



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

Distr.  
GENERAL

CAT/C/MDA/2  
12 December 2007

Original: ENGLISH

---

COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**Second periodic reports of States parties due in 2004**

**Addendum\* \*\***

**MOLDOVA**

[3 September 2007]

---

\* For the initial report, see CAT/C/32/Add.4; for its consideration, see CAT/C/SR. 563 and 565 and conclusions and recommendations CAT/C/CR/30/7.

\*\* 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 service.

### **Introduction**

1. In accordance with Article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the present report deals with the measures taken by the Republic of Moldova with the view of implementing the Convention and on the progress made in 2003-2006.
2. For the main demographic, economic and social indicators relating to the description of the legal system, reference is made to the core documents of the Republic of Moldova.
3. The evolution of the judiciary system and main legislative developments.
4. The Republic of Moldova has the priority objective to adjust its state system to contemporary standards of democratic societies with an independent judiciary system capable to ensure sound justice and protection of fundamental human rights and freedoms as its indispensable element.
5. The constitutional law no. 1471-XV of 21 November 2002 on the amendment of the Constitution of the Republic of Moldova, which entered into force on 12 December 2002, has amended paragraph (1) of Article 115 by stipulation that justice in the Republic of Moldova shall be rendered by the Supreme Court of Justice, Courts of Appeal, and courts of law.
6. The legal framework regulating organizational principles of the judiciary system has been amended by Law no. 191-XV of 8 May 2003 respectively. According to these amendments, the 4-level judiciary system has been reorganized. Since 12 June 2003 the Republic of Moldova has a 3-level judiciary system, with the Supreme Court of Justice, 6 Courts of Appeal (in Chisinau, Balti, Bender (based in Causeni), Cahul, Comrat), the Economic Court of Appeal (located in Chisinau municipality), 48 courts, including the District Economic Court and the Military Court. There are 44 relevant posts in the common courts. Investigating Judges are entitled with the tasks of judicial control of prejudicial procedures. The tribunals were reorganized into courts of appeal.
7. Besides institutional changes, new codes have been enforced: Criminal and Civil Codes as well as those on: Criminal Procedure and Civil Procedure that have entered into force on 12 June 2003.
8. The Enforcement Code has come into force on 1 July 2005.
9. The Code on Administrative Offences is being reviewed now by the Parliament of the Republic of Moldova.

### **Article 1**

10. Although the Criminal Code of the Republic of Moldova of 24.03.1961, included an article on torture (article 101/1), it was not actually enforced, as the authorities did not recognize this phenomenon and did not strive to eradicate it. Consequently, the acts of torture were qualified by the state agencies as “abuse of power or excess of official duties” (article 185, Criminal Code of the Republic of Moldova). It should be noted that this article provided for a distinct *corpus delicti*.

11. The new Criminal Code introduced torture as an aggravating factor to a range of criminal offences. However, these amendments did not ensure appropriate protection for torture victims. Many actions that amounted to torture were still qualified as abuse of power. Therefore, the absence of crime of torture in the Criminal Code conflicted with the CAT recommendations developed in May 2003.

12. This incompatibility has been remedied by Law no. 139 of 30.06.2005 that introduced 'torture' as a distinct *corpus delicti*.

13. Article 309<sup>1</sup> of the Criminal Code stipulates that torture is "the action by which strong physical and mental pain and suffering is deliberately caused to a person, especially with the aim of receiving information and confession from the person concerned or a third person, punishing for a deed that the person concerned or a third person committed or is suspected of committing, intimidating or putting pressure on the person concerned or a third person, or for any other reason based on a form of discrimination, whatever it is, if such pain or suffering is caused by an official or by any other person that acts officially or at the instigation or with the verbal or written consent of such a person, except for the pain or suffering that results exclusively from legal sanctions, inherent to such sanctions or caused by them". Such a crime is punished with 2 to 5 years of imprisonment, withdrawal of the right to hold certain positions or to carry out certain activities for a period up to 5 years.

14. Paragraph 2 of the same article stipulates that organization or instigation of acts of torture is punished with 3 to 8 years of imprisonment, withdrawal of the right to hold certain positions or to carry out certain activities for a period up to 5 years.

## Article 2

15. The irreversible course of the Republic of Moldova towards integration with the European Union, as well as the actual imperatives, establishment of an effective and comprehensive mechanism to raise the level of accountability, adjustment of the legislative framework, primarily aimed at preventing and combating cases of torture.

16. Article 4 of the Criminal Code of the Republic of Moldova:

(a) The Criminal Law does not have as a purpose to cause physical suffering or to violate human dignity. No person can be submitted to torture or to cruel, inhuman, degrading treatments or punishments;

(b) The Law no. 184 of 29.06.2006 on the amendment of the Criminal Code, whose purpose is to minimize the limits of criminal sanctions and maximize the number of components of crime for which other sanctions, alternative to imprisonment can be applied.

17. The Code of Criminal Procedure of the Republic of Moldova stipulates in paragraph (3) of article 10 that during the process of criminal investigation nobody can be subjected to torture and other cruel, inhuman or degrading treatment or punishment, nobody can be kept in humiliating conditions, or forced to take part in proceedings that impair human dignity.

18. Similarly, in paragraph (8) of Article 11 it is mentioned that any detained or arrested person shall be treated so that human dignity is respected. Paragraph (9) stipulates that during the

process of criminal investigation, nobody can be physically or mentally abused and any actions and methods that endanger human life, health and the environment, even with consent of those concerned, are prohibited. Detained or remanded persons cannot be subjected to violence, threats or any methods that affect their ability to take decisions and express his/her opinions.

19. The Enforcement Code of the Republic of Moldova stipulates in Article 166 that every convicted person is guaranteed the right of having his dignity, rights and liberties defended and respected by the enforcing authority, including of not being subject to torture and other cruel, inhuman or degrading treatment or punishment as well as, notwithstanding his/her consent, medical or scientific experiments endangering life and health, and enjoying, if appropriate, protection measures from the state. Has the right to submit petitions to the management of the institution or to the body that ensures the execution of punishment, the right to contracted legal aid provided by lawyers, right to health care, right to social insurance.

20. Government Decision on the approval of the Code of Ethics and Deontology of Police Officers of 19.05.2006 in its paragraph 16 forbids the police to:

(a) Apply, encourage or tolerate acts of torture, inhuman or degrading treatment and punishment, in whatever circumstances;

(b) Use force, except of the situations when it is absolutely necessary and only to the extent needed to achieve a legitimate objective.

21. Government Decision on the approval of the Regulations on Serving of sentences by convicted persons of 16.06.2006 in its point 515 stipulates that the doctor that performs medical examination must contact the prosecutor when finding out that the detained person was subject to torture and other cruel, inhuman or degrading treatment or punishment, and record the relevant findings and detained person's statement in the medical card.

22. National Human Rights Action Plan for 2004-2008 (NHRAP) that contains 15 activities in Chapter 7 "Ensuring the right to life, physical and mental integrity" (Part II). From which, 27% (4) bear a regulatory character, 40% (6) - organizational and institutional character, 27% (4) - instructive character and 7% - assistance character.

23. The Concept Paper on Penitentiary System Reform for 2004-2013, approved by Government Decision no. 1624 dated December 2003, provides for the range of measures envisaging the improvement of the situation in the penitentiary system, based on the advanced expertise of countries that reformed their penitentiary systems in accordance with the European standards. They are aimed at bringing detention conditions in compatibility with human rights standards.

24. The establishment of a democratic state by the rule of law implies a radical reform of the policy for the enforcement of punishments under criminal law, as well as the resolution of issues relating to the fight against criminal elements and the overcoming of difficulties in the social sector, which are inevitable for the criminal enforcement system.

25. The Concept Paper on the reform of the penitentiary system consists of a number of ideas, objectives, directions, principles, targets and mechanisms for the improvement of the activity in

this field in the period 2004-2013. While carrying out the reform of the penitentiary system, the Department for Penitentiary Institutions assumed the duties of supervision and escort of inmates, health care, capital construction, provision with material and technical resources, staff training etc., which were previously within the competence of other state institutions. The actions undertaken had a favourable impact. The public opinion changed substantially, the penitentiary system became open and more accessible for many national and international organizations.

26. Currently, almost 80% of the buildings of penitentiary institutions are old, and some buildings are in an emergency condition. The buildings where inmates are kept in custody do not comply with the sanitary and hygienic standards, the normal weather conditions, as well as occupancy, lighting, aeration and heating standards. Because of the lack of financial resources, major repairs have not been made for over 15 years. The provision of inmates with food over the last years has been insufficient. The daily ration does not include meat, fish, dairy products etc. According to the Government Decision no. 246 of 13 May 1993 “On the provision of inmates and persons kept in Pre-trial Detention Centres and in social rehabilitation institutions with food products”, the caloric value of the daily food norm is 3070 kcal. Yet, as a matter of fact, detainees receive only 1730 kcal. The insufficient food and the bad detention conditions lead to a higher overall morbidity, and in particular, to TB-associated morbidity. The TB incidence in penitentiary institutions is 27 times higher than the country’s average. Last year, the TB mortality rate was 56% of the total number of deaths, due to the big number of chronic and polychemioresistant patients.

27. Upon the accession to the Council of Europe and to other international bodies active in the field of human rights protection, the Republic of Moldova undertook the commitment to ensure adequate detention conditions. The insufficient food and its low caloric value, the lack of decent living conditions, as stipulated in the international and national legislation, (limited supply with potable water, electric energy, heating, insufficient provision with bed linen etc.) and evidence of extremely low quality health care are qualified by the European Committee for the Prevention of Torture and other inhuman or degrading treatment or punishment (CPT) as a form of torture.

28. The national legislation of the Republic of Moldova ensures the inviolability of remanded persons and those convicted to imprisonment by guaranteeing their rights throughout all stages of criminal investigation as well as within penitentiary institutions.

29. The new Code of Criminal Procedure of the Republic of Moldova regulates the procedural coercion measures in Title V.

30. The “detention” measure differs in its legal character from similar notions stipulated in other laws (e.g. from “administrative detention” envisaged in Articles 256, 249 of the Code on Administrative Offences, dated 29 March 1985) The administrative detention of the person that committed an administrative offence cannot last more than three hours. In exceptional cases, when there is a special need, there can be established other terms for administrative detention by legislative acts of the Republic of Moldova. Thus, persons that violate the rules of stay of foreign citizens and stateless persons in the Republic of Moldova, the border regime or the state border

crossing points of the Republic of Moldova, can be detained for up to three hours in order to compile the minutes, and, if needed, to determine the identity and clarify the circumstances - up to three days. That being laid down and communicated to the prosecutor in written form within 24 hours since the detention or within ten days with prosecutor's agreement, if offenders do not have documents that prove their identity.

31. According to Article 165 paragraph (1) of the Code of Criminal Procedure (CCP), detention can be applied to:

(a) Persons suspected of committing a crime for which the law prescribes a sanction of deprivation of liberty for more than a year;

(b) Those accused that violate conditions of non-custodial preventive measures applied to them, if the crime is punishable with imprisonment;

(c) Convicted persons in respect of whom decisions to annul conditional suspension of execution of punishment or to annul early conditional suspension of punishment have been approved.

32. Procedural criminal legislation provides for detention, in other cases like:

(a) Apprehension of person suspected of committing a crime and bringing this person to the competent authority by citizens (Article 168 of the CCP). Any person has the right to capture and bring forcefully to the police station or to any other public authority a person caught on committing a crime or a person trying to hide or escape immediately after committing a crime;

(b) Detention of person accused on the basis of decision issued by prosecuting authority (article 169 of the CCP);

(c) Detention of an accused on the basis of an decree for criminal prosecution (article 170 of the CCP). In case an accused breaches the conditions imposed by the preventive measures applied to him/her or the written obligation given by the accused person to appear when invited by the criminal prosecution authority or by the court and to notify about his/her new residence, the prosecutor has the right to issue a decision regarding his/her detention, followed by immediate submission to the investigating judge of the warrant for the arrest of the accused person;

(d) Detention of persons on the basis of court decision in case of committing a crime during the court hearing (article 171 of the CCP). If during the court session a deed containing elements of crime provided for in the criminal law is committed, the chairman of the court session orders the identification of the person that committed the crime and his/her detention and this fact is recorded in the session minutes. The court takes a decision regarding on submission of materials as to the prosecutor and the detention of the person.

33. Has the right to detain a person suspected of committing a crime only if the following conditions are cumulatively assembled:

(a) The crime is punished with imprisonment for more than a year (this condition is provided even if the sanction has another alternative punishment);

- (b) There shall exist one of following situations:
- (i) If the person was caught in the act;
  - (ii) If an eye witness, including the injured party, directly indicates that this person committed the crime;
  - (iii) If visible traces of the crime are discovered on the body or clothes of this person, in his/her home or transport means;
  - (iv) Under other circumstances that can serve as grounds for suspecting of committing the crime, this person can be detained only if he/she tries to hide or does not have a permanent residence or his/her identity cannot be established (paragraph (2) Article 166 of the CCP).

34. Under paragraph x of article 166 of the CCP, a detention of an adult on the grounds stipulated in paragraph (1) can be performed before a crime is registered according to the procedure established under the law. An offence shall be registered immediately, not later than three hours from the moment the detained person is brought before the. If the offence for which the person was detained is not properly registered, this person should be immediately released.

35. Detention of any person under the terms of this article shall not exceed 72 hours from the moment of deprivation of liberty, in the case of minor this period cannot exceed 24 hours (paragraph (4) Article 166 of the CCP).

36. The detention term mentioned above starts from the moment of the deprivation of liberty which in all cases is the moment of actual detention, i.e. the moment of physical apprehension with the purpose of bringing of the person concerned to the police. Consequently, the time while the detained person is brought to the and the time spent for compiling the minutes is included in the detention term. If the person was detained according to Article 249 of the Code on Administrative Offences for 3 hours and after that it is stated that the respective deed is a crime, the administrative detention term is included in the detention term calculated under the CCP.

37. Paragraph (5) of Article 166 of the CCP incorporates a provision that is in compliance with article 5 of the European Convention on Human Rights. This implies that every detained person “shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or released pending trial”.

