



CPT/Inf (2010) 9

## **Response**

**of the Moldovan Government to the report  
of the European Committee for the  
Prevention of Torture and Inhuman or  
Degrading Treatment or Punishment (CPT)  
on its visit to Moldova**

**from 27 to 31 July 2009**

The Moldovan Government has requested the publication of this response. The report of the CPT on its July 2009 visit to Moldova is set out in document CPT/Inf (2009) 37.

Strasbourg, 26 March 2010

*Note:*

*In accordance with Article 11, paragraph 3, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, certain names have been deleted.*

**THE ANSWER OF THE GOVERNMENT OF THE  
REPUBLIC OF MOLDOVA ON THE CPT REPORT,  
ELABORATED AFTER THE VISIT OF THE OFFICIAL  
DELEGATION OF CPT DURING THE PERIOD OF 27  
TO 31 JULY 2009**

According to Article 10 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) sent on November 24, 2009 to the Moldavian authorities a report elaborated as a result of the visit made during the period 27-31 July 2009.

With a view to realize the recommendations stipulated in the report mentioned above, the following actions were undertaken.

**Points 8, 10**

**The CPT recommends that, pending the building of new pre-trial establishments, the Moldovan authorities take steps to transfer the responsibility for IDPs to the Ministry of Justice. Further, the Committee would like to receive up-to-date information on progress made to build new pre-trial establishments under the Ministry of Justice.**

**The CPT calls upon the Moldovan authorities to take determined action to implement fully the recommendations made in this and previous visit reports in order to combat ill-treatment by the police and ensure accountability.**

In order to realize this provision, recommended by CPT both after the visit made on July 2009 and reiterated in the previous visits of the Committee, an inter-ministries working group was set out. The working group has the duty to examine the possibilities and determine the procedure of transmission of IDP's from the Ministry of Internal Affairs to the Ministry of Justice, submitting the proposal of construction of Arrest Houses.

In this sense, the Ministry of Justice sustains the necessity to promote the Conception of Reforming the penitentiary system in order to built 4 arrest houses of the Republic, the modernization of IDPs from Balti, Cahul, Rezina and construction of a new penitentiary with a capacity of 2500 places in Chisinau Municipality.

In the light of the mentioned above, the construction of the arrest houses is considered a priority, being included as an objective in a number of strategic documents of a national character.

With a view to implement this objective, in 2008, the designing projects of the Arrest house were finished. The model-project of the Arrest House for 2500 places was elaborated by INCP „URBANPROIECT”. As a result, the Project of execution „Arrest House for 2500 places” ob. no. 15160 was recommended for approval together with the approximate cost and current prices (IV 2008 trimester) – 94 957, 88 thousands lei (that constitutes appreciatively 6 mln euro).

In a number of opportunities, the Ministry of Justice and the Department of Penitentiary Institutions have intervened before the local public authorities of the above mentioned cities with requests to examine the possibility of allocation of such plots. So far, only the Municipal Council of Comrat have allocated a plot with a total area of 3 ha for the construction of the Arrest House and the procedure of allocation of a plot in Orhei City has been started.

For the purpose of identifying the financial sources for the realization of this objective, the Ministry of Justice and the Department of Penitentiary Institutions sent a number of requests to donors and foreign embassies for providing support for the construction of Arrest houses.

Further, at present a concept paper of the priorities of the Government of the Republic of Moldova regarding actions that need financial external assistance is being formulated, which will be presented by the Prime-Minister at the Donors’ Consultative Group Meeting for Moldova, to be held in Brussels, on March 24, 2010.

#### **Point 11**

**The CPT recommends that prosecutors and judges be encouraged to be particularly vigilant as to the possible exploitation by the police of the provisions of the Contravention Code to circumvent the length of police custody in respect of criminal suspects. Reference is also made to paragraph 34 as regards access to a lawyer.**

In this respect were undertaken measures in accordance with the national legislation, aimed at improving the detention conditions of the arrested persons and those detained in provisional detention institutions.

Thus, according to the provisions of Article 165 Code of Criminal Procedure, confine, means deprivation of liberty for a short period of time but not more than 72 hours, in the places and conditions prescribed by law. In our opinion this period of time gives possibility to the inquiry body to gather probation material in order to decide on the necessity to apply to the persons who are suspected of having committed a crime and to the accused ones, the provisional measure of provisional arrest. Considering the special position of the minors during the criminal procedure, the confine time was reduced to 24 hours.

**The CPT recommends that the Moldovan authorities take all the necessary measures to ensure that persons under administrative arrest serve their sentences in penitentiary establishments.**

It has to be mentioned that according to provisions of Article 338 Execution Code, through the internal order of the Ministry of Internal Affairs from November 2009 the persons in whose respect the contraventional arrest was applied are escorted to semi-closed penitentiary institutions for detention.

In order to execute the recommendation concerned, from the beginning of November 2009, according to the provisions of the Contraventional Code of the Republic of Moldova, the administration of penitentiaries started to receive the detainees in whose respect the judiciary instance applied the punishment of administrative arrest. From November 2009 till the 25th of January 2010, in the penitentiaries of the Republic of Moldova were received 191 persons in whose respect was applied the punishment of contraventional arrest. At present, in penitentiaries, on the grounds of a contraventional decision 15 persons are executing this privative of liberty punishment. Given the fact that at this moment no deficiencies of this mechanism are registered, DPI shall continue to ensure the execution of the administrative arrest for the persons that will be convicted to this kind of punishment.

### **Point 16**

**The Committee reiterates its recommendation that all police officers receive, at regular intervals, a firm message of “zero tolerance” of ill-treatment, including through the adoption of a statement from the highest level. It should be made clear once again that the perpetrators of ill-treatment and those condoning or encouraging such acts will be subject to severe sanctions.**

**The Committee also recommends that the methods used by members of the BPDS “Fulger” and other police forces involved in the apprehension of persons in the context of crowd-control situations be subject to closer and more effective independent supervision.**

Particular attention in this regard shall be given to a full examination of citizen's petitions concerning violations admitted by police collaborators. In order to realize the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, are organized and carried out spot checks in order to prevent and detect cases of physical and mental mistreatment of detainees. For preventing possible violations, according to a disposition of the Ministry of Internal Affairs, the managers of the bodies and subdivisions of the Ministry were ordered to undertake unconditional service surveys in each particular case in order to establish the circumstances in which the body injuries were caused.

