

**SUPPORT TO CRIMINAL JUSTICE REFORMS
IN THE REPUBLIC OF MOLDOVA**



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REPORT

ON THE SITUATION IN THE REPUBLIC OF MOLDOVA ON CIVIL CONTROL OVER RESPECT FOR HUMAN RIGHTS IN DETENTION FACILITIES

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Summary	3
Introduction.....	5
I. General aspects on the monitoring of detention Facilities	6
1.1. International and regional rules providing for standards in the area of detention of persons and the monitoring of detention facilities	6
1.2. Models of functional civil control mechanisms	9
II. National regulatory framework on the civil control over respect for human rights in detention facilities	11
2.1. Purpose.....	11
2.2. Scope	11
2.3. Functions and competences of Monitoring Commissions	13
2.4. The context for approving Law No 235 of 13 November 2008.....	15
2.5 Establishment and membership of Monitoring Commissions.....	18
2.6 Functioning of Monitoring Commissions.....	20
Meetings of the Monitoring Commission	21
Monitoring visits and reporting.....	22
Funding of Monitoring Commissions	24
Recommendations.....	29
<i>Appendix A</i>	32
<i>Appendix B</i>.....	44

Summary

The detention facilities of the Republic of Moldova have a poor reputation with respect to detention conditions. This fact was repeatedly reported by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as CPT), including in the reports of 2007 and 2009 following visits to the Republic of Moldova¹. Based on this, as well as considering the inefficiency of then existing mechanisms of monitoring detention facilities, such as Complaints Committee², the Ombudsperson institution, the Advisory Council for the Prevention of Torture and other relevant bodies³, in 2008, a decision was taken to establish monitoring commissions as a mechanism for civil control over respect for human rights in detention facilities (hereinafter referred to as Monitoring Commissions). This mechanism was established under Law No 235 of 13 November 2008 on the civil control over respect for human rights in detention facilities of the Republic of Moldova⁴ (hereinafter referred to as Law No 235 of 13 November 2008).

In October 2015, requests for information were dispatched to the attention of second level administrative units (through the State Chancellery), the Department of Penitentiary Institutions, the Ministry of Internal Affairs and the Ombudsperson's Office⁵ about the date of establishment, membership, the monitoring programmes and the reports prepared by the members of the Monitoring Commissions that monitored detention facilities. Most of the local authorities (except for Leova, Briceni districts and Balti Municipality) did not respond to these requests for information⁶. In the absence of recently available information, the requested central authority bodies did not provide comprehensive data.

In October - December 2015, interviews were conducted with the representatives of the local public authorities (Balti Municipality, Briceni district and Leova district), the representatives of the civil society organizations and the OSCE Mission to Moldova. Interviews revolved around the establishment, competences, functioning and funding of Monitoring Commissions. A series of acts adopted locally were collected following the interviews, and the legislative acts and resources prepared by the civil society organisations were subject to a review. Nevertheless, the information collected as a result of the

¹ Report no. CPT/Inf (2008) 39 to the Moldovan Government on the visit to Moldova carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 14 to 24 September 2007, Report no. CPT/Inf (2009) 37 to the Moldovan Government on the visit to Moldova carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 to 31 July 2009.

² Regulation on the Complaint Committee approved by Government Decision no 77 of 23 January 2006, available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=315149>.

³ According the Law No 294 of 25 December 2008 on Prosecution Service (abrogated), the prosecutor supervises the compliance with laws in the Armed Forces, penitentiaries, temporary detention facilities and in application of measures to protect witnesses, victims of crime and other participants in criminal proceedings (see Article 5 letters i) and j)). According to the new Law on Public Prosecution Service no.3 of 25 February 2016, the prosecutors will not ensure the control over the execution of sentences and detention facilities. However, it is not excluded the involvement of the prosecutors to investigate crimes committed in detention facilities.

⁴ Law No 235 of 13 November 2008, available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=329996>.

⁵ See Appendix A

⁶ See Appendix B

interviews and held by the authors was sufficient to draft the Report and to make recommendations.

It is to be mentioned, that on 11 December 2015, following the dispatch of the request for information, at a meeting of the Municipality Council of Balti, a decision was made to inform the public associations of the intention to establish the Monitoring Commission.

Relevant international and regional regulations in the area of detention of persons and prevention of torture and inhuman or degrading treatment or punishment, as well as experiences of different European countries on models of functional civil control mechanisms have been studied and analysed in the preparation of this Report.

The first chapter of the Report puts forward the relevant international and regional rules and regulations providing for standards in the area of detention of persons and the monitoring of detention facilities and references to the prevention of torture and inhuman or degrading treatment or punishment. Relevant models of functional civil control mechanisms from Germany, Netherlands and Norway underlying the adoption of the civil control over the respect for human rights in detention facilities are analysed.

The second chapter reviews the scope, the establishment, the competences, the functioning, the reporting and the funding of Monitoring Commissions. Also, it provides an analysis of the procedures of organising the meetings and monitoring visits. In the period of 2010 – 2014, only few monitoring commissions were set-up by the local public administration. One of the factors working against the optimum performance of the members of Monitoring Commissions is the tradition of subordination to, and dependence on the political branches. Lack of financial resources (the activity on voluntary basis) resulting in poor infrastructure and ineffective operating systems are also a problems referred to the efficient functioning of the Monitoring Commissions. The lack of proper legal provisions with respect to the activity of the Monitoring Commissions is not to be neglected. Finally, the prevailing paradigm that the prisons, police stations and other similar institutions are closed and secret places, with activities inside hidden from public view, anyway, exists in Moldovan reality.

The activity of the Monitoring Commissions in the period 2009 – 2015 is assessed in the third chapter. No recent data is available on the establishment by the local public administration of the Monitoring Commissions. It was established, that the local public authorities have not taken any action since 2013 to establish Monitoring Commissions, and no further activities intended to strengthen the Monitoring Commissions have been carried out. Similarly, there is no recent data on the cooperation of the Ombudsman Office and the Monitoring Commissions.

Recommendations are made in the end of the Report and addressed to the central and local authorities, the Ombudsperson institution, the public associations to assess the need of establishing Monitoring Commissions and/or strengthening their institutional capacities. Moreover, recommendations are made to amend Law No 235 of 13 November 2008 and Government Decision No 286 of 13 April 2009 approving the Regulation on the activity of the Monitoring Commissions concerning respect for human rights in detention facilities⁷ (hereinafter referred to as Government Decision No 286 of 13 April 2009).

⁷ The Government Decision No 286 of 13 April 2009 approving the Regulation on the activity of the Monitoring Commissions concerning respect for human rights in detention facilities, available only in Romanian at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=331293>.

Introduction

This Report undertakes a review of the legislation related to and the activity of the Monitoring Commissions with regard to places of detention as a mechanism for civil control over respect for human rights in detention facilities in the Republic of Moldova.

This Report analyses the Law No 235 of 13 November 2008 and the Government Decision No 286 of 13 April 2009, as well as the state of art on the functioning of the Monitoring Commissions in the period of 2009 – 2015. It provides number of recommendations addressed to relevant central, local authorities as well as to the Ombudsperson institution and civil society organizations active in the relevant field in the Republic of Moldova.

The Report reflects the legislation in force by 31 March 2016.

This Report is prepared within the framework of the Council of Europe project “Support to Criminal Justice Reforms in the Republic of Moldova” funded by the Danish Government, based on the contributions of the Council of Europe national short-term consultants Mr. Ion Guzun, legal adviser, Legal Resources Centre from Moldova and Mr. Alexandru Adam, head of the Legal Directorate, Department of Penitentiary Institutions of the Republic of Moldova. The Report is for the Council of Europe internal use. The opinions expressed in the Report do not reflect the views of the Council of Europe, and are those of the authors.

I. General aspects on the monitoring of detention Facilities

1.1. International and regional rules providing for standards in the area of detention of persons and the monitoring of detention facilities

Monitoring of the government authorities' activity related to the segregation of persons and their deprivation of liberty by civil society representatives has been the subject of number of conventions and recommendations at international and regional level. The monitoring of detention facilities provided by such instruments is intended to ensure an efficient mechanism for human rights protection as well as to check the compliance of Member States with commitments undertaken by joining these instruments.

The main international instruments establishing forms and mechanisms to monitor respect for human rights and, in particular, those focused on the activity of the authorities ensuring the detention of persons relevant for this Report, are the following:

1. The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁸ and the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment⁹ establish a mechanism of visits to places of detention. Pursuant to the provisions of Article 11 of the Optional Protocol, the main powers of the UN Subcommittee on Prevention of Torture include the following:

- to visit the places of detention and to make recommendations to the States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
- to maintain direct, and if necessary confidential, contact with the national preventive mechanisms and to propose them assistance for professional training and technical support with a view to strengthening their potential;
- to make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment; etc.

2. European Convention on Human Rights¹⁰. In addition to having enshrined and listing human rights and fundamental liberties, it establishes the judicial mechanism for their protection, which is the European Court of Human Rights (hereinafter referred to as ECtHR). At the same time, the Convention regulates relevant aspects for detainees: the right to life,

⁸ The Convention was adopted by Resolution No 39/46 of 10 December 1984 of the General Assembly of the United Nations, entered into force on 26 June 1987 and the Republic of Moldova adhered to it by Decision No 473 of 31 May 1995 of the Parliament of the Republic of Moldova. Effective for the Republic of Moldova as of 28 December 1995.

⁹ Adopted by the UN General Assembly on 18 December 2002, signed by the Republic of Moldova on 16 September 2005 and ratified by Law No 66 of 30 March 2006, effective for the Republic of Moldova as of 24 July 2006, available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=315880>.

¹⁰ Ratified by the Republic of Moldova by Decision No 1298-XIII of 24 July 1997 and effective for the Republic of Moldova as of 30 December 1998.

prohibition of torture, prohibition of slavery and forced labour, the right to freedom and safety, the right to a fair trial, the right to privacy etc.

3. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment establishes the CPT¹¹, which is “not a control body, but provides for a non-judicial preventive instrument for the protection of persons deprived of their liberty against torture or other forms of ill-treatment. Thus, it supplements the judicial activity of the European Court of Human Rights”¹².

CPT exercise their duties of prevention of any violation of the right not to be subjected to torture and ill-treatment through periodic and ad-hoc monitoring visits.

During their visits, CPT members may hold confidential conversations (in the absence of witnesses) with the persons deprived of their liberty and may “*communicate freely with any person whom it believes can supply relevant information*”¹³.

At the same time, recommendations to the Member States to establish some form of Governmental and/or civil control over respect for the rights of detainees are virtually found in all the international acts concerning detention principles and rules or standards for the activity of detention facilities. Among such instruments the following may be listed:

1. The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Article 3 of which says that each State Party to the Convention shall set up at the domestic level one body to carry out regular inspections to the places of detention for the prevention of torture or other cruel, inhuman or degrading treatment or punishment¹⁴.

2. Standard Minimum Rules for the Treatment of Prisoners¹⁵, provisions of section 55 of which provides for the need to establish a service of “*qualified and experienced inspectors appointed by a competent authority*” tasked to conduct regular inspections in the places of detention and penitentiary services. During the inspections, they shall monitor “*that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services*”. The Standard Minimum Rules for the Treatment of Prisoners do not provide expressly that the inspection

¹¹ Ratified by the Republic of Moldova by Decision No 1238-XIII of 9 July 1997 and effective for the Republic of Moldova as of 1 February 1998

¹² The European Committee for the Prevention of Torture in short is available on <http://www.cpt.coe.int/romanian.htm>.

