-type)	510	346	436	346
Penitentiary institution No. 4 – Cricova (semi-open)	1 000	736	870	736
Penitentiary institution No. 6 – Soroca (closed-type)	1 200	892	1109	892
Penitentiary institution No. 7 – Rusca (women only)	300	252	274	252
Penitentiary institution No. 8 – Bender (semi-open)	250	94	102	94
Penitentiary institution No. 9 – Pruncul (semi-open)	750	577	755	577
Penitentiary institution No. 10 – Goian (semi-open)	250	79	51	79

<i>Name of institution</i>	<i>Number of places</i>	<i>As at 01.01.2009</i>	<i>As at 01.01.2008</i>	<i>As at 01.07.2009</i>
Penitentiary institution No. 15 – Cricova (semi-open)	600	421	524	421
		373 (including 24 persons subject to preventive measures)	437 (including 18 persons under investigation)	373 (including persons subject to preventive measures)
Penitentiary institution No. 16 – Pruncul (penitentiary hospital)	600			
Penitentiary institution No. 18 – Brănești (semi-open)	800	468	648	468
<b>Total</b>	<b>6 860</b>	<b>4 538/4 562</b>	<b>5 580/5 598</b>	<b>4 538/4 562</b>
Penitentiary institution No. 5 – Cahul (pretrial detention centre)	300	41/202	83/256	41/202
Penitentiary institution No. 11 – Bălți (pretrial detention centre)	510	252/458	294/474	252/458
Penitentiary institution No. 12 – Bender (pretrial detention centre)	250	80/83	77/82	80/83
Penitentiary institution No. 13 – Chișinău (pretrial detention centre)	1 200	182/1 049	169/1 078	182/1 049
Penitentiary institution No. 17 – Rezina (pretrial detention centre)	510	377/476	318/407	377/476
<b>Total number in pretrial detention centres</b>	<b>2 770</b>	<b>932/2 268</b>	<b>941/2 297</b>	<b>932/2 268</b>
<b>Grand total</b>	<b>9 630</b>	<b>5 470/6 830</b>	<b>6 521/7 895</b>	<b>5 470/6 830</b>

262. Pursuant to articles 219 and 224 of the Enforcement Code, adolescents and adults of both sexes are found in all categories of detention.

263. Minors detained in the penitentiary system of the Republic of Moldova undergo a comprehensive range of rehabilitation measures with a view to their social reintegration following release. They take part in social and psychological reform programmes, including a programme of basic social and legal studies, a programme of preparation for release (Prosocial), a programme of sporting activities (Prosport), a creative arts programme, a programme for drug users and a programme for prisoners convicted of theft and robbery.

264. All minors released from detention are placed in general education or vocational training. All pretrial detention centres, including penitentiary institutions No. 2 (Lipcani) and No. 7 (Rusca), organize general education classes in accordance with the requirements of the Ministry of Education, Youth and Sport, which has overall responsibility for the process. All convicted minors are registered with gymnasia, lycées and schools in local communities and are taught in accordance with a timetable approved by the director of the penitentiary institution in which they are being held. On completion of vocational training, detained minors receive a graduation certificate. To mark the various holidays, convicted minors enter national art competitions (such as the Christmas holiday event “Youth for Moldova”), international competitions (such as “Kalina Krasnaya”, an annual art competition originally organized by the penitentiary system of Ukraine before it was handed over to the Republic of Moldova), contests involving local sports personalities, and events organized by non-governmental organizations.

265. On 24 August 2009, there were 84 minors in penitentiary institutions, including 5 girls; the average term of imprisonment was approximately four years.

266. In the first seven months of 2009, the following offences were recorded:

(a) **1,246 violations of the rules governing the stay of foreign nationals in the Republic of Moldova (compared to 1,489 in the previous year):** Russian Federation – 345, Ukraine – 273, Turkey – 183, Romania – 85, Azerbaijan – 82, Uzbekistan – 57, Armenia – 44, Georgia – 24, Israel – 16, Belarus – 16, Italy – 13, Syrian Arab Republic – 13, Tajikistan – 9, Bulgaria – 6, Kyrgyzstan – 4, France – 3, Cyprus – 2, Jordan – 2, the former Yugoslav Republic of Macedonia – 2, China – 1, Colombia – 1, Mongolia – 1, Sudan – 1, United States of America – 1, and others;

(b) **Article 333 of the Code of Offences (191/1, sects. 1 and 2):** violations by foreign nationals or stateless persons of the rules on their stay in the Republic of Moldova – 1,116 recorded offences;

(c) **Article 334, section 1, of the Code (192/1, sect. 1):** employment of foreign nationals or stateless persons temporarily resident in the Republic of Moldova who are not in possession of a work permit issued in accordance with the legally established procedure – 8 recorded offences;

(d) **Article 334, section 2, of the Code (192/1, sect. 2):** acceptance of employment by foreign nationals or stateless persons temporarily resident in the Republic of Moldova who are not in possession of a work permit issued in accordance with the legally established procedure – 121 recorded offences;

(e) **Article 192 of the Code:** violation of the procedure for the registration of identity documents and the drawing up of documents authorizing foreign nationals or stateless persons to reside in or transit through the Republic of Moldova – 1 recorded offence.

267. There were 48 recorded offences under other articles:

(a) **Article 47/1, section 1:** actual bodily harm – 4 recorded offences;

(b) **Article 47/3, section 1:** insult – 3 recorded offences;

(c) **Article 164/1, section 1:** petty hooliganism – 5 recorded offences;

(d) **Article 167/1, section 1:** consumption of alcohol in a public place and public drunkenness – 2 recorded offences;

(e) **Article 174/1, section 1:** violation of legislation on the organization and conduct of assemblies – 4 recorded offences;

(f) **Article 174/5, section 1:** resisting a police officer or court official – 9 recorded offences;

(g) **Article 174/6, section 1:** insulting a police officer or court official – 5 recorded offences;

(h) **Article 174/7, section 1:** failure to appear at a law enforcement agency – 1 recorded offence;

(i) **Article 191:** violation of the regulations for crossing the State border – 11 recorded offences.

