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Meeting: 1514th meeting (December 2024) (DH)

Communication from NGOs (Promo-LEX Association, European Prison Litigation Network (EPLN) and NHRI the People's Advocate Office) (30/10/2024) concerning the I.D. group of cases v. the Republic of Moldova (Application No. 47203/06) and reply from the authorities (07/11/2024).

Information made available under Rules 9.2 and 9.6 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1514^e réunion (décembre 2024) (DH)

Communication d'ONG (Promo-LEX Association, European Prison Litigation Network (EPLN) and NHRI the People's Advocate Office) (30/10/2024) relative au groupe d'affaires I.D. c. République de Moldova (requête n° 47203/06) et réponse des autorités (07/11/2024) **[anglais uniquement]**

Informations mises à disposition en vertu des Règles 9.2 et 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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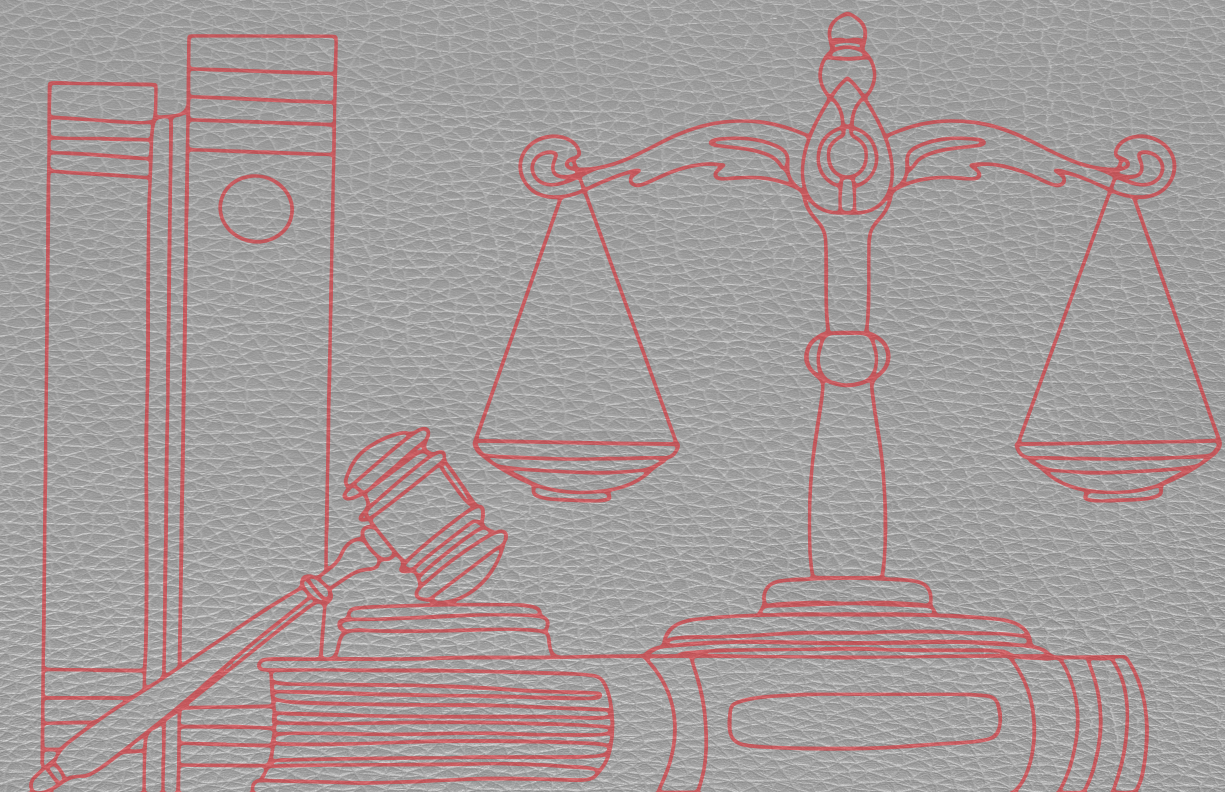
30 OCT. 2024

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

JOINT SUBMISSION

in accordance with Rule 9.2 of the Rules of the Committee
of Ministers for the supervision of the execution of
judgments and the terms of friendly settlements

Submitted on: October 25, 2024





Authors of the joint submission:

A. Promo-LEX

Promo-LEX Association is a non-governmental¹, not-for-profit, and politically independent human rights and advocacy organization established in 2002 and registered with the Ministry of Justice of the Republic of Moldova on July 19, 2002. Promo-LEX's Mission is to advance democracy in the Republic of Moldova through promoting and defending human rights and strengthening civil society. PromoLEX does its work through two Programs: Human Rights Program and Monitoring Democratic Processes Program

B. The People's Advocate Office (The Ombudsman institution)

The People's Advocate Office² is an autonomous institution, independent from any public authority, legal person, regardless of the property type and legal form of organization, and from any decision maker at all levels. The Ombudsman institution was established in 1998 originally as the Human Rights Center, which became the People's Advocate Office in 2014. The People's Advocate work is governed by the UN General Assembly Resolution no. 48/134 of December 20, 1993, the Principles relating to the Status of National Human Rights Institutions (the Paris Principles) and other international treaties in the field of human rights, as well as the Constitution and other laws of the Republic of Moldova.

C. EPLN (European Prison Litigation Network)

The European Prison Litigation Network (EPLN)³ is an international non-governmental organization (INGO) granted participative status with the Council of Europe. It was founded in 2013 by a group of NGOs, lawyers, and researchers active in the penitentiary field in different countries. The Network aims to strengthen the judicial protection of prisoners' fundamental rights in Europe.

¹ Promo-LEX Association. "Promo-LEX." Accessed October 24, 2024. <https://promolex.md/?lang=ro>.

² Ombudsman Office of the Republic of Moldova. "Ombudsman.md." Accessed October 24, 2024. <https://ombudsman.md/>.

³ European Prison Litigation Network. "European Prison Litigation Network." Accessed October 24, 2024. <https://www.prisonlitigation.org/>.

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I. DESCRIPTION OF THE CASE

1. This submission pertains to a group of cases concerning the Republic of Moldova's violation of several articles of the European Convention on Human Rights, as adjudicated by the European Court of Human Rights ("the Court"). The primary issues revolve around the poor material conditions of detention in facilities overseen by the Ministries of the Interior and Justice, as well as the detention facility of the National Anticorruption Centre. Specifically, the detainees have been subjected to inadequate living conditions and have lacked access to sufficient medical care, including specialized medical treatment, which constitutes a violation of Article 3 of the Convention (prohibition of inhuman or degrading treatment)⁴.
2. Moreover, the absence of effective domestic remedies to address these inadequacies has been identified as a violation of Article 13 of the Convention (right to an effective remedy). In the landmark judgment of *Shishanov v. Moldova*, delivered on 15 September 2015, the Court, invoking Article 46 of the Convention, explicitly directed the Moldovan authorities to promptly implement effective preventive and compensatory remedies, or a combination thereof, to redress the inadequate conditions of detention⁵.
3. Additionally, this group of cases highlights a lack of reasonable clarity regarding the discretion exercised by investigating authorities and courts in authorizing family visits for remand detainees, leading to a violation of Article 8 of the Convention (right to respect for private and family life). In particular, detainees have experienced arbitrary restrictions on family visits without a clear legal framework guiding such decisions.
4. Furthermore, in the case of *A.C. v. Moldova*, the Court found that the prison administration undertook actions intended to intimidate or dissuade the applicant from pursuing his application before the Court. These actions included conducting unwarranted searches of his cell, seizing personal belongings, and transferring him to another prison facility. Such conduct was deemed a violation of Article 34 of the Convention (right of individual petition), as it interfered with the applicant's ability to effectively present his case⁶.
5. The Committee of Ministers of the Council of Europe has actively monitored the execution of these judgments. At its 1443rd meeting held from 20 to 22 September 2022, the Committee noted that while supervision of individual measures in all cases had concluded—without prejudice to the necessity for general measures—significant concerns remained regarding the implementation of systemic reforms. Specifically, the Committee has encouraged the Moldovan authorities to ensure that domestic remedies are effectively applied in practice, particularly concerning the timeliness of examining detainees' complaints and the adequacy of monetary compensation awarded⁷.

⁴ European Court of Human Rights. *I.D. v. Republic of Moldova*. No. 47203/06. Judgment of November 30, 2010. Final judgment April 11, 2011. Pending, Enhanced Procedure. Accessed October 24, 2024. <https://hudoc.exec.coe.int/eng?i=004-13947>.

⁵ European Court of Human Rights. *Shishanov v. Republic of Moldova*. No. 11353/06. Judgment of September 15, 2015. Romanian translation by the Ministry of Justice of the Republic of Moldova. Accessed October 24, 2024. <https://hudoc.echr.coe.int/app/conversion/docx/?library=ECHR&id=001-163333&filename=CASE%20OF%20SHISHANOV%20v.%20THE%20REPUBLIC%20OF%20MOLDOVA%20-%20%5BRomanian%20Translation%5D%20by%20the%20Ministry%20of%20Justice%20of%20the%20Republic%20of%20Moldova.docx&logEvent=False>.

⁶ European Court of Human Rights. *A.C. v. Republic of Moldova*. No. 60450/13. Judgment of November 30, 2021. Final judgment November 30, 2021. Accessed October 24, 2024. <https://hudoc.exec.coe.int/eng?i=60450/13>.