¹³ Article 8 (4) of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

¹⁴ In the Republic of Moldova, the National Preventive Mechanism is operational on the grounds of Law No 52 of 3 April 2014 on the Ombudsman. The Advisory Council was established by Law No 200 of 26 July 2007 amending and supplementing Law No 1349 of 17 October 1997 on Parliament lawyers, being empowered to function as a national mechanism for the prevention of torture. See more details at <http://old.parlament.md/lawprocess/laws/july2007/200-XVI-26.07.2007/>.

¹⁵ *Standard Minimum Rules for the Treatment of Prisoners* adopted by the Resolution of 30 August 1955 of the Economic and Social Council at the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, supplemented on 31 July 1977 https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf.

service is part of the Government authority, however from the method of establishment and the inspection duties in terms of compliance with the legislation, it is inferred that its subordination to the Government may be admitted.

One of the guarantees set out in the **Standard Minimum Rules for the Treatment of Prisoners** provides for the right of the detainee to file complaints to the administration of the place of detention and to its control authority¹⁶.

3. The body of principles for the protection of all persons under any form of detention or imprisonment¹⁷ indicates the obligations of the State as regards approving domestic regulations that *„prohibit by law any act contrary to the rights and duties contained in these principles [envisaged for persons under any form of detention or imprisonment], make any such act subject to appropriate sanctions and conduct impartial investigations upon complaints”*¹⁸. This document refers for the first time to the independent nature of inspections *with regard to* the authorities ensuring directly the detention of persons¹⁹, as well as to the detainee’s right *“to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment in accordance with paragraph 1 of the present principle, subject to reasonable conditions to ensure security and good order in such places”*.

According to Principle 33 of the same document, any detained or imprisoned person has the right *“to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers. Every request or complaint shall be promptly dealt with and replied to without undue delay. If the request or complaint is rejected or, in case of inordinate delay, the complainant shall be entitled to bring it before a judicial or other authority. Neither the detained or imprisoned person nor any complainant under paragraph 1 of the present principle shall suffer prejudice for making a request or complaint”*²⁰.

¹⁶ Section 36, *“Every prisoner shall have the opportunity each week day of making requests or complaints to the director of the institution or the officer authorized to represent him. It shall be possible to make requests or complaints to the inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present”*, *idem*.

¹⁷ Body of principles for the protection of all persons under any form of detention or imprisonment, as approved by the UN General Assembly Resolution on 9 December 1988.

¹⁸ Principle 7, Body of principles for the protection of all persons under any form of detention or imprisonment, 1988, available at <http://www.un.org/documents/ga/res/43/a43r173.htm>.

¹⁹ Principle 29, *“In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.”*, *idem*.

²⁰ Principle 33, *idem*.

4. The European Prison Rules²¹ describe in detail the mechanisms for monitoring places of detention. It differentiates government inspections from the independent control performed by the representatives of the civil society. More specifically:

- *Government inspection implies that the Prisons are to be inspected regularly by a government body, in order to see whether they are managed in accordance with the national and international legal rules and the provisions of these rules²², and*
- *Independent monitoring establishes that the conditions of detention and the treatment of prisoners shall be monitored by an independent body or bodies whose findings shall be made public. Such independent monitoring body or bodies shall be encouraged to cooperate with those international agencies that are legally entitled to visit prisons.*²³

The differentiation of these activities is important in defining the scope of the national regulatory framework for the civil control over the institutions where prisoners are held, which was established under Law No 235 of 13 November 2008.

1.2. Models of functional civil control mechanisms

The practice of monitoring detention facilities by a civil society is different from one country to another. They are differentiated by the complexity of the tasks assigned to the independent control bodies and the structure of the government system enforcing criminal sentences, applying preventive or safety measures and others. Some characteristics of the most efficient independent control mechanisms can be summed up as follows:

- control is assigned to persons who are not under the influence of Government authorities, as a rule non-government organisations specialised in human rights protection;
- volunteer participation in the monitoring activities;
- identifying the challenges and needs of the monitored institutions;
- the outcome of the control is recorded in monitoring reports;
- submitting reports and recommendations to authorities (under confidentiality terms) and informing international human rights protection institutions thereof, where applicable.

The federal act of **Germany** concerning the execution of prison sentences and measures of rehabilitation and prevention involving deprivation of liberty (Prison Act) of 16 March 1976,²⁴ provides for the obligation to establish Advisory Councils in the penal institutions. Staff members of the institution shall not be members of Advisory Councils. According to Section 163 of that Act, Members of the Advisory Council shall contribute to the organisation of the prison regime and the treatment of prisoners, shall support the head

²¹ Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules Rec (2006)2, available at

<http://www.coe.int/t/dghl/standardsetting/prisons/Rec%282006%292%20Romanian.pdf>

²² Section 92, *idem*.

²³ Section 93, *idem*.

²⁴ The Federal Act concerning the execution of prison sentences and measures of rehabilitation and prevention involving deprivation of liberty (Prison Act) of 16 March 1976, translation into English available at http://www.cgerli.org/fileadmin/user_upload/interne_Dokumente/Legislation/Prison_Act.pdf.

of the institution by making suggestions and proposals for improvements, and shall provide assistance in the prisoners' reintegration after their release. The Councils shall have powers to accept requests, suggestions and complaints; to gather information on accommodation, occupation, vocational training, food, medical services and treatment of prisoners; to visit the institution and its facilities; to comply with the confidentiality of information that may not be disclosed by their nature, in particular with regard to the names and personalities of the prisoners and detainees.

In the **Netherlands**, local Commissions for prison oversight act as inspection bodies for places of detention and the review of prisoners' complaints. The duties and rights of these local Commissions were used as a model for the establishment of the Complaints Committee in the Republic of Moldova. Unlike the Netherlands, a single Complaints Committee was established in the Republic of Moldova and *a priori* it was unable to monitor all the detention facilities in the country.

Section 9 of the **Norwegian** Act relating to the execution of sentences of 21 May 2001²⁵ provides that each correctional region shall be attached to a supervisory and control council which shall exercise supervision and control over prisons and aftercare offices and over the treatment of convicted persons and prisoners. Each Supervisory and Control Council consists of the head, the deputy head, members and representatives of all the administrative units within the correctional region, so that the membership of the Council ensures the possibility for each detention centre functioning in the administrative unit to be visited on average three times a year.

The Supervisory and Control Council reviews the cases of violation of the prisoners' rights at the request of the latter, upon the referrals of other persons or on their own initiative. The members of the Supervisory and Control Council are allowed to communicate with prisoners without the presence of the prison staff; furthermore, they may have access to the prisoners' personal files if the person concerned agrees therewith. The Supervisory and Control Council submits an annual activity report at the end of each year to all the detention facilities and aftercare offices subject to monitoring, as well as to the Correctional Agency.

²⁵ Act relating to the execution of sentences of 21 May 2001, the translation into Romanian is accessible at <http://www.kriminalomsorgen.no/the-execution-of-sentences-act-in-six-languages.250423.no.html>. The original document is available at <https://lovdata.no/dokument/NL/lov/2001-05-18-21>.

II. National regulatory framework on the civil control over respect for human rights in detention facilities

2.1. Purpose

National regulations relating to the monitoring of places of detention by the civil society are an important mechanism for the implementation of the recommendations set out by relevant international instruments and standards on respect for the rights of detainees. The establishment of a monitoring mechanism independent from the government authorities is determined by the provisions of Section 93 of the European Prison Rules.

In the Republic of Moldova, the monitoring of the places of detention was carried out through the Advisory Council functioning on grounds of Law No 200 of 26 July 2007 amending and supplementing Law No 1349 of 17 October 1997 on Parliamentary advocates²⁶. Furthermore, the mechanism of civil control over respect for human rights in the detention facilities, which was set up by Law No 235 of 13 November 2008, is a method of independent control aimed to review the conditions of detention and the treatment of prisoners, and to make public its findings. Monitoring Commissions are distinguished from government control authorities inspecting detention facilities²⁷.

The establishment and functioning of the mechanism of civil control over places of detention does not mean to replace governmental bodies, institutions or mechanisms having the duty to monitor places of detention. It provides the active representatives of the society with the possibility to monitor and identify the deficiencies in the activity of detention authorities and to bring civic responsibility at local level.

2.2. Scope

The rules and conditions for detention, the duties and obligations of the bodies enforcing criminal sentences are internationally provided by the Standard Minimum Rules for the Treatment of Prisoners and its recommendations²⁸, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment²⁹, the European Prison Rules³⁰, and others. On the national level these provisions are provided in the Criminal Execution Code, Law No 443 of 24 December 2004, Government Decision No 583 of 26 May 2006 approving the Statute for the execution of sentences by convicted persons³¹, and others.

²⁶ The Advisory Council was established by Law No 200 of 26 July 2007 amending and supplementing Law No 1349 of 17 October 1997 on Parliamentary advocates, being empowered to function as a national mechanism for the prevention of torture. See more details at <http://old.parlament.md/lawprocess/laws/july2007/200-XVI-26.07.2007/>.

²⁷ Articles 6 and 8 (1) of Law No 235 of 13 November 2008 and Section 92, Recommendation Rec (2006)2 of the Committee of Ministers to member states on the European Prison Rules Rec(2006)2.

²⁸ Supra note 16.

²⁹ Supra note 18.

³⁰ Supra note 22.

³¹ Government Decision No 583 of 26 May 2006 approving the Regime for the execution of sentences by convicted persons, available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=316314>.

Law No 235 of 13 November 2008 does not provide for an express list of detention facilities that are to be monitored. Article 1 (1) of the same law provides that the scope of the regulation is the relations established in connection with the civil control (monitoring) over the activity of detention facilities in order to guarantee respect for human rights. These provisions seem to be similar to those set out in Section 93.1 of the European Prison Rules³².

Law No 235 of 13 November 2008 does not define the meaning of the phrase “*place of detention*”³³, which allows one to extend the meaning of it in a way that the remit of Monitoring Commissions covers all places of detention. However, the information note³⁴ to the draft law on civil control over respect for human rights in detention facilities refers to a series of acts pertaining to penitentiary institutions and provisional detention facilities, namely:

- Parliament Decision No 72 of 28 March 2008 regarding the hearings relating to the decisions of the European Court of Human Rights with regard to the Republic of Moldova, their execution and prevention of violation of human rights and fundamental freedoms³⁵.
- The report of the Human Rights Centre on Respect for Human Rights in the Republic of Moldova in 2007³⁶, whereby reference is also made to the improvement of the behaviour towards the persons deprived of their liberty, the conditions of detention and the prevention of torture.
- Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules.

For the purposes of the above, the Law No 1036 of 17 December 1996 on penitentiary system of the Republic of Moldova³⁷ distinguishes between several types of detention facilities for persons deprived of their liberty:

- *Prisons* (penitentiary institutions, including remand centres), which enforce the sentence of imprisonment, detention for life and the measure of pre-trial detention³⁸, and the sanction of administrative arrest³⁹;

³² Supra note 22.