Additionally, we inform you that against some of the collaborators of BPDS “Fulger” of the Ministry of Internal Affairs were brought 3 criminal actions for violations admitted and excess of duties, including: 1 criminal case being brought by the Prosecutor's Office for events of 07-08 April 2009, 2 cases – were started by the Prosecutor office of Leova and Cahul regions, which were later submitted to the General Prosecutor Office of the Republic of Moldova on the ill-treatment of citizens by police employees involved in measures to combat criminality, jointly with the District Police Stations of the regions mentioned above. The criminal cases concerned are currently under examination.

**Point 17**

**The CPT recommends that the Moldovan authorities take the necessary measures in the light of the above remarks. If need be, the relevant legal provisions should be amended.**

In the process of ensuring safety and restore public order, are used and applied special means, including firearms in strict accordance with the provisions of Law no. 416-XII of 18 December 1990 on Police, Law no. 26-XVI of February 22, 2008 on Assembly and the Decision of Parliament. no. 1275 of May 12, 1993.

Thus, if the mass demonstration lose its peaceful character, or is intending to instigate to start a war of aggression, to national hatred, ethnic or religious discrimination or incitement to public violence, undermining national security or territorial integrity of the country, to committing crimes, to breach of public order or organizing mass unrest, to violation of public morality, of the rights and freedoms of other persons, or endangering their life or health, the police is obliged to undertake the dispersal of the meeting.

Therefore, under section I of point. No. 4 of the Decision of Parliament. 1275 of May 12, 1993, among the means that can be applied by enforcement staff of the Interior and by the Carabinieri military forces of the Ministry of Internal Affairs, police employees involved in maintaining public order can also use “other means of protection not used for active defense, including special clothing”, being equipped with special equipment designed for such activities.

Also, note that the relevant regulatory provisions do not expressly provide a sign or use of an identification number on the uniforms of police trained to maintain public order.

Prosecutor General asked the Ministry of Internal Affairs leadership to remove the causes and conditions that led to the impossibility to promptly identify the police involved in intervention operations. In particular, it called for a review of the grounds and conditions for the application of masks for special subdivisions of the Ministry of Internal Affairs with the establishment of a real mechanism for identifying and monitoring the participants in these actions.

In the official response of the Ministry of Internal Affairs, its leadership said that it is willing to consider the above mentioned demands.

In this regard, by order of the Minister of the Internal Affairs no. 38 of 18 February 2010 was called the attention of all subdivisions, which directly participate in riot control operations (including those who use uniforms with hoods on the head), to establish the requirement for all employees of BPDS “Fulger” involved in various operations to use the metal badge of the Brigade, located on the service special uniform, which contains the personal number of each employed.

### Point 18

**The Committee must reiterate the delegation's request. In particular, the CPT would like to obtain information on specific criteria on the use of each type of equipment available (including stun grenades), taking due account of the types of injuries such equipment may cause. It would also like to receive information on measures envisaged or taken to upgrade the skills of police staff in handling problematic situations encountered during crowd-control operations and in using no more force than necessary.**

In performing their functions to maintain public order in situations of mass disorder, the collaborators of the Ministry of Internal Affairs and its military of Carabinieri troops may resort to the use of physical force or special means, including special procedures for the exercise of service for curbing crime and defeating resistance opposed to legal requirements, only if peaceful methods do not ensure fulfillment of obligations.

At the same time, special means may be used to reject attacks on citizens, on the law enforcement organs, on the military of Carabinieri troops, and other persons that fulfill their functions or civic duty of maintaining public order and combating crime; in order to put an end to mass or group violation of public order, to the actions that impede the normal operation of transport, telecommunications, enterprises, institutions and organizations, disruption of the activity of penitentiary institutions, to reject attacks on buildings, constructions and vehicles regardless of their belonging; or in order to stop the intentional failure to obey the legitimate requirements of law enforcement organs, military of Carabinieri troops, and other persons that fulfill their functions or civic duty to maintain public order.

In case there is a need to resort to the use of special means of active defense, law enforcement organs of the Ministry of Internal Affairs and military employees of Carabinieri troops are obliged to take into account the technical and tactical data and to be guided by the rules of application of these means. Thus, when performing their functions, the law enforcement organs and the Carabinieri military troops can decide independently how to apply the available special means, taking into account the particular circumstances of the situation, nature of offense and the identity of offenders.

If the application of special means may lead to damaging people's health and deterioration of surrounding objects, the law enforcement organs of the Ministry of Internal Affairs and the military employees of Carabinieri troops must refrain from causing a bigger damage than it would be necessary in that situation.

The resort to the use of physical force and/or special means, is preceded by a warning about the intention of resorting to them, providing sufficient time for feedback, unless the delay in application of physical force and special means can generate a danger to life and health of citizens and law enforcement organs of the Ministry of Internal Affairs and the military employees of Carabinieri troops, which can lead to serious consequences.

In all cases the application of physical force and special means can not be avoided, the law enforcement organs of the Ministry of Internal Affairs and the military employees of Carabinieri troops are obliged to act so as to cause the lowest damage possible to the health, honor, dignity and properties of citizens, providing medical assistance to victims.

Also, during the application of special means, it is obligatory to take into account the specific features of each type of tool used, namely:

- Special rubber and plastic rods – it is prohibited the application of blows to the head, neck and clavicles, belly and genitals;
- Coils – the closure has to be periodically checked up;
- Tear gas – it is prohibited the direct pulling on criminals, throwing grenades into the crowd and repeated use of the grenades within the affected area during the direct action of gas;
- Rubber and plastic bullet cartridges – it is prohibited their application on the head;
- Grenades and audio-visual devices – are used to influence people who break the law by powerful luminescent and sonorous impulses (from a distance of at least 2 meters);
- Tanker fire with carriage tube – is used for spreading the participants of the riots. It is prohibited to use jets of water at a lower air temperature than 0 degrees C.