38. Paragraph (2) of Article 167 of the CCP includes an imperative provision regarding participation of defence lawyer in communicating and handing in a copy of minutes on detention. It is in accordance with paragraph (5) of Article 25 of the Constitution of the Republic of Moldova. This law stipulates the initial moment when a defence lawyer of every detained suspect shall be admitted. Defence lawyer’s participation in this action is mandatory, but a detained suspect can refuse defence lawyer’s services only when real possibilities for the lawyer to take part in the trial process have been created. The collocation ‘are immediately notified’ implies the obligation of to accomplish this action without delay after the completion of minutes on detention, which is confirmed in the minutes against the detained person’s signature.

39. If detained person refuses to sign minutes on detention, that should be mentioned therein and confirmed by the defence lawyer in written form.

40. When a minor is detained, the person that performs the criminal prosecution is obliged to communicate this fact to a prosecutor immediately and the parents of the minor or the persons that replace them. Postponement of the notification about detention of a minor is not allowed (paragraph (3) Article 167 of the CCP).

41. Under Article 298 of the CCP persons that can file a complaint against actions by the and by the body that exercises operative investigation activity are: a suspect, an accused, their legal representative, defence lawyer, injured party, plaintiff, defendant and their representatives as well as other persons whose legal rights and interests have been violated.

42. On 28.07.2006 the Parliament of the Republic of Moldova approved Law no. 264-XVI on the amendment of the Code of Criminal Procedure. This act amends Article 298 of the CCP. Under the new regulation, the complaints against actions of and of a body that performs operative investigation activity are addressed to the prosecutor that leads the, but if the complaint concerns the prosecutor that leads the or exercises the very in this case, they are obliged to submit the complaint together with the supporting explanations within 24 hours to the superior prosecutor.

43. Any statement, complaint or other circumstances that can serve as a basis to suppose that a person was subjected to acts of torture, inhuman or degrading treatment shall be examined by the prosecutor in the manner stipulated in Article 274 of the CCP, i.e. under separate procedures.

44. The new CCP provides for legal guarantees for human rights protection and safeguards against torture. Thus, in accordance with article 17 that ensures the right to defence during the criminal proceedings, the parties have the right to and a court are obliged to ensure the right to qualified legal assistance provided by a defence lawyer assigned or appointed *ex officio*. For the first time in the procedural criminal legislation of the Republic of Moldova there is a stipulation that every detained person has the right to confidential legal assistance prior to the first questioning (). Every suspect has the right to get assistance provided by a defence lawyer, to meet the person he or she is being defended by without any limits concerning the number or duration of these meetings. However, such meetings can be observed in circumstances that exclude hearing by observing personnel.

45. In order to organize the medical assistance and sanitary epidemiological surveillance of the arrested or detained persons in Pre-trial detention centres (total number - 38), the Screening Centre for homeless and beggars (Chisinau municipality) and the Medical Sobering-up Stations of subdivisions of internal affairs a post of medical attendant has been introduced in each of establishments. All of them have been equipped with the necessary medical kits. At the moment, all 42 such medical posts of the special institutions are filled.

46. It is worth mentioning that the regulations in force also regulate the way the acts of violence and bodily injuries of the detainees are determined. In accordance with the provisions of Article 26 of the Regulations on serving of sentences by convicted persons, if it is established



that a detained person has bodily injuries, he/she is examined by doctor providing relevant medical aid and, if needed, the detained person is transferred to the health unit of the penitentiary establishment. If the detained person needs to be treated in an in-patient unit, he/she is offered first necessary aid as far as possible and according to doctor's report measures should be taken to transfer the patient to an in-patient unit. Institution's administration is obliged to report in writing to the Penitentiary Department as soon as possible and the territorial units of General Prosecutor's Office about bodily injuries of detained persons admitted to the penitentiary.

47. Besides injuries, medical screening of newly arrived inmates at penitentiary institutions is carried out with the aim of assessing their state of health in general. soon arrival In case when a disease is identified they are prescribed necessary treatment and, if needed, they are transferred to a medical unit or the penitentiary hospital Penitentiary establishment no. 16 in Pruncul).In order to provide medical assistance within the penitentiary system the pay roll includes 132 posts for medical personnel, from which 113.5 posts are filled and 18.5 posts are vacant.

48. Every inmate has the right to ask to be examined by a doctor from outside the penitentiary system assigned by this person or by the forensic expert. The findings of the doctor from outside the penitentiary system are recorded in convicted person's medical card and the medical-forensic certificate is attached to the medical card after the convicted persons read its content and signed.

***Article 173. Notification about detention***

*(1) The person that compiled the minutes on detention is obliged to allow every detainee to inform someone from his/her family or other person of his/her choice immediately or not later than within 6 hours about the place of detention. , or do it personally.*

*(2) If the detained person is a citizen of another state then the embassy or consulate of this state is notified about the detention within the time limit mentioned in paragraph (1) if the person asks this.*

*(3) If the detained person is in military service then, within the time limit provided for in paragraph (1), the military unit where he/she serves or the military centre where he/she is registered at as well as the persons mentioned in paragraph (1) are notified.*

*(4) In exceptional cases, if it is requested by the circumstances, in order to secure the secrecy of the initial stage of the criminal prosecution, with the investigating judge's agreement, the notification about the detention can be performed within a time limit that will not exceed 72 hours from the moment of detention, except for the cases when the detained person is a minor.*

*(5) If the detained or arrested person is a guardian to a minor, a person acknowledged as irresponsible, a person who due to his/her age, disease or for other reasons needs*

*support, this will be reported to the competent authorities so that they take measures to protect such persons. The duty to inform about the need to take protective measures shall rest with the body that provided for the detention or provisional arrest.*

49. According to the order of the prosecuting authority or that of the court, guardianship authorities as well as heads of medical or social institutions of the guardianship authority, heads of state medical or social institutions shall take measures for the protection of the above-mentioned persons, left without guardianship. The prosecuting authority or the court can refer minors, irresponsible or elderly persons for guardianship to their relatives, with their consent.

50. In relation to incommunicado detention, the provisions of Article 212 paragraph (8) of the Enforcement Code that regulates the execution of the disciplinary sanction in the form of incarceration can be referred to: "Upon the lack of resources, the disciplinary sanction in the form of incarceration is executed, in compliance with the Regulations of the disciplinary military unit, provided that the medical report has positive results. While in the solitary detention the convicted person is prohibited to have meetings, telephone conversations, to purchase food, to receive parcels, food packs and printed matters.

51. The convicted person is entitled to a one-hour walk and is subjected to medical examination each day. If he/she is transferred to a preventive medical institution, the duration of treatment of the convicted person is included in the period of his/her incarceration."

52. The Enforcement Code includes a chapter on Execution of Penal Sanctions and refers to Pre-trial detention centres under the jurisdiction of Ministry of Justice.

53. At the moment, the Pre-trial detention centres are located in the basements and underground floors of police stations of the Ministry of Internal Affairs and there is no possibility to isolate them from the rest of premises of police stations. In these conditions it is impossible to exercise the competences of two coercive structures in an isolated manner that constitutes an impediment for delimitation of responsibilities regarding respective functions and insurance of security. Moreover, police forces must provide the confinement of detained persons for up to 72 hours and it will be impossible to perform this task properly without these facilities available for the police.

54. According to the Government Decision on the amendment of the Government Decision no. 1624 of 31.12.2003 on the approval of the Concept Paper on penitentiary system reform, it is envisaged to introduce eight arrest facilities with capacity of 250 places each and estimated cost of an arrest facility of 31 mil. in the following districts:

#	Location	Cost of construction (thou.)	Deadline	Responsible institutions
1.	Arrest facility with a capacity of 250 places, Glodeni rayon (construction)	12 600	2008	Ministry of Justice, Ministry of Finance, Ministry of Ecology and Natural Resources, Ministry of Transport and Road Management, Ministry of Informational Development, Agency for Construction and Territory Development
		11 400	2009	
		7 000	2010	
2.	Arrest facility with a capacity of 250 places, Hincesti rayon (construction)	6 500	2010	
		10 000	2011	
		15 500	2012	
3.	Arrest facility with a capacity of 250 places, Comrat rayon (construction)	5 000	2012	
		11 000	2013	
		18 000	2014	
4.	Arrest facility with a capacity of 250 places, Orhei rayon (construction)	6 000	2013	
		9 000	2014	
		20 000	2015	
5.	Arrest facility with a capacity of 250 places, Causeni rayon (construction)	8 000	2015	
		15 000	2016	
		15 000	2017	
6.	Arrest facility with a capacity of 250 places, Edinet rayon (construction)	8 000	2016	
		13 000	2017	
		19 000	2018	
7.	Arrest facility with a capacity of 250 places, Floresti rayon (construction)	6 000	2018	
		17 000	2019	
		20 000	2020	
8.	Arrest facility with a capacity of 250 places, Ungheni rayon (construction)	6 000	2018	
		17 000	2019	
		20 000	2020	

55. At the moment the Government of the Republic of Moldova has transferred 30% of the sum needed. It is meant for drafting a model design of an arrest house.

56. On 30 March 2006 the Law on Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was approved. It has come into force on 24 July 2006. The Ministry of Justice together with the Ministry of Internal Affairs have been entrusted with the responsibility for taking necessary measures aiming at implementation of its provisions. Accordingly a multidisciplinary group has been created with the task to identify and establish the national preventive mechanism. This process is assisted by the civil society. On 17-18.11.2006 the OSCE Mission to Moldova, the Institute of Criminal Reforms and the Amnesty International Moldova organized the International Conference during which the international experts presented the existing practices in this regard. As a result some proposals in respect of establishment of the national mechanism have been put forward. They concern Parliamentary Advocates (Ombudspersons), Complaints Committee, a mixed structure comprising both the representatives of the state structures and of the civil society. The process shall be finished by March 2007.

57. The laws in force guarantee the right not to be tortured both in time of peace and war, under threats of war, internal political instability and other exceptional situations. Article 137 of Chapter I "Crimes against peace or humanity and war crimes" of the Criminal Code provides for *corpus delicti* "inhuman treatment". It implies "subjecting to torture or inhuman treatment in any manner with the purpose of deliberate infliction of severe suffer or serious infringement of physical integrity or health of wounded or sick persons, prisoners of war, civilians, civilian

medical staff or the staff of the Red Cross or other similar organizations, shipwrecked, as well as of any other person under the authority of the enemy, or subjecting this person to medical, biological or scientific experiments that are not justified by a medical treatment for their benefit". At the same time, it is worth mentioning that in the nearest future it is envisaged to amend the present version of Article 137 of the Criminal Code.

58. The prohibition of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, just as the right to life is an absolute right of any person meaning that it should be observed without any derogation, even in exceptional situations.

59. In relation to justification of using torture under superior's orders, the disciplinary status both of the internal affairs authorities and the Penitentiary Department stipulate the obligation of subordinates to obey the orders received completely and in a timely manner. Every superior is completely responsible for the legality of the given order, he/she must be the first to obey it stringently, and the person that is under orders is obliged to obey it and report immediately after. When a subordinate finds out that he/she cannot obey the order he/she shall report immediately about that to the superior that gave it. Any employee has the right to challenge the legality of the received order after obeying it by informing his superior about this.

### Article 3

60. Extradition is an act of interstate legal assistance on criminal matters, aimed at transferring a person under or a convict from the jurisdiction of one state under the jurisdiction of another.

61. Article 546 para. (2), (6) of the CCP provides that the actions for extradition may be undertaken by the Prosecutor General, Minister of Justice or the court of law examining the extradition case. The competence rests with the court which is closer to the Ministry of Justice (under art. 544 para. (6) of the CCP). The extradition can be carried out under certain conditions only. The requirements can be divided into substantial and formal conditions. In their turn, the substantial ones are divided into the conditions *ratione personae* and those related to criminal act and punishment.

62. Substantial conditions *ratione personae* are as follows:

(a) Non-extradition of own citizens. Thus, Article 18 of the Constitution provides in paragraph (2) that citizens of the Republic of Moldova cannot be extradited or expelled from their country. Foreign citizens or stateless persons may be extradited only in compliance with an international agreement or under conditions of reciprocity in following a decision of a court of law;

(b) Non-extradition of the own persons liable to trial in a court of justice, i.e. the persons under criminal prosecution or trial in Moldova will not be extradited;

(c) A person cannot be extradited if he/she receives the final acquittal by the national court of law or the court of a third country or the criminal prosecution in the case, which formed the object of the extradition request, has been terminated.

63. According to Article 541 of the CCP, the Republic of Moldova may address a foreign state with a request on extradition of a person who is being prosecuted for crimes for which the

criminal law provides the minimal punishment of 1 year of imprisonment or another severer punishment or a person sentenced to imprisonment for the duration of at least 6 months in case of extradition for execution of punishment, if the international treaties do not provide otherwise.

64. An extradition request shall be made on the basis of international treaty to which the Republic of Moldova and the requested state are parties to or on the grounds of written obligations of reciprocity.

65. In case of extradition requests regarding non-convicted persons under the aforementioned conditions, all necessary materials shall be submitted to the Prosecutor General for settling issues related to submission of it to the respective institution of the foreign state. Extradition requests regarding convicted persons shall be handled by the Ministry of Justice. If no international treaty has been concluded with the state concerned, the issue of extradition shall be settled via diplomatic channels.

66. The request for extradition shall include a thorough description of:

- (a) The name and address of the requesting institution;
- (b) The name of the institution requested;
- (c) The international treaty or reciprocity agreement based on which extradition is requested;
- (d) The last name, first name and patronymic of the person whose extradition is requested, date and place of birth, information on the nationality, domicile, whereabouts and other data on the person, as well as, to the best extent possible, the description of the appearance, photo and other materials which may help to identify the person;
- (e) A description of the offence committed by the person whose extradition is being requested, the legal qualification of the offence committed, information on the damage caused, as well as the text of the national law which provides for the criminal liability for the offence concerned with obligatory indication of the sanction;
- (f) Information on the place and date of sentence in force or of the decision on bringing forward charges with the attached authenticated copies of the originals of these documents.

67. The decision of the investigating judge or, as the case may be, of the court on the authorization of the pre-trial arrest shall be attached to the extradition request. Besides the copy of the sentence in force, information on the unexecuted part of the punishment shall be attached to the request on extradition of the convicted person.