³³ In the national law, the concept of “detention” is defined at Section 4 of the Regime for the execution of sentences by convicted persons, as approved by Government Decision No 583 of 26 May 2006 as “*any form of institutional deprivation of liberty instituted by a final or effective judgment of the court (the investigating judge) issued under the Code of Criminal Procedure*”. At the same time, Article 23¹ of Law No 1349 of 17 October 1997 on Parliament advocates defined deprivation of liberty as “*any form of remand of a person in a public or private place of detention at the order of any judicial, administrative or other body as a punishment, sanction, constraint procedural measure, safety precaution, and as a result of dependency on some form of care granted or for any other reason, which place that person shall not have the right to leave on his/her own initiative*”. For the purposes of Law No 52 of 3 April 2014 on the Ombudsman, places of detention are “*the police inspectorates and detention centres attached thereto, prisons, prosecution confinement establishments, military units, accommodation centres for immigrants or asylum seekers, institutions providing social, health or mental care, special educational and re-educational establishments or treatment and re-education establishments for minors and other peer institutions*”.

³⁴ Explanatory Note to the Law, available at <http://old.parlament.md/lawprocess/laws/november2008/235-XVI-13.11.2008/>.

³⁵ Parliament Decision No 72 of 28 March 2008, available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=327643>

³⁶ The Report of the Human Rights Centre on Respect for Human Rights in the Republic of Moldova in 2007, available at http://ombudsman.md/sites/default/files/document/attachments/raport_2007_0.pdf

³⁷ The Law no 1036 of 17 December 1996 on penitentiary system of the Republic of Moldova, available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=329291>.

- *Provisional detention facilities*, which enforce the procedural measure of constraint – restraint of a person for 72 hours (except for military staff)⁴⁰;
- *The military unit commandment*, which enforces the procedural measure of constraint – restraint of military staff for 72 hours⁴¹;
- *Psychiatric institutions with regular or rigorous oversight*⁴² of the persons who committed acts provided for by the Criminal Code and who are irresponsible, or persons who committed such acts as responsible persons or with limited responsibility, but who have come to suffer from a mental disease by the time the sentence was ruled, this being the reason why they are unable to realise their actions or to manage them.

Moreover, in order to define the scope of Law No 235 of 13 November 2008, a distinction must be made between “detention” as deprivation of liberty and other forms of institutional placement for persons. The essential distinction is based on the fact that the measure concerned does not imply a person’s deprivation of liberty under a court judgment or a decision of another competent authority. Therefore, Monitoring Commissions are not authorised to monitor the establishments where other categories of persons are held and with regard to whom deprivation of liberty has not been ruled (e.g. orphanages, care centres for elderly people, military units and others). Such confusion resides particularly in the scope of the control rights assigned to the national mechanisms for the prevention of torture or to the bodies established under international conventions (e.g. CPT). Thus, Monitoring Commissions were established pursuant to Section 93.1. of the European Prison Rules with the purpose of monitoring the conditions of detention, the treatment of prisoners, of making recommendations for improvement in these activities and to inform the public and the competent authorities of any practice that is inconsistent with the national and international rules and standards.

2.3. Functions and competences of Monitoring Commissions

By Law No 235 of 13 November 2008, the Monitoring Commissions were vested with the duties provided for an independent control under the European Prison Rules⁴³. The Monitoring Commissions are permanent bodies with no legal personality, which are established in each second level administrative - territorial unit where detention facilities function⁴⁴. Respect for human rights in detention facilities is monitored by the representatives of the civil society, who are organised in permanent Monitoring

³⁸ Articles 173 (4) and 175 (9) of the Execution Code.

³⁹ Article 313 (3), *idem*.

⁴⁰ Article 175¹, *idem*.

⁴¹ *Ibidem*.

⁴² Articles 99 and 100 of the Criminal Code of the Republic of Moldova, No 985-XV of 18 April 2002, available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=331268>.

⁴³ Rule 92. 1, Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules.

⁴⁴ Article 3 of Law No 235 of 13 November 2008.

Commissions and who follow the principles of volunteering, independence, equality and lawfulness⁴⁵.

Article 6 (a) of Law No 235 of 13 November 2008 provides the duties of the Monitoring Commissions. Other provisions of Article 6 refer to rights of the Monitoring Commissions to exercise their duties. Consequently, Monitoring Commissions are to be established in order to exercise the duties involving the assessment of the conditions of detention and the treatment applied to prisoners and they refer to:

- *monitoring the conditions of detention* in compliance with the rules and standards ensuring the material conditions for prisoners, starting from the technical conditions for the accommodation places, their equipment, the provision of sanitation and hygiene services, water supply, supplies, provision of equipment etc.
- *monitoring the treatment applied to prisoners* - the regime of detention (prison system) applicable, compliance with the separate detention rules, the order and safety of detention, the existence and observance of a prison programme, the involvement of prisoners in the educational and reintegration of prisoners programmes, sport programmes, the allowance of visits, access to information, including to libraries and regular publications, pursuit of open-air activities, the exercise of the rights to file petitions, the application and execution of disciplinary proceedings, the provision of healthcare etc.

In order to perform the prescribed duties, the Law No 235 of 13 November 2008 also entails a series of rights conferred on the Monitoring Commissions in order to enable them to carry out such duties. Thus, Monitoring Commissions are entitled:

- to have unrestricted access to any sector of the detention centre, except for the guard facilities at any time during the visit, without any prior approval, provided that the security rules and the regime of the establishment are complied with⁴⁶;
- to request from the detention centre administration and from the public administration authorities all the information they deem necessary for monitoring purposes, except for the information classified as a State secret;
- to have conversations with prisoners only with their consent, without any witnesses or under the visual oversight of the administration, as required by the security rules;
- to notify and to approach the State authorities as regards the performance of their monitoring duties concerning respect for human rights in the detention centre in question;
- to receive complaints concerning respect for human rights in the detention centre in question from prisoners and their relatives, as well as from other natural or legal persons.

The provisions of Article 6(g) of Law No 235 of 13 November 2008 and Section 6(g) of Government Decision No 286 of 13 April 2009 provide for the powers of the Monitoring Commissions, which do not normally correspond to them. For example, provide opinions on

⁴⁵ Article 2, *idem*.

⁴⁶ Pursuant to Article 2 (2) of Law No 235 of 13 November 2008, during monitoring no interference is allowed in the activity of the detention centers, in the operative investigation activity, in the criminal investigation activity and in the contraventional or disciplinary procedure conducted with regard to the persons which work in these institutions.

the possibility of exemption from criminal liability before the prisoner's term of sentence, on the replacement of the unserved term of the punishment with a milder punishment, on the exemption of criminal liability of juveniles, on exemption of criminal liability due to a change in the state of facts, on the suspension of the execution of the sentence for seriously ill persons, the application of the amnesty act and, on the possibility of applying for a pardon. In general, such documents can be delivered only by the persons who are specifically acquainted with each and every prisoner.

Government Decision No 286 of 13 April 2009 also lays down the obligations of Monitoring Commissions in the exercise of their duties. Thus, Monitoring Commissions have the obligation:

- to check and oversee the conditions of detention and the treatment of prisoners in the detention centre;
- to approve its annual action plans;
- to plan and to approve the visit programme on a quarterly basis (monitoring schedule);
- to approve the composition of monitoring groups;
- to approve the reports on the facts found during the visits, submitting them to the detention centre administration and, if required, to the higher-ranked body of the visited institution, as well as to the Ombudsperson's Office and to the prosecution bodies;
- to approve the general annual report and to submit it to the Ombudsperson's Office and to the higher-ranked body of the inspected establishments;
- to submit its reports and answers to the authorities concerned, to the authorised international bodies, to inspect detention facilities in accordance with the requirements of the relevant international treaties to which the Republic of Moldova is a party;
- to respect the integrity of the information received during the exercise of their duties, as well as the confidentiality of the information on the identity of the persons who provided that information;
- to cooperate with the media and with the public associations active in the protection of human rights in the country and abroad.

One of the Monitoring Commission's obligations is to preserve the integrity of the information and the confidential nature of the source, which practically involves that all the findings of the Monitoring Commissions must be objective and unbiased, without any interpretations based on assumptions.

2.4. The context for approving Law No 235 of 13 November 2008

In order to identify the particularities of the national regulations on the monitoring of the places of detention by the civil society, it is important to have knowledge about the evolution of the criminal execution law and of the main institutions having powers to control/inspect places of detention until the adoption of Law No 235 of 13 November 2008 on the civil control over respect for human rights in detention facilities.

The code for the execution of penalties under the criminal law, as adopted by Law No 1524 of 22 June 1993⁴⁷, was designed to preserve institutions and procedures taken over from the legislation of the USSR on the execution of penalties under the criminal law. The very types of detention facilities and the criminal penalties were virtually identical to the ones in force prior to the declaration of independence of the Republic of Moldova. The regulations on the monitoring of the activity of places of detention were limited to the control exerted by the specialised prosecutor's office over the supervision of execution of criminal penalties, the access of and the independent control exerted by the civil society not being regulated.

The Complaints Committee was established under Government Decision No 77 of 23 January 2006⁴⁸. The membership of the Committee was approved by the Ministry of Justice and included:

- either a resigned judge or prosecutor, or another person with a vast experience in the legal field, which is proposed by the Ministry of Justice;
- a healthcare practitioner proposed by the Ministry of Health;
- a collaborator of the social welfare system proposed by the Ministry of Social, Family and Child Protection;
- a representative of the custody or guardianship authority, which is proposed by the Ministry of Education, Youth and Sport;
- a representatives of the legally-established non-governmental organisations active in the field of human rights.

The members of the Complaints Committee were appointed by a Government Decision for a mandate of four years. The Government Decision No 77 of 23 January 2006 didn't provide any details of the selection and/or appointment procedures.

The Complaints Committee was purposed to review complaints submitted by the prisoners in the penitentiary institutions, including objections to orders or rulings of the prison administration, which were issued for the execution of criminal sentences, and was empowered to hear petitioners and the prison administration, to review the prisoners' personal files, the contested orders or rulings and other relevant documents, to visit penitentiary institutions in order to check the veracity of the facts set out in the prisoners' complaints, and to request the information needed in order to settle complaints⁴⁹. Following the review of the complaints, the Complaints Committee adopted decisions on the admission or rejection of complaints, as well as on the notification of the competent bodies on the breaches found.

The composition and functionality of the Complaints Committee have not been adapted to the actual number of complaints and objections filed by the prisoners and its funding was decided only in a form that the Ministry of Justice ensured the provision of the secretarial works for the Committee. As it is known, shortly after its establishment, its activity became non-functional. The practise showed that the Committee did not hold

⁴⁷ Code for the execution of penalties under the criminal law No 1524 of 22 June 1993, abrogated by Law no 443 of 24 December 2004, available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=311605>.

⁴⁸ Supra note 2.

⁴⁹ Section 2 of the Regulation of the Complaints Committee, as approved by Government Decision No 77 of January 23, 2006, available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=315149>.

meetings and the prisoners' requests remained unhandled, and in many cases they were deprived of the right to file a legal action against the actions of the administration. Subsequently, these powers were exerted by the Department of Penitentiary Institutions, Ministry of Justice, criminal investigating bodies or directly by the courts. Thus, the mechanism of civil control over the places of detention was revised and the Complaints Committee was dissolved by the adoption of Law No 106 of 4 June 2010 amending and supplementing the Execution Code of the Republic of Moldova.

The discontinuation of the activity of the Complaints Committee was justified by the reinforcement of the mandate of the Parliamentary advocate and the widening of powers of the Department of Penitentiary Institutions⁵⁰. Furthermore, by Law No 235 of 13 November 2008 a new procedure was established for the monitoring of places of detention by the civil society, the regulatory features of which will be discussed in the following chapter. The activity of the local Monitoring Commissions was meant to be more efficient than that of the Complaints Committee. The experience of the Complaints Committee proved its deficiency, particularly, that this committee was granted a national power without having the necessary resources allocated, which would have enabled it to exert its functional powers⁵¹.