268. On 4 August 2009, 20 individuals from the countries and regions listed below were placed in a temporary holding centre for foreign nationals: Azerbaijan – 6, Turkey – 5, Russian Federation – 2, Ukraine – 1, Armenia – 1, Nigeria – 1, Pakistan – 1, West Africa – 1, Syrian Arab Republic – 1, Viet Nam – 1. All were male, with an average age of 30. They are being held for up to six months for violating immigration rules.

269. In accordance with the Act on Asylum, persons requiring international protection are placed in a temporary holding centre specifically for asylum-seekers. Such centres are

designated or established in accordance with the legislation in force, and their activities comply with the regulations approved by the Government of the Republic of Moldova.

270. In accordance with article 251, section (1), of the Enforcement Code, convicted persons undergo a medical examination on entering penitentiary institutions and during their incarceration, on request and at regular intervals of not more than six months. The medical examination is confidential.

271. From 10 to 30 April 2009, pursuant to court decisions regarding pretrial detention, 111 individuals (including 4 minors) suspected of committing the offences specified in article 285 (Mass disorder) and article 187 (Robbery) of the Criminal Code during the riots of 7 April 2009 were remanded in penitentiary institution No. 13 (Chişinău).

272. The rights of these individuals were respected while they were in custody. No physical force was used, and they were not subjected to any other type of coercion or inhuman treatment. In accordance with current legislation governing the status of persons under criminal investigation, medical doctors examined these individuals on their arrival at the penitentiary institution. Their state of health was assessed and recorded, as were any bodily injuries, and they were given medical treatment where necessary.

273. Pursuant to article 251 of the Enforcement Code and paragraph 25 of the regulations governing the serving of sentences by convicted persons, detainees placed in a penitentiary institution on 11 April 2009 were examined by medical service staff for bodily injuries or other signs of violent treatment. The results of the examinations were recorded in outpatient medical records. Thirty-seven of the 111 individuals suspected of involvement in the protests had suffered bodily injuries. Three were hospitalized in the clinic of the penitentiary institution's medical service.

### **Articles 12 and 13**

274. No convicted person is currently being detained in the penitentiary institutions of the Republic of Moldova under article 309/1 (Torture) or article 137 (Inhuman treatment) of the Criminal Code. Complaints about actions or omissions of criminal prosecution and investigation bodies are submitted to the prosecutor leading the criminal prosecution, in accordance with article 298 of the Code of Criminal Procedure.

275. A review of the available data on petitions received by the Department of Penitentiary Institutions shows that since 2007 the following numbers of petitions have been filed with the Department by detainees and other persons claiming that penitentiary system personnel had committed against persons in places of detention acts that could be described as constituting torture or cruel or inhuman treatment (unlawful use of physical force and/or special instruments, failure to meet dietary standards, and conditions of detention that do not comply with minimum European standards):

- (a) Three appeals in 2007;
- (b) Three appeals in 2008;
- (c) Three appeals in 2009.

276. Every such appeal was carefully reviewed, including through visits to the relevant institutions, and the requisite probative material was gathered in each individual case taken up; it emerged that none of the claims made in any of the appeals was supported by the facts.

277. Prisoners have access to postboxes that have been installed for sending mail at penitentiary institutions (in each self-contained area), in accordance with paragraph 343 of the regulations governing the serving of sentences by convicted persons, approved by

Government decision No. 583 of 26 May 2006. Under paragraph 344 of the regulations, letters are dropped in the postboxes or given to penitentiary staff in sealed envelopes.

278. In this context, it should be pointed out that postboxes were put in place in all penitentiary institutions and remand centres in accordance with article 8 of the Constitution, which stipulates the primacy of international over national norms. Access to postboxes by detainees (convicted and remand prisoners alike) is not restricted in any way and thus their constitutional right to secrecy of correspondence is strictly observed.

279. In addition, pursuant to article 229 of the Enforcement Code, the Department of Penitentiary Institutions issued decree No. 196 of 1 October 2008 on guaranteeing the right of detainees to correspondence, under which detainees may exercise their right to correspondence by personally placing their mail in sealed envelopes in the post, in accordance with article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and articles 8 and 28 of the Constitution. This is specified in paragraphs 1 and 2 of the decree.

280. For the sake of providing detainees with access to various public bodies and voluntary associations, the Department of Penitentiary Institutions issued order No. 29 of 2 March 2006 confirming the regulations on public notices, under which billboards were mounted with the details of the postal addresses of public bodies and voluntary associations to which detainees could send petitions.

281. Correspondence between a convicted person and his or her lawyer, the Complaints Committee, criminal prosecution bodies, the prosecutor's office, the courts, central government bodies and intergovernmental international organizations for the protection of human rights and fundamental freedoms is not subject to censorship (article 229 of the Enforcement Code). Correspondence is posted or transmitted to the addressee by the administration of the place of detention within 24 hours after it is received. Nevertheless, five complaints from detainees about the administration's refusal to send their letters, calling for them to be posted, were filed during the reporting period. Since 1 January 2007, five complaints from detainees have been received stating that penitentiary institution officials had not accepted their letters for posting.

282. Commissions to oversee the review of petitions have been established in every institution of the penitentiary system.

283. In addition, tireless efforts are made to carry out the plan of action to realize the right to petitions, information and access to justice, approved by Government decision No. 1013 of 12 September 2007.

284. Convicted persons may file complaints about actions or omissions of penitentiary institution officials with the prosecution bodies, the Centre for Human Rights and other authorities, in accordance with the **Code of Criminal Procedure**.