The rules of operation, storage and destruction of special means are set out by the Ministry of Internal Affairs.

In order to ensure public safety during mass events, it is involved a real number of employees, depending on the number of participants, nature of the meeting, and the possibility of exceptional circumstances. Concrete actions are undertaken to remove the factors that can disrupt the peaceful nature of events and group breaches of legal order. At the same time, one of the primary tasks of the police is to ensure public security, paying a particular attention to the way of organizing and ensuring the legal order during the meetings and mass demonstrations.

In addition, in order to improve the police staff and fully eradicate the cases of human rights violation, during the current year was elaborated a continuous training program for police officers, on the development of ethical quality in service activities. In the framework of police officers general training, was included the subject "Human rights", which contributes to the development of a innovative professional level of police staff, as well as to a strict compliance of the police activities with current legislation.

Additionally, for a better promotion of the respect for human rights and eradication of torture and inhuman or degrading treatment, regular meetings are organized and conducted roundtables with involvement in the activities of specialists in the field.



**Point 19**

**The Committee recommended that consideration be given to bringing together the efforts of all relevant structures in a concerted strategy, such as a National Action Plan against torture. The CPT reiterates this recommendation.**

Currently, has been drafted a strategic document „Action plan on human rights for the years 2010-2013”, which is at a completion stage at this moment. It is proposed to be a strategic policy document, with a large content of mandatory regulations, which cover a wide circle of subjects at different levels. In this regard Chapter 4 of the draft plan includes actions to prevent torture. It has to be noted that as concrete steps towards strengthening the national mechanism to prevent torture and other inhuman and degrading treatment, annually is proposed to be developed sectoral plans of action on the measures to be taken to prevent torture, for which is responsible the Centre for Human Rights. In this context, the Centre for Human Rights is currently developing the draft National Action Plan against Torture funded by UNDP and European Commission.

**Point 20**

**The CPT calls upon the Moldovan authorities to take steps to ensure that police interviews with persons held in IDPs only takes place in the rooms designated for this purpose.**

In particular, further efforts are made to ensure proper conditions for the meetings between the arrested persons and their defenders in confidential circumstances, without limiting the number of the meetings, their length, etc. In this sense in each IDP are arranged rooms for meetings and criminal inquiry. In this regard, to the management of territorial subdivisions have been sent circular notes calling for the respect of national legislation which stipulates expressly that interrogation of persons should take place only in the places arranged especially for this purpose in the isolators of provisional detention. The access of the defender and the unlimited time of the meetings with his client should also be guaranteed.

**Point 21**

**The CPT recommends that the Moldovan authorities make further efforts, including, if necessary, through legal amendments, to ensure that, whenever a detained person brought before a judge alleges ill-treatment by police officers, these allegations be recorded in writing, a forensic medical examination be immediately ordered, and the necessary steps be taken to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible injuries. Moreover, even in the absence of an express allegation of ill-treatment, judges should adopt a proactive attitude; for instance, a forensic medical examination should be requested whenever there are other grounds to believe that a person could have been the victim of ill-treatment.**

In accordance with Article 139 Code of Criminal Procedure, in the cases in which the evidences are in danger of disappearance or there is a risk of change of facts and is urgently necessary to explain the facts or circumstances of the case, the inquiry body or the court may use knowledge of a specialist disposing, at the request of the parties and the inquiry body (who can do this even ex officio) the technical scientific findings and forensic medical examinations.

Also, note that during the April events, as a result of the investigation of the materials and finding of a number of irregularities, were submitted to the disciplinary procedures some judges who have allowed serious violations of procedural and judicial ethics. Thus, on 9 February 2010 the Superior Council of Magistracy initiated disciplinary proceedings against the Judge "V". At the same time, the General Prosecutor Office was asked to check the existence of the elements of crime under Article 307 Criminal Code. Also, the life mandate of two judges was not extended.

#### **Point 24**

**The CPT calls upon the Moldovan authorities to ensure that:**

- **all persons admitted to an IDP are seen by a feldsher within 24 hours of arrival; the examination should involve a systematic screening of the detained person's body for injuries;**
- **all examinations by health-care staff working or intervening in an IDP or penitentiary establishment are conducted out of the hearing and – unless the health-care professional concerned expressly requests otherwise in a given case – out of the sight of non-medical staff;**
- **the confidentiality of medical documentation is strictly observed in IDPs. Naturally, health-care staff working or intervening in the IDPs may inform custodial staff on a need-to-know basis about the state of health of a detained person, including medication being taken and particular health risks;**
- **the medical records of the IDPs, penitentiary establishments and hospitals contain a full account of statements made by the newly admitted persons which are relevant to the medical examination (including any allegations of ill-treatment by public officials) and a full account of objective medical findings based on a thorough examination. Whenever injuries are recorded which are consistent with allegations of ill-treatment made by a person, the record should be systematically brought to the attention of the relevant prosecutor and an examination should be promptly performed by a recognized forensic doctor. Further, the results of every examination should be made available to the person concerned and his lawyer. Under no circumstances should such cases be brought to the attention of police staff.**

In order to ensure for the detained or arrested persons proper detention conditions in isolators of temporary detention, under the provision of Government Decision no. 1474 of December 27, 2001 and the Order of the Ministry of Internal Affairs no. 31 of 27 January 2004, in the IDPs were introduced doctor's assistant functions, furnished and equipped medical posts, while ensuring independence of the medical staff activity with regard to the decisions taken on the health of detainees, the identification of trauma, bruises, injuries, etc. of persons under review.

At the same time, it is determined how the medical examinations of detained and arrested persons will take place, both when the persons are placed and in the moment they are released from the provisional detention isolators. The data regarding their health is indicated in a particular document set.

Also, in case of refusal of the person detained or arrested to be medically examined, at his request, he can be examined by an independent doctor.

These organizational and practical activities serve as a proof of the head of the institution where the person was detained, which confirms that he was not tortured and abused.