In addition, Law No 200 of 26 July 2007 amending and supplementing Law No 1349 of 17 October 1997 on Parliamentary advocates of the Republic of Moldova was adopted and an Advisory Council was set up in order to provide consulting and assistance in the exercise of the duties of the Parliamentary advocates as a national mechanism for the prevention of torture⁵². In order to exercise the function of the prevention of torture independently, the members of the Advisory Council enjoyed the rights conferred to them under Article 24 (b) - (d), (f) and (g) of the Law on Parliamentary advocates⁵³.

⁵⁰ For more details, see Law No 106 of 4 June 2010 amending and supplementing the Execution Code, available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=335151>.

⁵¹ Report on the establishment of local commissions for monitoring of detention facilities, available at <http://crim.org/wp-content/uploads/2016/05/2011-Formarea-CLMLD-ENG.pdf>.

⁵² Supra note 27.

⁵³ Article 24 of Law No 1349 of 17 October 1997:

b) shall have free access to institutions, organisations and undertakings, irrespective of the type of property, to public associations, to police commissioner's offices and their places of detention, to penitentiary institutions, to the provisional detention centers, to military units, to accommodation centers for immigrants or asylum seekers, to welfare, healthcare or psychiatric institutions, to special schools for minors with behavioral problems and to other similar institutions;

c) shall request and receive from the central and local public authorities, from the responsible persons from all levels the information, documents and materials required for the exercise of their duties;

c¹) shall have unlimited access to any information on the treatment and conditions of detention of the persons deprived of liberty;

d) shall receive explanations from the responsible persons from all levels on the issues that are to be clarified during the control process;

f) shall have unlimited meetings and private conversations, without any witnesses, and, where required, with the assistance of a translator, with the person held in the locations listed under point (b), and with any other person who, in his/her opinion, could provide useful information;

g) shall involve, when making preventive visits to the places where persons deprived of liberty are held or are likely to be held, independent specialists and experts from various fields, including legal advisers, doctors, psychologists, representatives of public associations.

2.5 Establishment and membership of Monitoring Commissions

It can be mentioned that Law No 235 of 13 November 2008 does not provide expressly for the method of establishment of the Monitoring Commissions, however the Article 3 para 1 of the same law vests local councils of second level of the administrative - territorial units with the power to establish Monitoring Commissions. The vesting of local authorities with the power to establish Monitoring Commissions is justified by several aspects, among which are:

- local authorities do not have duties and subordinated bodies for enforcing the measures or sentences with deprivation of liberty⁵⁴, therefore they are independent and unbiased as regards the interest in setting up some particular membership of the Monitoring Commissions;
- the location of detention facilities- although they are subordinated to central authorities, they are located and carry out their activity directly in the administrative - territorial units (e.g. provision of communal services, provision of education on the prison premises, development of programmes for reintegration in the society and preparation for release, and others);
- carrying out the activities of a detention centre in a community involves a certain degree of risk. Thus, the local administration is also interested in keeping order and safety in the community;
- the probability of a further settlement of former prisoners in the locality where the detention centre has been relocated.

At the same time, the local authority facilitates the establishment of the Monitoring Commissions by:

- approaching the public associations within the administrative - territorial unit concerned in order to bring forward the representatives of the civil society for their inclusion as members in the Monitoring Commissions⁵⁵;
- submitting applications by the local council for the position of member in the Monitoring Commissions after their prior coordination with the Ombudsperson's Office if public associations do not bring forward their own candidates;
- approving the membership of the Monitoring Commissions⁵⁶;
- issuing the identity badges attesting the membership of the Monitoring Commissions by the president of the second level administrative - territorial unit council;
- convening the first meeting of the Monitoring Commission within 5 days from the approval of its membership⁵⁷;
- providing free rooms to the Monitoring Commissions for their meetings.

In accordance with para 9 of the Rules on the activity of the Monitoring Commission regarding respect for human rights in detention facilities, the requests of the relevant local

⁵⁴ Article 14 of Law No 436 of 28 December 2006 on the local public administration, available at http://lex.justice.md/document_rom.php?id=C8E304A4:037190E8.

⁵⁵ Section 8 of the Regulation on the activity of the Monitoring Commission concerning respect for human rights in detention centers, as approved by Government Decision No 286 of 13 April 2009, available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=331293>

⁵⁶ Section 13, *idem*.

⁵⁷ Section 15, *idem*.

council for the appointment of members to the Monitoring Commissions are reviewed by the public associations in their General Assembly within 30 days. Thus, some public associations could hesitate to propose persons as members in the Monitoring Commissions for the reason that it is not appropriate to convene the general assembly meeting only for this reason.⁵⁸

Law No 235 of 13 April 2008 and Government Decision No 286 of 13 April 2009 do not provide for the powers of the local administration to refuse to include or to accept a candidate delegated by the public organisations. Thus, when issuing its decision to approve the membership of the Monitoring Commissions, the local council must check whether all the candidates meet the requirements, set out in Article 3 (3) of Law No 235 of 13 November 2008 in order to be qualified as a member. Among the three criteria defined by the law, the most difficult seems to be to identify "*the proper conduct in society*", which should essentially be a presumption actually, and the reasons behind this criterion must reside in the request made by the public association when the candidate is proposed. The same rule also provides for an additional criterion in order to qualify as a member of the Monitoring Commission, which is not directly related to the quality of the person, namely to be proposed "*by a public association that has been acting for 5 years, one of its statutory goals being to protect human rights*"⁵⁹. This provision is essentially positively purposed - to grant the right to select the members of the Monitoring Commissions to the public organisations with expertise in human rights protection. However, it can actually cause some hindrances in the establishment of Monitoring Commissions. This is the case with the administrative - territorial units where the number of active public organisations is not large and the notorious persons may be refused to be included in the membership of the Monitoring Commissions for the sole reason that the public organisations proposing them do not meet the requirement for the activity, as provided by the law.

The Monitoring Commissions consist of 7 members. This number could be considered excessive, including for financial reasons, for the administrative - territorial units where only one detention centre exists (e.g. police inspectorates). At the same time, it could be insufficient in other administrative - territorial units where the number of detention facilities is larger, the number of detainees is large and therefore the workload of the Monitoring Commissions' could be very different. Seven members of the Monitoring Commissions seem to be definitely insufficient for Chisinau Municipality, where there are 6 penitentiary institutions⁶⁰ with a prison population of about 4 thousand⁶¹, 7 provisional detention facilities in police inspectorates, military establishments, a psychiatric hospital, and others.

Pursuant to Article 3 (3) of Law No 235 of 13 November 2008, the interested organisations are to dispatch the following to the attention of the local councils: (1) the written consent of the candidates' acceptance of the position of member in the Monitoring Commissions, (2) their curriculum vitae and (3) other relevant information. As regards the

⁵⁸ Report on the amendment of the law providing for the establishment and functioning of Local Detention Monitoring Commissions, available at <http://crim.org/wp-content/uploads/2016/05/2011-Modificare-legisla%C8%9Bie-formare-si-functionare-CLMLD-ENG.pdf>.

⁵⁹ Article 3 (3) of Law No 235 of 13 November 2008.

⁶⁰ Penitentiary no 4 - Cricova, Chisinau municipality; Penitentiary no 9-Pruncul, Chisinau municipality; Penitentiary no 10 - Goian, Chisinau municipality; Penitentiary no 13-Chișinău, Chisinau municipality; Penitentiary no 15 - Cricova, Chisinau municipality; Penitentiary no 16-Pruncul, Chisinau municipality.

⁶¹ The statistics of the prison population is available on the web page of the Penitentiary Department of the Ministry of Justice, available only in Romanian at <http://penitenciari.gov.md/ro/statistica>.

last provision, the law does not indicate the kind of information and the criteria that are to be applied to the appointed person or the human rights protection organisation.

When the local councils issue the decisions to approve the membership of the Monitoring Commissions, they must check whether the proposed persons are not incompatible with the requirements to the position of a member. Article 3 (6) of Law No 235 of 13 November 2008 provides that the following persons may not be members of Monitoring Commissions:

- persons holding public positions;
- public officials;
- judges and prosecutors;
- employees under special rules for national defence Commissions, state security and public order;
- attorneys, notaries and mediators.

Pursuant to the provisions of Article 4 of Law No 235 of 13 November 2008:

a) the position of member shall be suspended where:

- a final court judgment has been issued to sanction the Monitoring Commission member with remand in contraventional arrest - during his/her serving of the imprisonment sentence;
- criminal proceedings have been initiated with regard to the Monitoring Commission member - until the criminal trial has come to an end, until prosecution has ceased with regard to his/her person or until the court judgment has remained final as regards the acquittal of that person;
- the person concerned has been enrolled for military service for the full period, for reduced period, or for civil (alternative) service - during the service, and

b) the position of member shall cease in the following cases:

- the term of office has expired;
- resignation;
- the physical death or the judicial confirmation of the person's death;
- the natural person has been declared unable or with limited ability to act;
- a final court judgment has been issued for conviction or for the application of medical constraint measures;
- the Commission member has been declared missing - as of the date when the final court judgment has been issued.

2.6 Functioning of Monitoring Commissions

The Monitoring Commission is chaired by its president, who is assisted by a vice-president. The secretarial works are performed by the Commission secretary, who is appointed by the president among the members of the Monitoring Commission. After the Monitoring Commission has been established, the Local Council shall convene the first meeting of the Commission within 5 days, to elect the president and the vice-president of the Monitoring Commission. Article 7 of Law No 235 of 13 November 2008 provides for the need to have a qualified majority of two-thirds of the Commission's members for the election of the president and the vice-president. Pursuant to Article 7(3) of Law No 235 of 13

November 2008, the activity of the Monitoring Commission is performed through its meetings and monitoring visits.

Meetings of the Monitoring Commission

The meeting of the Monitoring Commission is convened by its President at least once a month⁶² and they are deliberative if the majority of the members take part in them. The Monitoring Commission Secretary is responsible for convening the Commission members.

The meetings of the Monitoring Commission can be public or behind closed doors. The closed meetings are held only if there is a need to prevent disclosure of personal data, information related to private life, to honour, to dignity, or under other circumstances that could prejudice the interests of detainees, public order or morality, as well as other information the disclosure of which is prohibited under the law⁶³. Thus, not all the topics on the agenda of the meeting of the Monitoring Commission can be reviewed in closed meeting, and the reports of the Commission must be made public in all cases.

The decisions on the topics debated at the meeting are adopted with the vote of the majority of members present at the meeting and are recorded in the minutes of the meeting.

The Monitoring Commission Secretary prepares the minutes of the meeting. The minutes are drawn up within 7 days from the time of the meeting and must be signed by the President of the Monitoring Commission and its Secretary. The minutes of the meeting of the Monitoring Commission must include⁶⁴:

- the agenda;
- the date, time and place of the meeting of the Monitoring Commission;
- data on the attending parties, on the absent members and on the invited persons who were not present at the meeting of the Monitoring Commission;
- the speeches of the persons attending the meetings;
- the decisions approved by the Monitoring Commission;
- the separate opinions of the Monitoring Commission members, if any;
- other relevant information found during the meeting, such as that drawn from the responses of the authorities, the complaints or referrals received etc.