285. In addition, under Government decision No. 583 of **26 May 2006 approving the regulations governing the serving of sentences by prisoners**, if a prisoner is found to have suffered bodily injuries he or she must be examined by a doctor and provided with the necessary medical care. The doctor who carries out the examination is required to inform the prosecutor's office and the Department of Penitentiary Institutions if he or she finds that bodily injuries have been inflicted on the prisoner, regardless of whether this is the result of violence, and to enter in the medical record everything observed or declared by the prisoner in this connection.

286. Furthermore, the Ministry of Justice, the General Prosecutor's Office and the Centre for Human Rights are now briefed daily on cases and complaints of the use of force against prisoners by police and prison officers.

287. With a view to providing detainees with access to various public bodies and voluntary associations, the Department of Penitentiary Institutions issued order No. 29 on 2 March 2006 confirming the regulations on public notices, which provide for the mounting of billboards on which the mailing addresses of the law enforcement agencies must appear.

288. Under article 298 of the Code of Criminal Procedure any evidence, complaint or other indication that a person may have been subjected to torture or cruel, inhuman or degrading treatment must be referred to the prosecutor leading the criminal prosecution and reviewed according to the procedures set out in article 274, with criminal proceedings being instituted where appropriate in a separate case.

289. With respect to the actions of the police bodies, the Ministry of Internal Affairs has set up an Internet hotline, allowing complaints and statements to be filed online by filling in a special form.

290. Medical care for detainees entering penitentiary institutions includes a mandatory confidential check-up. The results of the check-up, containing information about the person's mental and physical health, are kept in the detainee's medical record.

291. In addition to performing a general medical examination of detainees, the medical service staff check whether detainees show signs of injury or abuse. The necessary medical care is given to persons examined who are found to have been physically harmed. If required, such persons are hospitalized in the medical section of the institution. If detainees require emergency inpatient care they are given special leave to be taken to an inpatient facility.

292. In the first half of 2009, there were 37 cases of persons found on entering Moldovan penitentiary institutions to have sustained injuries, including 35 persons newly arrived from temporary detention facilities of the Ministry of Internal Affairs.

293. Under Act No. 1545 of 25 February 1998 on the Procedure for Compensation for Damage Caused by Unlawful Actions of Criminal Prosecution Bodies, Prosecutor's Offices and the Courts and article 1405 of the Civil Code, a natural or legal person is liable for material and moral damage caused as a result of: unlawful detention; unlawful use of preventive measures in the form of pretrial detention or recognizance not to leave the area or the country; wrongful prosecution; wrongful conviction; unlawful confiscation of property; unlawful compulsory unpaid community service; unlawful search or seizure while a criminal case is being criminally prosecuted or tried by a court; unlawful seizure of property; unauthorized discharge or dismissal from work (or service) and other legal proceedings that restrict the rights of a natural or legal person; unlawful imprisonment for an offence or unlawful administrative detention or imposition of an administrative fine by a court; and unlawful investigative measures. Damage must be compensated in full regardless of whether it is the fault of an official of a criminal prosecution body, a prosecutor's office or a court.

294. With respect to information on cases in which the judicial authorities have ordered payment of compensation and on the complaints procedure for victims of torture and cruel, inhuman or degrading treatment or punishment and their families, we can present sample data in this area, as the courts do not have centralized statistics concerning such cases. According to information submitted by the Supreme Court of Justice, the Appeals Chamber of Cahul, the Appeals Chamber of Comrat and the courts of Ciocana and Rîșcani in the Municipality of Țhisinău, Ciqđr-Lunga and Hîncești, 13 cases were considered between 2008 and 2009 involving 19 persons; 11 were victims.

295. With respect to victims seeking compensation for material and moral damage, 63 claims were filed in 2008, 32 of which are on record and **could** be verified, and 209,339 Moldovan lei were paid out in damages to the victims, while the remaining cases were

heard on appeal or under an annulment procedure; 53 claims were filed in 2009, 38 of which were reviewed, and 339,367 Moldovan lei were paid out in damages, while the remaining cases are under consideration.

## Article 15

296. Under article 94 of the Code of Criminal Procedure, information obtained with the use of force, threats or other coercive measures, in violation of human rights and freedoms or in gross violation of the requirements of the Code by criminal prosecution bodies in criminal proceedings may not be used as evidence and, therefore, is excluded from the case, and may not be **submitted** to the court and used as the basis for a judgement or other court decision. In addition, evidence obtained as a result of the administrative use of illegally obtained evidence is inadmissible, with the exception of cases in which the evidence obtained is based on an independent source or would inevitably have come to light.

## Article 16

297. (a) The steps taken to improve conditions of detention are as follows:

### In 2007:

- Dormitory No. 5 was built out of slate for detainees in penitentiary institution No. 4 in Cricova, and bath and laundry facilities were installed in penitentiary institution No. 5 in Cahul and wing No. 6 in penitentiary institution No. 18 in Brănești
- Major renovations were carried out on the roof of the medical facility of penitentiary institution No. 3 in Leova
- A heating system and an MCR-5 boiler-house were installed in penitentiary institution No. 4 in Cricova, No. 6 in Soroca, No. 15 in Cricova and No. 18 in Brănești
- The bathrooms for detainees in penitentiary institutions Nos. 4 and 15 in Cricova were repaired
- Major repairs were carried out on the boilers in the boiler-houses in penitentiary institution No. 3 in Leova, No. 5 in Cahul and No. 17 in Rezina to ensure that network equipment and engineering works run safely
- Repairs were carried out on the plumbing in penitentiary institutions No. 11 in Bălți and Nos. 9 and 16 in Pruncul
- Lighting fixtures were mounted on the periphery of penitentiary institution No. 3 in Leova and No. 5 in Cahul. The power transformers of penitentiary institution No. 4 in Cricova and No. 5 in Cahul were also repaired
- The sump pumps in penitentiary institution No. 2 in Lipcani, No. 7 in Rusca, No. 16 in Pruncul and No. 17 in Rezina underwent major repairs
- The areas and yards used for exercise by patients with tuberculosis in penitentiary institution No. 13 in Chișinău were repaired
- Transport vehicles used in the penitentiary system were serviced and properly insured in accordance with the legislation in force