Health records can not be strictly confidential, because together with the information regarding the health of the person concerned, they contain also information on the presence of contagious diseases, fact that is important to know during the detention period in IDP, and during the period of detention in prison.

As proof of the independence of medical staff and the absence of influence of the administration of the detention place, it has to be emphasized that doctor's assistants are employed on contract basis as civil staff.

Additionally, in order to ensure the independence of medical staff, to the management of subdivisions were sent circular notes reiterating that under their duties is the supervision of the supply with the necessary medicines.

According to the CPT findings “the detection of injuries in the penitentiary institution no. 13, from Chisinau, was generally at a good level: new arrivals were examined by prison medical staff shortly after admission and reports describing the injuries observed during the examinations were sent to the prosecuting authorities”. The Department of Penitentiary Institutions indicates that according to Art. 251 of the Execution Code and Section 25 of the Statute on the execution of the punishment by the convicted persons, when receiving the detained persons, the medical service employees examine the detainees for the determination of the existence of other injuries or signs of violence, apart from the general health condition.

The normative acts in force regulate the manner of finding the acts of violence or the body injuries of detained persons. If the findings show that the prisoner has injuries, under the provisions of section 26 of the Statute on the execution of the punishment by the convicted persons, the person concerned is examined by the doctor, being provided the necessary medical aid and, if necessary, the prisoner is hospitalized by the medical department of the prison. If the prisoner requires urgent treatment in stationary conditions, he is given medical help and according to the report of the doctor are undertaken the necessary measures and the patient is delivered to hospital.

About the prisoners that arrived in the penitentiary with body injuries, the administration of the institution is obliged to inform in written form and in the shortest time possible the Department of Penitentiary Institutions and the territorial body of the Prosecutor office, as well as the Ombudsman. Apart from finding injuries, in order to examine the general health situation, the medical control of the prisoners has to be done at their arrival in the penitentiary institutions.

In case some diseases are being detected, the necessary treatment is prescribed, and in case of necessity, he is placed in the medical unit or hospitalized in the penitentiary hospital (penitentiary no. 16 - Pruncul). Each prisoner has the right to ask for the examination of an independent doctor, who is out of the penitentiary system, chosen by the prisoner himself or by another doctor. The findings of the independent doctor are recorded in prisoners' personal card, and the medical certificate is attached to the medical record, which has to be showed to the convicted person.

When body injuries are detected (occasional ones or as a result of the application of special means) a medical act has to be prepared in two copies, which are attached to the personal record and medical card of the convicted person. The officer in charge and the head of the institution have to be announced about this.

Criminal Procedure legislation of the Republic of Moldova (Article 1(1), (2), 15(3) of Law no. 1086 on the judiciary examination, technical-scientific findings and forensic medical examinations; Article 142(2) Code of Criminal Procedure) stipulates that every citizen enjoys the right to be medically examined at his own request.

Moreover, on 13 November 2009, at the initiative of General Prosecutor Office was executed the joint Order no. 372/388, according to which, the staff of medical institutions was obliged to promptly inform the territorial procuracies about each particular case citizens had to suffer as a result of the application of torture by the law enforcement bodies. The previous mechanism was allowing the identification of such cases by the prosecutors; however it was not very functional because of the fact that in many cases the police officers were obstructing the investigations.

## **Point 25**

**The CPT recommends that the Moldovan authorities take steps to improve the quality of forensic medical examinations and reports, taking due account of international guidelines on the examination and documentation of physical evidence of torture and other forms of ill-treatment.**

For the improvement of medical documents and fixing the particularities of the body injuries, the Ministry of Health emitted the Order no. 265 of 03 August 2009 on the Instruction regarding the filling out of the Medical card of the stationary ill person (F 003/e), in which the principles of examination and the description scheme of injuries are set out. On the basis of the above mentioned order, the Centre for forensic medical examinations emitted the disposition no. 9 of 08 August 2009, according to which, the experts in forensic medical examinations were recommended to inform the administration of the medical institutions and the Centre in case of serious violations of the Instruction mentioned above.

In order to improve the quality of the forensic medical reports and their adjustment to the international standards of examination of torture and ill treatment, the Centre for forensic medical examinations undertook during the year 2009 the following steps for the implementation in national forensic medical practice of the provisions of Istanbul Protocol. At 05 January 2009 was emitted the disposition no. 1 regarding the respect of some special exigencies in the process of forensic medical examinations of persons in case there is a doubt that ill treatments were applied. Special requirements included in the indicated disposition resulted from the requirements of the Istanbul Protocol. For a suitable documentation of personal injury, on 12 June 2009 was issued the Disposition No. 6, on the standardization of the schemes of anatomical regions of the human body, through which judicial forensic experts were forced to use diagrams to illustrate injuries as annex to the examination / forensic expertise of cadavers of people who died by violence.

Given the forensic practice generated by the events of April 2009 in order to ensure completeness and a high quality standard research of bodies, on the basis of in the international experience on 13 October 2009 was issued the Disposition No. 10 through which were brought improvements to the techniques of forensic investigation of the bodies of dead people who died in custody of law enforcement organs or during the events accompanied by intervention of law enforcement bodies. In order to implement these provisions were held 2 workshops with participation of experts from the entire republic, in which was discussed the role of forensic expertise in identifying, documenting and prove cases of torture and ill-treatment, and all the experts were given an occasional booklet, containing Chapter V of the Istanbul Protocol, on the medical and forensic examination of the victim. The provisions and the extract of the Istanbul Protocol were submitted to the collaborators of USMF Department of Legal Medicine “Nicolae Testemitanu” to their use as teaching aids in the initial pedagogical training (continuing and through residency) of the medical and legal experts. With support of UNDP Moldova, the Centre drafted “Legal medicine in fighting torture and ill-treatment”, which provides trainings for forensic experts in order to identify the consequences of torture and equipment of forensic territorial divisions with computers needed for the documentation of these cases.