68. Refusal of extradition is regulated in Article 546 of the CCP. Thus, the Republic of Moldova shall not extradite its own citizens and the persons it has granted the right to asylum.

69. Extradition will be also refused, if:

- (a) The crime had been committed in the territory of the Republic of Moldova;

(b) A domestic court or a court of a third state have delivered a sentence of conviction, acquittal or termination of criminal procedures in respect of the person concerned for the crime for which extradition is requested, or if the criminal prosecution has issued a decision on termination of the criminal proceeding or if the national authorities are prosecuting the offence;

(c) The statute of limitations for holding criminally liable for the kind of offences concerned has expired, according to the national legislation or in case of amnesty;

(d) Criminal prosecution may be initiated only on the basis of the prior complaint of the injured party and such a complaint is missing;

(e) The crime for which extradition of the person is requested is considered by the domestic law as a political crime or connected to it;

(f) The Prosecutor General, the Minister of Justice or the court examining the extradition case have well-founded reasons to believe that:

(i) The request on extradition has been lodged with the aim to prosecute or punish a person for race, religion, sex, nationality, ethnical origins or political opinions;

(ii) The situation of this person is under risk to deteriorate for one of the reasons mentioned at the subparagraph (a);

(iii) If the person is extradited he/she will be subjected to torture, inhuman or degrading treatment in the requesting state;

(g) The requested person was granted the status of political refugee;

(h) The state requesting extradition does ensure reciprocity of extradition.

70. If the deed for which extradition is requested is punished by the legislation of the requesting state with capital punishment, extradition of the person may be refused, unless the requesting party gives appropriate guaranties in this regard.

71. The Parliament of the Republic of Moldova has recently passed a draft law on amending the CCP, which provides: the convicted person can be transferred if *there is no reasonable assumption that the transferred person will be subjected to an eventual risk of inhuman and degrading treatment in the state where he/she is going to be transferred.*

72. The issue of expulsion and extradition is also regulated by the Law on the Legal Status of Foreign Citizens and Stateless Persons in the Republic of Moldova no. 275-XIII, dated 10 November 1994, and the CCP.

73. According to Article 23 of the aforementioned law, foreign citizens and stateless persons may be expelled from the Republic of Moldova if:

(a) Their entry and stay in the Republic are in violation of present legislation;

(b) Their stay in the Republic prejudices the national security, order, health or public morals.

74. Article 29 stipulates:

*“Foreigners and stateless persons shall not be expelled to a country where there is evidence that they will be persecuted on religious, racial, or national grounds or because of their political opinions, or where they will be subjected to torture, inhuman or degrading treatment, or capital punishment.”*

75. Article 24 of the Law on the Legal Status of Foreign Citizens and Stateless Persons in the Republic of Moldova provides:

*“Initiation of an expulsion procedure shall be done by high officials of the internal affairs units, upon personal initiative, or on the basis of a request by an organization, institution or enterprise which sponsors the stay of a foreigner or stateless person in the Republic of Moldova, followed by a report to the Ministry of Internal Affairs.”*

76. In accordance with Article 25, the expulsion of foreign and stateless persons is carried out on the basis of a court decision by internal affairs units.

77. Foreign citizens and stateless persons are expelled to the country which authorized their identity documents.

78. The court decisions may be appealed according to the ordinary procedure, in compliance with the CCP provision on the appeal and with recourse to the first instance court decision. The decisions taken by a public administration body may be appealed in an administrative court of law.

79. On 31 August 2004, September 2005, the Programme of Assistance for the Prevention of Drug Abuse and Drug Trafficking in Belarus, Ukraine, Moldova (BUMAD) organized a seminar on “Implementing the norms of international law on extradition and mutual legal assistance into national law and practice” in Chisinau, where representatives of state agencies involved in the extradition process benefited from a relevant specialized training.

#### **Article 4**

80. In statistical terms, during 2005 and the first 8 months of 2006 the Prosecution initiated criminal proceedings against police staff implicated in acts of torture, excess of power accompanied by use of violence and torture respectively in 118 criminal cases in 2005 (article 309/1 CC - 9 cases, article 328 CC - 109 cases) and 105 criminal cases in 2006 (article 309/1 CC - 39 cases, article 328 CC - 66 cases).

81. Out of all cases of this type, investigated during the above-mentioned period the prosecutors finalized the investigations by bringing the indictment on 73 criminal cases in 2005 (article 309/1 CC - 3 cases, article 328 CC - 70 cases) and on 39 criminal cases in 2006 (article 309/1 CC - 16 cases, article 328 CC - 23 cases), which were submitted to court of laws.

82. At the same time because of the failure to confirm during the investigation the injured parties' claims of being ill-treated by policemen and due to the fact that as a result of investigations, no sufficient evidence could be collected to confirm the guilt of some police officers/employees for illegal use of physical force or violence, and for acts of torture, the prosecutors dismissed 52 criminal cases in 2005 (article 309/1 CC - 2 cases, article 328 CC - 50 cases) and 14 criminal cases in 2006 (article 309/1 CC - 2 cases, article 328 CC - 12 cases), all on the basis of lack of corpus delicti.

83. At present the investigations continue in 88 criminal cases of the specified type (article 309/1 CC - 22 cases, article 328 CC - 66 cases).

84. Courts pronounced 41 sentences of conviction in 2005 (article 309/1 CC - 1 sentence, article 328 CC - 40 sentences) and 28 sentences of conviction in 2006 (article 309/1 CC - 1 sentence, article 328 CC - 27 sentences), finding that the evidence brought during the trial fully proved the policemen's guilt in respective acts. In most of the cases the courts applied conditional punishment by enforcing article 90 of the CC. Courts decided on dismissals in 8 cases (3 in 2005 and 5 in 2006), including by bringing administrative charges against the defendants, and also pronounced 15 sentences of acquittal (11 in 2005 and 4 in 2006), all of them in respect of crimes provided under article 328 of the CC, of which 5 became final and irrevocable.

85. At present 53 criminal cases are under consideration by courts (article 309/1 CC - 15, article 328 CC - 38 cases, of which 24 criminal cases were submitted before 2006 (annexes, tables 1-4).

86. The statistics presented, as compared with the period of 2001-2005, when prosecutors filed 227 criminal cases against policemen accused of abuse of power, suggest that there is an intensification of respective activities against torture and violence committed by policemen.

87. As to disciplinary procedures within the internal affairs structures, it should be mentioned that during the first 10 months of 2006, 3 persons were fired for discrediting (10 - in the first 10 months of 2005).

88. One thousand six hundred and seventy-nine (-394) disciplinary sanctions were applied for the violation of discipline, deviation from the laws in force and violation of the social cohabitation norms, of which 148 (-118) were applied to the regular staff of the carabinieri troops, 170 - to the staff of the Emergency Situations Department, 136 (-57) - staff of the State Guard General Division, and 60 (+/-0) - to the staff of the educational institutions of the MIA.

89. The imposed disciplinary sanctions can be grouped as follows: violations of the labour discipline - 778 (-107), negligence during the execution of the functions - 479 (-387), violation of the interdepartmental order no. 124/319/46/172-O/101 of 26.08.2003 "On the single record keeping of crimes, crimes and perpetrators" - 138 (+5), for use of alcoholic beverages - 78 (+9), for breaking the law - 74 (+12), for violating Traffic Regulations - 6 (-7) and 123 (-13) - for other reasons.



90. During the first 10 months of 2006 1480 (-250) persons were dismissed from the internal affairs bodies, including 110 (-26) for unfavourable grounds, out of which 82 (-23) for violating the labour discipline, 3 (-7) for discrediting, 25 (+8) on the basis of a court sentence.

91. The legislation in force provides for statutes of limitations. Thus, persons are exempted from criminal responsibility when the following periods of time pass since the commitment of crime:

(a) 2 years since a petty crime - for which the criminal law provides for a maximal punishment of 2 years of imprisonment;

(b) 5 years since a less severe crime - for which the criminal law provides for a maximal punishment of 5 years of imprisonment;

(c) 15 years since a severe crime - for which the criminal law provides for a maximal punishment of 15 years of imprisonment;

(d) 20 years since an intentional especially severe crime - for which the criminal law provides for a maximal punishment of over 15 years of imprisonment;

(e) 25 years since an intentional exceptionally severe crime for which the criminal law provides for life imprisonment.

92. The term is calculated since the day of crime till the last day of validity of the court decision; if the person commits another crime the term of limitation shall be calculated separately for each crime.

93. No limitation period is applied to people that committed crimes against peace and humanity, war crimes and other crimes stipulated in the international treaties, to which the Republic of Moldova is a party.

94. The Criminal Code also stipulates the statute of limitation of execution of conviction. It shall not be executed if it wasn't executed during the following periods of time, calculated since the day of the final adjudication:

(a) 2 years, in case of conviction for a petty crime;

(b) 6 years, in case of conviction for a less grave crime;

(c) 10 years, in case of conviction for a grave crime;

(d) 15 years, in case of conviction for an especially grave crime;

(e) 20 years, in case of conviction for an exceptionally grave crime.

95. The term is interrupted if execution of punishment is disrupted before its expiry or when another crime is intentionally committed. In case of avoiding execution of punishment, the term of limitation shall be calculated starting with the date when the person shows up for execution of punishment or is detained, and in case of another crime - since its committal.

96. The statute of limitation does not prevent the execution of the main sanctions applied for crimes against peace and humanity and for war crimes.

97. The national criminal law criminalises an attempt to commit a crime, which is defined as an intentional action or inaction directly aimed at committing a crime, which failed short of execution because of certain reasons beyond the perpetrator's control.

98. When deciding on the punishment for the failed crime circumstances that prevented the crime are also taken into account.

99. Any punishment for the crime preparation, provided it is not a repeated commission of crime, cannot exceed half of the maximum punishment envisaged in the relevant chapter of the Criminal Code.

100. A punishment for an attempt to commit a crime, provided it is not a repeated commission of crime, cannot exceed three fourths of the punishment envisaged in the relevant chapter of the Criminal Code.

101. Life imprisonment cannot be applied for crime preparation and attempt.

#### **Article 5**

102. According to paragraph (1), Article 11 of the CC the provisions of the Criminal Code are applicable to all crimes committed in the territory of the Republic of Moldova, regardless whether the perpetrator: is a Moldovan or foreign citizen, or stateless person domiciled in the Republic of Moldova or abroad.

103. According to paragraph (2) of the same Article, the citizens of the Republic of Moldova and the stateless persons with permanent domicile in the territory of the Republic of Moldova, who committed crimes outside the territory of the country are liable to criminal responsibility under the Criminal Code of the Republic of Moldova if:

(a) Transgression is also regarded as crime according to the legislation of the state where it was committed;

(b) Moldovan citizen (stateless person) was not convicted for the crime committed in a foreign country.

104. Foreign citizens and stateless persons that do not have permanent domicile in the territory of the Republic of Moldova, who committed crimes outside the territory of the Republic of Moldova, are liable to criminal responsibility under the present Code and are subject to the criminal responsibility in the territory of the Republic of Moldova when the crimes are committed against the interests of the Republic of Moldova, the peace and security of mankind or it is provided by the International Treaties to which Moldova is a party, as well as for crimes against the peace and security of mankind and war crimes and they were not held criminally liable or convicted by that foreign state, will be held criminally liable within the territory of the Republic of Moldova.

105. Crimes committed within the borders of territorial waters or within the air space of the Republic of Moldova are considered to be committed within the territory of the Republic of Moldova. The person who committed a crime on a ship or aircraft, registered in a harbour or airport of the Republic of Moldova, which is located in the water or air space of outside the borders of the Republic of Moldova, can be held criminally liable under the present Code, provided that the international treaties to which Moldova is a party do not contain provisions.

106. Persons who committed crimes aboard a military ship or a military aircraft, irrespective of their location, are also held criminally responsible under the Criminal Code.

107. Punishments and criminal records for crimes committed outside the territory of the Republic of Moldova are taken into consideration, according to the present Code, in the individualization of punishment for a new crime committed by the same person within the territory of Moldova, as well as for resolving issues regarding the amnesty in conditions of reciprocity according to the court decision.

108. The national legislation in force doesn't stipulate explicitly the mandatory establishment of its own jurisdiction in case of refusal to extradite. But, the European Convention on Extradition refers to the principle of *aut dedere aut iudicare*, according to which the state that refuses the extradition shall either start a criminal prosecution or execute the punishment of the person, whose extradition is requested. In addition, the Additional Protocol to the European Convention on the Transfer of the Sentenced Persons provides for the mandatory taking-over of the execution of the punishment through imprisonment if the convicted person takes refuge in the territory of the state which he/she is a citizen of, and consequently cannot be extradited for the execution of the punishment. These treaties, in line with the principle of *pacta sunt servanda*, shall be executed in good faith, not being able to invoke the principles of the internal legislation as an excuse for the failure to execute a treaty, to which the Republic of Moldova is a party.

109. The Republic of Moldova still doesn't have the possibility to secure the implementation of international conventions and its national legislation within its territory on the left bank of the Nistru river. The Transnistrian issue and the impossibility of the national authorities of the Republic of Moldova to exercise full jurisdiction in this region is known on the international arena. However, the authorities try to settle the Transnistrian dispute through the available legal and diplomatic means, involving the international institutions in this process (for instance the OSCE, EU). The problem has been addressed in the judgment of the European Court for Human Rights in *Ilascu and others v Moldova and Russia*. It is worth mentioning that this problem is much more complicated at the institutional level, as the penitentiary administration of Transnistria is reluctant to accept and refuses any cooperation with the penitentiary system of the Republic of Moldova. Moreover, the Transnistrian authorities try by all means to prevent the Moldovan authorities from managing the penitentiary institutions, which are under the jurisdiction of the Republic of Moldova but are located in Bender (penitentiary institutions no. 12 and no. 8).