According to their rights, petitioners, witnesses or representatives of the monitored authorities may be heard at the meetings of the Monitoring Commission. The Monitoring Commission may not request their forced summoning or the escorting of prisoners to the meeting. In all cases, the prisoners' claims or opinions are to be gathered during the visits and, if prisoners have some hesitation in submitting a written complaint/opinion, this fact must be recorded in the monitoring report by the Monitoring Group members, ensuring confidentiality, if required.

⁶² Section 21 of the Regulation on the activity of the Monitoring Commission concerning respect for human rights in detention centers, as approved by Government Decision No 286 of 13 April 2009.

⁶³ Section 23, *idem*.

⁶⁴ Section 25, *idem*.

Monitoring visits and reporting

The Monitoring Commission plans and approves the visit programme of detention facilities on a quarterly basis (hereinafter - monitoring programme). Law No 235 provides for the obligation of coordinating the monitoring programme with the higher-ranked body of the establishment to be monitored and to approve the annual action plan⁶⁵. The need to coordinate the monitoring programme emerges from the limited powers of the Monitoring Commissions compared to the power of the Ombudsperson or of the Consultative Council for the Prevention of Torture.

Law No 235 of 13 November 2008 does not exclude the possibility of unplanned visits made by the Monitoring Commissions. They must be justified by the occurrence of exceptional situations in the detention facility concerned and the consent of the higher-ranked body of the facility concerned must be obtained. Pursuant to Article 8 (3) of Law No 235 of 13 November 2008, the higher-ranked body may refuse to grant access to the facilities if there are any circumstances that could jeopardise the security of the facility or public safety. At the same time, Article 181 (j) of the Execution Code provides that the member of the Monitoring Commission is entitled to visit the detention facilities without any special permit.

Places of detention may be monitored after having shown the identity badges confirming the position of member of the Monitoring Commission and the monitoring permit issued by the President of the Commission, which lists the names of the persons designated to conduct the monitoring, the visit date and the establishment to be inspected. In the case of unexpected visits, access to the detention facility is allowed with a monitoring permit issued without a planned visit and coordinated by the higher-ranked leader of the establishment concerned. Moreover, in accordance with the monitoring programme, the members of the group are to make a statement addressed to the President of the Monitoring Commission regarding the absence of any conflicts of interests in respect of each monitoring visit. This fact is to be stated in the monitoring permit. The Monitoring Commission member may not monitor the cases involving the detention of persons with whom he/she is related by affinity or kinship to the fourth level inclusively, whose representative he/she is or was, and if that member is a victim, witness or another party to the criminal, civil or administrative trial, where the person deprived of liberty, who is subject to monitoring, has a legal standing⁶⁶.

According to the Article 9 of Law No 235 of 13 November 2008, the monitoring group may not consist of less than two members. At the same time, there is no maximum limit for the number of members in the group. If the monitoring is complex, the participation of all the members of the Monitoring Commission is justified.

The members of the monitoring group, according to the Article 9 of Law No 235 of 13 November 2008 must prepare a visit programme for each visit made. It must include the objectives defined, the activities planning such objectives, the identification of the information sources and the necessary support from the authorities, so that monitoring is carried out in an organised manner, expeditiously and with maximum efficiency. The visit programme must be differentiated from the Monitoring Programme. The last one is not a

⁶⁵ Article (7) (c) and Article 8 (2) of Law No 235 of 13 November 2008.

⁶⁶ Article 5 (1), *idem*.

permissive act and does not require prior coordination with the administration of the detention facility.

The monitoring visits, although planned, may not be made, and are suspended, during the special regime instituted in prisons. Pursuant to Article 220 of the Criminal Execution Code, suspension is applied for 24 hours by the head of the prison or for 30 days by the Ministry of Justice after having consulted the General Prosecutor's Office in the event of natural disasters, epidemic diseases, epizootic diseases, damage, mass disturbances, convicts' mass disobedience, hostage situations, external circumstances, war or other cases of force majeure endangering people's life or health. It is not clear from the provisions of Law No 235 of 13 November 2008 whether the members of the Monitoring Commission may make visits outside the daily work programme, on days off or on holidays.

The monitoring activity is completed in the form of reports prepared and published. Monitoring reports and the annual report of the Monitoring Commission are to be submitted to the Ombudsperson's Office and to the higher-ranked bodies of monitored establishments⁶⁷. The general annual report is to be prepared and properly submitted to the authorities by 20 January of the following year.

Monitoring reports or case reports are prepared after the visit of the monitoring group and are presented for review and approval at the meeting of the Monitoring Commission. Although the regulatory acts do not set out requirements regarding the structure and time limit for preparation, the monitoring report must include at least the following: the statement of the objectives established at the beginning of the control, the visiting method, the findings and the relevant evidence, the conclusions and recommendations of the Commission (including ascertainment or disapproval of complaints or referrals).

In order to finalise and to complete the report, the monitoring group shall request, if needed, until the meeting of the Monitoring Commission, additional explanations or information from the competent authorities or shall call the persons concerned for hearings. During the meeting of the Monitoring Commission, the content of the monitoring report is to be finalised by taking into account all the additional information reviewed during the meeting, and the final report is approved and remitted to the administration of the detention facility and, if needed, to the higher-ranked body of the facility concerned. The authorities ensuring the detention of persons have the obligation to review within 30 days the report submitted after the monitoring and to take action in order to remove the breaches found, informing the Monitoring Commission in writing thereof. According to the decision of the Monitoring Commission, the report may be dispatched to the Ombudsperson's Office.

Pursuant to Article 8 (8) of Law No 235 of 13 November 2008, the Monitoring Commission submits its reports and answers to the authorities concerned, to the international bodies authorised to inspect detention facilities in accordance with the international regulatory acts to which the Republic of Moldova is a party.

⁶⁷ Article 8 (7) of Law No 235 of 13 November 2008.

Funding of Monitoring Commissions

Article 10 (1) of Law No 235 of 13 November 2008 establishes the obligation of the State to fund “from the State budget” the monitoring of detention facilities, which is conducted by the civil society. However, the procedure for funding the Monitoring Commissions, which are neither legal persons nor budget executors, has not been defined. Thus, Monitoring Commissions may not be funded because the authority to whom the budgetary resources are to be allocated in order to make payments for the expenditure incurred with the work of the Commissions was not established. In this respect, Law No 235 of 13 November 2008 s needs to be amended with a provision whereby the Monitoring Commissions would be funded directly through the local public authorities so that the local public administration may receive the transfers needed to fund the operational expenditure of Monitoring Commissions from the State budget pursuant to Law No 847 of 24 May 1996 on the budgetary system and process⁶⁸.

Law No 235 of 13 November 2008 does not define expressly the expenses required for the activity of the Monitoring Commissions, but it is only limited to stating that the expenses incurred with the activities of the Monitoring Commissions are funded from the State budget and that the local public administration authorities provide the Monitoring Commissions with free spaces for their meetings following a written request. Such ambiguities are likely to seriously affect the activity of the Monitoring Commissions because the expenses required for travelling to the places of detention are not limited only to the places where these Commissions hold their meetings.

⁶⁸ Law No 847 of 24 May 1996 on the budgetary system and process, available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=328230>.

III. The activity of Monitoring Commissions

Starting from 2009 the civil society organizations implemented several projects to encourage local public administration, detention institutions and the civil society organizations to establish Monitoring Commissions at rayon level. Since 2015, there is no information with regard to the activity of any Monitoring Commissions. The latest activities carried out by civil society organizations with the support of the donor community to establish or revival of the Monitoring Commissions were in 2013. The last remarks on the activities of the Monitoring Commissions were in the report of the Human Rights Centre of 2010⁶⁹ (the predecessor of the Ombudsperson's Office).

Regarding the reports of the Monitoring Commissions, the Human Rights Centre stated in its report of 2010 that the information concerning organisation and the reports prepared after the visits were not submitted by all second level local public authorities or Monitoring Commissions, and that the information received was incomplete or contrary to the legal requirements in force⁷⁰. The report also makes reference to the training activities performed by the Human Rights Centre in a few districts with regard to ensuring the required conditions for exerting civil control, as provided by the law.

The reports of the Centre for Human Rights on Respect for Human Rights in the Republic of Moldova for the years 2011 - 2014 do not mention anything about the activity of the Monitoring Commissions and their interaction with the ombudsman. The reports of the Human Rights Centre refer also to the opportunity of activating Monitoring Commissions within the Ombudsperson's Office as support and consulting entities of the National Mechanism for Prevention of Torture. Otherwise, Monitoring Commissions shall remain unsustainable entities.

During the years 2009 - 2013, civil society organisations implemented projects pertaining to the enhancement of the effective implementation of the Law No 235 of 13 November 2008 and the strengthening of the capacity of Monitoring Commissions⁷¹. The projects were purposed to assist in the establishment, functioning and efficiency of the Monitoring Commissions, as well as in the strengthening of the capacity of Commissions when monitoring the places of detention. It was aimed at supporting the development of Monitoring Commissions into active and effective torture-prevention and human rights mechanisms at the local level. Consequently, several activities had been performed, such as

⁶⁹ Report on human rights observance in the Republic of Moldova in 2010, available at http://ombudsman.md/sites/default/files/document/attachments/raport_2010_cpdom_en_.pdf.

⁷⁰ Page 134, *idem*.

⁷¹ The project entitled "*Contribution to the functioning of the Monitoring Commissions concerning respect for human rights in detention centers*", which was implemented by the Human Rights Institute and funded by the EU and co-funded and implemented by the United Nations Development Programme; the projects entitled "*Strengthening the capacity of local detention monitoring Commissions*" and "*Conditions of detention and monitoring in Moldova: updating the activity of local detention monitoring Commissions*", implemented by the OSCE Mission in Moldova in partnership with the Human Rights Institute in Moldova; the project entitled "*Contribution to the strengthening of the managing capacity of Local Detention Monitoring Commissions*", implemented by the Community Justice Centre in Chisinau with the financial support of the Institute for Penal Reforms and ICCO.

the analysis of the legislative framework for the establishment and activity of Monitoring Commissions⁷² and trainings for the Commissions members.

The first training activities under the Law No 235 of 13 November 2008 were carried out in 2010. Over 50 representatives of the civil society organisations and local public administration attended the information seminars organized by the Moldovan Institute for Human Rights (hereinafter referred to as MIHR). The representatives of the district police commissioner's offices and of the Department of Penitentiary Institutions did not attend. Attendants were informed about:

- The procedure for informing public associations on bringing forward the civil society representatives for reviewing the possibility to include them in the membership of the Monitoring Commissions.
- The procedure for the establishment and activity of the Monitoring Commissions.
- The position of a member in the Monitoring Commissions.
- The incompatibility of the members of the Monitoring Commissions.
- The dismissal from the Monitoring Commission.
- The powers of the Monitoring Commission.
- The organisation of the Monitoring Commissions' activity.
- The valorisation of the monitoring outputs.
- Relevant national and international standards⁷³.

Following the trainings, assistance was provided by MIHR to the representatives of the civil society in four districts⁷⁴ and the police commissioner's office in Ocnita in the establishment of local detention Monitoring Commissions. Subsequently, under a decision of the district councils of Soroca, Falesti⁷⁵, and Soldanesti the first Monitoring Commissions were set up. In 2011 being contacted with regard to the implementation of the Law No 235 of 13 November 2008, nine district councils⁷⁶ responded that no Monitoring Commissions shall be established because there are no places of detention within the jurisdiction of their territorial - administrative units⁷⁷.