### Investment capital:

- Reconstruction of penitentiary institution No. 1 in Taraclia – 2,767,400 lei
- Reconstruction of the tuberculosis hospital in Rezina – 1,867,800 lei
- Share in the installation of housing unit boilers and the heating system in penitentiary institution No. 7 in Rusca – 1,643,700 lei
- Drafting of construction documents for a model remand centre with a 250-person capacity – 2,608,000 lei
- Total: 6,539,700 lei

*Reconstruction of penitentiary institution No. 1 in Taraclia*

298. Reconstruction work was carried out on security unit No. 2 in penitentiary institution No. 1 in Taraclia; 90 to 95 per cent of the work has been completed.

*Reconstruction of penitentiary institution No. 7 in Rusca*

299. A boiler was installed and work was done on the heating system of the housing unit in collaboration with the Swiss Agency for Development and Cooperation to renovate the detention unit for women in penitentiary institution No. 7 in Rusca.

*Reconstruction of the tuberculosis hospital in penitentiary institution No. 17 in Rezina*

300. Reconstruction of the Rezina tuberculosis hospital facility was completed, including the construction of a slate roof and rooms for long- and short-term stays and the production and installation of a ventilation system.

301. The facility was put into operation in September.

302. Major repairs were carried out **in 2008** involving the replacement of heating pipes, beginning with the boilers and ending with all housing units in penitentiary institution No. 3 in Leova and No. 5 in Cahul. Renovations were carried out on the entire internal and external heating systems of penitentiary institution No. 13 in Chişinău. Repair work was done on the boiler equipment (change of heating pumps and valves) in penitentiary institution No. 3 in Leova, No. 5 in Cahul, No. 13 in Chişinău and No. 17 in Rezina.

303. A total of four heating rooms were built in 2008 in penitentiary institution No. 6 in Soroca, No. 9 in Pruncul, No. 15 in Cricova and No. 18 in Brăneşti. In penitentiary institution No. 3 in Leova a heating system was built in housing sectors Nos. 3, 4, 5 and 6, including a boiler for the institution. An autonomous heating system for the visiting areas was built in penitentiary institution No. 8 in Bender. Boilers and electrical systems were installed in the housing unit for the rehabilitation of convicted persons in penitentiary institution No. 4 in Cricova. Work was begun on a 300-metre heating pipeline. Major repair work was done on the toilets and washbasins of housing sectors Nos. 3, 4, 5 and 6 of penitentiary institution No. 3 in Leova. The power transformers were repaired in penitentiary institution No. 2 in Lipcani. The sump pumps in penitentiary institution No. 4 in Cricova, No. 10 in Goian and No. 16 in Pruncul have undergone major repairs.

304. Roofs were built in housing unit No. 1 for prisoners in penitentiary institution No. 18 in Brăneşti. Major repairs were carried out on the boiler roof in penitentiary institution No. 13 in Chişinău, the surgery unit of penitentiary institution No. 16 in Pruncul and the administrative unit of penitentiary institution No. 17 in Rezina. Routine repairs were done on the quarters, water pipes and electrical systems in all penitentiary institutions.

305. The Department of Penitentiary Institutions continued to work with the Swiss Agency for Development and Cooperation in 2008. A bilateral agreement on cooperation in this area was signed on 5 March 2008, followed by the reconstruction of the water supply



and plumbing system, the building of a room to dry laundry, the reconstruction and conversion of the washbasins and summer outhouse into a solar-powered laundry room and the construction of heated shower stalls in penitentiary institution No. 7 in Rusca. The Agency paid 2.5 million lei for this work. Furthermore, the Agency completed the construction of a water treatment plant and sewer system, which will be operational in the course of 2009.

306. A housing unit for mothers with children with the capacity to accommodate about 12 mothers with children is now under construction in penitentiary institution No. 16 in Pruncul with financial support from the Carlux voluntary association.

307. Government decision No. 1054 of 15 September 2008 amending and supplementing Government decision No. 609 of 29 May 2006 on minimum standards for daily nutrition and provision of personal hygiene products and toiletries, which entered into force on 1 January 2009, was adopted with a view to improving the regulatory framework governing the conditions of detention in penitentiary institutions. The amendments ensure that detainees are provided with toiletries and household articles.

### **Investment capital**

308. The following kinds of construction work were completed under the financing plan for 2008:

- Reconstruction of penitentiary institution No. 1 in Taraclia – 744,000 lei
- Reconstruction of the training centre of the Department of Penitentiary Institutions – 620,000 lei
- Construction of a medical station for penitentiary institution No. 7 in Rusca – 2.4 million lei
- Drafting of construction documents for the model remand centre with a 250-person capacity – 630,000 lei

309. Under the plan of action to reform the penitentiary system, construction work was begun in 2008 to rebuild penitentiary institution No. 1 in Taraclia (involving the complex's electrical system).

310. A two-storey building that meets the requirements of the Enforcement Code was opened at penitentiary institution No. 1 in Taraclia during the first half of 2008. The design work for the reconstruction of unit No. 1 and the penitentiary institution was completed with a view to establishing a special maximum security sector for persons sentenced to life imprisonment, and documents were submitted for consideration to the competent authorities.

311. The competitive bidding process for the restoration of the electrical systems and installation of power supply units in penitentiary institutions took place on 17 October, and the contract for the work was awarded to the Dacia 90 company. The contractor completed the installation work at the end of December 2008 and is expected to finish fitting the equipment for the Union Fenosa power distribution network in the first quarter of 2009.