110. The problems with the penitentiary establishment no.8 started in the spring of 2002, when the authorities of the self-proclaimed Transnistrian Republic and the local authorities of Bender municipality raised the issue of emergency evacuation of 200 inmates with tuberculosis and the 400 inmates in rehabilitation, expressing their intention to gradually bring to a close the institution. To meet this goal they cut the penitentiary of the electricity and water supply. The

Moldovan authorities carried out concrete measures to settle this problem. With the support of the US Government and the US Embassy to the Republic of Moldova and the financial support of Counterpart International Inc., a Phthisio-Pneumological Ward with the capacity of 300 beds had been repaired and all the inmates with TB were transferred to it from the Penitentiary establishment no. 8. Only the healthy detainees were left in the aforementioned establishment to accomplish their punishment. The authorities of the self-proclaimed Transnistrian Republic didn't reconnect the penitentiary to the electricity and water supply networks. On the contrary, they continued their illegal activities and disconnected the penitentiary from the sewerage system on 26 October 2005.

111. The situation attracted attention of the CPT that carried out targeted *ad hoc* visits in this regard, including the most recent visit to penitentiary no. 8 in March 2006. The CPT appreciated the efforts of the penitentiary management and Moldovan authorities aimed at assuring decent imprisonment conditions. However, the CPT warned about the ongoing risk that the local authorities might block completely the activity of the penitentiary completely (especially the movement of vehicles that supply the penitentiary with food, fuel for the power station, water, coal, wood, etc.) and resulting in conditions of detention that could be regarded as inhuman and degrading treatment.

112. Besides that, it is not possible to carry out any procedures on the criminal cases initiated against the inhabitants of Transnistria, as well against the abuses committed by the authorities of the self-proclaimed republic. The main cause is repeated detention of policemen of the Republic of Moldova at the internal customs posts on the pretext that it is forbidden for uniformed policemen to enter their territory. The policemen are released only after the intervention of the members of the Unified Control Commission, after being detained for about one to five hours.

113. The situation can be illustrated by the following case: on , at about 9.30 pm the Police Commissariat of Bender municipality received an official information from the so-called Ministry of the National Security of the self-proclaimed republic that the following employees of the Police Commissariat of Bender were detained in Tiraspol: A.A. Pohila, head of the Criminal Police Division, police lieutenant-colonel, C.V. Condrea, deputy head of the Criminal Police Division, general police lieutenant, V.A. Vasilev, superior inspector of the Criminal Police Division, police lieutenant, I.P. Datco, superior inspector of the Criminal Police Division, general police lieutenant, and St.I. Manghir, employee of the Division for Combating the Organized Crime, head of "SUD" section, who were in the mentioned territory in order to solve their personal problems. On 17.06.2006 C. V. Condrea and St. I. Manghir were escorted to a court in Tiraspol city, and were detained there for 72 hours.

114. At about 20:00, A. A. Pohila, V. A. Vasiliev and P. Datco were released and handed over to police officers of the Bender city.

115. On 23.06.2007, an official of the Ministry of National Security of the transnistrian region, escorted the police officers C.V. Condrea and St. I. Manghir, and at 22:00 he handed them over to the Minister of Reintegration, Mr. V. Sova.

## **Article 6**

116. According to Article 12 (5) of Law on Police, the police authority shall take operative investigation measures and other steps, stipulated by legislation, to detect, prevent and fight crimes, locate and keep under observation criminals, persons fleeing from investigating, criminal prosecution, and judicial authorities, and those evading criminal sanction execution, as well as persons put on the wanted list or other persons, as stipulated by law.

117. The detention procedure does not vary according to person's citizenship and crime qualification. Detaining authorities are obliged to observe the provisions of the CCP, described in the section under Article 2 of the Convention.

118. When a person detained is a citizen of another state, the embassy or consulate of the respective state shall be notified of the detention within the term mentioned above on request of the detained person. Consequently, on detaining a foreign citizen it is necessary to inform him (by means of an interpreter, if he does not know the official language) of his right to request the representation office of the respective state to be notified and if verify whether he or she wants the notification to be made.

119. The competent authorities have the right to detain a foreign citizen or a stateless person, as stipulated by the legislation in force.

120. In case of detention, the foreign citizen or the stateless person shall be informed about the reason for detention and charge, stated in the language understood by him, as well as of his procedural rights and obligations.

121. In case of arresting a foreign citizen or a stateless person, competent authorities shall notify the diplomatic or consular missions of the state, of which the respective person is a citizen, or the diplomatic or consular missions of the identity card issuing state, within 48 hours from the moment of the arrest.

122. The outlined legal framework applies to those implicated in acts falling under Article 309<sup>1</sup> and other related provisions of the Criminal Code.

## **Article 7**

123. According to Article 11 of the Criminal Code, all persons having committed an offence in the territory of the Republic of Moldova are to be put on trial, under provisions of the Criminal Code of the Republic of Moldova.

124. According to article 16 of the Constitution of the Republic of Moldova respecting and protecting a person is the state's primary commitment. All citizens of the Republic of Moldova are treated equally by law and public authorities, irrespective of their race, nationality, ethnic origin, language, religion, gender, views, political affiliation or fortune.

125. This principle is also confirmed by Article 9 of the CCP, which stipulates that everyone is treated equally by law, criminal prosecution authorities and the court, regardless of gender, race, colour, language, religion, political or any other views, national or social origin, national minority group, fortune, birth or any other situation. This means that the same material and

procedural norms are applied, the same rights are granted and the same obligations are imposed with respect to all persons involved in the process. The scope of rights and obligations of each person is set, according to procedural position of the respective person.

126. Public authorities involved in the criminal procedure must treat all persons equally, without any discrimination. Ill treatment of some persons and connivance to others is prohibited. State authorities shall create for every person a real possibility to exercise his/her rights.

127. According to Article 19 of the Constitution, foreign citizens and stateless persons have the same rights and obligations as the citizens of the Republic of Moldova, unless otherwise stipulated by law.

128. According to Article 5 of the CCP, criminal proceedings against foreign citizens and stateless persons in the territory of the Republic of Moldova are carried out as stipulated by this code. Respectively, in the territory of the Republic of Moldova, criminal prosecution and criminal proceedings on crimes committed by foreign citizens or stateless persons are performed in accordance with the national procedural law. In respect of foreign citizens enjoying diplomatic immunities, the criminal procedural law is applied under certain special rules, set by the Vienna Convention on Diplomatic Relations, concluded on April 18, 1961, the Vienna Convention on Consular Relations, concluded on April 24, 1963, as well as other international treaties, to which the Republic of Moldova is a party.

129. Every person has the right to benefit of real satisfaction on the part of competent courts, against acts that violate the respective person rights, freedoms and interests. No law can deny access to justice (Article 20 of the Constitution of RM).

130. This principle is also confirmed by Article 19 of the CCP, which stipulates that every person has the right to an equitable and timely examination and settlement of his/her case by an independent, impartial, legally founded court, which will act in accordance with this code.

131. Any person performing criminal prosecution and a judge shall not participate in the investigation procedure, in case they are interested in the process, in a direct or an indirect way.

132. The authority shall take all measures, stipulated by law, to review in any form, completely and objectively, the circumstances of the case, to identify both circumstances demonstrating the guilt of the suspect, accused, defendant, as well as the exculpatory ones, and the extenuating or aggravating factors.

133. Any person charged with a crime is presumed not guilty, until his/her guilt is legally proved, in the course of a public judicial process, whereas the person charged benefited of all defence guarantees (Article 21 of the Constitution).

134. The presumption of innocence is the basic principle of the criminal procedure and one of the fundamental human rights. This explains the inclusion of the presumption of innocence in numerous international law documents, in which the person fundamental rights are stated.

135. No one is obliged to prove his /her innocence. Conclusions on the person's guilt of crime commission shall not be based on assumptions. Any doubts, referring to prosecution, which cannot be eliminated, under the provisions of this code, are interpreted in favour of the suspect, charged, or defendant.

136. The outlined legal framework applies to those implicated in acts falling under Article 309<sup>1</sup> and other related provisions of the Criminal Code.

### **Article 8**

137. According to paragraph (3) of Article 544 of the CCP, one of the main conditions for extradition is the fact that the crime, for which extradition is solicited, is punishable according to legislation of the Republic of Moldova. Consequently, as Article 137 of the CC includes the *corpus delicti* of inhuman treatment, and Article 309/1 of the CC - one of torture, extradition for commission of these crimes shall not be refused, provided that the other conditions are observed.

138. Extradition requests shall be satisfied in accordance with article 541 paragraph (2) of the CCP under the international treaty, to which the Republic of Moldova and a foreign state are parties, under the obligations written on a reciprocity basis.

139. The Convention is considered to be the legal basis for extradition, referring to the above-mentioned offences, in case both states are parties to this Convention, and it is applied as legal basis for crimes covered by the Convention.

### **Article 9**

140. Issues of interaction with foreign states or international courts on issues of legal assistance in criminal matters is regulated by Chapter IX INTERNATIONAL LEGAL ASSISTANCE IN CRIMINAL MATTERS of the CCP. Provisions of international treaties to which the Republic of Moldova is a party, including the Convention in question, as well as other international obligations assumed by the Republic of Moldova prevail over this chapter provisions.

141. In cases when the Republic of Moldova is bound by several acts on international legal assistance, to which the state rendering legal assistance or the state-applicant is a party, and there are certain divergences or discrepancies between these acts, the treaty providing better protection of human rights and freedoms will prevail.

142. Decisions on admissibility of international legal assistance are taken by the competent judicial authority. The Ministry of Justice may decide on the non-execution of the judicial decision on the international legal assistance, in case the fundamental national interests are at issue. This attribution is exercised to observe the defendants rights on the implementation of the decisions pronounced in their favour.

143. The way of submitting requests for international legal assistance in criminal matters is regulated in ratification instruments of respective international treaties. According to Article 4 of Parliament Decision of the Republic of Moldova no. 1332 dated September 26, 1997 "On ratification of the European Convention on legal assistance in criminal matters", any request for

legal assistance shall be addressed to the Ministry of Justice or Prosecutor General. In case the international assistance is offered or requested on a reciprocity basis, the Ministry of Justice or Prosecutor General can submit or receive requests either directly, or via the Ministry of Foreign Affairs and European Integration. On a reciprocity basis, other communication methods between the respective state bodies may be applied (Interpol, Europol, SECE, etc.).

144. International legal assistance may be requested or offered in respect of certain procedural activities stipulated by the criminal procedural law of the Republic of Moldova and of the respective foreign state, in particular:

- (a) Remittance of documents to the individuals or legal entities staying abroad;
- (b) Questioning of witnesses or experts;
- (c) Carrying out of investigations, searches, withdrawal of objects or documents and remitting them abroad, expert examinations;
- (d) Summoning persons from abroad to participate voluntarily in the criminal prosecution or trial for questioning or cross-examination as well as delivering of persons deprived of their liberty;
- (e) Carrying out criminal prosecution on denunciation by a foreign state;
- (f) Search and extradition of criminals to execute the custodial sanction;
- (g) Recognition and execution of foreign judgments;
- (h) Rendering of convicted persons;
- (i) Other actions that do not infringe provisions of this code.

145. Taking preventive measures is not an object of international legal assistance.

146. International legal assistance may not be provided if:

- (a) The request refers to transgressions, which are considered in the Republic of Moldova, as bearing a political character or other related transgressions of this kind. Such refusal is impermissible in case the person is suspected, charged or convicted for committing certain actions stipulated by Articles 5-8 of Rome Statute of the International Criminal Court (ICC);
- (b) The request refers exclusively to violation of the military discipline;
- (c) The criminal prosecution authority or the court addressed to for legal assistance consider that a fulfilment of request could affect the state sovereignty, security or public order;
- (d) There are solid grounds for supposing that the suspect is under criminal prosecution or sanction because of his/her race, religion, citizenship, group affiliation or dissemination of certain political views, or in case his/her situation would deteriorate because of one of the above-mentioned reasons;



(e) It is proved that the respective person will not have access to a fair trial in the applicant state;

(f) The respective crime is punished with death penalty in accordance with the laws in force of the applicant state, and the applicant state does not guarantee the non-appliance or non-execution of the capital punishment;

(g) According to the Criminal Code of the Republic of Moldova, the deed or deeds referred to in the request are not considered to be a crime;

(h) According to the national legislation, no criminal proceedings shall be applied to the respective person.

147. Refusal of international legal assistance will be justified if such obligation results from the treaty to which the Republic of Moldova is a party.

148. Expenses related to rendering of legal assistance are covered by the applicant in the territory of its country, unless otherwise stipulated by international treaty provisions or if another mode of covering expenses on a reciprocity basis has not been agreed upon.

149. In case a procedural action has to be performed in the territory of a foreign state, the criminal prosecution authority or the court should appeal through a rogatory letter to a criminal prosecution authority or a court of the respective state, or to an international criminal court, in accordance with the international treaty, to which the Republic of Moldova is a party or on a reciprocity basis.

150. The reciprocity is confirmed by a letter, via which the Minister of Justice or Prosecutor General assume the obligation to offer legal assistance on behalf of the Republic of Moldova to a foreign state or an international criminal court in performing certain procedural actions upon guaranteeing procedural rights of the beneficiary of assistance as stipulated by national legislation.

151. Rogatory letters in the Republic of Moldova are submitted by to the Prosecutor General, and by courts - to the Minister of Justice.

152. Rogatory letters and the documents attached shall be translated in the official language of the respective state or of the international criminal court it is addressed to.

153. Or a court shall execute a rogatory letter of the respective foreign authorities , in accordance with the international treaties, to which the Republic of Moldova and the applicant state are parties or under conditions of reciprocity stipulated in article 536 paragraph (2).

154. Rogatory letters shall be submitted by the Prosecutor General to the or, if needed, by the Minister of Justice to the court of the district, where the requested procedural action is to be performed.

155. Request for questioning of a witness or expert is executed, in all the cases, by the investigating judge.

156. Rogatory letters should be executed under provisions of the CCP. However, on request of the applicant, a special procedure stipulated by legislation of the foreign country may be applied, in accordance with the respective international treaty or on a reciprocity basis, unless such action infringes the national legislation and the international obligations assumed by the Republic of Moldova.

157. Representatives of foreign states or of the international court may assist in executing a rogatory letter, provided that such action is stipulated by the respective international treaty or a written obligation assumed on a reciprocity basis. In such case, on request of the applicant, the body in charge of the execution of rogatory letters shall notify the applicant of the time, place and deadline of its completion, so that the interested party may assist in this process.