⁷ Council of Europe, Ministers' Deputies. *Notes on the Agenda: 1443rd Meeting, 20-22 September 2022 (DH), Human Rights – I.D. Group v. Republic of Moldova (Application No. 47203/06), Supervision of the Execution of the European Court's Judgments*. CM/Notes/1443/H46-17, September 22, 2022. Accessed October 24, 2024. <https://hudoc.exec.coe.int/eng?i=CM/Notes/1443/H46-17E>.

6. Despite these directives, the authorities have yet to demonstrate substantial progress. Although legislative amendments and procedural guides have been introduced to enhance the compensatory remedy system, challenges persist. Courts have faced difficulties in adhering to statutory time limits for examining complaints, and the monetary compensation awarded has often been insufficient. Additionally, there remains a lack of information on the functioning of preventive remedies.
7. Prison overcrowding continues to be a critical issue, exacerbated by excessive application of pre-trial detention and low rates of conditional release. The overall prison population has not significantly decreased, and facilities such as Chişinău Prison No. 13 remain substantially overpopulated relative to their official capacities. While some infrastructural improvements have been made in certain prisons, the construction of new facilities, including the much-needed new prison in Chişinău, has experienced delays and setbacks.
8. Medical care in prisons remains inadequate, with deficiencies in both the availability and quality of medical services provided to detainees. Although some efforts have been made to accredit medical units and supply equipment, these measures have not sufficiently addressed the systemic issues identified by the Court.
9. The lack of clarity and consistency in authorizing family visits for remand detainees persists, with reports of arbitrary refusals and restrictions that have not been adequately remedied through the legal system. Additionally, the practices that led to the violation of Article 34 in the A.C. case have not been fully addressed, raising concerns about the protection of applicants' rights before the Court.
10. Non-governmental organizations, including the Promo-LEX Association and the European Prison Litigation Network, have submitted communications under Rule 9 highlighting ongoing concerns. These include prolonged delays in court proceedings related to detention conditions, insufficient compensation for violations, persistent overcrowding, and inadequate medical care. The NGOs have called for specific actions by the Moldovan authorities to comply with the Convention and the Court's judgments⁸.
11. In summary, this case reflects systemic failures by the Republic of Moldova to uphold its obligations under the European Convention on Human Rights, particularly concerning the treatment of detainees and the provision of effective legal remedies. The Moldovan authorities are urged to implement comprehensive reforms to address these violations and to comply fully with the judgments of the European Court of Human Rights.

Committee of Ministers' last examination and decisions

12. At its 1443rd meeting, held from 20 to 22 September 2022, the Committee of Ministers of the Council of Europe examined the execution of judgments concerning the Republic of Moldova's violations of the European Convention on Human Rights, specifically relating to poor conditions of detention, inadequate medical care, and the absence of effective domestic remedies. The examination focused on the cases of *I.D. v. Moldova* (Application No. 47203/06), *A.C. v. Moldova* (Application No. 60450/13), and *Talambuţa and Iaşcinina v. Moldova* (Application No. 23151/09)⁹.

⁸ Council of Europe, Ministers' Deputies. *1443rd Meeting (September 2022) (DH) - Rule 9.2 - Communication from NGOs (Promo-LEX Association and European Prison Litigation Network) in the Case of I.D. v. Republic of Moldova (Application No. 47203/06)*. DH-DD(2022)870, August 8, 2022. Accessed October 24, 2024. [https://hudoc.exec.coe.int/eng?i=DH-DD\(2022\)870E](https://hudoc.exec.coe.int/eng?i=DH-DD(2022)870E).

⁹ Agentul Guvernamental. "Talambuţa şi Iaşcinina v. Republica Moldova." Accessed October 24, 2024. <https://www.agentguvernamental.md/comunicate-de-presa/talambuta-si-iascinina-v-republica-moldova/>.

Individual measures

13. The Committee noted that the applicants in the cases of *Talambuța and Iașcinina* and *A.C.* had been released from detention and that the just satisfaction awarded by the European Court of Human Rights had been paid. Consequently, it concluded that no further individual measures were necessary in these cases.

General measures

14. Regarding the new domestic remedy to challenge poor conditions of detention, the Committee acknowledged that the compensatory remedy continues to be applied in practice and that the Moldovan authorities are keen to introduce amendments to enhance its efficiency. However, concerns were raised about the proposed legislative amendments, which exclude certain categories of detainees from claiming monetary compensation under the Code of Criminal Procedure, directing them instead to the general civil remedy. The Committee invited the authorities to explain the rationale behind this exclusion and to clarify whether the civil remedy would be compatible with the Convention's requirements, particularly regarding the length of proceedings and the rules governing the burden of proof.
15. The Committee emphasized the importance of the swift examination of detainees' complaints challenging poor detention conditions. It noted that delays persist, especially in courts with jurisdiction over multiple prisons, and encouraged the authorities to reduce these delays, including by increasing the number of investigating judges if necessary. The Committee reiterated its request for updated statistical data on the use of the compensatory remedy and information on the application of the preventive remedy.
16. Concerning prison overcrowding, the Committee expressed concern that, despite a slight decrease in the overall prison population in recent years, significant progress has not been achieved in reducing overcrowding. The prison population rate remains very high, reaching extreme levels in some facilities, notably Chișinău Prison No. 13. The Committee deplored that no action has been taken by the Moldovan authorities to develop a comprehensive strategy to address prison overcrowding, despite repeated invitations to do so. It urged the authorities to adopt such a strategy without further delay and strongly encouraged them to request expert assistance from the Council of Europe in this process.
17. In terms of measures to improve material conditions of detention, the Committee noted the information provided on maintenance and repair works in prisons but questioned whether these efforts are sufficient to ensure compliance with Article 3 of the Convention. It requested clarification on whether the repair works are based on a proper needs assessment and whether an inventory of the prison estate and its condition has been compiled for this purpose. Additionally, the Committee sought information on the budgetary resources invested in prison infrastructure in recent years and projections for future investments.
18. The Committee expressed regret over the lack of updated information regarding the construction of the new prison in Chișinău, intended to replace the outdated and overcrowded Chișinău Prison No. 13. Despite funding commitments from the Council of Europe Development Bank and the Moldovan government, significant delays have occurred. The Committee invited the authorities to provide information on relevant developments and to expedite the construction process.
19. Regarding medical assistance in detention, the Committee took note of the European Court's recent judgment in *Cosovan v. Moldova* (Application No. 13472/18)¹⁰, which identified systemic

¹⁰ Agentul Guvernamental. *Hotărârea Cosovan v. Republica Moldova*. Accessed October 24, 2024. <https://www.agentguvernamental.md/wp-content/uploads/2022/09/hotararea-Cosovan-v.-MDA-RO.pdf>.

shortcomings in the provision of medical care to detainees, constituting a violation of Article 3. These shortcomings include the lack of official accreditation for prison hospitals, absence of specialist doctors, logistical and financial challenges in transferring detainees to civil hospitals, detainees' lack of access to general medical insurance, subordination of prison doctors to penitentiary administration, and the unavailability of humanitarian release for seriously ill pre-trial detainees. Given the systemic nature of these issues, the Committee decided to separate matters related to medical care from the present group of cases and to examine them separately under the *Cosovan* case using the enhanced supervision procedure. Additionally, the case of *Talambuța and Iașcinina*, which also concerns inadequate medical care and lack of effective remedies, was joined to the *Cosovan* case for further examination.

20. Concerning family visits to detainees, the Committee noted that refusals by prison administrations to allow family visits can be challenged before the courts but requested information on the outcomes of such proceedings. Recalling the violation identified in *Ostrovar v. Moldova*¹¹, where the lack of clarity and foreseeability in legal provisions governing family visits led to arbitrary restrictions, the Committee invited the authorities to provide detailed information on the current legislative framework. This includes the procedure for requesting family visits to remand detainees, the conditions under which such visits can be refused, the duration of permitted visits, and statistical data on requests submitted and decisions made.
21. Regarding the violation of Article 34 of the Convention, which concerns the right of individual petition, the Committee acknowledged the measures adopted thus far to prevent prison staff from exerting pressure on detainees to dissuade them from applying to the European Court. However, it requested further information on additional measures envisaged to ensure full compliance with Article 34 and to guarantee that no such pressure is exerted in the future.

Decisions adopted by the committee

22. The Committee adopted several decisions aimed at addressing these ongoing issues. It confirmed that no further individual measures are necessary in the cases of *Talambuța and Iașcinina* and *A.C.* It invited the Moldovan authorities to explain the exclusion of certain detainees from the compensatory remedy under the Code of Criminal Procedure and to clarify whether the civil remedy available to them complies with the Convention, particularly regarding the length of proceedings and the burden of proof.
23. The Committee emphasized the importance of timely examination of detainees' complaints and encouraged the authorities to reduce delays, potentially by increasing the number of investigating judges handling such complaints. It reiterated its request for updated statistical data on the use of the compensatory remedy and information on the application of the preventive remedy.
24. Expressing concern over the lack of significant progress in reducing prison overcrowding, the Committee deplored the absence of a comprehensive strategy to address the issue. It urged the authorities to develop such a strategy without delay and strongly encouraged them to seek expert assistance from the Council of Europe. The Committee requested clarification on whether maintenance and repair works in prisons are based on proper needs assessments and whether sufficient budgetary resources have been allocated for improvements. It regretted the considerable delay in constructing the new prison in Chișinău and invited the authorities to provide information on relevant developments.

¹¹ Agentul Guvernamental. "Ostrovar v. Republica Moldova." Accessed October 24, 2024. <https://www.agentguvernamental.md/impotriva-moldovei/impotriva-moldovei-impotriva-moldovei/hotariri-jurisprudenta-curtii-europene/ostrovar/>.