312. The medical rehabilitation unit of penitentiary institution No. 7 in Rusca was renovated in cooperation with the Swiss Agency for Development and Cooperation. Although the work contracted was completed, several defects were found in the facilities while the building and installation work was being carried out, which required additional contractual work that was completed in the first half of 2009.

313. The Urbanproiekt company completed work on the design of a remand centre in 2008. The standard documents for the centre were reviewed by the board of construction

project control and evaluation of the Ministry of Construction and Territorial Development, and a recommendation was made to approve funding of roughly 90,957,880 lei at current prices (fourth quarter of 2008) in accordance with design No. 15160 for a remand centre with a capacity to hold 250 persons.

#### **Major repairs**

314. The following items were included and the work completed under the financing plan for 2008:

- Renovation of a room in the disciplinary unit of penitentiary institution No. 9 in Pruncul – 1,021,000 lei
- The cafeteria of the Department of Penitentiary Institutions – 785,000 lei
- Total: **1,806,000 lei**.

315. The aforementioned facilities were completed and put into operation.

#### **Maintenance work**

316. A total of 2,136,000 lei was spent in 2008 and 1,695,000 in 2007 on maintenance work on penitentiary system facilities.

#### **In 2009**

##### **Capital investment**

317. The following items were included in the financial plan for 2009:

- Drafting of construction documents to restore the Department of Penitentiary Institutions training centre in Goian – 420,000 lei
- The medical station of penitentiary institution No. 7 in Rusca – 500,000 lei
- Reconstruction of the first floor of the training unit of the Department of Penitentiary Institutions training centre – 540,000 lei

318. In accordance with the plan of action for penitentiary system's reform the following kinds of construction work continued to be carried out in 2009:

- Reconstruction of the first floor of the training unit of the Department of Penitentiary Institutions training centre in Goian, which has been completed;
- Drafting of construction documents to restore the Department's training centre in Goian, the contract for the drafting of the documents having been awarded following public procurement procedures. About 6 per cent of the overall work has been completed to date.

319. Concerning the building of exercise yards for mothers with children up to 3 years, construction work was done on a building in the medical rehabilitation unit of penitentiary institution No. 7 in Rusca and completed on 3 July 2009 in cooperation with the United Nations Children's Fund, which contributed about 100,000 lei to finance the project.

320. Work has begun on construction of a sewage treatment station for penitentiary institution No. 7 in Rusca in cooperation with the Swiss Agency for Development and Cooperation, which envisages removing a layer of fertile earth and keeping it for future use. The second stage of work involves building a tank to treat the sewage. About 8 per cent of the planned work has been completed to date.

### Major repairs

321. The following kinds of construction work continue to be done in accordance with the plan of action for penitentiary system reform:

- Repair of the well and water tower of penitentiary institution No. 4 in Cricova – 252,000 lei
- Repair work on the administrative unit of the Department of Penitentiary Institutions – 300,000 lei

322. With respect to the repair of the well and water tower of penitentiary institution No. 4 in Cricova, a contract was concluded following public procurement procedures and work on the facility is to begin once a 10-per-cent advance has been paid.

323. Since the amount allocated for the repair work on the administrative unit of the Department of Penitentiary Institutions has been lowered from 800,000 to 300,000 lei, Department specialists have been preparing a new budget for the most crucial work to be done and working out the details of the procurement procedures.

### Maintenance work

324. About 2.5 million lei were set aside in 2009 and 2,136,000 lei in 2008 for maintenance work on penitentiary system facilities.

325. The Department purchased and distributed construction materials for its subdivisions at a cost of about 1.6 million lei, including 120 tons of cement, 60 tons of slaked lime, 2,002 kilograms of paint, 2,000 slates, 5 tons of asphalt, 600 square metres of tar paper, 2,000 square metres of Linokrom heat insulating roofing material, 1,000 square metres of Rubemast waterproofing roofing material, 30 cubic metres of boards, 800 square metres of glass, 1.5 tons of metal, 32 tons of pipes, 2,500 kilograms of electrodes, 1,600 square metres of linoleum, 2,600 square metres of tiles and 10 tons of dry mix.

326. This had made it possible to carry out maintenance work in all the penitentiary institutions.

327. A range of measures has helped to lower the incidence of tuberculosis among prisoners from 495 cases in 2006 to 245 in 2008, or a decrease of 50.5 per cent. In the first half of 2009, 119 cases of prisoners with tuberculosis were registered.

328. The number of new cases of the illness declined twofold, from 314 in 2006 to 153 in 2008 (a 48.7 per cent decrease). There were 92 registered cases of prisoners whose tuberculosis had recurred in 2008, or 49.2 per cent fewer than in 2006 (181 cases).

329. In accordance with the recommendations of the international Stop TB Strategy, all detainees in the Republic of Moldova must undergo radiological screening when they enter the penitentiary system. Thus, in 2006, 20 per cent of the tuberculosis cases declared in the penitentiary system were detected when the prisoner entered the penitentiary institution. In 2008, the rate of detection increased to 25 per cent of the overall number of registered cases (245 cases).

330. The number of prisoners with tuberculosis has decreased by 3.5 times, from 1,152 patients in 2001 to 292 patients at the end of 2008, or by 74.6 per cent. By 1 January 2006, there were 364 registered cases of persons with tuberculosis in the penitentiary system and, as at 1 January 2009, 292 cases, or around 4 per cent of the overall number of detainees.

331. Between 2006 and 2007, tuberculosis accounted for 25.5 to 27 per cent of detainee deaths, a twofold decrease since 2001. In 2008, the Republic of Moldova registered 718 cases of death from tuberculosis, of which only 15 cases involved prisoners. Of these 15

cases, the cause of death for 40 per cent of the prisoners was HIV/AIDS (tuberculosis combined with HIV infection).