158. If the address of the person, with respect to whom the rogatory letter is requested, is not correct, the body assigned with it takes the respective measures to identify the correct one. In case of impossibility of identifying the address, the applicant shall be notified accordingly.

159. Whenever a rogatory letter cannot be satisfied, the documents received shall be returned to the applicant via the sending institutions with the reasons of non-execution indicated. The rogatory request and the documents attached to it are also returned in case of refusal because of the reasons mentioned above.

#### **Article 10**

160. Within the reporting period, no training on detecting and documenting the signs of torture was organized for the medical staff of state institutions. This is caused by the fact that the problem of torture was not tackled adequately in the Republic of Moldova, and it was not included in programs of training and/or development of the medical staff dealing with detainees and refugees.

161. On the other hand, the medical legal/forensic examination is under State monopoly still. This fact negatively affects activities and actions of some doctors from such institutions.

162. As to non-governmental sector, Medical Rehabilitation Centre for Torture Victims (RCTV) "Memoria" organized different informative and training events for medical staff, law and medicine students, penitentiary staff and policemen, such as the seminar "Torture consequences - common concern of society" (2002).

163. In this period (2002-2006) different prospectuses and informative materials were distributed, such as:

- (a) "The epidemiology of torture";
- (b) "Consequences of the T-Torture phenomenon";
- (c) "NO" - to force abuse and social violence;
- (d) "Interaction between 2 elements of the "T" - torture phenomenon";
- (e) "Circle of Violence";

- (f) “Don’t tolerate torture”;
- (g) “26 June, the UN International Day in Support of Victims of Torture”.

164. For 2007, the NGO “Memoria” has planned to organize an International Seminar, during which the Istanbul Protocol, approved by UN, a torture documentation and investigation manual, will be presented.

165. Based on the experience and current exigencies, it can be concluded that the training programs applied in Moldova by higher education institutions should be reviewed on a state-level, and supplemented with courses on methods of detection of consequences of torture and its identification, including the enforcement of the Istanbul Protocol. Also, the staff of different state institutions should get training consequences of torture, its victims, and their problems.

166. Besides the initial and subsequent professional training of penitentiary staff in the Study Centre, according to Penitentiary Department order no. 13 dated January 26, 2006, training courses for penitentiary staff are structured by its subdivisions. The respective training program is approved annually by the leadership of the Penitentiary Department It consists of 40 hours per year, including 6 hours for training in the field of human rights, combating torture , inhuman and degrading treatment, during which the employees deal with the provisions of the UN Convention against torture and other cruel, inhuman and degrading treatment, standards developed under the European Convention for the prevention of torture or inhuman or degrading treatment and punishment, etc.

167. In the period of 2003-2006, no specialized training activities have been organized on issues related to prevention of torture. As part of the UNDP project “Support to Implementation of the National Human Rights Action Plan”, including a training and education element in the Human Rights field, the issue was discussed during the seminars and workshops on human rights. However, it was introduced as a special subject within the training/informative activities in 2003-2006. It covered more than 60 officers from all police departments of the country, including Chisinau municipality and the MIA. Specialized training courses attended by more than 20 employees, developed as a study program, were organized in October, 2006.

168. In 2005-2006 more than 150 employees of the penitentiary system were involved in training activities. In October 2006 a specialized seminar on combating torture and legality of using special means was organized in the Goeni Professional Training Centre The seminar was attended by heads of the penitentiary institutions and representatives of the Central Directorate of the Penitentiary Department.

169. The compilation of reference guidebooks „Human rights training for penitentiary staff” and “Human rights training for police staff” created under the framework of the UNDP project has been a noticeable development on the issue in question. These two reference guidebooks are to be used by the MIA officers and under-officers, as well as by the penitentiary system staff in the course of training activities. They include specialized sections on torture, use of firearms and

special means. Using these guidebooks in training activities will facilitate the training process in the area of combating torture and protection of human rights. At the moment, these are the only national guidebooks in the respective area. As from 2007, these guidebooks are to be used in the MIA subdivisions, as well as within the penitentiary system of Moldova.

170. According to the Ministry of Health and Social Protection, training programs for 2007-2008 (within the departments of legal medicine, psychiatry, surgery, traumatology, neurology, neurosurgery, otorhinolaryngology, stomatology, urology, obstetrics and gynecology) will include the subject on detection of consequences of and their identification, as well as enforcement of the Istanbul Protocol. Besides that, it is envisaged to organise training courses on torture, its consequences and victims, and their problems for the staff of different state institutions. Suggestions have been put forward to the Rector of the State University of Medicine and Pharmaceutics "Nicolae Testemitanu", principals of medical colleges, heads of Professional Training Centres for medical staff and chemists with a secondary education in medicine, with a view to approve the number of hours of to be devoted to teaching on the subject.

### **Article 11**

171. The right to freedom and security of person is stipulated in article 25 of the Constitution as a fundamental right. The protection of a person's freedom and inviolability is an obligation of the prosecution authorities and the courts which are obliged to fully observe all the provisions relating to its fulfilment.

172. Measures of confinement are applicable in exceptional cases, by observing the rigorous regulations establishing requirements and grounds for their application. Such measures can be applied only to ensure that trial and criminal law objectives are met.

173. Personal freedom can only be limited as a result of a decision taken by a court (art. 11 para. (3) CCP), except cases when persons are detained by the criminal pursuit body. It cannot exceed 72 hours.

174. Deprivation of freedom may be used for periods strictly established in the law or in the court decision. Once the detention term expires, the person should be released, any other form of detention for the same purpose being illegal.

175. Although the law establishes certain terms that may be applied to detention of a person, the right to freedom implies that a deprivation of freedom cannot last longer than required, taking into account relevant circumstances, even if the legal term or the term established by the court has not expired. To this end, the law provides that the criminal pursuit body, criminal prosecution authority or the court is obliged to release immediately any person when the grounds for detention or arrest are no longer valid.

176. Deprivation of freedom or its extension cannot be authorized if there are no circumstances to justify it. To this end, the initial grounds for the deprivation of freedom may not be sufficient subsequently to justify a legal detention.

177. Every arrested or detained person should be immediately informed about his/her rights and reasons for detention or arrest, circumstances of the case, as well as the legal scope of the action of which he/she is suspected/indicted, in the language he/she understands, in the presence of a defence lawyer selected or appointed ex officio.

178. Another prerequisite to ensure a legality of detention are the appropriate conditions of detention and treatment of the person deprived of freedom. Any person detained or arrested should be treated with respect to human dignity and he/she should not be subjected to violence, threats or any methods which may affect his/her capacity to make decisions and to express his/her opinion.

179. As provided in Article 187 of the CCP, every suspect, accused or arrested person, whether or not cooperating with prosecution authorities, has the right to personal security. Thus, if there is any threat to the life and health of the remand prisoner, he/she is entitled to submit to the officer of the remand prison a request for transfer to any premises where there is no such threat. In such a case, the authorized official is obliged to take urgent action for the transfer of the remand prisoner to a safe location.

180. Besides that, the administration of the detention facility is obliged to:

- (a) Provide detainees with access to independent health care;
- (b) Provide detainees on the same day with copies of procedural documents addressed to them;
- (c) Ensure registration of detainees' complaints and requests;
- (d) Send detainees' complaints and other requests addressed to the court, prosecutor or other officials of the criminal prosecution authority on the same day without checking and censoring them;
- (e) Prepare a report on the detainee's refusal to be brought to the court;
- (f) Allow unhindered and confidential meetings of detainees and their defence lawyers, legal representatives, mediators, without limiting the number and duration of meetings.

181. Under Article 177 of the new Code a special body - the Complaints Committee has been established with the view of ensuring an impartial review of complaints, lodged by inmates from penitentiary institutions, as well as monitoring the observance of their rights. On 23 January 2006 the Government approved the Regulations of the Complaints Committee by its Decision no. 77.

182. The Regulations provide for legal basis for the activity of the Complaints Committee, an authority acting on a voluntary basis. Its objective is to monitor the observation of detainees' rights by reviewing complaints lodged inmates from penitentiary institutions against illegal actions of their administration, violations of regime, as well as other actions infringing on the legality in places of detention.

183. Based on the above-mentioned Regulations, the Committee employs staff with vast experience in the field of human rights. As a rule, the Committee is composed of:

- (a) A resigned judge or prosecutor, or another person with vast legal experience, nominated by the Ministry of Justice;
- (b) A doctor-practitioner, proposed by the Ministry of Health and Social Protection;
- (c) An official of the social assistance system, nominated by the Ministry of Health and Social Protection;
- (d) A representative of the guardianship or trusteeship authority, nominated by the Ministry of Education, Youth and Sports;
- (e) A representative of legally established NGOs acting in the field of human rights.

184. While exercising their functions, members of the Committee have certain rights and duties, among which is the right to visit detention institutions without a special permit to carry out an on-site check. The objective of this Committee is to ensure a timely and qualitative review of complaints lodged by persons from penitentiaries, in order to protect their rights and interests.

185. This Committee assists in monitoring human rights protection in penitentiaries, solving conflicts between penitentiary administration and detainees.

186. The prosecutor's office performs the daily supervision of places of temporary detention under the jurisdiction of the Ministry of Internal Affairs by checking the cells, detainees with regard to the reason and legality of detention, availability of complaints against actions of internal affairs authorities, by registering the findings of the visit in the logbook of comments made by persons who carried out a check-up visit to the PDC. At the same time, the person authorized by the management of the internal affairs authority is obliged to check on a daily basis the pre-trial detention centre and to record the comments in the above mentioned logbook.

187. Also, places of detention are regularly visited and monitored by Ombudspersons, NGO representatives, such as the Helsinki Committee, Institute of Penal Reform, CarLux, RCTV Memoria.

188. The number of persons detained in the pre-trial detention centres under the police commissioner's offices of the Ministry of Internal Affairs in 2003-2006 are as follows:

#	Description	2003	2004	2005	11 months 2006
1.	Total detainees	35 841	35 788	35 235	22 068
2.	Persons under preventive arrest	12 618	13 043	14 412	7 983
3.	Persons under administrative arrest	19 004	19 929	18 211	12 332
4.	Persons detained after the issuance of court sentence	4 219	2 816	2 612	1 753

189. In order to avoid cases of torture and ill-treatment, to ensure the medical examination of persons detained and arrested in pre-trial detention centres of the police commissioner's offices, the Ministry of Internal Affairs developed a number of relevant regulations.

190. Additionally, the duties of medical attendants from detention centres include the medical examination of persons before and after detention, by making relevant records in the medical examination cards of persons detained or arrested.

191. One more area related deprivation of liberty concerns Psychiatry hospitals of the Ministry of Health and Social Protection, where in 2003-2006 the following numbers of persons were placed: 2003 - in total 1268, of which 1193 for committing crimes, 2004 - in total 1238, of which 1148 for committing crimes, 2005 - in total 1322, of which 1217 for committing crimes, 11 months 2006 - in total 978, of which 892 for committing crimes.

192. During the above-mentioned period, no cases of torture by the staff of Psychiatry Hospitals were registered.

193. Based on the Government's Decision no. 529 of 17.05.2006, the Ministry of Internal Affairs took over the functions related to asylum seekers and refugees and established the Directorate for Refugees under the Bureau for Migration and Asylum - a subdivision of the Ministry.

194. The main function of the Directorate for Refugees is effective management of the asylum procedure by taking over from the United Nations High Commissioner for Refugees the entire procedure for case review and provision of any form of protection under the law.

195. While managing this procedure, the Directorate started issuing temporary IDs to asylum seekers. The ID is valid for 30 days, and may be extended for additional 30-day periods (Art. 16, para. 2 "Law of the Republic of Moldova on the Status of Refugees").

196. In 2003-2006 the staff of the Directorate opened 278 cases (concerning 314 persons) and re-opened 39 cases (39 persons). They issued 215 decisions (245 persons), of which 127 were negative and 99 - positive ones (161 persons were granted refugee status or humanitarian protection).

197. Following an analysis no cases of torture or other inhuman or degrading treatment were revealed among persons who had been granted asylum and humanitarian protection in the above-mentioned period.

198. During the reporting period, readmission agreements were signed with the following parties:

- (a) The Swiss Federal Council;
- (b) Government of the Czech Republic;
- (c) Government of the Italian Republic;
- (d) Government of the Republic of Lithuania;

- (e) Government of the Republic of Poland;
- (f) Government of the Hungarian Republic;
- (g) Government of Romania;
- (h) Government of Ukraine;
- (i) Government of Kingdom of Norway.

199. Under the provisions of para. (2) of Article 165 of the Enforcement Code, every convicted foreign citizen or stateless person enjoys the rights and duties stipulated in the international treaties to which the Republic of Moldova is a party, in the law of the Republic of Moldova on the legal status of foreign citizens and stateless persons, with the exceptions and limitations stipulated in this Code and the regulations adopted in compliance with it. Also, the convicted persons with a citizenship other than that of the Republic of Moldova have the right to appeal to the diplomatic or consular institutions of the state of their citizenship in the Republic of Moldova and to be visited by officials of such diplomatic or consular institutions.

200. The Government's Decision No. 826 of 4 August 2005 provides that penitentiaries have the status of a legal person of public law and are subordinated to the Penitentiary Department of the Ministry of Justice.