25. Regarding medical care in detention, the Committee decided to examine these issues separately under the *Cosovan* case using the enhanced supervision procedure and joined the case of *Talambuța and Iașcinina* to it for further examination.
26. The Committee also invited the authorities to provide information on measures taken to address other shortcomings identified by the Court, including inadequate food quality and quantity, poor sanitary conditions, lack of out-of-cell activities, and material conditions in police detention facilities. Additionally, it requested information on the current legislative framework for family visits to remand detainees, including conditions for refusal and duration, as well as statistical data on such requests and their outcomes. Furthermore, the Committee sought additional information on measures to ensure that no pressure is exerted on detainees regarding applications to the European Court.

II. GENERAL MEASURES: DOMESTIC REMEDY TO CHALLENGE POOR CONDITIONS OF DETENTION

Introduction of Preventive and Compensatory Mechanisms in the Republic of Moldova

27. In response to the judgment rendered by the European Court of Human Rights in *Shishanov v. Moldova* (Application No. 11353/06, judgment of 15 September 2015, §188), the Parliament of the Republic of Moldova enacted two significant legislative measures, namely Laws No. 163 and No. 272. These laws, published on 20 October 2017 and 12 December 2018 respectively, introduced remedies for complaints concerning conditions of detention. The provisions pertaining to the new compensatory remedy came into force on 1 January 2019.
28. Subsequent to these legislative developments, the Committee of Ministers invited the Moldovan Government to provide information on interim measures envisaged to offer redress to detainees contesting their conditions of detention, including those with cases pending before the European Court (see the decision of the 1310th meeting, 13–15 March 2018).
29. The established remedy encompasses both preventive and compensatory aspects. The procedure is overseen by a judge who must uphold the necessary guarantees of independence and impartiality, alongside all other safeguards inherent in judicial proceedings. Importantly, the burden of proof placed upon the detainee is not to be excessive; the judge is obliged to assess the conditions of detention in light of the principles articulated by the European Court. Moreover, judges are mandated to examine cases within a strict three-month timeframe, ensuring adherence to this period. In instances requiring special analysis, judges are compelled to expedite the examination even further (refer to *Atanasov and Apostolov v. Bulgaria* (dec.), Applications Nos. 65540/16 and 22368/17, decision of 27 June 2017, Note 209)¹².
30. Regarding the preventive facet of the remedy, the judge possesses the authority to order the prison institution to rectify the identified issues within 15 days. Upon the conclusion of this period, the prison service is required to inform the judge of the concrete measures implemented to address the situation.

¹² European Court of Human Rights. *Atanasov and Apostolov v. Bulgaria* (dec.). Nos. 65540/16 and 22368/17. Decision of June 27, 2017. Accessed October 24, 2024. <https://hudoc.echr.coe.int>.

31. Concerning the compensatory dimension, the new provisions delineate two forms of redress for offenders:
32. **Reduction of sentence:** This entails a day-to-day reduction, wherein ten days of imprisonment under substandard conditions result in a commensurate reduction of the sentence.
33. **Pecuniary compensation:** In circumstances where the reduction of sentence does not suffice as adequate redress, or where detention under such conditions lasted fewer than ten days, a monetary compensation is awarded. This compensation amounts to up to 100 Moldovan lei (approximately EUR 5.10 as of 1 January 2019) for each day spent in precarious conditions.
34. Following the enforcement of these remedies at the national level, the European Court, in its decision in *Draniceru v. Republic of Moldova* (dec.), Application No. 31975/15, declared applications submitted to the Court concerning poor conditions of detention inadmissible. The Court based its decision on the availability and effectiveness of the new domestic remedy described above¹³.
35. Within this context, the Promo-LEX Association has been providing pro bono legal assistance to over 25 applicants engaging with the new remedy. In the forthcoming months, Promo-LEX intends to continue monitoring the application of the remedy in the assisted cases. The focus will be on evaluating the efficiency of the remedy in ameliorating detention conditions on both individual and general levels, as well as assessing whether the compensation awarded constitutes an effective remedy. Additionally, Promo-LEX will oversee the application of the new provisions in other analogous cases to ensure consistent and effective implementation.
36. However, during the initial stages of applying the new laws, Promo-LEX has identified issues pertaining to their interpretation and application by national courts. These problems raise concerns regarding the efficacy of the remedy and will be comprehensively addressed in the subsequent sections.

Statistical analysis of complaints regarding conditions of detention

37. In examining the effectiveness of the preventive and compensatory mechanisms introduced to address conditions of detention contrary to Article 3 of the European Convention on Human Rights, it is imperative to consider the statistical data pertaining to complaints filed by detainees. The statistics for the years 2022 and 2023 reveal significant insights into the operation and efficacy of these remedies.
38. In the year 2023, a total of 3,735 complaints concerning conditions of detention were examined by the competent judicial authorities. Of these, 2,425 complaints were admitted, and 401 were partially admitted. Conversely, 543 complaints were dismissed, 69 proceedings were terminated, and 391 complaints were declined due to lack of jurisdiction.
39. Similarly, in 2022, the courts examined 5,360 complaints on the same grounds. Out of these, 1,692 complaints were admitted, and 379 were partially admitted. A total of 483 complaints were dismissed, 74 proceedings were terminated, and 515 complaints were declined on jurisdictional grounds.
40. The statistical data indicates that in 2023, approximately 37% of the complaints were either dismissed or not fully satisfied. Specifically, out of the 3,735 complaints examined, only 2,425 were admitted, and 401 were partially admitted, leaving a significant proportion unresolved in favor of the complainants. In 2022, a similar trend is observed, with only 1,692 out of 5,360 complaints being admitted.

¹³Administrația Națională a Penitenciarelor. *Raport privind activitatea sistemului administrației penitenciare pentru anul 2023*. Ianuarie 2024. Accessed October 24, 2024. https://drive.google.com/file/d/1Vyn8BydVUcPz2pkvO_IWbSwzUGHAj9Vw/view.

41. This low rate of admissibility suggests systemic shortcomings in the judicial recognition and compensation of cases involving detention under precarious conditions. The data implies that the justice system may not be adequately addressing all instances of substandard detention conditions, thereby limiting the practical effectiveness of the compensatory mechanism established to remedy violations of Article 3.
42. The statistics also reveal procedural deficiencies in the management of complaints. In 2023, 543 complaints were dismissed, and 391 were declined due to jurisdictional issues. In 2022, 483 complaints faced dismissal, and 515 were declined on similar grounds. These figures suggest challenges in the proper investigation and adjudication of a considerable number of complaints. The transfer of cases to other institutions or the failure to adequately investigate them may lead to delays in resolution and hinder detainees' access to effective remedies.
43. Such administrative deficiencies contribute to perceptions of inefficacy within the system and may pose obstacles to detainees seeking justified compensation. The procedural obstacles not only prolong the suffering and vulnerability of detainees but also undermine confidence in the mechanisms designed to safeguard their rights.
44. Even when the examination of the substance of detainees' complaints occurs within the legislatively prescribed timeframes, the appellate process may encounter significant delays. Various factors contribute to this issue, including the high volume of cases subject to appellate review, challenges in ensuring efficient and timely examination of detainees' complaints, and frequent changes in judicial panels, which may result in cases being reassigned or remanded for retrial. These procedural complexities can extend the duration of legal proceedings to up to two years.
45. The delays and intricacies of judicial procedures within the penitentiary system exacerbate the suffering and vulnerability of detainees. Even in cases where the merits are clear and the detainees' complaints are well-founded, courts often demand excessive proof, leading to significant delays and prolongation of judicial proceedings. This onerous evidentiary burden is particularly challenging under the restrictive conditions of detention and creates additional barriers to detainees' access to justice.
46. The excessive demand for evidence by the courts imposes undue hardship on detainees, who already face limitations due to their incarceration. The restrictive environment of detention impedes their ability to gather and present evidence to substantiate their claims. Such stringent evidentiary requirements are inconsistent with the principles of fairness and access to justice, particularly in light of international human rights standards.
47. It is essential for courts to adopt a more balanced approach and to apply appropriate standards in evaluating evidence, in accordance with legal principles and international norms. Reforming these practices would contribute to reducing the stigmatization of detainees and promote a more efficient and equitable justice system within the penitentiary context.
48. It is crucial to underscore that the preventive and compensatory mechanisms for detention under precarious conditions should not extend to aspects concerning inadequate medical assistance. In a prior communication to the Committee of Ministers regarding *Cosovan v. Republic of Moldova* (Application No. 13472/18), the Promo-LEX Association asserted that the national compensatory mechanism intended for conditions of detention is insufficient in addressing the complexities of medical assistance.
49. This position is substantiated by the case of *Machina v. Republic of Moldova*¹⁴, wherein the European Court of Human Rights found no effective remedy for the complaint concerning inadequate medical

¹⁴ Agentul Guvernamental. "Machina v. Republica Moldova." Accessed October 24, 2024. <https://www.agentguvernamental.md/impotriva-moldovei/impotriva-moldovei-impotriva-moldovei/hotariri-jurisprudenta-curtii-europene/machina-v-republica-moldova-2/>.

assistance provided to the detainee. The Court's findings highlight that the national courts' tendency to extend the compensatory mechanism to encompass medical assistance lacks a firm legal basis and fails to consider the severity of the consequences on detainees' health.