332. A national programme supported by the Global Fund to Fight AIDS, Tuberculosis and Malaria and the World Bank covers 100 per cent of the first- and second-line anti-tuberculosis drugs provided in the penitentiary system. Persons with tuberculosis are treated under the directly observed treatment short course (DOTS) and DOTS plus strategies. DOTS plus was introduced in penitentiary institutions in 2006, and the total number of detainees being treated for drug-resistant forms of tuberculosis now stands at 95. In 2008, 35 detainees joined the ranks of those being treated under DOTS plus, and in the first eight months of 2009, 21 persons.

333. As at 1 August 2009, 54 detainees (17.9 per cent) of the 302 detainees with tuberculosis registered in the penitentiary system were being treated under DOTS plus.

334. The convalescence sector of penitentiary institution No. 9 in Pruncul, with a capacity to hold 80 persons, was opened on 1 November 2006 to serve as an initial place for holding prisoners who successfully complete the anti-tuberculosis course, in accordance with the plan of the Department of Penitentiary Institutions. The establishment of this sector is expected to reduce the spread of tuberculosis among detainees in the coming years. Thus, 232 new cases of tuberculosis and 172 cases of relapse were detected in 2007 against 314 new cases and 181 cases of relapse in 2006. In 2008, the incidence of new cases registered was reduced by 50 per cent (153 new cases) and cases of relapse by 5 per cent (92 cases) compared to 2006. During the first eight months of 2009, 73 new cases and 46 recurrences of tuberculosis were registered. There was a clear decline in 2008 in new cases of tuberculosis and relapse among detainees, by 21.5 per cent (33 cases) and 34.8 per cent (47 cases), respectively, compared to the same period in 2007.

335. The following measures have been taken to address the problem of tuberculosis in penitentiary institutions:

(a) Providing access to diagnosis and anti-tuberculosis treatment with 100 per cent coverage under the DOTS and DOTS plus strategies;

(b) Improving the ventilation system in prison medical institutions No. 13 in Chişinău, No. 16 in Pruncul and No. 17 in Rezina;

(c) Preparing and distributing printed and video materials on the prevention and treatment of tuberculosis;

(d) Conducting chest X-ray examinations on prisoners twice a year and a mandatory examination on prisoners entering a penitentiary institution;

(e) Carrying out screening in the interim for early detection of tuberculosis;

(f) Cooperating with non-governmental organizations to prevent tuberculosis;

(g) Taking steps to isolate, observe and treat persons with persistent, chronic forms of tuberculosis in penitentiary institution No. 17 in Rezina (prison hospital sector), so as to lower the risk of tuberculosis infection in accordance with the requirements of the World Health Organization. Efforts have been made to raise awareness among detainees to involve them in the DOTS plus programme;

(h) Opening a rehabilitation department in prison No. 9 in Pruncul, in conjunction with other measures by the Department of Penitentiary Institutions to improve conditions of detention and reduce the incidence of tuberculosis among prisoners;

(i) Setting aside rooms for collecting sputum in penitentiary institutions with support from Carlux.

- In accordance with international recommendations for the penitentiary system in the Republic of Moldova, a mandatory chest X-ray examination is carried out on every detainee entering a penitentiary institution.
- A total of 105 detainees living with HIV in penitentiary institutions have received antiretroviral treatment, which became available in 2004. Antiretroviral therapy was prescribed for 26 detainees in 2008 and 12 in 2009. As at 1 August 2009, 36 (26.1 per cent) of the 140 detainees living with HIV registered in the penitentiary system were undergoing antiretroviral treatment.

336. The following information relates to paragraph 3 (f) of the list of issues.

337. The adoption of Act No. 5-XVI of 9 February 2006 on the Establishment of Equality between Men and Women and the National Plan to Promote Gender Equality in a Humane Society for 2006–2009 (confirmed by Government decision No. 984 of 8 September 2006) have led to the creation of a legal and regulatory framework in this area.

338. The Ministry of Internal Affairs has proposed recruiting staff from ethnic minorities to participate actively in law enforcement structures in the regions with the largest minority populations with a view to carrying out the provisions of paragraphs 18, 19 and 21 of the plan of action to implement the recommendations of the Committee on the Elimination of Discrimination against Women for 2008–2010.

339. To achieve these objectives local leaders were shown the need to enter into a productive partnership with persons representing ethnic minority interests in the regions in order to monitor progress in the selection and inclusion of minorities in voluntary community police corps.

340. For this purpose, officials at the level of deputy commissioners, chiefs of public order police forces and heads of public order departments and representatives for each region were authorized to oversee and manage the activities of voluntary community police corps.

341. In addition, further training was arranged for ethnic minorities involved in maintaining public order to caution them about their safety and inform them about professional requirements and codes of conduct.

342. Moreover, during the meetings organized by police station chiefs and operational officers in local government bodies, it was decided that ethnic minorities should have a greater presence in places where they encounter problems with various segments of society.

343. During this time, local governments and representatives of police bodies organized various meetings with representatives of ethnic minorities, who were informed about the existing state of affairs in the region they represented and were presented with possible ways of preventing potential anti-social behaviour.

344. Furthermore, in 2009 members of the General Department of Public Order took part in various seminars and meetings arranged by the Bureau for Inter-Ethnic Relations and other organizations and attended by representatives of central and local authorities and various experts from the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities, among others, at which various issues were considered and discussed.

345. Representatives of the departments of education, youth and sport in local councils took joint measures to teach minority schoolchildren such as the Roma with a view to developing lofty moral and spiritual qualities among them.

346. Another aspect that creates difficulties in relations with the Roma is their engagement in unlawful trade, especially trade in religious objects at markets for agricultural and manufactured goods, a fact that makes it necessary to react by enforcing the relevant legislation applicable in the specific circumstances, which displeases certain people.