201. As provided in the Annex to the Government's Decision No. 826 of 4 August 2005, the penitentiary system comprises of the following penitentiary institutions:

#	Name of institution	Location of institution
1.	Penitentiary institution no. 1 - Taraclia	Taraclia town
2.	Penitentiary institution no. 2 - Lipcani	Lipcani town
3.	Penitentiary institution no. 3 - Leova	Leova town
4.	Penitentiary institution no. 4 - Cricova	Cricova town, Chisinau municipality
5.	Penitentiary institution no. 5 - Cahul	Cahul town
6.	Penitentiary institution no. 6 - Soroca	Soroca town
7.	Penitentiary institution no. 7 - Rusca	Rusca village, Hincesti rayon
8.	Penitentiary institution no. 8 - Bender	Bender municipality
9.	Penitentiary institution no. 9 - Pruncul	Chisinau municipality
10.	Penitentiary institution no. 10 - Goian	Goian village, Chisinau municipality
11.	Penitentiary institution no. 11 - Balti	Balti municipality
12.	Penitentiary institution no. 12 - Bender	Bender municipality
13.	Penitentiary institution no. 13 - Chisinau	Chisinau municipality
14.	Penitentiary institution no. 14 - Basarabasca	Basarabasca town
15.	Penitentiary institution no. 15 - Cricova	Cricova town, Chisinau municipality
16.	Penitentiary institution no. 16 - Pruncul	Chisinau municipality
17.	Penitentiary institution no. 17 - Rezina	Rezina town
18.	Penitentiary institution no. 18 - Branesti	Branesti village, Orhei rayon
19.	Penitentiary institution no. 19 - Goian	Goian village, Chisinau municipality



202. As provided in Article 216 of the Enforcement Code, the punishment of imprisonment is executed in open, semi-open and closed penitentiaries, each of them having three regimes - initial, common and resocializing. Attribution of the type of penitentiary, creation and elimination of detention sectors within an institution, suspension of the activity of penitentiary institutions fall under the responsibility of the Ministry of Justice. Thus, as provided in the Order of the Ministry of Justice, no. 327 of 18 August 2005, of the total 19 penitentiaries, 5 are closed-type penitentiaries, 3 are semi-open, 2 are open, 5 have the status of Pre-trial Detention Centres, one is a penitentiary for detention of women, one is a penitentiary for detention of minors, and one is a penitentiary hospital. The activity of two penitentiaries is suspended (penitentiaries no. 14-Basarabeasca and no. 19-Goian).

203. Under the provisions of para.(1), Article 187 of the CCP, the penitentiary administration has the duty to ensure detainees' security, to provide them with relevant protection and assistance. Also, under the provisions of Article 225 of the CCP, if there is any threat to the personal security of the convicted person, he/she has the right to submit to any official of the penitentiary a request to ensure his/her personal security. In such a case, the official is obliged to take immediate measures to ensure personal security of the convicted person, and, accordingly, measures of protection by the state. In 2006 there were registered 197 petitions of detainees requesting to ensure their personal security (there is no statistical data for 2003-2005).

204. As a result of various measures undertaken by Moldovan authorities, the number of detainees is gradually decreasing, as follows:

#	Period	Convicted	Remand prisoners	Total
1.	31.12.2003	7 836	2 755	10 591
2.	31.12.2004	6 920	2 457	9 377
3.	31.12.2005	6 404	2 472	8 876
4.	01.12.2006	6 057	2 557	8 614

205. The Department for Penitentiary Institutions supervises the activity of penitentiaries in line with the legislative provisions, i.e. it can perform a check-up at any time, using both comprehensive check-ups, and ad-hoc check-ups. Based on such check-ups, it prepares recommendations for elimination of gaps identified and submits them for follow-up to the administration of the relevant penitentiary.

## Article 12

206. According to Article 252 of the CCP, the objective of the criminal prosecution is to collect all necessary evidence concerning the existence of a crime, the identification of the perpetrator, to decide whether or not the criminal case should be sent to court under the law and to establish his/her liability.

207. The prosecution is carried out by the prosecutor, as well as other authorities established under the law, within:

- (a) The Ministry of Internal Affairs;
- (b) The Customs Service;

(c) The Centre for Combating Economic Crimes and Corruption.

208. Criminal prosecution authorities are represented by prosecution officers appointed within the above-mentioned institutions and subordinated to the head of the respective institution (Article 253 of the CCP).

209. The criminal prosecution authority is obliged to take all the necessary actions provided under the law for a complete and objective investigation of all the facts of the case to establish the truth.

210. The activity of the criminal prosecution authority mentioned above should be performed even in cases when the suspect or the defendant is pleading guilty.

211. The prosecutor is obliged to review and notify the person who submitted the complaint about his decision within 72 hours from the receipt of the complaint. In the case when the complaint is rejected, the prosecutor is obliged to motivate by means of a decision why he considers the complaint unfounded, explaining at the same time the procedure for challenging it before the investigating judge.

212. Respective functions of investigating judge being an independent and impartial authority concern investigation of actions of the criminal prosecution and the operative investigation authorities, aiming at identifying and eliminating any human rights violation at the stage of criminal prosecution and ensuring the respect for fundamental human rights and freedoms and legitimate interests of parties to proceedings and any third parties. The judicial supervision of pre-trial proceedings is performed by an investigating judge acting within a court, and, in cases provided by the law, by a court of appeal verifying the legality of the initial judicial supervision.

213. Any complaint against actions of the mentioned authorities can be submitted within 10 days from the date when the person identifies a violation of his/her right according to the venue of the investigating judge. If the complaint concerning a decision of the of criminal prosecution or operative investigation authorities is submitted, it must contain a copy of the decision in question attached or identification data of the decision in cases when the authority in question refused to issue a copy to the complaining person. The judge shall establish the date when the complaint will be examined, order the forwarding of the complaint to the prosecutor and solicit the opinion of the prosecutor on the matter.

214. Complaints shall be examined by the investigating judge within 10 days from the submission date. The prosecutor in charge of the criminal prosecution in question and the complainant must participate at the examination of the complaint.

215. Based on the fact that the prosecutor is in charge of the criminal prosecution in question, the judge shall hand a copy of the complaint to the prosecutor and will require his opinion concerning the complaint. The prosecutor is obliged to present his opinion to the court. This provision of the law makes it mandatory for the prosecutor to verify arguments raised in the complaint before the time when it will be settled by the investigating judge. The materials obtained as a result of the control have to be presented to the judge at the date of the examination of the complaint.

216. The absence of the person that submitted the complaint does not affect the examination of it. During the examination the prosecutor and the petitioner, if he or she is present at the session, must give explanations concerning the arguments mentioned in the complaint.

217. According to the legal provisions of Republic of Moldova, prosecutors are in charge of the criminal prosecution regarding officers of criminal prosecution. In cases of other officers of the Ministry of Internal Affairs the criminal prosecution will be conducted by the General Department of Criminal Investigation of the Ministry of Internal Affairs, although the in all the cases mentioned above is usually conducted by the prosecutors based on their territorial jurisdiction.

218. There is a special body within the Ministry of Internal Affairs, called Department of Internal Security, specialized in investigations against officers involved in criminal prosecution. This department is organising periodical random check-ups vis-à-vis officers in order to prevent and find out cases of physical and psychological ill-treatment of individuals, as well as any illegal detention, arrest, or forced confinement, threats to use force in order to obtain required testimonies from individuals involved in the process, searches of houses and interceptions of phone calls or other types of communication without a legal warrant, etc. Simultaneously, the body mentioned above seizes and analyzes any objects or tools adapted to torture people, as well as any documents and evidences hidden from criminal and administrative prosecution. At the same time the officers of the department are searching buildings, offices and other sites under of subdivisions of the Ministry of Internal Affairs, etc.

219. On daily basis the department verifies the way the police authorities are reacting to information concerning crimes received from individuals, the correctness of registration of these notifications and the treatment of individuals addressing to the police authorities. In all cases where violations are tracked down the department initiates investigations for the assessment of the role of the heads of the police stations in question, as well as initiate discussions of wrongdoings with the entire police station staff.

220. During 2005 and up to August 2006 regular checks were performed almost in all police stations of the country.

221. The Department of Internal Security of the Ministry of Internal Affairs examines all requests of individuals concerning violations committed by the staff of police stations.

222. The Department of Internal Security established a hotline - 226-574 - for calls, including anonymous ones, concerning any violations committed by policemen. The phone number is posted in all police stations in the country.

223. All relevant complaints are examined during special investigations, followed by disciplinary sanctions against policemen found to be responsible for violations established. In each case where there is enough evidence to believe that the police officer committed a crime, materials of the case are sent to the Prosecution Office for further examination that can lead to a criminal prosecution. During the examination of the materials by the prosecutor, the internal

investigation is suspended, with the possibility of reopening after a decision of the prosecution or court is issued. The person that is under investigation may be suspended from his ordinary duties with seizure of and his firearm and credentials, as well as a ban on access to the Ministry of Internal Affairs' offices.

224. The case of August 19<sup>th</sup> 2005 from the office of the Cojusna Police Station in Straseni rayon (district) can serve as an example of the activities mentioned. As a result of the check-up it was established that within the police building the head of the police station No. 7 "Sireti", major I.N. Bivol, being drunk, and his colleague, field inspector, police ensign Gh.I. Bivol, while wearing their uniforms abused mister V.Gr. Mereneanu, born in 1972, motivating their behaviour by the fact that he took a picture of them in the local bar, where the police officers concerned were consuming alcoholic drinks.

225. As a result of the investigation, the Ministry of Internal Affairs issued Decree No. 272-ef of September 12<sup>th</sup> 2005 applying disciplinary sanctions to the police officers. Police major Iurie Bivol dismissed from police service and police ensign Gheorghe Bivol received a final warning that could be followed by severe sanctions in case of future violations.

226. The materials collected were forwarded to the General Prosecution Office of the Republic of Moldova for further criminal investigations.

227. Article 248 "Refusal to accept food" of the Enforcement Code of Republic of Moldova stipulates that "In situations when a convicted person refuses to accept any food, the head of the penitentiary has the obligation to listen to the convicted person in a hearing immediately and to request the convicted person to write down a declaration, to find out the reasons ... and to decide on initial measures for the settlement of the situation. The declarations are forwarded, in maximum 24 hours, to the prosecutor and to the Complaints Committee that must listen to the arguments of the convicted person". Article 267 (6) of the Enforcement Code stipulates that "... disciplinary sanctions can be cancelled by the final decision of the court or by the Complaints Committee decision ...".

228. The access of the members of the Committee to penitentiary institutions can not be barred by the authorities and unscheduled visits do not need any preliminary coordination with the authorities. The sessions of the Complaints Committee are organised regularly starting from June 2006. There were two extraordinary sessions in July 2006 in which the committee members discussed the working system and the modes of settling complaints. 150 complaints have been registered by. The Committee received complaints that had been forwarded by the Centre for Human Rights of Moldova, Parliamentary Commissions, and Prosecutor General Office of the Republic of Moldova and the Department for Penitentiary Institutions of the Ministry of Justice.

229. In the course of consideration of all petitions and communications received, members of the committee discussed the issues brought in by convicted persons with the inmates, the administration and other responsible persons from the Penitentiary Department and Ministry of Justice. On July 26<sup>th</sup> 2006 members of the committee visited the prison No. 13 situated in Chisinau. They found that the penitentiary is overcrowded; detention conditions were unbearable due to lack of financial resources. At the same time, it was found that many complaints had been filed according a sample and thus did not represent the individual opinions of the petitioners, because some of them were illiterate even.

230. To date, the Complaints Committee received only one notification by ordinary mail from the Correction Centre No. 3 (CC-3) in Leova, consisting of 150 complaints that reflected on the unacceptable general situation in penitentiaries all over the country.

231. The main problems and reasons mentioned by convicted persons in the complaints are: disagreement with the sentence; hunger strikes; necessary medical assistance; disagreement with the disciplinary sanctions applied by the penitentiary administration; parole; violation of rights of convicts by the penitentiary administration.

232. Thirty eight complaints have been forwarded to other competent authorities with the request of mandatory notification of the Committee. Fourteen replies have been received from competent authorities. Twenty replies were prepared and sent to convicted persons by the Complaints Committee directly.

233. Members of the committee organised fact-finding visits to penitentiaries No. 3 and 13 in Chisinau, Republican Specialised Hospital in Pruncul, prisons No. 4 and 15 in Cricova, Branesti prison, Lipcani prison and the penitentiary institution in Bender.

234. The committee will present to the Government of the Republic of Moldova a special activity report on the evaluation of the situation in the penitentiary system.

235. Whenever there are any statements concerning ill-treatment in the penitentiary system, the Department for Penitentiary Institutions, in particular its Human Resources Direction, runs a special investigation for the elucidation of all circumstances mentioned in the complaint. Officers found guilty of committing any violent acts are disciplinary sanctioned and the materials gathered forwarded to the criminal prosecution.

236. During 2001-2006 three investigations took place in respect of allegations of use of violence and inhuman treatment, two of which proved to be inconsistent. As to the third one, on 12 August 2006 174 convicted persons from penitentiary No. 3 in Leova addressed complaints concerning hunger strikes related to illegal use of force against them by the administration. After the facts were verified, it was found out that 6 convicted persons stated that they were subjected to ill-treatment by the head of Penitentiary No. 3, colonel A. Pîslari and his deputy, major Ig. Tepeniuc. The above mentioned actions of the administration became the subject of a special investigation carried out by the Department for Penitentiary Institutions. The materials of the case were forwarded to the competent Cahul Military Prosecution and a criminal investigation based on them started for the perpetration of the crime under article 328 of the Criminal Code of Republic of Moldova. The criminal investigation has not been finished. Relevant penitentiary officials have been dismissed during the investigation.

237. The statistics of the disciplinary practice shows that in the period 2001-2006, 5 officials were punished for irregular use of physical force, and namely: in 2001-2003 none, in 2004 - 1 official, in 2005 - 1 official and in 2006 - 3 officials.

### **Article 13**

238. Article 298 of the CPC ensures the settlement of complaints against actions and offences of the prosecuting authority and the operative investigation authority.

239. Supervision of the legality of actions taken by the prosecuting authority (criminal pursuit body) and the operative investigation authority represents a realisation of the right to justice - a right guaranteed by Article 20 of the Constitution and, also, an efficient way to identify and eliminate violations of human rights. Under Article 300 of the CCP, the investigating judge examines prosecutor's applications regarding permit for carrying out actions and operative investigation measures, as well as, enforcement of coercive procedural measures which limit person's constitutional rights and freedoms.

240. The investigating judge examines complaints against illegal acts of authorities and bodies that exercise operative investigation, if the person does not agree with the result of the investigation of his/her complaint performed by the prosecutor or in case he/she did not receive any answer from the prosecutor within the term set by the law.

241. The investigating judge examines complaints against illegal acts of the prosecutor leading the very criminal prosecution, if the person does not agree with the result of the investigation his/her complaint performed by the prosecutor or in case he/she did not receive any answer from the prosecutor within the term set by the law.