50. An additional significant concern pertains to the provision of erroneous information by penitentiary institutions to the courts regarding detainees' living conditions in proceedings seeking the application of the compensatory mechanism for poor detention conditions. The Council for the Prevention of Torture has highlighted this major deficiency in the implementation of the preventive and compensatory mechanism.
51. Detainees have reported, and the Council has corroborated, instances where the factual circumstances presented by the penitentiary administration do not align with the actual conditions. For example, in court submissions, the administration reported that a dormitory of 87 square meters housed 20 detainees, whereas, in reality, 32 detainees were accommodated in that space. Such discrepancies have resulted in judges refusing to apply the compensatory mechanism based on inaccurate information provided by the penitentiary institution.
52. The Council has expressed grave concern regarding the outcome of cases lost by detainees due to the erroneous information supplied by the administration. Detainees have presented copies of judicial decisions wherein judges declined to apply the compensatory mechanism, relying on the information furnished by the penitentiary institution. This misrepresentation undermines the integrity of the judicial process and deprives detainees of their right to an effective remedy.
53. The statistical data and observed practices indicate systemic issues in the application and effectiveness of the preventive and compensatory mechanisms established to address conditions of detention that violate Article 3 of the Convention. The significant proportion of complaints dismissed or not fully satisfied, coupled with procedural delays and evidentiary challenges, suggest that the justice system is not adequately recognizing and compensating all instances of detention under precarious conditions.
54. Furthermore, the misrepresentation of factual conditions by penitentiary institutions impedes the fair adjudication of detainees' complaints and undermines the compensatory mechanism's effectiveness. The inadequacy of the mechanism in addressing issues of medical assistance further highlights the need for a distinct and effective remedy in this domain¹⁵.

Examples of practical application

55. The practical application of the compensatory mechanism established to address violations of Article 3 of the European Convention on Human Rights has revealed significant inefficiencies, particularly in cases currently under examination with the assistance of the Promo-LEX Association. Despite the mechanism's intended purpose of providing timely and effective remedies for detainees subjected to inhuman or degrading conditions of detention, several cases have remained unresolved for extended periods, exceeding five years in duration.
56. Promo-LEX has been providing legal assistance in cases where detainees have lodged complaints concerning their conditions of detention, invoking the compensatory remedy provided under Article 473 of the Moldovan Code of Criminal Procedure. Notably, certain cases initiated as early as 2019 are still pending resolution and are currently under examination in the appellate court.
57. For instance, in the case registered under number 1-19070256-02-21r-16012024, involving the appellant Ion Gherman, the initial proceedings commenced on 1 May 2019. Despite the significant passage of time, the case remains unresolved, with a hearing scheduled for 13 November 2024.

¹⁵ Ombudsman Office of the Republic of Moldova. *Raport Anual 2023 Privind Prevenirea Torturii și a Altor Pedepse Ori Tratamente cu Cruzime, Inumane sau Degradante în Republica Moldova*. Accessed October 24, 2024. <https://ombudsman.md/post-document/raport-anual-2023-privind-prevenirea-torturii-si-a-altor-pedepse-ori-tratamente-cu-cruzime-inumane-sau-degradante-in-republica-moldova/>.

58. Similarly, in case number 1-19092586-02-21r-19032024, involving the appellant Tatiana Machina, the proceedings have been prolonged, with the next hearing also set for 13 November 2024. Both cases pertain to new categories arising under Article 473 of the Code of Criminal Procedure and are classified under criminal law¹⁶.
59. These prolonged proceedings exemplify systemic delays that undermine the efficacy of the compensatory mechanism. Despite clear legislative mandates requiring judges to examine cases within a three-month period, the reality reflects substantial deviations from these standards. The extensive duration of these cases, now exceeding five years and currently pending before the appellate court, contravenes the principle of a reasonable time guaranteed under Article 6 of the Convention and impedes the realization of the right to an effective remedy as enshrined in Article 13.
60. The excessive length of these proceedings exacerbates the suffering and vulnerability of exdetainees. The protracted judicial process not only diminishes the remedial value of any eventual compensation or sentence reduction but also erodes confidence in the justice system's ability to uphold fundamental human rights.

Several factors contribute to these inefficiencies:

61. The courts are inundated with a high volume of cases concerning detention conditions, leading to congested dockets and extended scheduling delays. Insufficient judicial resources and personnel further exacerbate this issue, limiting the courts' capacity to expedite hearings and render timely decisions.
62. Even when initial examinations of detainees' complaints occur within statutory timeframes, the appellate process introduces significant delays. Factors such as the reassignment of cases due to changes in judicial panels, procedural irregularities, and remittals for retrial contribute to extended proceedings, sometimes spanning several years.
63. Courts frequently impose stringent evidentiary requirements on detainees, necessitating comprehensive proof to substantiate their claims. Given the restrictive environment of detention, detainees face substantial obstacles in gathering and presenting such evidence, leading to further delays and procedural complications.
64. Instances of miscommunication, erroneous information provided by penitentiary institutions, and administrative errors impede the courts' ability to make informed decisions promptly and effectively.
65. The cumulative effect of these factors results in a de facto denial of detainees' right to an effective remedy. The prolonged uncertainty and lack of resolution not only perpetuate the detrimental conditions of detention but also infringe upon detainees' rights under the Convention.

¹⁶ Curtea de Apel Chişinău. "Agenda of Meetings." Accessed October 24, 2024. <https://cac.instante.justice.md/ro/agenda-of-meetings-page/>.

Other practical issues

Legal uncertainties regarding the right to action under the compensatory mechanism

66. Pursuant to Law No. 272 of 29 November 2018, effective from 1 January 2019, and Law No. 163 of 20 July 2017, the Republic of Moldova implemented a national remedy for the recognition and compensation of poor conditions of detention within its penitentiary system. These legislative measures were introduced to align domestic law with the standards set forth in Article 3 of the European Convention on Human Rights, addressing the prohibition of inhuman or degrading treatment¹⁷.
67. Article 473² paragraph (5) of the Moldovan Code of Criminal Procedure stipulates: *"A complaint regarding detention conditions that gravely affect the rights of the convicted person or the pre-trial detainee shall be filed during the period of detention in conditions contrary to the provisions of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, or within six months from the date when the individual is no longer held in such conditions, but not later than four months from their release from the place of detention."*
68. Regarding the timeframe for submitting such complaints, Law No. 163 of 20 July 2017, aimed at amending and supplementing certain legislative acts, modified the Code of Criminal Procedure of the Republic of Moldova as indicated in Article II of the said law. Specifically, point 2 of Article II amended Article 385 of the Code of Criminal Procedure by adding paragraphs (4) to (6). Furthermore, Article VI of the same law provides: *"(1) This law shall enter into force upon the expiration of two months from the date of its publication, except for Article II insofar as it pertains to Articles 473²–473⁴, which shall enter into force on 1 January 2019."*
69. The wording of these provisions introduces uncertainties concerning the application of the compensatory mechanism to different categories of individuals (pre-trial detainees and convicted persons). Specifically, ambiguities arise when, at the time of filing the complaint, there is an interruption in the term of detention, or when the convicted person submits selective claims relating to different periods of detention.
70. These uncertainties pertain to the calculation of the right to action and raise fundamental questions regarding the applicability of the compensatory mechanism to periods preceding the law's entry into force. The lack of clarity in the legislative text creates potential obstacles for individuals seeking redress for violations experienced prior to 1 January 2019, thereby affecting the mechanism's effectiveness in providing comprehensive remedies for all instances of detention under conditions contravening Article 3 of the Convention.
71. The legal community has observed that the retroactive application of the compensatory mechanism is not explicitly addressed within the legislative framework. Consequently, courts may interpret the law restrictively, limiting its applicability solely to violations occurring after the effective date of the legislation. This interpretation could unjustly exclude individuals who suffered under inhumane or degrading conditions prior to the enactment of the law, despite the continuous nature of such violations and the ongoing effects on the affected individuals.
72. Moreover, the distinction between pre-trial detainees and convicted persons introduces additional complexity. The legislation does not unequivocally delineate how the compensatory mechanism applies to each category, particularly in cases where individuals transition from pre-trial detention to convicted status, or where detention terms are interrupted or segmented. Such gaps in the

¹⁷ Republica Moldova. *Codul de procedură penală al Republicii Moldova*. Registrul de Stat. Accessed October 24, 2024. <https://www.legis.md/cautare/getResults>.

legislative text necessitate judicial interpretation, which may lead to inconsistent applications of the law and undermine the uniform protection of detainees' rights.

73. In light of these ambiguities, it is imperative for the Moldovan legislature or judiciary to provide clear guidance on the temporal and categorical scope of the compensatory mechanism. Clarification is essential to ensure that all individuals subjected to conditions violating Article 3 of the Convention have access to effective remedies, regardless of the timing of their detention or changes in their legal status.
74. Failure to address these uncertainties may result in the denial of justice for individuals who endured inhumane conditions prior to the law's enactment and may contravene Moldova's obligations under the European Convention on Human Rights. It is therefore recommended that legislative amendments or authoritative judicial interpretations be adopted to resolve these ambiguities, thereby reinforcing the effectiveness of the compensatory mechanism and upholding the fundamental rights of all detainees.