### **Point 32**

**The CPT calls upon the Moldovan authorities to take all the necessary measures, including at legislative level, to implement without further delay its recommendations made in paragraphs 26 to 33 of the report on the 2007 visit; the comments made in paragraphs 26 and 30 should also be taken into account.**

According to the report of CPT members, following the visit to Moldova in 2007, the Ministry of Internal Affairs has undertaken a number of organizational and practical measures.

According to the recommendations (CPT-2007), were created favorable conditions for the meetings and consultations between lawyer and client. The meeting and queries rooms were repaired.

In the provisional detention isolators were arranged medical posts and procedure rooms, equipped with all necessary medical assistance and carrying out procedures for eligible inmates. Medical examination is performed by a physician, examining each new person arrived, as well as those who were escorted to police station and are returned in isolators.

To maintain adequate health status of detainees and to prevent contamination of insulators, two days a week, they have access to isolator's bathroom, which is supplied with hot water.

Throughout the period of detention in the isolator, any detained person has the opportunity to talk with relatives and his lawyer without limiting the duration and period of such meetings. Every person detained has the right to receive packages and bands in the amount prescribed by the internal regulations.

As far as the situation of persons detained for the commission of administrative contraventions is concerned, they apply to a separate system comparing to persons detained on criminal cases and the difference constitutes in their detention. It is prohibited the administrative detention of persons in the penitentiary institutions for criminal cases and vice versa. Those arrested for an administrative contravention are not required to do some unpaid administrative work. Any involvement of persons arrested for a contravention in some administrative work is done only with voluntary consent of the person concerned, which is indicated in the personal file of each arrested person.

Also, note that the nutrition for prisoners has been improved, being provided three times a day, according to standards set by the Government.

Any detained person receives regular daily walks that take place in the courtyard for walking of the isolator.

During the examined period, according to the financial resources received by the police stations and allocated by local public administration, in some commissioners were cosmetically repaired the IDPs and equipped rooms for meetings and queries. The ventilation system have been repaired, installed bath cabins, and in October 2007 was put into operation the yard for walking of CPR isolator from Ceadir - Lunga. Also, with the financial support of local government were put into operation the isolators from Ungheni and Taraclia. Currently, is carried out reconstruction of the walking yard and fitting the toilet room of the isolator of CPM Balti.

**In addition, the Committee recommends that prosecutors and senior police officials increase their vigilance as regards the observance of the legal provisions concerning detention and the accuracy of protocols of detention and custody registers.**

As a result of recommendations made by the CPT, following the visit of Moldova in 2009, the Ministry of Internal Affairs has renovated the IDPs training documentation, priority being given to the correctness of the records at the entry/exit of the IDP.

In particular, as a basis for admission to the IDP of persons detained, suspected of committing a crime, serve:

- Minutes of detention made under the law of criminal procedure (Art. 166, 167 CPC).
- Grounds for receiving and holding in the IDP of arrested persons are:
  - Arrest warrant as a preventative measure issued by the court;
  - Final decision of the trial on the sentencing to imprisonment of a person who at the time of her delivery was held under arrest;
  - Case trial of psychiatric hospitalization in particular hospital, pronounced on a person who is detained in custody;
  - The administrative decision of the court.

Thus, in order to avoid cases of inadequate evidence of service records, to the territorial subdivisions of police stations were sent circulars, in which were established methods and the content needed to renew existing track records for the evidence of the detained persons who are placed and detained in isolators for provisional detention, as well as concrete tasks for the study and use in everyday activity of the provisions of legislative and regulatory provisions such as:

- Correct preparation of the materials on the cases of detention of persons for administrative contraventions and held in custody of CPS cells of Chisinau municipality (retention time and signature of the person in minutes, medical act establishing the state of drunkenness, informing their relatives about the place they are being held, etc.);
- Proper completion of track records regarding persons who are detained in police stations in Chisinau municipality sectors (renewal records, numbering, sealing and appropriate registration);
- Respect the right of persons deprived of their freedom to have chosen defender;
- Allow the access of lawyers, ombudsman and members of Advisory Council in CPS where people were deprived of their liberty.

In this regard, as a result of the shortcomings found in the keeping of the IDP service documentation and recommendations, by order of Ministry of Internal Affairs, changes were made to the normative act that concerns the basic activity of IDPs, and includes the holding cell seal nominated in the register records of detainees in IDP.

At the same time, the leaders of territorial subdivisions of police were alerted to respect the rights of prisoners to meetings with their defenders in confidential terms, without limiting their number, length etc. In this respect, in each IDP were arranged rooms for meetings and inquiry.

We reiterate that to the head of territorial subdivisions have been sent circular notes to alert to the fact that there is a need to respect national legislation specifically aimed at hearing people only in the visiting rooms of the isolators of provisional detention and ensure the unlimited access of the defender and the unlimited time for meetings with his clients.

**Point 33**

**The CPT recommends that steps be taken to ensure that juveniles do not make any statement or sign any document relating to the offence of which they are suspected without the benefit of a lawyer and ideally another trusted adult being present to assist them.**

In accordance with the criminal procedure law, investigation of juvenile offences (including the hearing of the juveniles) lies exclusively within the competencies of the prosecutor offices.

Hearing of the juvenile suspect, accused or defendant shall be executed immediately after being restraint or after the application of preventive measures as suspect or after issuing an order to recognize him as suspect, or by submitting the accusation.

According to Articles 64 and 66 CPC, the minor suspected, accused or defendant is entitled to legal aid until his hearing. It is necessary to ensure the possibility of meeting the defender in confidence. This meeting may be limited in time. When the defender can not appear, another defender has to be ensured.

The hearing of the minor may be held only with the approval of the legal representatives and with mandatory participation of the defender. For these reasons, the person conducting the hearing must determine whether the minor - the suspect, accused, or defendant agrees to make declarations in this regard, noting the statement in the minutes.

The person conducting the inquiry is required to ensure that the suspects and accused persons may not communicate between them in the situations where in the criminal case are several defendants. If the person agrees to be heard, the problem regarding the language in which the person will make statements has to be sorted out. If necessary an interpreter has to be guaranteed.