242. Complaints and petitions submitted under the above mentioned provisions are reviewed by the investigating judge at the location, where or the operative investigation activity was undertaken.

243. To ensure detainee's access to different state bodies, including some public organizations, Order Nr. 29 dated 02 March 2006 of the Department for Penitentiary Institutions has approved the Regulation on visual propaganda in penitentiary institutions, based on which informative posters were installed within establishments. These posters exhibit precise information regarding the addresses of state bodies and some public organizations to which detainees can submit petitions. Access to medical assistance in case of torture is stipulated in Article 10 of the present Report.

244. The diversity of authorities appealed to by detainees and the tendency in respect of numbers of petitions submitted by detainees is reflected in the following tables:

**Number of petitions submitted to the PD through state  
authorities and organizations**

Name of authority or organization	2002	2003	2004	2005
Parliament	87	43	110	288
President's Administration	40	45	89	137
Government/State Chancellery	11	-	16	29
Judges	-	-	-	21
Prosecutor's office	52	46	116	67
Ministry of Health and Social Protection	-	-	82	-
OSCE Mission in Moldova	7	11	-	-
Human Rights Centre	21	86	86	75
Mass media	3	1	-	-
Other authorities	55	63	33	66

245. During 2006, the PD has received 21 petitions from detainees regarding torture or ill-treatment, but their examination did not confirm any of these acts.

**Numbers of petitions within the penitentiary system**

Petitions	2001	2002	2003	2004	2005
Total registered	645	1 218	1 384	2 085	3 415
Illegal actions of the administration	109 (8.9%)	109 (8.9%)	181 (13.1%)	323 (15.5%)	544 (15.0%)

246. The number of petitions have mainly increased due to amendments in the national legislation that provide the convicted person with the right to receive and send on his/her own expenses letters, telegrams and petitions with no limitation in number and in accordance with provisions set by the enforcement Code (Article 229) and Regulations on completion of sentences by convicted persons (section 21, 30). The content of incoming and outgoing correspondence may be censored (formerly, according to the previous legislation, the correspondence sent and received by convicted persons was subjected to mandatory censorship). Convicted person's correspondence with the defence lawyer, Complaints Committee, prosecutor's office, court, central public administration authorities, inter-government international organizations that ensure the protection of fundamental human rights and freedoms cannot be censored (Article 229 of the Enforcement Code). Correspondence is sent or passed to the addressee by the administration of the detention facility within 24 hours after its receipt. Post boxes were installed in all penitentiaries, except for Pre-trial Detention Centres, where the correspondence is collected and delivered by the penitentiary according to the provisions of the legislation.

247. Convicted persons have the right to make telephone calls from public phones, on their own expenses, according to conditions and procedures set by the Enforcement Code (Article 229) and Regulations on completion of sentences by convicted persons. To ensure the right to telephone calls, the penitentiary administration takes all necessary measures to install public phones within the establishments. Telephone calls may be tapped. The convicted person is entitled to at least one 10-minute telephone call within two weeks with the spouse, relative or any other person of his/her own choice. The number, periodicity and duration of telephone calls are established by the penitentiary administration based on the number of convicted persons and public phones available.

248. In case a petitioner submits a petition regarding violent acts committed by the administration of the detention facility, the following protection mechanism can be used: the petitioner can be transferred to complete his/her sentence to another penitentiary of a similar type.

249. The situation regarding real interventions as a result of submitting petitions is still raising concerns. The majority of interviewed detainees mentioned no impediments when submitting petitions (although sometimes they are "asked" not to "seal the envelope"), but not all of them received answers to their petitions and no real changes occurred as a result of submitting petitions.

250. During 11 months of 2006, the Ministry of Internal Affairs has received in total 36 petitions from detainees or arrested persons indicating to cases of torture, inhuman or degrading treatment, of which 2 cases were found to be substantiated.

251. On 08.03.2006, the Moldovan citizen Calalb Florin, who stood next to the cultural hall of Leova town, was attacked by police officers Iurie Mitelea, Valentin Voicu and Grigore Sofroni, and then was taken to the Leova Rayon Police Commissioner's Office, was beaten with hands and feet all the way to the office. Citizens who commented on their illegitimate measures were threatened. The abovementioned police officers continued to beat Mr. Calalb in the office 102 of the Leova RPCO. They beat him with their hands and feet on his chest, ribs, head, so that one tooth fell out.

252. With regard to Mr. Florin Calalb a report was prepared based on article 174<sup>6</sup> of the CAO (contempt of police officers). However, no report under art. 167 (presence in alcoholic inebriation in a public place) and under art. 164 (less severe hooliganism) was drafted. Mr. Florin Calalb was detained in the PDC of the Leova RPCO by 09.03.2006, 09:30, without being subjected to medical examination of his alcoholic inebriation and the degree of bodily injury received upon detention. On 09.03.2006 the Leova court closed the case of Mr. Calalb Florin based on art. 174<sup>6</sup> of the CAO, and sent the case to the Leova prosecutor's office, which on 13.04.2006 initiated the criminal case no. 2006238002 under art. 328 para. 2 let. (a) and (c) of the Criminal Code on the abuse of power or excess of official duties by the police officers of the Leova RPCO.

253. On 16.03.2007 the Leova court pronounced the sentence for the conviction of Mr. Sofroni Grigore, by punishing him with a 4-year imprisonment in a semiopen penitentiary establishment, and prohibiting him to hold an executive position in law-enforcement authorities for 3 years, by applying art. 90 of the Criminal Code for 3 years, while Mr. Mitelea Iurie was punished with a 3-year imprisonment in a semiopen penitentiary establishment and prohibiting him to hold an executive position in law-enforcement authorities for 2 years, by applying art. 90 of the Criminal Code for 2 years.

254. According to art. 110 of the CCP, the witness can be interviewed without being present in the courtroom, if there are solid grounds that were presented to the judge at the concluding stage.

255. The following prerequisites result from the abovementioned legal provisions:

(a) Danger to life, bodily integrity or freedom of the witness or his/her close relative is determined by his/her own testimony;

(b) Witness' declaration/testimony are taken in a criminal case related to a grave, very grave and exceptionally grave crime;

(c) Availability of relevant technical means.

256. This procedure can be launched by investigating judge's grounded order (conclusion) in response to motivated request filed by prosecutor, defence lawyer, respective witness or any other interested person.



257. The request should be confirmed and motivated through specific data on the persistent danger. In case the request is submitted to the investigating judge by the defence lawyer, respective witness or any other interested person, the relevant authorities should be notified about the alleged danger for undertaking protection measures in respect of persons concerned.

258. As to technical means, they have to be installed at least in two premises: the court - where the investigating judge leading the hearing, the prosecutor, injured party, defence lawyer, suspect or the accused person (as the case may be) are located and the premises for the witness to be heard assisted by another investigating judge. These two premises shall be connected through television network with closed circuit.

259. Every witness heard in such circumstances has the right to conceal identity using invented data. The real identity is verified by the investigating judge that is assisting the witness. Witness real identity is stated by the investigating judge in separate minutes which are signed by the witness and the investigating judge and are kept in respective court offices in a sealed up envelope under maximum confidentiality and security.

260. When hearing a witness with concealed identity, the prosecutor leading or exercising (as the case may be) the criminal prosecution will provide the witness with a special legend.

261. Such witness can be heard through closed circuit teleconference with distorted voice and image making it unrecognizable.

262. The procedure is minute down by the clerk from the trial court.

263. Every suspect, accused person and his/her defence lawyer, as well as, injured party are offered an opportunity to address questions to the witness heard under these specific conditions with the possibility to hear answers to questions and to see expression of the questioned person.

264. Declarations recorded by video technical means are attached to the trial minutes.

265. Witness declarations taken under such conditions can be used as evidence within the scope corroborated by other evidences only. No conviction can be based only or mainly on declarations of the witness whom the accused persons could not face due to witness absence or anonymity (European Court for Human Rights, *Birutis and Others versus Lithuania*, 28<sup>th</sup> of March 2002, § 29).

266. Although, the legislation in force provides for several mechanisms meant to prevent ill-treatment, there were some developments in this regard in the judicial practice as well. The Plenum of the Supreme Court of Justice has established a distinct mechanism through its Decision No. 22 of 12 December 2005. Pursuant to this Decision, whenever a defendant or any other party to a trial submits allegations of the use of coercive actions during that were not dealt with in the court of the first instance, given that an appeal is an actual continuation of case trial, the Appeal Court shall postpone the trial to take adequate measures for investigating all circumstances by the prosecutor's office. The prosecutor shall submit to the court written conclusion and the findings of investigation of invoked circumstances within certain time.

267. This kind of violations induced a number of decisions taken by the expanded Criminal Plenum of the Supreme Court of Justice, which admitted the appeals of convicted persons and their representatives and ruled the re-trial of 10 cases in the last six months of 2006.

#### **Article 14**

268. In the Republic of Moldova torture victims' right to complex medical-social rehabilitation services is limited because of the following factors:

- (a) Lack of medical and psychological rehabilitation services within state institutions;
- (b) Complex character of victims' post-traumatic problems and unilateral approach to these issues within state health institutions;
- (c) Lack of sufficient correlation between clinical evidence and fixed diagnosis with traumas suffered by victims;
- (d) Financial constraints experienced by victims that cannot face expenditures necessary for diagnostic investigations which are rather costly and are not covered by the minimum funding guaranteed by the state;
- (e) Negative experience of doctors assisting the victims being persecuted or menaced;
- (f) Free access of law-enforcement officials to health care institutions with hospitalized victims of torture.

269. Torture victims' right, including asylum seekers and refugees, to medical-social rehabilitation services is enforced in Moldova only by the NGO - Medical Rehabilitation Centre for Torture Victims "Memoria". Its multidisciplinary team of doctors, social workers and psychologists offer victims a complex rehabilitation assistance and facilitate their social re-integration.

270. Since 2000 the Centre has been working exclusively on external grants. Limited international financial sources available for supporting rehabilitation of victims, as well as lack of real assistance on state's behalf affect the quality of rendered services.

271. The following proposals of the Centre are under consideration:

- (a) To develop legislation for ensuring health care and complex rehabilitation provided to torture victims by well trained multidisciplinary teams;
- (b) To ensure confidentiality and develop protection mechanisms for torture victims applying to state institutions for medical assistance;
- (c) To introduce professional approach towards Post Traumatic Stress Syndrome and immediate or subsequent consequences of torture;
- (d) To limit access of law-enforcement officials to medical institutions with hospitalized victims of torture.

## Article 15

272. According to article 93 of the Criminal Procedural Code, data, documents and other objects may be used during the criminal proceeding as evidence if the criminal prosecution authority or any other party participating in the criminal proceeding gathered them by observing the provisions of the present Code.

273. Material evidence obtained during investigation actions may be accepted as evidence exclusively in those cases when they have been obtained and verified in conformity with provisions of the criminal procedural legislation, with the observance of rights and freedoms of the person or with the limitation of certain rights and freedoms, if authorized by the court of law.

274. Article 94 defines the circumstances which, if present, exclude any use of evidence during the criminal proceedings. Thus, the following data shall neither be admitted as evidence during the criminal proceeding nor used as basis for a court sentence or other court decisions:

- (a) Materials obtained through violence, threats or other compelling methods, through violation of person's rights and freedoms;
- (b) Materials obtained through violation of the right to defence of the suspect, accused or defendant, injured party and witness;
- (c) Materials obtained through violation of the right to an interpreter of participants of criminal proceeding;
- (d) Materials gathered by a person not entitled to carry out actions in the particular case;
- (e) Materials submitted by a person who is to be evidently challenged under the law;
- (f) Materials obtained from a source appeared to be not verifiable during the trial;
- (g) Materials obtained by means of methods contravening scientific provisions;
- (h) Materials obtained with essential violations of the provisions of this Code committed by the;
- (i) Materials not verified during the trial in a prescribed way;
- (j) Materials submitted by a person that can not recognise the respective document or object, can not confirm its authenticity and can not inform about their origin and the circumstances of their obtainment.

275. The following shall be considered as essential violation of the provisions of the present Code on gathering of evidence: violation of person's constitutional rights and freedoms or of the provisions of the criminal procedural legislation through deprivation or infringement of guaranteed rights of participants in the criminal proceedings; fact that influenced or could influence the authenticity of obtained data, document or any other object obtained.

276. The administrative data obtained through violations listed above may constitute evidence that certify the existence of the respective violations and responsibility of persons that allowed them.

277. Complaints filed during the procedure and adopted decisions do not constitute evidence of any circumstance important for the case in question. They simply constitute evidence of the fact that a complaint was filed and a decision made.

278. To be accepted in the criminal proceedings the evidence shall be admissible. The pertinent evidences are to be considered admissible, conclusive and appropriate if they are processed according to the provisions of the present Code.

279. The criminal prosecution authority or the court considers the admissibility of information, documents and objects as evidence, ex officio or at the request of parties.

280. If evidences are processed in accordance with the provisions of the present Code, then arguments in favour of non-admissibility of the evidence shall be stated by the party requesting this rejection. Otherwise, the obligation to argument their admissibility lies with the party which acquired them.

281. As already mentioned, the CCP regards as null all evidences obtained through violence during the criminal proceeding process by stipulating in Article 251 of the CCP that a violation of the legal provisions regulating the development of the criminal proceedings shall entail the nullity of the procedural act only in case when a violation of criminal procedural provisions established can be remedied by quashing the act only.

### **Article 16**

282. Article 24 of the Constitution of the Republic of Moldova provides:

- (a) The State guarantees everyone the right to life, and to physical and mental integrity;
- (b) No one may be subjected to torture or to cruel, inhuman, degrading punishment or treatment;
- (c) The capital punishment was abolished. No one may be condemned to such a punishment or executed.

283. The capital punishment was abolished on 8 December 1995, by repealing article 22 of the annulled Criminal Code, and this punishment is not provided for in the new Criminal Code of 2003.

284. At the same time, according to paragraph 3 of Article 10, during the criminal proceedings nobody can be subjected to torture and other cruel, inhuman or degrading treatment or punishment, nobody can be kept in humiliating conditions, or forced to take part in proceedings that impair human dignity.