Legal uncertainties affecting the predictability of the law

75. Prior to the legislative amendments enacted in 2023, the compensatory mechanism established by Law No. 272 of 29 November 2018 and Law No. 163 of 20 July 2017 exhibited significant ambiguities impacting its predictability and consistent application in the Republic of Moldova.
76. Article 473² paragraph (3) of the Moldovan Code of Criminal Procedure provided that convicted persons detained for at least ten days in conditions contravening Article 3 of the European Convention on Human Rights could request a reduction of their sentence as compensation. Articles 473⁴ and 385 further detailed the calculation of sentence reduction and monetary compensation for both convicted persons and pre-trial detainees.
77. However, uncertainties arose regarding the distinction between a pre-trial detainee ("prevenit") and a convicted person ("condamnat"), specifically concerning the point at which an individual's status changes and how this affects the application of the compensatory mechanism. The ambiguity centered on whether the compensatory provisions apply only until the pronouncement of the first-instance court's sentence or extend until the appellate court's final decision.
78. One interpretation held that an individual retains the status of a pre-trial detainee until the appellate court issues its decision, given that the initial sentence is not final and the presumption of innocence remains until all appeals are exhausted. Under this view, the compensatory mechanism applicable to pre-trial detention would continue until the appellate decision.
79. Alternatively, another interpretation asserted that upon the pronouncement of the first-instance court's sentence, the individual becomes a convicted person, and the compensatory mechanism for pre-trial detainees ceases to apply. This position is supported by procedural provisions limiting pre-trial detention to 12 months until the first-instance judgment and recognizing that post-conviction detention is lawful under Article 5 §1(a) of the Convention.
80. These divergent interpretations led to inconsistent judicial applications and legal uncertainty, undermining the law's predictability and potentially impeding detainees' access to effective remedies for violations of their rights under Article 3 of the Convention. The lack of clarity in defining the statuses and rights of pre-trial detainees versus convicted persons resulted in uneven protection and could lead to the denial of compensation for periods of detention under inhumane conditions.
81. To resolve these issues, it is imperative for legislative authorities or higher courts to provide clear definitions and guidelines regarding the statuses of pre-trial detainees and convicted persons and to specify the temporal scope of the compensatory mechanism. Such clarifications are essential to

ensure uniform application of the law, uphold legal certainty, and guarantee effective remedies for all individuals subjected to inhumane detention conditions, in compliance with Moldova's obligations under the European Convention on Human Rights.

Unpredictability of the law in compensating Pre-Trial detainees

82. The compensatory mechanism established under Article 473⁴ paragraph (5) of the Moldovan Code of Criminal Procedure presents significant ambiguities regarding its application to pre-trial detainees. The provision states: *"In the event of establishing the circumstances provided for in Article 473² paragraph (3), pre-trial detainees shall be compensated in accordance with Article 385 paragraphs (5) and (6) or, as appropriate, they may file a civil action."* Article 385 paragraph (5) further stipulates: *"In the event of establishing a violation of rights regarding detention conditions, guaranteed by Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, according to the jurisprudence of the European Court of Human Rights, the reduction of the sentence shall be calculated as follows: two days of imprisonment for one day of pre-trial detention."*
83. The law lacks clarity on how to calculate the reduction for pre-trial detainees who subsequently become convicted persons. Specifically, it is uncertain whether the reduction should be:
1. **A straightforward calculation:** Multiplying the number of days spent in inhumane conditions as a pre-trial detainee by two, thereby reducing the sentence accordingly.
 2. **An alternative interpretation:** Considering that one day of pre-trial detention is already included in the overall sentence, the reduction would involve an additional day deducted from the sentence, effectively avoiding a "double compensation" for the same period.
84. Judicial practice has not been consistent, with some courts adopting the latter interpretation to prevent what they perceive as double counting.
85. Moreover, the law becomes unpredictable when an individual seeking compensation as a pre-trial detainee is released from detention during the proceedings due to the completion of their sentence. Articles 473² paragraphs (3) and (4) suggest that convicted persons can request sentence reduction for detention in inhumane conditions and, if the remaining sentence is insufficient for a full reduction, may seek monetary compensation for the remaining period.
86. Article 473⁴ paragraphs (4) and (5) address the calculation of sentence reduction and monetary compensation but do not clearly delineate their application to pre-trial detainees who have been released. The provision implies that monetary compensation is primarily available to convicted persons for any remaining period not covered by sentence reduction, leaving pre-trial detainees in a legal grey area.
87. Additionally, it is ambiguous whether monetary compensation for convicted persons applies to the entire period of inhumane detention or only to the portion that could not be reduced due to mathematical limitations (e.g., periods not divisible by ten as per the reduction formula). The responsibility for calculating these periods and determining appropriate compensation rests with the investigating judge, adding to the procedural uncertainty.
88. These ambiguities hinder the law's predictability and effectiveness, potentially denying individuals adequate remedies for violations of their rights under Article 3 of the Convention. The lack of clear legislative guidance on whether pre-trial detainees must pursue civil actions for compensation further complicates the legal landscape and may lead to inconsistent judicial outcomes.
89. To address these issues, it is imperative that the legislative framework be clarified to:
- Define explicitly the procedures and entitlements for pre-trial detainees seeking compensation for inhumane detention conditions.
 - Establish clear guidelines for calculating sentence reductions and monetary compensation, ensuring equitable treatment of both pre-trial detainees and convicted persons.

- Provide unambiguous directions on the applicability of monetary compensation when individuals are released from detention during legal proceedings.
90. Such clarifications would enhance the law's predictability, ensure compliance with international human rights obligations, and guarantee effective remedies for all individuals subjected to inhumane detention conditions.

Applicability of the law over time following the august 2023 amendments.

91. The legislative amendments introduced by Law No. 245 of 31 July 2023, effective from 22 August 2023, have significantly altered the compensatory mechanism provided in the Moldovan Code of Criminal Procedure for detainees held in conditions contravening Article 3 of the European Convention on Human Rights. These changes raise critical questions regarding their applicability to pending cases initiated prior to the amendments, particularly in situations involving multiple retrials.
92. Prior to the amendments, Article 473⁴ paragraph (5) of the Code stated: "In the event of establishing the circumstances provided for in Article 473² paragraph (3), pre-trial detainees shall be compensated in accordance with Article 385 paragraphs (5) and (6) or, as appropriate, they may file a civil action." Article 385 paragraph (5) further stipulated: "In the event of establishing a violation of rights regarding detention conditions, guaranteed by Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, according to the jurisprudence of the European Court of Human Rights, the reduction of the sentence shall be calculated as follows: two days of imprisonment for one day of pre-trial detention."
93. In the current version of the Code, Article 385 paragraph (5) now provides: "In the event of establishing a violation of rights regarding detention conditions, the reduction of the sentence is calculated as follows: from one to two days of reduction for every ten days of cumulative detention in poor conditions." Similarly, Article 473² paragraph (3) allows convicted persons who have been detained for at least ten days in conditions violating Article 3 of the Convention to request a sentence reduction, with the court calculating reductions from one to two days for every ten days of cumulative detention, as per Article 473⁴ paragraph (4).
94. These amendments effectively reduce the compensatory benefits available to detainees and eliminate distinctions between pre-trial detainees and convicted persons. The new provisions allow a maximum of two days' reduction for every ten days of detention in poor conditions, whereas previously, pre-trial detainees could receive a reduction of two days for each day of such detention.
95. A significant issue arises concerning the application of these amendments to pending cases that were initiated before the changes took effect. The law lacks transitional provisions, creating uncertainty about whether the new, less favorable provisions should apply retroactively to cases already in progress. Given that the compensatory mechanism impacts the execution of criminal sentences and serves to remedy violations of fundamental rights, it possesses a substantive character. According to Article 10 of the Criminal Code, substantive provisions that are less favorable should not apply retroactively.
96. Therefore, it is arguable that the compensatory mechanism initiated under the earlier, more favorable law should continue to apply to cases pending at the time of the amendments. Detainees had legitimate expectations based on the legal framework in place when they filed their claims, and the courts' inability to adjudicate these claims promptly should not prejudice their rights. Applying the new, less favorable law to pending cases could undermine the principles of legal certainty and non-retroactivity.

97. However, the absence of explicit legislative guidance on this matter creates practical difficulties. Courts are faced with interpreting whether to apply the previous law for periods before 22 August 2023 and the new law thereafter or to apply the new provisions entirely. This ambiguity affects the fairness and consistency of judicial outcomes, potentially disadvantaging individuals who sought remedies under the former legal regime.
98. To uphold the principles of fairness and legal certainty, it is essential that the compensatory mechanism provided by the older, more favorable law be applied to periods during which it was in effect, that is, until 22 August 2023. Periods of detention occurring after this date would be subject to the new provisions. Such an approach respects the substantive rights of detainees and aligns with the general legal principle that more lenient laws should apply retroactively, while harsher laws should not adversely affect individuals retroactively.
99. The legislative amendments of August 2023 introduce complexities in the application of the compensatory mechanism for poor detention conditions, particularly concerning pending cases. The lack of transitional provisions necessitates careful judicial interpretation to ensure that detainees' rights are protected and that the law is applied consistently and fairly. Clarification from the legislature or higher judicial authorities would be beneficial to resolve these uncertainties and uphold the integrity of the legal system.