347. Moreover, ethnic minorities, especially the Roma, always tend to migrate from one settlement to another, and in a number of cases with their families. Consequently, it is not possible to keep any records or inform them about the provisions of the laws in force.

348. It should be noted that in 2009 the Ministry of Internal Affairs did not register a single incident of threats, discrimination, hatred or violence against ethnic minorities. However, the prevalence of vagrancy and begging among the Roma, and the significant number of under-age children who take part in it, remain a problem.

349. Thus the Directorate General of the National Public Order Police continues to stand ready to offer assistance in making progress on a consensus and strengthening social cohesion and is in favour of genuine future cooperation.

### **Other issues**

350. Given that the Optional Protocol to the Convention against Torture does not prescribe a specific form of national mechanism for the prevention of torture, the Republic of Moldova has chosen to take a comprehensive approach to torture by staffing the mechanism with parliamentary advocates and establishing a consultative council under the Centre for Human Rights to provide advice and assistance to the advocates in carrying out their mandate. In short, the Consultative Council was conceived as a representative, independent and impartial civil society group made up of persons representing the widest possible range of interests. The selection of members is aimed at avoiding interference on the part of State bodies that oversee places of detention and ensuring that such establishments are monitored independently.

351. In accordance with article 23/1 of Act No. 1349-XIII of 17 October 1997 on Parliamentary Advocates, advocates, members of the Consultative Council and persons accompanying them regularly carry out preventive visits to places where persons are or may be deprived of their liberty in order to provide protection against torture and other cruel, inhuman or degrading treatment or punishment.

352. Members of the Council have been given guarantees similar to those granted to parliamentary advocates so that they may carry out their mandate to protect. Thus, in accordance with article 23/2, section (4), of the aforementioned Act, in order to perform their duties of preventing torture in an independent manner, members of the Council enjoy the rights specified in article 24, as follows:

(a) To visit without interference institutions, organizations, enterprises irrespective of the form of ownership, civil society associations, police stations and their detention facilities, penitentiary institutions, temporary holding facilities, military units, holding centres for immigrants and asylum-seekers, institutions providing social, medical or psychiatric assistance, special schools for children with behavioural disorders and other similar facilities;

(b) To request and obtain information, documents and materials needed to carry out their duties from the central Government, local authorities and officials at all levels;

(c) To have unrestricted access to any information on the treatment of detention conditions of persons deprived of their liberty;

(d) To be informed by officials at all levels about issues that require clarification during inspections;

(e) To meet and converse, without restriction and without witnesses, but if necessary through an interpreter, with individuals held in places of detention and with any other person who, in their view, might provide relevant information;

(f) To invite specialists and independent experts in a variety of fields, including lawyers, doctors, psychologists and representatives of civil society associations, to participate in preventive visits to places where persons are or may be deprived of their liberty.

353. In addition, under the provisions of article 178, section (1) (e), of the Enforcement Code, parliamentary advocates, members of the Consultative Council and other persons accompanying them are entitled, in the course of carrying out their duties, to visit places of detention without special permission to do so.

354. Act No. 200-XVI of 26 July 2007 amending the Act on Parliamentary Advocates and parliamentary decision No. 201-XVI of 26 July 2007 amending and supplementing the regulations on the Centre for Human Rights confirmed that the Centre for Human Rights would establish a consultative council to advise and assist the parliamentary advocates in exercising their mandate as a national mechanism for the prevention of torture.

355. The Council must include members of civil society organizations working in the area of human rights. The membership and rules on the organization and operation of the Council were approved on 31 January 2008 by the Director of the Centre for Human Rights, and its members include specialists in various fields, including members of voluntary associations (a total of 10 members).

356. These legal instruments refer to the right to visit places of detention and specify a list of places to be visited, guarantees and duties during visits and measures to be taken by parliamentary advocates following preventive visits. To ensure the effective exercise of the Ombudsman's duties in respect of torture prevention, provision was made to establish a consultative council attached to the Centre for Human Rights with the authority and mandate to prevent torture and other cruel, inhuman or degrading treatment and carry out periodic preventive visits in conjunction with or independently of the Ombudsman to places where persons are or may be deprived of their liberty. The Council must include representatives of voluntary associations working for the defence of human rights.

357. The issue of torture and other ill-treatment in the Republic of Moldova, including in the context of censure from the European Court of Human Rights, has become a topic of parliamentary hearings, leading to the adoption of decisions which noted shortcomings in the activities of the Government, prosecution bodies, the police and the courts. Decisions have also been proposed to redress the situation, including in this area.

358. In recognition of the importance of the positive commitments made to meet international standards for the abolition of torture and on the basis of a tendency to use any European best practices in this area, on 16 September 2005 the Republic of Moldova signed the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 18 December 2002, which it ratified by Act No. 66 of 30 March 2006.

359. By ratifying the Protocol, the Republic of Moldova affirmed that torture and inhuman or degrading treatment or punishment are prohibited and constitute a serious human rights violation and expressed its conviction that it is all the more necessary to take steps to achieve the goals of the Convention against Torture and enhance the protection of persons deprived of their liberty from such ill-treatment.

360. The Protocol entered into force for the Republic of Moldova on 24 July 2006. Its objective is to establish a system of regular visits undertaken by independent international and national bodies to places where persons are deprived of their liberty in order to prevent torture and inhuman or degrading treatment or punishment.

361. In this connection, one of the requirements of the Protocol is to establish an independent national mechanism to prevent torture and inhuman or degrading treatment.

362. On 26 July 2007, the Parliament adopted Act No. 200 amending and supplementing Act No. 1349 of 17 October 1997 on Parliamentary Advocates to meet the requirements of the Protocol.