During the hearing, are not used methods of physical or psychological influence, methods that humiliate the honor and dignity of the juvenile, false promises, threats, etc. The law is not infringed if the person conducting the inquiry proceeds to the next question only after each question is recorded and each answer is signed.

Ongoing measures are planned jointly with state and public institutions aimed at juvenile delinquency and also seminars and meetings on prevention of crimes committed by juveniles, with a continues reflection of the results through media sources in order to promote partnership with local authorities and civil society.



**Point 34**

**The CPT recommends that the Moldovan authorities take measures, including through legal amendments, to ensure that persons held under the Contravention Code enjoy the rights of notification of custody and of access to a lawyer and a doctor as from the very outset of police custody.**

General Prosecutor Office, assessing the effectiveness of existing regulatory framework in relation to the existing reality, as well as the recommendations of international forum, initiated amendments to the law.

Thus, it is proposed to amend Article 173 Code of Criminal Procedure in order to exclude the time period of 6 hours to inform relatives about the detention of the person, and give the right to the person detained to inform his relatives immediately after detention. At the same time, it was proposed the need for specification of the cases where is permitted to extend this period up to 72 hours.

In addition it is proposed to amend Article 167 Code of Criminal Procedure in order to exclude the period of 3 hours allowed for preparation of minutes of detention of the person, and make it directly during the detention, and also to amend Articles 64 and 66 of the same code to ensure the right of the accused persons to independent medical care, including on their own.

The proposed mechanism, although existing up to now but in a more declarative form, is going to ensure that the basic guarantees of detained persons are apprehended.

**Point 36**

**The CPT recommends that these shortcomings be remedied (see also the recommendations made in paragraphs 10 and 11)**

With reference to conditions of detention in temporary detention isolators, it has to be noted that during the year 2009 all temporary detention isolators of the territorial police stations had been inspected. As a result, a number of irregularities related to organizational activity of IDPs had been found, and initiated service investigations. In consequence disciplinary sanctions were applied to the responsible persons.

After the detection of the above mentioned infringements, aiming at non-admission of an infringement of the rights of detainees and taking into account the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT), at the initiative of the administration of the Ministry of Internal Affairs was ceased the activity of the isolators of provisional detention of the district police stations from Donduseni, Ialoveni, Glodeni Criuleni, Stefan Voda, Ceadir-Lunga, Călarăși and Strășeni. The detention tasks were assigned to other detention institutions.

Thus, in order to redress the situation and create decent conditions, the management of police stations and the local public authorities were sent notifications with deadlines for the liquidation of the shortcomings identified, including allocation of financial resources.

### **Point 37**

**Although there were no juveniles being held at the time of the visit, police staff working at the IDP of the General Police Directorate informed the delegation that juveniles may be detained together with a carefully chosen adult (e.g. a first offender or former police officer). In the CPT's view, given the particular vulnerability of juveniles during police custody, the risks inherent in juveniles sharing accommodation with adult detained persons are such that this should not occur. The CPT recommends that police staff receive clear instructions on this matter.**

According to Article 329 Execution Code and to the provisions of the Order of the Ministry of Internal Affairs no. 5 of 05 January 2004, individuals are held separately in remand places: women - of men; children – of adults; people who are for the first time under remand - of people who were previously detained in prison; suspects, accused people, or defendants accused of having committed a crime – of the suspects, accused persons or defendants accused of the same offense; persons suspected or accused of committing serious crimes, particularly serious and exceptionally grave – of other persons; persons who had held positions of high responsibility in public authorities before being arrested - of other persons; persons that by virtue of their former positions may be threatened with retaliation - of other people; people who suffer from infectious diseases or require special medical care and supervision – of other persons; persons convicted of persons under remand.

In order to fully respect these conditions, daily, during the surveillance of the situation in these institutions, the management of detention institutions is alerted to act strictly in accordance with current legislation.

In addition to what has been said, daily by telephone are conducted talks with the administration of detention institutions on the rights of persons detained in the light of legislative and normative acts in force.

As required by the prosecution body and management body of General Police Commissariat of Chisinau Municipality, detained persons and those escorted to temporary detention cells of police stations from Center, Ciocani, Buiucani, Botanica and Riscani in order to start the inquiry procedures, compulsorily, the same day, without exceeding the detention period of 3 hours, are escorted for detention to Temporary Detention Isolator of CGP of Chisinau Municipality.

**Further, women were on occasion detained at the IDP. However, there were still no female officers among the IDP custodial staff. There were three staff vacancies at the time of the visit and the delegation was informed that the management was considering hiring female custodial officers. The CPT would like to be informed of steps taken in this respect.**

In order to ensure full protection of detainee's rights of both genders, in the staff of isolators of provisional detention, both in the IDP of Chisinau Municipality and the territorial police commissariats were included female employees.

### **Point 38**

**The CPT calls upon the Moldovan authorities to take effective steps to ensure that detained persons are not kept overnight at local police stations and are offered food at normal mealtimes. Further, the cells at Ciocana district police station should never be used for periods of detention exceeding three hours.**

It has to be mentioned that according to the requirements of prosecution bodies and management organ of General Police Commissariat of Chisinau Municipality, the detained persons and those who are escorted for criminal prosecution in temporary detention cells of police stations from Center, Ciocani, Buiucani, Botanica and Rișcani, are escorted obligatorily the same day for detention in the IDP of CGP of Chisinau Municipality. Additionally, were submitted requirements to the administration of the isolator of provisional detention to respect the persons' right to 1 hour walking per day.

### **Point 39**

**The CPT trusts that contingency plans will be formulated when planning future police operations that may lead to large-scale apprehensions of persons, in order to avoid overcrowding in police establishments.**

The isolator of provisional detention of General Police Commissariat of Chisinau Municipality (CGP), with a capacity of 78 persons and 27 cells is intended to hold in custody persons under administrative arrest and those in whose respect occur prosecution, with further escort to the penitentiary no. 13 under the Ministry of Justice.

In order to avoid overcrowding of this institution, at the indication of Commissariat administration, people are escorted daily out of IDPs to Prison No. 13, located in Chisinau, and therefore IDP holds daily 50% of actual capacity.