Evidentiary challenges in proceedings involving compensatory mechanisms

100. Under Article 4733 paragraphs (2) and (3) of the Code of Criminal Procedure, the burden of proving the absence of violations of detention conditions and the absence of moral prejudice claimed by the convicted person or pre-trial detainee lies with the representative of the penitentiary administration. Specifically, the representative is obliged to submit to the court, in writing and within ten days, a report addressing all allegations raised in the complaint, including any measures undertaken to rectify the contested detention conditions. A copy of this report, along with any annexed materials, must be provided to the complainant by the penitentiary administration. The maximum period for the court to examine a complaint concerning detention conditions that severely affect the rights of the convicted person or pre-trial detainee is three months.
101. However, uncertainties have arisen regarding the scope of this obligation. It is unclear whether the ten-day reporting requirement applies exclusively to the penitentiary where the convict is currently serving the sentence at the time of filing the complaint or whether it extends to all penitentiaries against which the convict has lodged claims. This ambiguity affects the administration of evidence, as the convict may have been detained in multiple institutions with varying conditions.
102. Additionally, Article 4734 paragraph (1) stipulates that, in evaluating detention conditions, the court shall consider both the evidence presented by the parties and reports from national and international institutions in the field. In practice, this raises the question of whether the court can assess the convict's claims based solely on external reports when the penitentiary fails to provide the required documentation within the prescribed timeframe.
103. The lack of clarity regarding the court's ability to rely on alternative sources of evidence has led to significant procedural complications. Numerous cases have been subjected to retrial by higher courts due to procedural deficiencies at the trial level. These deficiencies include situations where: Reports were not submitted by each penitentiary institution in which the convict was detained, but only by the last institution, thereby potentially overlooking violations that occurred during earlier periods of detention. The trial court rendered a decision without the penitentiary

institution's reports, relying instead on national and international reports, which higher courts deemed insufficient for a proper assessment of the claims.

104. Such procedural issues highlight the challenges in effectively administering evidence in cases involving compensatory mechanisms for poor detention conditions. The ambiguity surrounding evidentiary obligations may impede the timely resolution of complaints and undermine the ability of convicted persons or pre-trial detainees to obtain effective remedies for violations of their rights under Article 3 of the European Convention on Human Rights.
105. To address these challenges, it is essential to clarify: Whether the penitentiary administration's obligation to provide reports within ten days encompasses all institutions implicated in the convict's claims. The extent to which the court may rely on reports from national and international institutions in the absence of timely submissions from the penitentiary administration. The procedural consequences of the penitentiary's failure to comply with evidentiary obligations, including whether such failures constitute grounds for retrial or for the court to draw adverse inferences.

III. GENERAL MEASURES: OVERCROWDING IN THE PRISON ESTABLISHMENTS

Current situation

106. As of 1 January 2024, the penitentiary institutions in the Republic of Moldova housed 5,695 detainees, marking a decrease of 6.39% compared to 2022, when the detainee population was 6,084. Despite this reduction, the issue of overcrowding remains unresolved, indicating that numerical decreases alone are insufficient to alleviate the congested conditions within the prison system.
107. The persistent overcrowding is exacerbated by inefficient management practices and an incoherent calculation of detention capacities, which fail to reflect the actual accommodation capabilities of the penitentiaries. The absence of precise standards for allocating detainees based on available space and their specific needs leads to excessive concentration in certain facilities, perpetuating overcrowding and limiting access to essential services.
108. In its 2023 annual report, the National Administration of Penitentiaries explicitly acknowledged that some institutions, such as Penitentiary No. 13 in Chişinău and Penitentiary No. 11 in Bălţi, are overcrowded by 196 and 26 detainees more than their established capacities, respectively. This admission underscores systemic issues in managing inmate populations and the need for immediate remedial action.
109. Despite the chronic overcrowding, penal policies intended to reduce pressure on the penitentiary system continue to be ineffective and lack proper coordination. As regards release from detention: in 2023, a total of 3,042 individuals were released from detention, compared to 3,195 in 2022, representing a decrease of 4.79%. As regards conditional release: the penitentiary commissions reviewed 1,339 cases concerning the application of Article 91 of the Criminal Code (conditional release before term) and Article 92 (replacement of the unserved part of the sentence with a milder punishment), reflecting a decrease of 12.14% compared to 2022, when 1,524 cases were examined.

110. Following the decisions of the penitentiary commissions, 475 petitions were submitted to the courts in 2023, down from 541 in 2022—a reduction of 12.2%. Consequently, only 187 convicts were released under Article 91 of the Criminal Code in 2023, compared to 205 in 2022, marking a decrease of 8.78%. Under Article 92, 199 convicts were released in 2023, down from 228 in 2022, representing a decrease of 12.72%.
111. These statistics indicate a diminishing commitment to humane penal policies and a stagnation in the application of rehabilitative justice principles. Despite the reduction in the number of detainees, significant progress has not been made in improving detention conditions, and the persistence of overcrowding underscores deficiencies in implementation. The reduction of conditional release measures and other alternative instruments suggests that efforts to diminish the use of imprisonment have been marginal and insufficient to effect meaningful improvements in detention conditions¹⁸.
112. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), in its report following an ad hoc visit to the Republic of Moldova from 5 to 13 December 2022, highlighted significant concerns regarding overcrowding. The CPT observed that in several penitentiary institutions, notably those in Chişinău and Cricova, overcrowding in cells and dormitories remains a serious issue. This situation is partly attributable to the unequal distribution of detainees within facilities, a phenomenon closely linked to the informal hierarchy among inmates¹⁹.
113. During the visit, specific issues were identified in various institutions. The Brăneşti and Cricova penitentiaries, both semi-closed establishments, exhibited high occupancy rates relative to their official capacities. Brăneşti Penitentiary, with an official capacity of 652 places, housed 580 detainees. Cricova Penitentiary, designed for 728 inmates, accommodated 710 detainees. Penitentiary No. 13 in Chişinău, previously visited multiple times by the CPT, continued to present problems related to overcrowding. Although its official capacity was recalculated to 818 places, the institution housed 843 individuals in March 2023, exceeding its capacity. Subsequently, the detention capacity was revised back to the previous limit of 570 places.
114. The CPT concluded that the Moldovan authorities must intensify efforts to reduce overcrowding in penitentiary institutions and improve detention conditions in accordance with international human rights standards. The observations also highlighted that large-capacity cells significantly contribute to the problem, as they not only perpetuate but also amplify overcrowding, adversely affecting detainees' living conditions.
115. Despite reductions in the detainee population, the Republic of Moldova has not achieved significant progress in ameliorating detention conditions. The persistence of overcrowding indicates systemic deficiencies in implementing penal policies and managing penitentiary institutions. It is imperative for the authorities to adopt comprehensive measures to address overcrowding, including efficient management of detention capacities, equitable distribution of detainees, and the effective application of alternative sanctions and rehabilitative justice principles, to ensure compliance with international human rights obligations.

¹⁸ Administraţia Naţională a Penitenciarelor. *Raport privind activitatea sistemului administraţiei penitenciare pentru anul 2023*. Accessed October 24, 2024. <https://anp.gov.md/rapoarte-de-bilant-semestriale-anuale>.

¹⁹ Council of Europe. "Council of Europe Anti-Torture Committee (CPT) Publishes the Response of the Moldovan Authorities to the Report on the 2022 Visit." Accessed October 24, 2024. <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-cpt-publishes-the-response-of-the-moldovan-authorities-to-the-report-on-the-2022-visit>.

Table: accommodation in Penitentiary Institutions (Barrack-type Cells)²⁰

No.	Penitentiary Institution	Number of Barrack-type Cells	Area per Barrack (m ²)	Number of Accommodated Persons
1	Penitentiary No.1-Taraclia	0	0	0
2	Penitentiary No.2-Lipcani			
	Section 1		276.6	70
	Section 2, Subsection 1		473	131
	Section 2, Subsection 2		499	130
3	Penitentiary No.3-Leova	0	0	0
4	Penitentiary No.4-Cricova			
	Section 1		465	92
	Section 2		412	65
	Section 3		279	39
	Section 4		199	60
	Section 5		291	73
	Section 6		249	50
	Section 7		192	39
	Section 8		482	78
	Section 9		365	85
5	Penitentiary No.5-Cahul			
	Section 1		91.81	16
	Section 2		90.41	19
	Section 3		214.95	43
	Section 4		229.83	51
	Section 5		214.8	22
6	Penitentiary No.6-Soroca			
	Section 1		288.97	54
	Section 2		203.49	40

²⁰ Data provided by NAP

	Section 3		276.80	51
	Section 4		248.61	41
	Section 5		320.12	47
	Section 6		273.60	44
	Section 7		276.58	36
	Section 8		376.40	64
	Section 9		275.48	44
	Section 10		234.31	46
	Section 11		211.79	43
7	Penitentiary No.7-Rusca	0	0	0
8	Penitentiary No.8-Bender			
	Section 1, Subsection 2		85	14
	Section 2, Subsection 11		69	16
	Section 2, Subsection 16		69	13
	Section 2, Subsection 17		69	17
9	Penitentiary No.9-Pruncul			
	Cell 1		63.1	20
10	Penitentiary No.10-Goian	0	0	0
11	Penitentiary No.11-Bălți	0	0	0
12	Penitentiary No.12-Bender	0	0	0
13	Penitentiary No.13-Chișinău			
	Cell 26		45.5	16
	Cell 52		32.2	15
	Cell 104		42.7	15
	Cell 16		29.5	14
	Cell 17		30	12
	Cell 21		22.1	13
	Cell 23		23.4	12
	Cell 25		31.9	14

	Cell 27		30.2	12
	Cell 54		21.3	14
	Cell 60		22.8	11
	Cell 78		22.6	11
	Cell 97		42.4	13
	Cell 105		29.1	13
	Room 19		34.7	13
	Cell 169		32.8	11
14	Penitentiary No.15-Cricova			
	Section 3, Floor 2		57.60	12
	Section 3, Floor 2		86.30	30
	Section 3, Floor 3		74	19
	Section 3, Floor 3		63	23
	Section 4, Floor 2		54.20	26
	Section 4, Floor 2		99.90	34
15	Penitentiary No.16-Pruncul	0	0	0
16	Penitentiary No.17-Rezina	0	0	0
17	Penitentiary No.18-Brănești			
	Section 1		210	52
	Section 2		210	57
	Section 3		210	58
	Section 4		210	50
	Section 5		196	63

116. The data indicate that in certain institutions, such as Penitentiary No. 2 in Lipcani and Penitentiary No. 4 in Cricova, there are sectors that house a significant number of detainees in large-capacity cells. For example, in Penitentiary No. 2—Lipcani, sectors can accommodate up to 131 individuals in a single room. This extreme overcrowding generates exceptionally difficult living conditions, severely impacting personal hygiene, health, and the individual safety of detainees. The utilization of large-capacity cells is a direct consequence of the overarching problem of overcrowding in penitentiaries. The increasing number of detainees exceeds the capacity of the existing infrastructure, compelling authorities to resort to temporary and inadequate solutions such as overpopulated cells. This

situation highlights the urgent need for profound structural reform and interventions aimed at modernizing and expanding the penitentiary infrastructure.