363. For the Republic of Moldova, giving the Ombudsman the mandate of a national mechanism for the prevention of torture was feasible given that the parliamentary advocate (ombudsman) fully met the criteria for national torture prevention mechanisms set out in the Protocol: functional independence, professional skills and knowledge needed to carry out the mandate and wide authority to inspect places of detention in custody and other establishments.

364. This authority includes access to all places requiring inspection and the facilities and buildings of establishments such as prisons, police stations and their detention facilities, temporary holding facilities, military units, holding centres for immigrants and asylum-seekers, institutions providing social, medical or psychiatric assistance and special schools for children with behavioural disorders:

- (a) Freedom to choose places to visit, without prior notification, and persons to meet;
- (b) Access to all information, documents and materials needed to carry out the mandate and to any information on the treatment and detention conditions of persons deprived of their liberty;
- (c) The right to be informed when it is established that a detainee has been subjected to torture or cruel, inhuman or degrading punishment or other ill-treatment;
- (d) The right to receive information on cases of violent death in places of detention;
- (e) The right to appeal to State bodies to conduct investigations, solicit expert opinions and prepare reports on issues to be studied;
- (f) The right to receive information, within the bounds of the law, on measures taken by the authorities as a consequence of complaints and recommendations submitted;
- (g) The publication and distribution of annual reports.

365. In addition, in accordance with the provisions of article 23/2, paragraph (1), of Act No. 1349 of 17 October 1997 on Parliamentary Advocates, the Centre for Human Rights established a Consultative Council to advise and assist the parliamentary advocates in carrying out their mandate as a national mechanism to prevent torture. This article stipulates that the Council must include representatives of voluntary associations working in the area of human rights.

366. After identifying voluntary organizations working lawfully in the area of protecting the rights of persons with mental disorders, prisoners and persons in preventive custody, representatives of the Centre for Human Rights and representatives of the Organization for Security and Co-operation in Europe mission in the Republic of Moldova jointly began the process of drafting regulations governing the organization and operation of the Consultative Council.



367. The regulations were approved by the Director of the Centre for Human Rights on 31 January 2008 after being favourably reviewed by the Parliamentary Commission on Human Rights in accordance with the procedures set out in article 23/2 of the Act on Parliamentary Advocates.

368. Under article 5 of the regulations, the Council is composed of 11 members, including a presiding officer (the Ombudsman), who is responsible for the establishment and operation of the national torture prevention mechanism appointed by order of the Director of the Centre for Human Rights.

369. A task force made up of five persons, including two parliamentary advocates, one academic and two representatives of non-governmental organizations, was established to ensure maximum transparency and impartiality in the selection of members of the Consultative Council, in accordance with the regulations governing the Council's organization and operation.

370. The members of the Council were selected on a competitive basis. Of the 16 eligible candidates, only 14 were accepted; 2 were turned down because they did not meet the criteria set out in the regulations governing the Council's organization and operation. Ultimately, 10 members were chosen and the composition of the Council was approved by the Parliamentary Commission on Human Rights and confirmed by the Director of the Centre for Human Rights.

371. The term of the Consultative Council is three years.

372. Members of the Council have been given sufficient authority under the law to achieve their objectives. Thus, they have the powers of parliamentary advocates with respect to free access to any institution for visits, full access to any information about the treatment and detention conditions of persons deprived of their liberty, the right freely to choose the places they intend to visit and the persons they wish to meet.

373. Moreover, the Institute of Parliamentary Advocates intends to mount an information display in a visible place in every police station to shore up the work of the mechanism for the prevention of torture and the protection of detained persons from ill-treatment. The Ministry of Internal Affairs has already expressed its readiness to do so.

374. This display will contain a code of conduct which will be applied for persons who have been subjected to ill-treatment and other forms of abuse by the police and information material such as brochures, leaflets and posters regarding this topic. The installation of the displays will be done by the Centre for Human Rights and the United Nations agencies in the Republic of Moldova under an agreement on the protection of human rights and democracy in combating torture and other forms of degrading treatment.

375. The allegations that the authorities are putting pressure on parliamentary advocates are untrue. All the representatives of the European delegation who have visited the Republic of Moldova since April and held discussions with the parliamentary advocates on respect for human rights in the country, including in the context of the events of 7 April, have appreciated the parliamentary advocates' willingness to cooperate and the accurate and objective information and relevant data provided to them.

376. Under Act No. 187-XVI of 26 July 2007 on the making of declarations by the Republic of Moldova pursuant to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and in accordance with articles 21 and 22 of the Convention, the Republic of Moldova recognizes the competence of the Committee to receive and consider communications to the effect that one of the States parties is not fulfilling its obligations under the Convention, and it therefore recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by that State party.

377. In accordance with paragraph 5 (b) of Government decision No. 811 of 20 June 2002 on the establishment of a standing coordinating committee for assistance in drafting reports and replies of the Republic of Moldova in connection with visits by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to the Republic of Moldova and inter-State communications and individual complaints against the Republic of Moldova submitted to the Committee against Torture, the standing coordinating committee has been vested with the following duties in respect of the United Nations Convention against Torture:

- (a) Reviewing communications in which a State claims that the Republic of Moldova is not fulfilling its obligations under the Convention;
  - (b) Considering communications received from individuals who claim to be victims of violations of the provisions of the Convention by the Republic of Moldova;
  - (c) Submitting explanations, written statements and responses by the Government, within the periods specified under articles 21 and 22 of the Convention, to the States which sent the communications or, in the case of individual complaints, to the Committee, to clarify the matters raised;
  - (d) Presenting the Committee with oral and written comments;
  - (e) Drafting and concluding friendly settlements with other States or between the Republic of Moldova and persons who claim to be victims of a violation of the provisions of the Convention by the Republic of Moldova;
  - (f) Coordinating, preparing and presenting any information on the matters which is requested by the Committee.
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