Six Monitoring Commissions had begun establishment procedures in 2011 (of which two were completed). Older Monitoring Commissions became more active, initiating more visits and reports after receiving in-depth training from the above mentioned project

⁷² Guidelines "Local Monitoring Commissions for Places of Detention, available at <http://crjm.org/wp-content/uploads/2015/09/2010-Ghid-Comisii-locuri-detentie.pdf>; "Report on the establishment of local detention monitoring Commissions", available at <http://crjm.org/wp-content/uploads/2016/05/2011-Formarea-CLMLD-ENG.pdf>; "Report on the amendment of the legislation providing for the establishment and functioning of local detention monitoring Commissions", available at <http://crjm.org/wp-content/uploads/2016/05/2011-Modificare-legisla%C8%9Bie-formare-si-functionare-CLMLD-ENG.pdf>.

⁷³ This was mentioned while interviewing the representative of the OSCE Mission to Moldova.

⁷⁴ Districts of Leova, Nisporeni, Soroca and Causeni.

⁷⁵ In the case of Floresti District, representatives of the local public administration, of the police and the Public Prosecution Service were also included as members in the Monitoring Commissions. During a joint visit made under this composition, the District Council of Floresti decided to improve the conditions of detention from the police commissioner's office by allocating MDL 50 000.

⁷⁶ District Councils of Donduseni, Glodeni, Ungheni, Anenii-Noi, Ialoveni, Cimislia, Stefan Voda, Criuleni and Straseni.

⁷⁷ Please note that in these districts, there were functional preventive detention facilities at that time within police commissioner's offices.

experts. More local public administrations, likewise, initiated proper and transparent appointment procedures in compliance with the law after participating in the above mentioned project activities. Building upon these initial successes, projects implemented by few NGOs (such as MIHR, Institute for Penal Reforms, Community Justice Centres) continued their activities, such as awareness-raising roundtables in other regions where Monitoring Commissions had not been established yet. Also, activities on the writing of monitoring reports, and roundtables to facilitate better communication and collaboration between the Monitoring Commissions and the Centre for Human Rights were carried out.

The training activities intended for training and/or strengthening the activities of Monitoring Commissions continued during the years 2011 - 2013⁷⁸.

Particularly, in 2012, a series of roundtable meetings were carried out by the MIHR in the framework of a yearlong project. The purpose of these roundtable meetings was to support the development of Monitoring Commissions and provide a platform for representatives of local administrations and civil society to discuss the collaboration needed at the local level to establish Monitoring Commissions⁷⁹. During these activities 9 roundtables/meetings with local authorities and local NGOs had been conducted in the regions where the Monitoring Commissions had not been created (Ialoveni, Hincesti, Cimislia, Drochia, Glodeni, Ungheni, Stefan Voda, Donduseni and Cantemir) and regional trainings had been organized in Cahul, Soroca and Orhei districts for members of Monitoring Commissions, potential members and responsible authorities for the creation of the commissions. Finally, 45 members of Monitoring Commissions, potential members and responsible authorities for the creation of the commissions from different regions of Moldova had participated in all those three trainings organized in Cahul, Soroca and Orhei districts.

As a result, the following places of detention had been monitored by the Monitoring Commissions during the project implementation:

- Regional Police Commissariats: Cahul, Soroca⁸⁰ and Orhei;
- Penitentiary Institutions: Prison no. 5 from Cahul, Prison no. 6 from Soroca and Prison no. 18 from Branesti, Orhei;
- Psychiatric Institutions: Psycho-neurological Boarding School from Badiceni (Soroca) and Internat for children with mental disabilities (boys) from Orhei.

According to the Report on the establishment of Monitoring Commissions for places of detention of 2013 developed within the project „*Strengthening the capacities of local commissions for monitoring the places of detention*”, implemented by the OSCE Mission to Moldova in partnership with the MIHR⁸¹, Monitoring Commissions were set up in most of

⁷⁸ For example, the activities of the Community Justice Centre in Chisinau, available at <https://justitiecomunitara.wordpress.com/category/activitati/comisia-locala-de-monitorizare-a-locurilor-de-detentie/>; the activities of the Community Justice Centre in Cahul, available at <https://cjccahul.wordpress.com/>, etc.

⁷⁹ For the more details see at <http://www.osce.org/moldova/97121>; <http://www.osce.org/moldova/97127>; <http://www.osce.org/moldova/96461>; <http://gazetadesud.md/locurile-de-detentie-monitorizate-de-societatea-civila/>

⁸⁰ For the more details see at <http://www.penitenciar.gov.md/ro/content/exper%C5%A3ii-misiunii-osce-%C5%9Fi-idom-au-efectuat-o-vizit%C4%83-de-lucru-la-penitenciarul-nr6-soroca>.

⁸¹ Report on the establishment of local Monitoring Commissions for detention centers, available at <http://crjm.org/wp-content/uploads/2016/05/2011-Formarea-CLMLD-ENG.pdf>.

the administrative - territorial units. The Monitoring Commissions in the districts of Edinet, Calarasi, Taraclia and Cahul requested the advice of the Human Rights Centre on the membership of the Monitoring Commissions. At the end of 2013, a draft decision was issued by the District Council of Straseni for the establishment of the Monitoring Commission. In the Districts of Orhei, Singerei, Cantemir Criuleni and Ialoveni no Monitoring Commissions were established. The justification of the management of these districts was that there were no detention facilities within their territories, where persons deprived of their liberty could be held. The Center for Human Rights received no reports from the established Monitoring Commissions in 2013.

Under the project implemented by MIHR and funded by the OSCE Mission to Moldova in 2014, the representatives of the organisation, together with some representatives of the Monitoring Commissions, made 11 visits to the penitentiary institutions, psychiatric institutions and provisional detention facilities in the districts of Falesti, Riscani, Causeni, Rezina, Edinet, Telenesti, Leova, Nisporeni, Soroca (2 visits) and Cahul.

Since 2015 there is no data on the activities carried out by the Monitoring Commissions or on the efforts of the local public administration to establish such commissions in the districts.

On 26 October, 2015, the Council of Europe Office in Chisinau sent a number of requests to the relevant authorities in order to receive information on the activity and documents prepared by the Monitoring Commissions. In the absence of recently available information, the institutions, as well as most of the local authorities (except for Leova District, Briceni and Balti Municipality) did not provide the requested data. Nevertheless, on 11 December 2015, following the dispatch of the request for information, a decision was made at a meeting of the Municipality Council of Balti to inform the public associations of the intention to establish the Monitoring Commission. No recent information is available in this respect.

Considering abovementioned and the lack of comprehensive data and information regarding the functioning of Monitoring Commissions, the efficiency and functionality thereof can be assessed as insufficient. The need for having Monitoring Commissions should be considered by local and central levels of authorities, with consideration of mandate and functioning of Ombudsperson Institution and National Preventive Mechanism against Torture. The proper execution of the law on the activity of Monitoring Commissions should to be ensured if their local operation is deemed necessary. Otherwise, the existence of a law that is not applied is not justified.

Recommendations

Recommendations to be addressed to central authorities

1. To consult local authorities and public associations, in cooperation with Ombudsperson, on whether the Monitoring Commissions are a relevant mechanism for them in their activities relating to the protection of human rights.
2. To consult the local authorities on the opportunity of establishing Monitoring Commissions in the districts where they have not been formed or where they were established, however not functioning efficiently.
3. To amend the legislative framework in order to ensure the effective functioning of the Monitoring Commissions and to exclude the ambiguities with other legal provisions in force (as specified below).
4. To provide the financial support required for the proper activity of Monitoring Commissions.
5. To monitor the effectiveness of Law No 235 of 13 November 2008 and to ensure proper and full application thereof.

Recommendations to be addressed to the Ombudsperson institution

1. To establish formal cooperation between the Ombudsperson's office and the Monitoring Commissions in the second level administrative - territorial units, where they have been set up.
2. To the extent possible, to support strengthening capacities of the already established Monitoring Commissions by trainings and providing advice in the preparation of monitoring reports, as well as to provide support for conducting monitoring visits if requested.

Recommendations to be addressed to local authorities

1. To start a social dialogue with the representatives of the civil society on the establishment of Monitoring Commissions.
2. To organise transparent competitions for the selection of members to the Monitoring Commissions and to establish Monitoring Commissions.
3. To provide logistical support required for the activity of the Monitoring Commissions.

Recommendations to be addressed to the civil society organisations and the members of the Monitoring Commissions

1. To increase efforts at local level in order to establish and ensure the efficient functioning of the Monitoring Commissions.
2. To request the support needed for the activity of the Monitoring Commissions from the central and local authorities, the Ombudsperson, the Council for Prevention of Torture and the development partners of the Republic of Moldova (donor community).

Recommendations to amend Law No 235 of 13 November 2008

1. To establish expressly who is empowered to notify on the incompatibility of the members of the Monitoring Commissions, the competent authority for ascertaining the cases of incompatibility and ruling on the suspension or termination of the membership of the Monitoring Commission.
2. To amend Article 3 (2) with a view, that local council should be provided with the right to decide on the number of members of the Monitoring Commissions depending on the number of detention facilities or prisoners in the concerned administrative - territorial unit.
3. To amend Article 3 (3) by excluding the limitation of the possibility of recently set-up public associations to participate in the establishment of the Monitoring Commissions if they have members with extensive experience in the monitoring and protection of human rights.
4. To amend Article 6 by setting out the obligations of the Monitoring Commissions' members and providing that the members of the Monitoring Commission have unrestricted access within the daily work programme of the monitored establishment, having the right to use the necessary equipment in order to assess the conditions of detention or to achieve other monitoring purposes, without needing any special permit from the detention centre administration.
5. To amend Article 8 (1) by excluding the ambiguities arising from the use of the phrase "place of detention". The local authorities, the Ministry of Justice and the Parliament are to agree on the powers to be exercised by the Monitoring Commissions only at the level of the detention facilities (namely, imprisonment under the criminal law or under the contravention code and sentences) or in all the places of detention within the meaning of Law No 52 of 3 April 2014 on the Ombudsperson.
6. To include in Article 8 (3) provisions on the access of the monitoring group members right after the cessation or removal of the circumstances underlying the refusal of the access during ad-hoc visits.
7. To supplement Article 8 with provisions relating to the immediate notification of the Ombudsperson, members of the Council for Prevention of Torture and Prosecutor's Office on the findings of serious breaches of the prisoners' rights.
8. To establish the mandatory mechanism for the monitored establishments to file objections to the reports of the Monitoring Commissions. Subsequently, to publish the final report and the objections of the monitored institution.
9. To supplement the provisions of Article 10 by including the possibility of ensuring funds for the Monitoring Commissions through the executive bodies of the local public authorities. Thus, pursuant to the provisions of Law No 847 of 24 May 1996 on the budgetary system and process, local authorities shall plan the budgetary expenditure and shall receive transfers from the State budget in order to fund the operational expenditure of the Monitoring Commissions.

Recommendations to amend the Regulation on the activity of the Monitoring Commission

1. To corroborate the similar provisions in the Regulation with the provisions of Law No 235 of 13 November 2008, in particular Section 6 (b), (d), (f) and (g).