Evaluation of detention conditions in Penitentiary No. 13 – Chişinău: overcrowding ssues

117. In 2023, the Promo-LEX Association conducted a comprehensive evaluation of the detention conditions in Penitentiary No. 13 – Chişinău, aiming to assess their compliance with international and national standards. This evaluation encompassed 175 detention spaces, including regular inmate cells, the medical block, disciplinary isolation cells, cells designated for inmates involved in facility maintenance, and decommissioned cells.
118. The evaluation process involved the monitoring team completing an assessment form for each cell, comparing existing conditions with international benchmarks. The purpose of this initiative was to promote fair criminal justice and ensure adherence to the international commitments undertaken by the Republic of Moldova. The findings serve as a catalyst for change, informing inmates of their entitled standards and urging authorities to improve detention conditions.
119. During the assessment, it was observed that the inmate population had reached 750, significantly exceeding the officially sanctioned national capacity of 570 places. A rigorous analysis, aligned with international standards, indicated that the institution can adequately accommodate only 377 inmates. This discrepancy reveals an overcrowding rate of 98.9% relative to internationally recognized acceptable conditions. Furthermore, based on current national standards that establish an effective capacity of 479 persons, the level of overcrowding stands at 56.58%²¹.
120. This divergence underscores the urgent need for immediate intervention to rectify detention conditions and align the penitentiary with human rights obligations. Despite the detention capacity of Penitentiary No. 13 – Chişinău being defined by Order No. 41 of the Ministry of Justice dated 9 February 2023, the Promo-LEX Association identified significant inconsistencies between this regulatory figure and the institution's actual capacity.
121. The evaluation was conducted with reference to both international and national standards, highlighting the necessity for a thorough analysis and potential revision of existing regulations. One of the primary reasons for the incoherent detention ceiling is the absence of a regulatory act mandating a specific methodology or algorithm for calculating the capacity of penitentiary institutions.
122. According to the response provided by the National Administration of Penitentiaries, the legal framework utilized for determining detention capacity refers to the general provisions of Articles 224 and 225 of the Execution Code. Consequently, the detention ceiling of 570 places, established by ministerial order, is derived by dividing the total area of 2,521.34 square meters by 4 square meters per inmate, excluding the area occupied by the cell's sanitary facilities.
123. The Promo-LEX Association contends that the methodology adopted by the authorities fails to individualize the calculation for each cell, instead employing a generalized area. This approach does not accurately reflect the actual conditions, leading to overstated estimates of effective detention capacity. To avoid allegations of concealing or disregarding overcrowding issues, it is imperative to ensure transparency and precision in the methodology used to calculate the capacities of penitentiary institutions.
124. The evaluation conducted by the Promo-LEX Association reveals critical shortcomings in the current assessment and management of detention capacities within Penitentiary No. 13 – Chişinău. The

²¹ Promo-LEX Association. *EVA PASS Report 2023*. Accessed October 24, 2024. https://promolex.md/wp-content/uploads/2024/01/Report-EVA-PASS_2023_Eng.pdf.

significant levels of overcrowding not only contravene international and national standards but also highlight systemic issues in the calculation and regulation of detention capacities. Immediate action is required to address these deficiencies, including the development of a clear and transparent methodology for capacity calculation, individualized assessments of detention spaces, and adherence to human rights obligations to ensure humane and dignified conditions for all inmates.

Efforts by authorities to combat overcrowding in penitentiary institutions

125. The Ministry of Justice of the Republic of Moldova, in its 2023 Activity Report, identified the establishment of a progressive system for the execution of criminal penalties as an ongoing objective. According to the principle of progressivity, the Individual Plan for the Execution of Sentences should enable the gradual movement of detainees from one detention regime to another, facilitating their adaptation to life in freedom²².
126. The proposed progressive system is based on the following considerations: the current criminal law limits the individualization of the mode of execution of imprisonment sentences, does not allow for the classification of detainees according to their risk level, and does not provide for the revision of the initially established regime (level of security) corresponding to the convicted person's progress in changing criminal behavior.
127. According to findings in the Ministry of Justice's activity report, the current penal execution policy and practice present three primary issues: Application of disparate treatment: The Ministry of Justice notes that detainees experience inconsistent treatment, which may compromise the fairness and effectiveness of the penal system. Limited involvement of prison staff in the sentence execution process: Despite penitentiary staff being positioned to assess risks and needs—given their daily interactions with inmates—the report indicates that they are not sufficiently involved in the execution process. The Ministry suggests that this underutilization affects the system's ability to motivate and manage convicts effectively. Perpetuation of criminal subculture: The report points to factors such as the unrestricted movement of large numbers of detainees in extensive spaces as contributors to the perpetuation of a criminal subculture, a complex issue with origins in the Soviet period and influenced by various factors, including potentially the prison administration itself under certain condition.
128. Furthermore, as of 1 April 2022, out of 5,417 convicts in detention in the Republic of Moldova, 3,922—or 72.4%—are serving long-term sentences. The longer the sentence, the greater the financial costs and the efforts required by the penitentiary administration to resocialize the convicted person, considering the detriment caused by prolonged institutionalization. Long sentences have also an impact on the stock of prisoners, and therefore on prison overcrowding.
129. Compared to countries within the Council of Europe (CoE), the average incarceration duration in Moldova is among the longest, with only Ukraine, Azerbaijan and Portugal significantly exceeding it and is far above the European average (25.3 months compared to 11.8). Moldova has also a low admission rate (115 per 100,000 inhabitants for an European average of 167), a relatively low release rate (127, for an European average of 134) and a low turnover ratio (35% for an European average of 55%). Consequently, the rate of the penitentiary population per capita is twice as high as the average among CoE countries. In Moldova, the total number of detainees per 100,000 inhabitants was 242 in 2023, whereas the European average at CoE level was of 124²³.

²² Ministerul Justiției al Republicii Moldova. *Raport de Activitate 2023*. Accessed October 24, 2024.
https://www.justice.gov.md/sites/default/files/document/attachments/raport_mj_2023_final.pdf.

²³ Council of Europe. *SPACE: Council of Europe Annual Penal Statistics*. , Prisons and Prisoners in Europe 2023: Key Findings of the SPACE I survey, 2024. Accessed October 24, 2024.
https://wp.unil.ch/space/files/2024/06/SPACE_I_2023_Key_Findings.pdf.

130. Given the long periods of detention and the low rate of engagement in socially useful activities—which has not exceeded 15% in the last decade—it follows that the purpose of criminal punishment is largely not being fulfilled. In essence, the Republic of Moldova maintains a severe, retributive penal policy and a rigid, non-individualized execution system.
131. The Promo-LEX Association considers that implementing a progressive system for the execution of criminal penalties represents an essential solution for addressing the problem of overcrowding in penitentiary institutions in the Republic of Moldova. The authorities acknowledge existing challenges and deficiencies in the current penal system, including the inefficient application of penitentiary treatment, underutilization of the penitentiary staff's expertise, and the risk of promoting criminal behavior within the penitentiary environment.
132. Statistics reveal an average incarceration duration that exceeds the European average and a higher per capita penitentiary population rate than the average in CoE countries, underscoring the necessity for a fundamental revision of penal policy and sentencing practices. Implementing a progressive execution system could bring multiple benefits, including the gradual adaptation of detainees to life in freedom, individualized penitentiary treatment, and reduced risk of recidivism. By placing greater emphasis on resocialization and social reintegration of detainees, this system can contribute to increasing their chances of successfully reintegrating into the community.
133. Under the current format of executing imprisonment sentences, detainees face several problems:
- **Poor detention conditions and overcrowding:** The combination of inadequate detention conditions and overcrowding exacerbates existing vulnerabilities among detainees.
 - **Lack of control and inadequate response:** There is insufficient control and inadequate response to tense situations due to the unequal ratio between staff and detainees.
 - **Expansion of criminal subculture rules:** Unchecked expansion of criminal subculture rules leads to a decisive influence within the penitentiary institution, undermining rehabilitation efforts.
 - **Development of torture and inhuman treatment:** The environment fosters the development of torture and inhuman or degrading treatment.
 - **Reduced effectiveness of rehabilitation services:** The efficacy of rehabilitation and resocialization services is diminished, contributing to higher rates of recidivism.
 - **Increased tensions and risk of violence:** Heightened tensions and an increased risk of violence among detainees compromise safety and security within the institutions.
134. These factors highlight the urgent need for systemic reforms to address overcrowding and improve detention conditions. Implementing a progressive execution system, as proposed by the authorities, represents a significant step toward modernizing the penal system, aligning it with international standards, and ensuring the effective achievement of the purposes of criminal punishment.