### **Points 45, 46**

**The Committee recommends that measures be taken without delay to ensure that the Consultative Council for the Prevention of Torture exercises its powers to the full and without restrictions, taking due account of the recommendations, observations and guidelines that have been drawn up by the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) with a view to strengthening the capacity and the mandate of the national preventive mechanisms.**

Further, detailed information on the mandate and powers of all the members of the Council should be disseminated to the competent authorities and staff concerned. If necessary, the relevant authorities should also supply the monitors with credentials which spell out all their powers.

More generally, **the Committee recommends that the attention of visiting bodies be drawn to the need for exercising extra vigilance and adopting a more proactive approach in order to make sure that no case of ill-treatment goes unnoticed.**

**The CPT also recommends that police staff working in IDPs receive the clear message that any kind of threats or intimidating action against detained persons aimed at preventing them from making complaints to visiting bodies will be severely punished.**

Department of Penitentiary Institutions supports the position \*of the CPT on consolidation of the national mechanism of preventing torture - Consultative Council. Since the moment of its creation, DPI has ensured, with no impediments, the access of all the members of the Council within penitentiary establishments, has submitted propositions on cooperation with it and its capacity building. Also, in order to implement the provisions of the Law from 13.12.2008 on the civil control concerning human rights within establishments ensuring the detention of persons (in every administrative-territorial unit of second level where exist such institutions, there are created *monitoring committees*, consisting of representatives of nongovernmental organisations, whose statutory goal is human rights protection. The mission of monitoring committees is to assess the conditions of detention of the detainees and the treatment they have) in December 2009, at the initiative of the MoJ there had been sent a request to the majority of local authorities by which is expressed the availability of cooperation and the granting of access to the members of respective committees, with the conditions that they have been created and are functional.

In the context of future actions on preventing and fighting torture, DPI reaffirms its availability of cooperation and the access of visits without prior notification and with no impediments of the local and international authorities, who have the competence of monitoring the implementation of the provisions of criminal and enforcement legislation and directly - the human rights respect, such as: the Service of Information and Security, General Prosecutor's Office, specialized standing parliamentary committees, the Ombudsman's Institution, Consultative Council, Complaints Committee, the European Committee on Preventing Torture, UN Rapporteurs on torture and violence issues against women etc, as well as submits periodic informative notes and reports in the field in local, European and international structures.

In this context, we can affirm with certitude that this complex activity and opened position of the DPI provides sufficient mechanisms of redressing the situation, by attracting the sources of foreign donors and international organisations, in order to improve detention conditions and reconstruction of penitentiary establishments, as well as aiming to avoid any situations of stern infringements of human rights.

Ministry of Internal Affairs (MIA) informs the society about the situation in isolators of temporary detention and transparency measures taken to eradicate the inhuman and degrading treatment on the Ministry of Internal Affairs' web site ([www.mai.gov.md](http://www.mai.gov.md)) monthly, quarterly and biannual about the information regarding the activity of public order services, where the civil society gets familiar about cases of ill-treatment, torture or producing cases in places of detention during the period.

Accordingly, the press center of the MIA informs the public opinion and gives some information on respective chapter and through the press conferences held by the MIA, involving both accredited and non-accredited journalists.

Article 178 Execution Code and p. 2.44 of MIA Order no. 5 from 05 January 2004, contains express stipulations on access to temporary detention isolators subordinated MIA as:

- (1) During the performance of function are entitled to visit the institutions that provide detention of persons without special permission:
  - a) President of Parliament of the Republic of Moldova;
  - b) President of the Republic of Moldova;
  - c) Prime Minister of the Republic of Moldova;
  - d) Members of Parliament;
  - e) The Ombudsman;
  - f) Prosecutor General of the Republic of Moldova, the prosecutor who exercises control over the execution of criminal decisions in the territory;
  - g) The competent responsible of hierarchically superior institution or organ which performs criminal penalty;
  - h) The judge who considered or consider criminal case, according to territorial jurisdiction;
  - i) Representatives of international organizations which, according to national acts and/ or international agreements to which Moldova is party, have that right;
  - j) Member of Committee complaints;
  - k) Member of monitoring committee.
- (2) The Institutions that ensure the people detention can be viewed by others with special permission of the administration of these institutions or persons with a liability function of organs hierarchically superior or upon the court's decision, but in case of prevented persons - and upon the decision of the prosecuting body or court in who's proceedings is the criminal case.

Largely in the monitoring process of the detention places, the representatives of the mentioned institutions, together with other tasks assure free legal advice to prisoners. However, insurance of legal advice is provided as a priority by the lawyer, who has the right for these activities, with the permission of prosecution officers, is entitled to discuss unlimited time with the client, advised to the compliance conditions of legal restricts, related to the deployment of criminal or contravention process and the detention regime, including for the free legal advice obtaining.

In order to exclude future situations similar to those, some organizations had to face during their visits in IDPs, according to the CPT's findings, to all territorial subdivisions have been sent circular notes and supplementary rules in force that regulate this aspect.

For not admitting impediments in the activity of the national mechanism to prevent torture, inhuman or degrading treatment, established and exercised by the Ombudsman and members of the Advisory Council subordinated to Centre for Human Rights, had been organized meetings with Ombudsman's, where was established the visiting mechanism without special permission of the detention places subordinated to Ministry of Internal Affairs, and it was decided to take the immediate all necessary actions for documentation of all possible cases of violation of human rights.

### **Point 67**

**The CPT calls upon the Moldovan authorities to continue to take steps to:**

- **ensure that the highest priority be given to investigations into cases possibly involving ill-treatment in relation to the April 2009 events and that the criteria of an "effective" investigation as established by the European Court of Human Rights be fully met. In order to achieve this, the competent authorities should adopt a more proactive, coordinated and holistic approach;**

Following the April events, the prosecution bodies have been examining under art.274 of Criminal Code, 107 complaints of citizens who claimed to have suffered torture and ill-treatment by police collaborators during that period.

Most complaints were lodged immediately after the April events or within about one month after the events.