2. To supplement the provisions of Section 8 with guarantees to ensure transparency in the establishment of the Monitoring Commission, such establishment being organised on the basis of a public competition based on merits.
3. To repeal the provisions of Section 9 on the requirements for the public associations to follow complicated procedures for the selection of candidates as members in the Monitoring Commissions.
4. To complete Section 18 (g) with a provision requiring that the reports prepared after the monitoring visits to be dispatched to the monitored institutions.
5. To supplement Section 21 with provisions on the regularity of meetings and the obligation to publish in advance the draft agenda of the Monitoring Commission.
6. To amend the provisions of Section 23 by specifying the secret nature of the debates of the Monitoring Commission only in respect of the topics which are protected by the legal provisions, not of the entire meeting. To provide expressly for the obligation to publish the reports of the Monitoring Commission in all cases.

Oficiul Consiliului Europei la Chișinău
Council of Europe Office in Chisinau
Bureau du Conseil de l'Europe à Chisinau



No. 1326

Chisinau, 26 octombrie 2015

Stimată doamna Glavan,

Oficiul Consiliului Europei la Chișinău (CoE) prezintă salutul său Ministerului Sănătății din Republica Moldova și are plăcerea de a vă informa cu privire la implementarea Proiectului Consiliului Europei "Susținerea reformei justiției penale în Republica Moldova", finanțat de Guvernul Regatului Danemarcei (în continuare proiectul SRJP MD).

Proiectul va fi implementat în următorii doi ani și jumătate și va cuprinde trei obiective specifice: primul obiectiv specific constă în susținerea dezvoltării cadrului legal nou cu privire la procuratură și a reformei sale instituționale; al doilea obiectiv specific este de a consolida capacitățile Instituției Ombudsmanului și ale Mecanismului Național de Prevenire a Torturii conform standardelor internaționale; și al treilea obiectiv specific este consolidarea capacităților și a cadrului legal privind prevenirea rețelilor tratamente.

După cum cunoașteți, conform prevederilor *Regulamentului cu privire la activitatea Comisiei de monitorizare a respectării drepturilor omului în instituțiile care asigură detenția persoanelor*, aprobat prin Hotărârea Guvernului nr. 286 din 13 aprilie 2009 (care vine să execute prevederile alin. (1) art. 7 din Legea nr. 235-XVI din 13.11.2008 *privind controlul civil asupra respectării drepturilor omului în instituțiile care asigură detenția persoanelor*) urmau a fi înstituite Comisiile de Monitorizare a respectării drepturilor omului în instituțiile care asigură detenția persoanelor (în continuare Comisii) în fiecare unitate administrativ-teritorială de nivelul doi, unde există instituții care asigură detenția persoanelor.

Având în vedere aceste prevederi, Consiliul Europei și-a propus, în cadrul celui de-al treilea obiectiv al proiectului SRJP MD, să efectueze o evaluare a activității și eficienței acestor Comisii.

Astfel, pentru o evaluare amplă a funcționalității lor, Oficiul Consiliului Europei din Chișinău solicită respectuos asistența dumneavoastră în facilitarea accesului la informația privind data, componența, programele de monitorizare și conținutul rapoartelor elaborate de membrii Comisiilor, care au monitorizat instituțiile din subordinea Ministerului Sănătății.


Pentru orice întrebări, vă rog să o contactați pe Lucia Popescu, coordonator de proiect/consultant juridic local (tel. +373 22 888900, e-mail: Lucia.POPESCU@coe.int)

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Oficiul Consiliului Europei la Chișinău folosește acest prilej pentru a reînnoi asigurarea înaltei sale considerațiuni.

Cu respect,



Jose-Luis Herrero
Șeful Oficiului Consiliului Europei
în Chișinău

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Oficiul Consiliului Europei la Chișinău
Council of Europe Office in Chisinau
Bureau du Conseil de l'Europe à Chisinau



No. 1327

Chisinau, 26 octombrie 2015

Stimate domnule Buga,

Oficiul Consiliului Europei la Chișinău (CoE) prezintă salutul său Ministerului Muncii, Protecției Sociale și Familiei din Republica Moldova și are plăcerea de a vă informa cu privire la implementarea Proiectului Consiliului Europei "Susținerea reformei justiției penale în Republica Moldova", finanțat de Guvernul Regatului Danemarcei (în continuare proiectul SRJP MD).

Proiectul va fi implementat în următorii doi ani și jumătate și va cuprinde trei obiective specifice: primul obiectiv specific constă în susținerea dezvoltării cadrului legal nou cu privire la procuratură și a reformei sale instituționale; al doilea obiectiv specific este de a consolida capacitățile Instituției Ombudsmanului și ale Mecanismului Național de Prevenire a Torturii conform standardelor internaționale; și al treilea obiectiv specific este consolidarea capacităților și a cadrului legal privind prevenirea relelor tratamente.

După cum cunoașteți, conform prevederilor *Regulamentului cu privire la activitatea Comisiei de monitorizare a respectării drepturilor omului în instituțiile care asigură detenția persoanelor*, aprobat prin Hotărârea Guvernului nr. 286 din 13 aprilie 2009 (care vine să execute prevederile alin. (1) art. 7 din Legea nr. 235-XVI din 13.11.2008 *privind controlul civil asupra respectării drepturilor omului în instituțiile care asigură detenția persoanelor*) urmau a fi instituite Comisiile de Monitorizare a respectării drepturilor omului în instituțiile care asigură detenția persoanelor (în continuare Comisii) în fiecare unitate administrativ-teritorială de nivelul doi, unde există instituții care asigură detenția persoanelor.

Având în vedere aceste prevederi, Consiliul Europei și-a propus, în cadrul celui de-al treilea obiectiv al proiectului SRJP MD, să efectueze o evaluare a activității și eficienței acestor Comisii.

Astfel, pentru o evaluare amplă a funcționalității lor, Oficiul Consiliului Europei din Chișinău solicită respectuos asistența dumneavoastră în facilitarea accesului la informația privind data, componența, programele de monitorizare și conținutul rapoartelor elaborate de membrii Comisiilor, care au monitorizat instituțiile din subordinea Ministerului Muncii, Protecției Sociale și Familiei.

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Oficiul Consiliului Europei la Chișinău folosește acest prilej pentru a reînnoi asigurarea înaltei sale considerațiuni.

Cu respect,



Jose-Luis Herrero
Șeful Oficiului Consiliului Europei
în Chișinău

Mircea Buga,
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Oficiul Consiliului Europei la Chișinău
Council of Europe Office in Chisinau
Bureau du Conseil de l'Europe à Chisinau



No. 1328

Chisinau, 26 octombrie 2015

Stimate domnule Balan,

Oficiul Consiliului Europei la Chișinău (CoE) prezintă salutul său Ministerului Afacerilor Interne din Republica Moldova și are plăcerea de a vă informa cu privire la implementarea Proiectului Consiliului Europei "Susținerea reformei justiției penale în Republica Moldova", finanțat de Guvernul Regatului Danemarcei (în continuare proiectul SRJP MD).

Proiectul va fi implementat în următorii doi ani și jumătate și va cuprinde trei obiective specifice: primul obiectiv specific constă în susținerea dezvoltării cadrului legal nou cu privire la procuratură și a reformei sale instituționale; al doilea obiectiv specific este de a consolida capacitățile Instituției Ombudsmanului și ale Mecanismului Național de Prevenire a Torturii conform standardelor internaționale; și al treilea obiectiv specific este consolidarea capacităților și a cadrului legal privind prevenirea relelor tratamente.

După cum cunoașteți, conform prevederilor *Regulamentului cu privire la activitatea Comisiei de monitorizare a respectării drepturilor omului în instituțiile care asigură detenția persoanelor*, aprobat prin Hotărârea Guvernului nr. 286 din 13 aprilie 2009 (care vine să execute prevederile alin. (1) art. 7 din Legea nr. 235-XVI din 13.11.2008 privind controlul civil asupra respectării drepturilor omului în instituțiile care asigură detenția persoanelor) urmau a fi instituite Comisiile de Monitorizare a respectării drepturilor omului în instituțiile care asigură detenția persoanelor (în continuare Comisii) în fiecare unitate administrativ-teritorială de nivelul doi, unde există instituții care asigură detenția persoanelor.

Având în vedere aceste prevederi, Consiliul Europei și-a propus, în cadrul celui de-al treilea obiectiv al proiectului SRJP MD, să efectueze o evaluare a activității și eficienței acestor Comisii.

Astfel, pentru o evaluare amplă a funcționalității lor, Oficiul Consiliului Europei din Chișinău solicită respectuos asistența dumneavoastră în facilitarea accesului la informația privind data, componența, programele de monitorizare și conținutul rapoartelor elaborate de membrii Comisiilor, care au monitorizat instituțiile din subordinea Ministerului Afacerilor Interne.

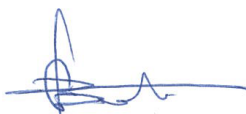
Pentru orice întrebări, vă rog să o contactați pe Lucia Popescu, coordonator de proiect/consultant juridic local (tel. +373 22 888900, e-mail: Lucia.POPESCU@coe.int).

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Oficiul Consiliului Europei la Chişinău foloseşte acest prilej pentru a reînnoi asigurarea înaltei sale consideraţiuni.

Cu respect,



Jose-Luis Herrero
Şeful Oficiului Consiliului Europei
în Chişinău

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Oficiul Consiliului Europei la Chișinău
Council of Europe Office in Chisinau
Bureau du Conseil de l'Europe à Chisinau



No. 1329

Chisinau, 26 octombrie 2015

Stimate domnule Pînzari,

Oficiul Consiliului Europei la Chișinău (CoE) prezintă salutul său Departamentului Instituțiilor Penitenciare din Republica Moldova și are plăcerea de a vă informa cu privire la implementarea Proiectului Consiliului Europei "Susținerea reformei justiției penale în Republica Moldova", finanțat de Guvernul Regatului Danemarcei (în continuare proiectul SRJP MD).

Proiectul va fi implementat în următorii doi ani și jumătate și va cuprinde trei obiective specifice: primul obiectiv specific constă în susținerea dezvoltării cadrului legal nou cu privire la procuratură și a reformei sale instituționale; al doilea obiectiv specific este de a consolida capacitățile Instituției Ombudsmanului și ale Mecanismului Național de Prevenire a Torturii conform standardelor internaționale; și al treilea obiectiv specific este consolidarea capacităților și a cadrului legal privind prevenirea relelor tratamente.

După cum cunoașteți, conform prevederilor *Regulamentului cu privire la activitatea Comisiei de monitorizare a respectării drepturilor omului în instituțiile care asigură detenția persoanelor*, aprobat prin Hotărârea Guvernului nr. 286 din 13 aprilie 2009 (care vine să execute prevederile alin. (1) art. 7 din Legea nr. 235-XVI din 13.11.2008 *privind controlul civil asupra respectării drepturilor omului în instituțiile care asigură detenția persoanelor*) urmau a fi instituite Comisiile de Monitorizare a respectării drepturilor omului în instituțiile care asigură detenția persoanelor (în continuare Comisii) în fiecare unitate administrativ-teritorială de nivelul doi, unde există instituții care asigură detenția persoanelor.

Avînd în vedere aceste prevederi, Consiliul Europei și-a propus, în cadrul celui de-al treilea obiectiv al proiectului SRJP MD, să efectueze o evaluare a activității și eficienței acestor Comisii.

Astfel, pentru o evaluare amplă a funcționalității lor, Oficiul Consiliului Europei din Chișinău solicită respectuos asistența dumneavoastră în facilitarea accesului la informația privind data, componența, programele de monitorizare și conținutul rapoartelor elaborate de membrii Comisiilor, care au monitorizat instituțiile din subordinea Departamentului Instituțiilor Penitenciare.