285. According to article 16 of the Civil Code, in addition to denunciation the person, whose honour, dignity and business standing have been infringed by information released, is entitled to requesting of reparation of material and moral damages. A compensation for moral damage shall be reasonable and calculated depending on the following:

- (a) Nature of information released;
- (b) Scope of information released;
- (c) Social impact on the person;
- (d) Severity and extent of the psychological and physical suffering caused to the injured person;
- (e) Proportionality between the compensation and the extent to which the reputation was damaged;
- (f) The extent of culpability of the person implicated;
- (g) The extent to which the compensation will satisfy the injured person;
- (h) Issuance of a rectification, reply or denunciation prior to an approval of the court decision;
- (i) Other circumstances relevant to the case concerned.

286. Moldovan law, in particular the Enforcement Code, incorporates the requirements stipulated in the Standard Minimum Rules for the Treatment of Prisoners. The provisions of the Enforcement Code are elaborated in the secondary regulations: on completion of sentence by convicted persons, on the Complaints Committee, other regulations in force or under development. The most serious problem is related to their implementation.

287. The failure to meet the requirements in respect of the detention conditions has gained a notorious character. However, interviews with detainees and the penitentiary staff, as well as onsite inspections demonstrate that a number of measures have been taken in order to improve the situation. In 2004 and 2005 the Penitentiary Department had repaired numerous living facilities, warehouses, other premises and buildings. The efforts mentioned included: replacement of the old roofing of some buildings of prisons (colonies) no. 5, no. 3, no. 9, no. 18, no. 4 and no. 15; installation of 4 autonomous heating systems in prisons (colonies) no. 2, no. 4 and the Training Centre ; capital repair of water pipes of prisons/colonies no. 2 and no. 11 in Balti; provision of electric cables and wires allowing restoration of the equipment, electrical installations, illuminators, sockets and switches, and the electric circuits in cells. According to the CPT recommendations, refurbishment works were carried out in prison no. 13: 129 cells were repaired, 13 new cells were put into operation, the bathroom was capitally repaired, the parcels' receipt offices and guard units were rebuilt and refurbished, the main water pipe was repaired, a video system with 16 cameras and a stationary metal detector were installed.

288. Procurement of building materials allowed performing of some additional repairs that concerned : installation of autonomous heating system and 24 windows in the administrative building of establishment no. 1; installation of two autonomous stokeholds in establishment no. 2; renovation of the roof of the disciplinary isolator and the water pipeline in establishment no. 3 ; repair of the roof of the administrative building and the illumination system as well as upgrade of two autonomous heating systems and installation of 35 new windows in establishment no. 4; repair of the roof of the canteen and water pipeline in establishment no. 5; repair of the roof of the dormitory , installation of an autonomous heating system in the health post and kitchen and renovation of a significant part of the dwelling building in establishment no. 7 in Rusca; partial replacement of the water pipeline in prison hospital no. 9; repair of the roof of the dwelling building no. 5 and of the administrative building as well as capital repair of the illumination system in establishment no. 15; repair of the roof of the regime building no. 3 in establishment no. 11; repair of the roof of the living building for life-sentence prisoners , regime building no. 3 and sanitary premises in establishment no. 17.

289. Nevertheless, the measures taken are insufficient to meet the standards set up in domestic legislation and international texts and implement the provisions of the national plans and strategies. For instance, a set of measures has been planned in the Concept Paper on penitentiary system reform and the action plan for 2004-2013 for the implementation of the Concept Paper, approved by Government Decision no. 1624 dated 31.12.2003. It includes: reconstruction of dwelling buildings, heating, potable water supply and effluent treatment systems, electrical circuits, improvement of health care, professional development of staff, renovation of library stocks etc. The experience of the past years of the implementation of the Concept Paper demonstrates that it has been significantly underfunded.

- (a) For 2004 - 2249.0 thousand lei (52.7%);
- (b) For 2005 - 4681.8 thousand lei (57.3%);
- (c) For 2006 - 2826.0 thousand lei (21.9%);

290. Moreover, the actions taken did not cover all penitentiaries. Generally speaking, there are serious problems as regards the standard of living space per inmate, water supply, hygiene, electric supply, heating during the cold season, nutrition. For example, the majority of prisoners are accommodated in dormitory-type premises (50-90 prisoners). The ventilation is insufficient; living premises are aerated only through the casements and in winters windows are closed almost all the time because of the cold weather. . Due to insufficient heating it is cold in many living premises. In some of establishments the practice of heating the dormitories by means of a stove, placed in the middle of the room, is still used. Most of the prisoners wear their own clothes and use their own bed linen. Nutrition of prisoners has been critical for a long time. The amount of money spent in 2002 for prisoners' nutrition was 3.63 lei per day (including 3.42 lei from the state budget), in 2003 - 4.18 lei per day (including 3.65 lei from the state budget), in 2004 - 4.58 lei per day (including 4.03 lei from the state budget), in 2005 almost 4.99 lei, of which 3.62 from budget allocations and humanitarian aid - 1.37 lei. The appropriations for prisoners' nutrition are the same from year to year and no explanations were indicated for their reduction in 2006.

291. The results of the survey carried out with the participation of prisoners from 5 establishments ( no. 4, 9, 13, 15 and 16) show that: 11.2 % of the respondents find imprisonment conditions to be extremely difficult; 37.3 % - difficult; 26.4 % - bearable; 24.1 - normal; 1 % - generally good. The unsatisfactory level of imprisonment conditions is mentioned in Ministry of Justice report submitted to the Government (no. 06/8770 dated 15.11. 2005), CPT report (the visit of 20-30 September 2004), the reports developed by Non-Government Organizations.

292. The housing conditions of the detainees in penitentiary establishments are deplorable. Certainly, concrete measures are taken to improve them. Thus, on 31 December 2003, the Government issued the Decision no. 1624 to approve the Concept Paper on the reform of the penitentiary system and the Action Plan for the implementation of this Concept Paper in the period 2004-2013.

293. With a view of implementing the CPT recommendations, on 18 July 2005 there was approved an Action Plan for the implementation of CPT recommendations, which, together with the CPT Report, was sent to subdivisions for execution. Following a visit in November 2005, the CPT gave a positive assessment of some aspects in the activity of the penitentiary system, in particular in terms of the attitude of the penitentiary personnel to the detained persons.

294. With a view of enhancing the respect for the rights and freedoms of detained persons, and reducing violence, both amidst detainees and between penitentiary personnel and detainees, and taking into consideration the Action Plan for the implementation of recommendations of the European Committee for the Prevention of Torture and other inhuman or degrading treatment or punishment, on 2 September 2005 the DPI issued the Order no. 168 to develop the Strategy for combating violence in penitentiary institutions. Thus, the latter aims at observing and protecting the detainees' fundamental rights and freedoms, their life, health and dignity; preventing conflicts between detainees and taking measures to prevent them in the future; preventing and abstaining from any action, which implies discrimination of detainees for reasons of ethnicity, race, nationality, sex, religion, language, opinion or other reasons.

295. To raise the effectiveness of health care within the penitentiary system, there were procured: 2 portable electrocardiographs with 3 channels, an ultrasound system, 2 portable stomatological systems, and a fibrogastroduodenoscope. 2 stomatological systems were donated by the Salvation Army.

296. The convicted minors are detained in colonies no. 2 Lipcani (boys) and in no. 7 Rusca (girls).

297. The Lipcani penitentiary has sport fields for soccer, volleyball, and basketball. There is also an exercise room to practice sports during the cold season. However, considerable investments for repairs and sport equipment are needed.

298. As to colony no. 7 there are no conditions for prisoners' physical development.

299. Remanded minors, in respect to whom arrest was applied as a preventive measure, are detained in investigative isolators within establishments no. 3, no. 5, no. 11 and no. 17.

300. In prison no. 3 one of cells was repaired and converted into an exercise room. Remanded minors are brought to it according to a schedule for 1-2 hours to practice sports. At the same time, the lack of space and equipment (about 20 m<sup>2</sup>) is more than obvious. Its equipment comprises of a ping-pong table, boxing sack, two small dumb-bells and mini horizontal bar.

301. Minors, detained in colony no. 7, are not involved in the educational process because there is no secondary school available. Despite the efforts of the Penitentiary Department and the Ministry of Education no positive results have been achieved.

302. During 2006 almost 11581 detainees requested medical out-patient assistance, out of which 5360 requested it for the first time. At the end of 2005, 3057 convicted persons were under medical supervision of penitentiary health care services. 2665 prisoners benefited of in-patient treatment. In-patient treatment is offered in establishments no. 16 (prison hospital) in Pruncul, no. 17 Rezina (tuberculosis hospital), no. 13 and in the medical units of other establishments. At the same time, 8 prisoners benefited of specialized treatment in the Medical Sanitary Institutions of the Ministry of Health and Social Protection based on the concluded contracts.

303. In colony no. 7 over 74% of the prisoners regarded the provided health care as "Poor" and "Very poor". At the same time they are dissatisfied with the fact that doctor's visits are allowed only between 10.00 and 11.00. This period of time is too short to answer all calls that come from the prisoners. Probably, this is the reason why 49% of the prisoners find the attitude of the medical staff as being "Indifferent" and "Absolutely indifferent".

304. At present, 495 detainees are undergoing medical treatment according. In 2004, 749 patients benefited of medical treatment. The results of the medical treatment were the following: 252 detainees ended their treatment, 140 were diagnosed as being cured and 34 prisoners discontinued it. In 2004, 24 persons died of tuberculosis, in 2005 - 26 persons.

305. The DOTS+ strategy is being implemented in the penitentiary system, in particular at prison hospital no. 16, since January 2006 (it provides for the treatment of TB patients with polychemoresistance). At present, only 4 persons are undergoing the treatment according to this strategy, though the treatment capacity can cover 30 persons. The reason for this is that the patients refuse to undergo such a treatment motivating that the medicine is too strong, while the nutrition in the penitentiary is unsatisfactory, that worsens the state of the patient.

306. At the same time, the number of relapses during the past two years, 2004 and 2005, is stable to a certain extent, amounting to 196 cases. Over 50% of them have active tuberculosis (with bacilli elimination).

307. The mortality within the penitentiary institutions has slightly increased: in 2004 67 prisoners died, and in 2005 - 71 prisoners. Tuberculosis was the cause of 35.8% of deaths (24 prisoners) in 2004 and 36.6% (26 prisoners) in 2005.

308. In order to improve the imprisonment conditions according to the Concept Paper on penitentiary system reform, building I and II of establishment no. 1 - Taraclia and the Tuberculosis Hospital in establishment no. 17 were repaired, each of them being provided with 100 places. In 2006 the construction works on building no. 3 of establishment no. 1 and the reconstruction works on the sanitary building of the Tuberculosis Hospital have been continued.



309. On this basis, different measures are taken with a view to find other financial sources for some additional measures the need for which emerges in the process of the penitentiary system reform. Thus, in accordance with the agreement signed by the Swiss Cooperation Bureau for the Republic of Moldova, the Penitentiary Department and colony no. 7, capital reconstruction works of the dwelling building for 200 places are carried out with due regard to the minimum standards. The Swiss Cooperation Bureau for the Republic of Moldova contributes 8.5 million lei for the implementation of this project, and the contribution of the Moldovan Government is 1.5 million lei.

310. The prisoners are offered hot food three times a day, according to the approved schedule, in special rooms or in the prison cells. Feeding is funded from the state budget in compliance with the minimum norms of daily nutrition of prisoners, which are also approved by the Government Decision no. 609 of 29 May 2006. It has been taken into account that the adequacy of qualitative and quantitative nurture of the human organism to a great extent depends on the optimal balance of the necessary food ingredients. Thus, the ratio of proteins, lipids, and carbohydrates must be 1:1:4 respectively.

311. For different categories of prisoners (minors, ill and I and II degree invalids, pregnant women prisoners and breastfeeding mothers, prisoners involved in hard and hazardous works) increased food allowances are introduced in comparison with the ones generally offered and include the additional ration. This arrangement is stipulated in the law.

312. The estimation of the food rations for the arrested and detained persons in the pre-trial detention centres of the Ministry of Internal Affairs, according to the Moldovan Government Decision no. 246 of 13.03.1993 is set at 9 lei and 19 bani, which is increasing now and the nutrition is much more qualitative.

313. In order to avoid future cases of improper behaviour of the police staff and strengthening the personal discipline in accordance with the initiative of the Ministry of Internal Affairs (MIA), a draft Disciplinary Statute of the internal affairs authorities was approved by Government Decision no. 841 on 16.08.2000, which is currently being used in the official activity.

314. Moreover, the 2007 plan of fundamental organizational measures of the MIA provides for unannounced controls at the regional subdivisions together with the representatives of the Prosecutor's Office aiming at detecting the cases of illegal detention of citizens in the pre-trial detention centres and discovering the cases of ill-treatment. According to ministerial regulations (Decision of the MIA Board no. 23 of 24.11.2006 "On the control of supervision of the police activity, aimed at preventing violations of fundamental human rights and freedoms", MAI's plan no. 6/71 of 09.01.2006 "On specified measures relating to the activity of prevention of torture and inhuman or degrading punishments in pre-trial detention centres of the MIA", MAI's decree no. 22/940 of 14.08.2006), the MIA management shall be immediately notified about the offences detected in relation to illegal detention and torturing of the persons suspected of committing crimes, internal investigations shall be carried out in respect of the police staff implicated in such offences, applying disciplinary and criminal measures in compliance with the laws in force.

315. At the same time, the state of discipline within the internal affairs structures was discussed during the MIA Board meeting on 24.11.2006, where each head of the subdivisions was given the task to take real measures against ill-treatment practiced by some members of police staff. The Main Division of Human Resources was commissioned with amending the professional training program according to the respective requirements.

316. Economic and financial constraints have had a negative impact on the detention conditions of persons in the detention centres. To the extent of its financial possibilities, the MIA undertakes actions to improve the conditions in respective institutions, where recently the expenditures needed for the adjustment to the domestic and international requirements have been budgeted at 25 560 457.714 lei.

317. Herewith the Republic of Moldova as a Party to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, meets its commitment to take every possible and required measure to observe the rights and freedoms guaranteed under its provisions.

-----