In October 2009 the leadership of the General Prosecutor's Office made an address to the society through mass-media and expressed its availability to objectively investigate all allegations related to torture and all citizens who have suffered as a result of illegal actions were requested to make complaints. Prosecutors in the outcome of these measures have received three complaints.

Thereby, as result of the events of April 2009, there were recorder and examined 106 complaints, of which in 26 cases the prosecutors began the investigations at its own motion in the absence of citizen's complaints.

Of the total number of complaints in 43 cases it was initiated criminal investigations, including 27 cases has ordered prosecution initiated under art. 309<sup>1</sup> Criminal Code (torture), in 12 cases was ordered prosecution initiated under art.328 par. (2). a) Criminal Code (exceeding duties and extra powers).

- In one case the prosecutors at their own motion, ordered the initiation of criminal proceedings under Art.328 par. (3). b) Criminal Code on excess of powers and overcoming of duties by persons in positions of responsibility within the Ministry of Internal Affairs, including BPDS „Fulger” whose employees applied physical

violence on more than one person on the night of 7 to 8 April in the Center of the capital. At the moment this question is dealt with by the General Prosecutors Office;

- In one of cases was disposed the initiation of the prosecution under Article. 152 par. (2). e) Criminal Code;

- In other case was disposed the initiation of the prosecution under Article. 187 par. (4) Criminal Code;

- In other case was disposed the initiation of the prosecution under Article. 151 para. (4) Criminal Code (deliberate serious body injuries leading to death of the person) the fact of death of “W”. The case concerned is investigated by the General Prosecutors Office.

In addition, the General Prosecutors Office is separately investigating under Article 329 par. (2) Criminal Code (negligence in service) the case of ex-Minister of Internal Affairs and former Commissioner of Chisinau municipality, for not taking appropriate actions and for tolerating the illegal acts of his subordinates concerning the application of physical force and unjustified detention of citizens.

From the total number of criminal cases, 10 cases on 18 police collaborators were completed and sent to court being at the moment under examinations.

Also note that the prosecution is at the final stage on 6 cases of 11 police employees, in whose respect have been submitted charges and after finishing the legal proceedings, the cases will be sent to court.

It has to be mentioned that after the adoption of final decisions, the General Prosecutors Office makes this information public, placing it on its official website.

Against the police suspected of having committed illegal acts have been submitted requests regarding the provisional suspension of their activity during the prosecution (in total 13 requests).

In other cases where perpetrators have already been identified, criminal cases are in stage of completion.

Prolonged nature of the investigation of some criminal cases is due to both volume of work performed (presentations for recognition, on-site reconstruction, complex forensic medical examinations, etc.) and prolonged absence from the country of victims.

Also, according to Article 251 of Executional Code and Section 25 of the Statute on the execution of punishment by convicted persons, when the medical staff received the inmates on 11 April 2009, at 00:30 hours medical service employees examined the detainees in order to establish the existence of injuries or other signs of violence. Examination results were recorded in the outpatient medical records of prisoners. As a result, the presence of injuries was recorded in 27 of all 111 prisoners suspect of participating in protests of April 7, 2009. Three people were hospitalized in the prison medical service:

- “X” – diagnosis: acute skull-brain trauma. Mental-shock; was confirmed by medical examination and investigations conducted in the IMSP National Scientific and Practical Centre of Emergency Medicine

- “Y” - the diagnosis: hypertensive syndrome;
- “Z” - the diagnosis: pulmonary tuberculosis evolving.

As a result of the medical examination of those 111 people and finding at some of them body injuries, Prison No.13 referred to the Department of Penitentiary Institutions and General Prosecutors Office by sending appropriate notices of lesions detected. For not admitting actions of torture or inhuman treatment, the Department of Penitentiary Institutions provided unconditional access of several national and European bodies, empowered with the rights of persons detained.

**- ensure, even at this late stage, the effective protection of alleged victims and witnesses of police ill-treatment whenever it is required by the circumstances, taking due account of the recommendations of the Committee of Ministers of the Council of Europe Rec (2005) 9 on the protection of witnesses and collaborators of justice and Rec (2006) 8 on assistance to crime victims. It is also essential that the competent authorities take due account of potential intimidation, reprisals and repeat victimisation by the police when examining requests for protection;**

Current legislation assigns these functions only to the Ministry of Internal Affairs, which in cases of torture and ill-treatment and for other crimes committed by employees of internal affairs or with their participation, questions the effectiveness of the undertaken measures.

**- increase the involvement of victims of ill-treatment and their representatives in the investigation process, and improve the provision of information to the public on the progress and outcome of investigations into complaints of ill-treatment.**

In order to exclude the possibility of intimidation of victims which require medical care as result of torture or other ill-treatment applied by the police collaborators, the Ministry of Health and the Ministry of Internal Affairs issued the common order no. 372/388 of 03.11.2009 on measures to improve collaboration between health and internal affairs bodies, through which medical institutions' staff from the entire republic was obliged to inform immediately the territorial Prosecutor office or the specialized Prosecutor office in whose radius the relevant medical institution is situated, of cases addressing the citizens as result of actions committed by law enforcement representatives, aimed at health and/or physical integrity.

**In the medium term, the CPT recommends that the Moldovan authorities set up an agency specialized in the investigation of cases possibly involving ill-treatment by law enforcement officials which is fully independent of both law enforcement and prosecuting authorities.**

The Government examines the opportunity of creation of a specialized independent agency, aiming at investigating any cases of ill-treatment.



Therefore, is sustained the idea of setting up an agency which would have an independent and permanent status, coordinate and evaluate national activities, identify and report directly to the Government on complex problems in the field, making recommendations for improvement of procedures and policies for the prevention and investigation of ill-treatment cases.

To this end, it is necessary to emphasize that the establishment of such an independent agency should pass a specific procedure and involve a number of decisional factors as required by law. At the same time, it has to be established its legal regime and activity status.

However, it is necessary to mention that in order to ensure its efficient work and goals, it is necessary to identify the sources of financing and to ensure sufficiently trained personnel in this field.