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Oficiul Consiliului Europei la Chișinău folosește acest prilej pentru a reînnoi asigurarea înaltei sale considerațiuni.

Cu respect,



Jose-Luis Herrero
Șeful Oficiului Consiliului Europei
în Chișinău

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Oficiul Consiliului Europei la Chișinău
Council of Europe Office in Chisinau
Bureau du Conseil de l'Europe à Chisinau



No. 1330

Chisinau, 26 octombrie 2015

Stimate domnule Palihovici,

Oficiul Consiliului Europei la Chișinău (CoE) prezintă salutul său Secretarului General al Guvernului Republicii Moldova și are plăcerea de a vă informa cu privire la implementarea Proiectului Consiliului Europei "Susținerea reformei justiției penale în Republica Moldova", finanțat de Guvernul Regatului Danemarcei (în continuare proiectul SRJP MD).

Proiectul va fi implementat în următorii doi ani și jumătate și va cuprinde trei obiective specifice: primul obiectiv specific constă în susținerea dezvoltării cadrului legal nou cu privire la procuratură și a reformei sale instituționale; al doilea obiectiv specific este de a consolida capacitățile Instituției Ombudsmanului și ale Mecanismului Național de Prevenire a Torturii conform standardelor internaționale; și al treilea obiectiv specific este consolidarea capacităților și a cadrului legal privind prevenirea reținerii ilegale.

După cum cunoașteți, conform prevederilor *Regulamentului cu privire la activitatea Comisiei de monitorizare a respectării drepturilor omului în instituțiile care asigură detenția persoanelor*, aprobat prin Hotărârea Guvernului nr. 286 din 13 aprilie 2009 (care vine să execute prevederile alin. (1) art. 7 din Legea nr. 235-XVI din 13.11.2008 *privind controlul civil asupra respectării drepturilor omului în instituțiile care asigură detenția persoanelor*) urmau a fi instituite Comisiile de Monitorizare a respectării drepturilor omului în instituțiile care asigură detenția persoanelor (în continuare Comisii) în fiecare unitate administrativ-teritorială de nivelul doi, unde există instituții care asigură detenția persoanelor.

Având în vedere aceste prevederi, Consiliul Europei și-a propus, în cadrul celui de-al treilea obiectiv al proiectului SRJP MD, să efectueze o evaluare a activității și eficienței acestor Comisii.

Astfel, pentru o evaluare amplă a funcționalității lor, Oficiul Consiliului Europei la Chișinău solicită respectuos asistența dumneavoastră în facilitarea stabilirii întrevederilor cu membrii Comisiilor din Consiliile raionale, unde acestea au activat sau activează.

Pentru orice întrebări, vă rog să o contactați pe Lucia Popescu, coordonator de proiect/consultant juridic local (tel. +373 22 888900, e-mail: Lucia.POPESCU@coe.int).

Str. Vlaicu Pircalab 63,
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MD-2012 Chisinau
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(+373 22) 21 23 74
Fax: (+373 22) 20 23 05

Oficiul Consiliului Europei la Chișinău folosește acest prilej pentru a reînnoi asigurarea înaltei sale considerațiuni.

Cu respect,



Jose-Luis Herrero
Șeful Oficiului Consiliului Europei
în Chișinău

Serghei Palihovici,
Secretar General al Guvernului
Republicii Moldova

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Oficiul Consiliului Europei la Chișinău
Council of Europe Office in Chisinau
Bureau du Conseil de l'Europe à Chisinau



No. 1325

Chisinau, 26 octombrie 2015

Stimate domnule Cotorobai,

Oficiul Consiliului Europei la Chișinău (CoE) prezintă salutul său Avocatului Poporului din Republica Moldova și își exprimă aprecierea pentru colaborarea constructivă stabilită cu instituția dumneavoastră în cadrul Proiectului "Susținerea reformei justiției penale în Republica Moldova", finanțat de Guvernul Regatului Danemarcei (în continuare proiectul SRJP MD).

Unul din obiectivele specifice ale Proiectului SRJP MD constă în consolidarea capacităților și a cadrului legal privind prevenirea reținerii tratamentelor.

Astfel, după cum cunoașteți, conform prevederilor *Regulamentului cu privire la activitatea Comisiei de monitorizare a respectării drepturilor omului în instituțiile care asigură detenția persoanelor*, aprobat prin Hotărârea Guvernului nr. 286 din 13 aprilie 2009 (care vine să execute prevederile alin. (1) art. 7 din Legea nr. 235-XVI din 13.11.2008 *privind controlul civil asupra respectării drepturilor omului în instituțiile care asigură detenția persoanelor*) urmau a fi instituite Comisiile de Monitorizare a respectării drepturilor omului în instituțiile care asigură detenția persoanelor (în continuare Comisii) în fiecare unitate administrativ-teritorială de nivelul doi, unde există instituții care asigură detenția persoanelor.

Având în vedere aceste prevederi, Consiliul Europei și-a propus, în cadrul celui de-al treilea obiectiv al proiectului SRJP MD, să efectueze o evaluare a activității și eficienței acestor Comisii.

Astfel, pentru o evaluare amplă a funcționalității lor, Oficiul Consiliului Europei din Chișinău solicită respectuos asistența dumneavoastră în facilitarea accesului la informația privind data, componența, programele de monitorizare și conținutul rapoartelor elaborate de membrii Comisiilor, care au fost expediate în adresa Avocatului Poporului.

Pentru orice întrebări, vă rog să o contactați pe Lucia Popescu, coordonator de proiect/consultant juridic local (tel. +373 22 888900, e-mail: Lucia.POPESCU@coe.int).

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Oficiul Consiliului Europei la Chişinău foloseşte acest prilej pentru a reînnoi asigurarea înaltei sale consideraţiuni.

Cu respect,



Jose-Luis Herrero
Şeful Oficiului Consiliului Europei
în Chişinău

Mihai Cotorobai,
Avocatul Poporului
din Republica Moldova

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CANCELARIA DE STAT A REPUBLICII MOLDOVA

Nr. 1308-522

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Președinților de raioane
(conform listei)

Copie: **Ministerul Justiției,**
↳ **Oficiul Consiliului Europei**
la Chișinău

Vă remitem spre examinare demersul înaintat de șeful Oficiului Consiliului Europei la Chișinău, dl Jose-Luis Herrero (*se anexează*).

Astfel, în scopul evaluării activității Comisiilor de monitorizare a respectării drepturilor omului în instituțiile care asigură deținea persoanelor, ce urmau a fi instituite în unitățile administrativ-teritoriale de nivelul al doilea, în conformitate cu Hotărârea Guvernului nr.286 din 13.04.2009, rugăm să asigurați stabilirea întrevederilor membrilor acestor Comisii cu reprezentanții Oficiului în cauză.

Secretar general al Guvernului



Serghei PALIHOVICI

Ex. I. Prisăcaru
tel. 250483

Casa Guvernului,
MD-2033, Chișinău,
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MINISTERUL SĂNĂTĂȚII AL REPUBLICII MOLDOVA

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U.M.N. nr. 01-9/1809
La nr. _____ din _____

**Oficiul Consiliului Europei la
Chișinău
Str. Vlaicu Pîrcălab 63 et. 4**

Prin prezenta, Ministerul Sănătății comunică că Comisiile de monitorizare a respectării drepturilor omului în instituțiile care asigură detenția sînt instituite la nivelul autorității publice locale.

În conformitate cu Hotărîrea Guvernului nr. 397 din 31 mai 2015 pentru aprobarea Regulamentului privind organizarea și funcționarea Ministerului Sănătății, structurii și efectivului-limită ale aparatului central al acestuia, Ministerul Sănătății este autoritate publică centrală de specialitate, care elaborează politicile pentru domeniul sănătății.

Totodată, menționăm că pe lângă minister a fost instituită funcția de ombudsman responsabil de protecția drepturilor pacientului din instituțiile medicale psihiatrice, responsabil monitorizarea acestora, precum și de elaborarea rapoartelor în cauză.

Viceministru

Gheorghe ȚURCANU

Executor: Bîtea Diana
Tel. 268890

POPESCU Lucia

From: Gheorghe Bosii <gheorghe.bosii@gmail.com>
Sent: 20 November 2015 14:46
To: Lucia.POPESCU@coe.int
Cc: Ion
Subject: comisiile locale de monitorizare

Bună ziua Doamnă Lucia, Domnule Ion!!!

La solicitarea Dvs. nr. 1325 din 26.10.2015 despre oferirea informațiilor referitoare la activitatea comisiilor locale de monitorizare a locurilor de detenție, țin să Vă informez următoarele.

Oficiul Avocatului Poporului a privit cu mare atenție evoluția comisiilor civile de monitorizare a locurilor de detenție, instituite în baza Legii nr. 235 și care urma să activeze conform HG nr. 286 din 13.04.2009. Rolul acestor comisii a fost determinat de faptul accesului societății civile în locurile de detenție din raza de activitate a filialelor diferitor tipuri de asociații neguvernamentale, persoane civice activ, a persoanelor cu interes deosebit față de drepturile omului și societății democratice.

Spre mare regret activitatea acestor entități (comisii de monitorizare) de cele mai multe ori nu și-a găsit finalitatea din cauza diferitelor probleme care le-au întâmpinat. Și aici în primul rând vorbim de indeferența autorităților publice locale de nivelul II (consiliile raionale, primăria mun. Bălți, Primăria mun. Chișinău și Adunarea Populară a UTA Gagauzia) care nu și-au manifestat interesul privind activitatea comisiilor, nu au oferit sprijin financiar sau logistic în activitatea acestora.

Pe de altă parte în comisiile de monitorizare a căror componență am regăsit-o în urma interpelărilor efectuate se regăseau tot tipul de funcționari ai statului, care în principiu nu trebuiau incluși în aceste comisii. Dar chiar și în cazul constituirii comisiilor de monitorizare crearea acestora a fost făcută doar formal pentru a pune în executare legea, comisiile date în majoritatea unităților administrativ teritoriale terminându-și activitatea din momentul creării.

POPESCU Lucia

From: Gheorghe Bosii <gheorghe.bosii@gmail.com>
Sent: 20 November 2015 14:57
To: Lucia.POPESCU@coe.int
Cc: Ion
Subject: comisiile locale

Doamnă Lucia , Domnule Ion!

În final obligativitatea înaintării rapoartelor efectuate de comisiile de monitorizare atât în urma vizitelor, cât și a celor anuale nu s-a realizat. Astfel nici o comisie de monitorizare de când activează Legea nr. 235 nu a trimis nici un raport efectuat în urma vizitelor, cu atât mai mult un raport anual generalizat asupra activităților efectuate.

Acest fapt denotă că comisiile de monitorizare nu sunt entități viabile la moment, urmînd a analiza oportunitatea activității acestora în continuare. În special ar fi binevenită analizarea activității comisiilor în comun cu Consiliul pentru prevenire a torturii ce va activa pe lîngă (în cadrul) Oficiului Avocatului Poporului ca entități de suport și consultanță a Mecanismului Național de Prevenire a Torturii.

Așteptăm raportul de evaluare ce îl elaborați cu doleanța de a crea instituții eficiente și viabile în procesul de combatere a relelor tratamente.

Cu un mare respect și doleanță de colaborare fructuoasă în continuare.

Gheorghe Bosii

Consultant în Oficiul Avocatului Poporului.