Non-Custodial measures with limited applicability – findings of the Ministry of Justice

135. Aware of the consequences of overcrowding in penitentiary institutions and the importance of the Council of Europe's observations, the Moldovan authorities have initiated the conceptualization of non-custodial measures. They recognize that the continuous increase in the number of detainees may compromise the respect for human rights as stipulated in Article 3 of the European Convention on Human Rights.

136. Overcrowding and the rising number of detainees present major challenges for prison administrations and the legal system in general. To address these issues, the authorities have developed a concept promoting the development of non-custodial punishments and measures. This initiative is based on confronting several pressing realities within the Republic of Moldova.
137. In the past three years, there has been a notable increase in the percentage of imprisonment sentences out of the total convictions: from 26% in 2020, to 30% in 2021, and reaching 39% in 2022. According to data from the National Bureau of Statistics, in 2022, the predominant sentences were imprisonment (3,262 persons or 38.8%), unpaid community work (2,930 persons or 34.8%), conditional sentencing (1,567 persons or 18.6%), and fines (649 persons or 7.7%).
138. Additionally, the application of conditional release before term by courts has been declining. Approximately half of the penitentiary commissions' motions are rejected, and the number of conditionally released individuals under probation supervision is decreasing. Moldova currently holds one of the highest average durations of detention in Europe, and the state's continued condemnation for violating detention conditions persists.
139. Several factors may explain this downward trend in conditional releases. Penitentiary commissions often provide decisions lacking sufficient reasoning, failing to supply relevant information for judicial examination in conditional release cases. Decisions are predominantly made by staff from the penitentiary where the detainee is held, potentially limiting objectivity. Judges exhibit low confidence in the decisions of penitentiary commission members, leading to higher rejection rates.
140. Compared to other Council of Europe member states, the proportion of prisoners on parole among the probation population is below the European average. In 2023, conditionally released convicts represented only 5.1% of the total under the National Probation Inspectorate's supervision, whereas the CoE average was of 16.4%. In countries such as Austria, the Czech Republic, Sweden, Switzerland, and England, this proportion exceeds 25%.
141. In implementing best practices within the probation sector, the national criminal justice system has faced multiple challenges. These include incoherent formulations and inconsistencies between normative acts regulating the execution of non-custodial punishments and measures, non-uniform judicial practice and confusion in interpreting legal norms, and overcrowding due to the severity of sentences and inadequate use of alternatives to imprisonment. There is also a low application of instruments that allow for release from criminal liability, insufficient understanding of the probation field among public authorities and civil society, and an affected institutional memory due to staff turnover and insufficient funding in the probation system.
142. The critical observation of the application of non-custodial measures in the Republic of Moldova reveals fundamental deficiencies reflecting poor management within the criminal justice system and inadequate utilization of alternatives to imprisonment. The increasing reliance on custodial sentences, combined with the decrease in conditional releases, indicates a tendency to favor imprisonment over measures that could alleviate pressure on the penitentiary system. This trend undermines the efficiency of the criminal justice system and compromises the fundamental rights of detainees.
143. Furthermore, identifying causes such as insufficient reasoning in penitentiary commission decisions and judges' lack of confidence in these decisions highlights a crisis of transparency and credibility. This deficit leads to the ineffective application of conditional releases, perpetuating prison overcrowding—a situation further aggravated by the insufficient use of non-custodial measures and mechanisms for releasing individuals from criminal liability.
144. Moreover, inconsistencies between normative acts regulating the execution of punishments reflect problematic management within the criminal justice system. Non-uniform judicial practices and confusion in interpreting legal norms result in unequal and inadequate application of non-custodial measures, reinforcing the severity of sentences and exacerbating overcrowding issues.

145. Additionally, staff turnover and insufficient funding in the probation system contribute to a fragile institutional memory and hinder effective practice. This instability affects the capacity to implement best practices and adapt the system to international standards, undermining efforts to reintegrate detainees effectively²⁴.
146. In conclusion, the Ministry of Justice's findings underscore the urgent need for systemic reforms to enhance the applicability of non-custodial measures in Moldova. Addressing the identified challenges—such as improving the reasoning in penitentiary commission decisions, fostering judicial confidence, ensuring consistency in legal interpretations, and strengthening the probation system—is essential. Such reforms can promote more effective alternatives to imprisonment, decongest the penitentiary system, uphold the fundamental rights of individuals, and improve the overall efficiency and fairness of the criminal justice system.
147. However, the development of alternatives to imprisonment cannot be a solution in itself. Indeed, in addition to having a high prison population rate (242 per 100,000 inhabitants, compared to a European average of 124), Moldova has a very high probation population rate (320.2 probationers per inhabitants, compared to a European average of 179.1). Acting on prison overcrowding requires implementing a coherent penal policy that takes into account the long-term characteristics of the Moldovan penal system and uses all the available levers (entry and exit flows, length of detention, use of pre-trial detention) in an integrated manner, as advocated in the CoE White Paper on Prison Overcrowding. Otherwise, the sole development of alternatives to imprisonment could result in an expansion of the penal system

Overcrowding in penitentiary institutions associated with poor detention conditions

148. The existence of overcrowded penitentiary institutions and the maintenance of a degrading material environment in detention represent a serious and complex problem within the criminal justice system. Overcrowding often results from a combination of factors, including an increase in the number of offenses, the imposition of harsher sentences, and longer periods of detention. This leads to pressure on available resources, including living space, sanitary facilities, medical services, and rehabilitation programs.
149. Poor material conditions exacerbate the issues associated with overcrowding. Outdated infrastructure, lack of maintenance, and insufficient funding lead to the deterioration of buildings and facilities. This includes inadequate hygiene, limited access to potable water, and substandard accommodation conditions, all of which negatively impact the health of detainees.
150. According to the National Administration of Penitentiaries, over the past three years, a significantly suboptimal amount—approximately 2 million lei per year—has been allocated for improving detention conditions in penitentiary institutions. Of this sum, Penitentiary No. 13 – Chişinău received around 200,000 lei for rehabilitating a medical ward and two exercise yards, and approximately 1 million lei was invested in renovating the roof of the tower and rooms designated for lawyers. Additionally, Penitentiary No. 13 benefited from about 500,000 lei for purchasing goods and construction materials necessary for planned projects. In 2023, this penitentiary utilized almost half of the annual budget allocated to the entire penitentiary system²⁵.

²⁴ Ministerul Justiției al Republicii Moldova. *Concept Privind Dezvoltarea Pedepselor și a Măsurilor Neprivative de Libertate*. Accessed October 24, 2024.

https://justice.gov.md/sites/default/files/document/attachments/concept_privind_dezvoltarea_masurilor_neprivative_de_libertate.pdf.

²⁵ Ministerul Justiției, Administrația Națională a Penitenciarelor din Republica Moldova. *Raport privind activitatea sistemului administrației penitenciare pentru anul 2023*. Accessed October 24, 2024.

https://drive.google.com/file/d/1Vyn8BydVUCpZ2pkv0_lWbSwzUGHAj9Vw/view.

151. The limited resources allocated for improving detention conditions are deeply concerning and can have serious consequences for the rights of detainees. Overcrowding and poor material conditions not only violate fundamental individual rights but can also lead to negative societal consequences. Detainees deprived of adequate medical services, hygiene, and decent living conditions are at increased risk of poor health and mental deterioration. These conditions can contribute to recidivism and undermine the objectives of penal rehabilitation.
152. It is essential for authorities to allocate sufficient resources to improve conditions within penitentiary institutions. Prioritizing investments in rehabilitation, medical care, and humane detention conditions can promote fairer justice and reduce long-term crime rates. Authorities should question why a significant portion of allocated funds is directed toward a single institution and aim to implement qualitative changes to address the needs of the entire penitentiary system. Equitable distribution of resources is crucial to improve detention conditions across all institutions and ensure that the rights of all detainees are respected.
153. However, it needs to be underlined that improvements in material detention conditions are bound to remain short-lived without decisive action on prison inflation and prison overcrowding.
154. The failure to improve detention conditions is further highlighted by information provided by the National Administration of Penitentiaries:
155. Following three public tenders in October 2021, March 2022, and May 2022 for the reconstruction of Penitentiary No. 5 – Cahul, no economic operator met the preselection criteria. The State Budget Law for 2023 allocated 10 million lei for initiating work on this project. However, a repeated public procurement procedure in 2023 attracted only one offer, which did not meet the criteria. Discrepancies between the 2021 cost estimates and current costs, which have increased by over 35%, complicated the situation. Economic operators raised questions about cost adjustments, but the contracting authority can revise estimates only at intervals exceeding two years. The lack of interest from economic operators, due to these discrepancies and legal provisions, led the procurement working group to revise cost estimates. Consequently, the specifications for a new public procurement procedure are in the process of being published. The initial financial allocations intended for Penitentiary No. 5 – Cahul were unused and redirected to another investment.
156. Repeated failures in organizing public procurements for the reconstruction of Penitentiary No. 5 – Cahul reflect the authorities' shortcomings in improving detention conditions. It is imperative that they assume responsibility and adopt concrete measures to address this issue, ensuring compliance with positive obligations regarding the treatment of detainees.
157. Furthermore, during budget planning processes, including proposals for the medium-term budget framework and the State Budget Law draft, the National Administration of Penitentiaries has justifiably requested additional financial allocations. However, due to budget austerity, most of these requests were not accepted. This lack of additional funding affects the authorities' capacity to improve infrastructure and detention conditions. It is crucial for authorities to pay greater attention to the needs of this sector and allocate necessary resources to ensure efficient and humane management of detainees. The absence of sufficient financial resources compromises detainees' fundamental rights, leading to inhumane and degrading conditions. Without necessary funds for modernization and infrastructure improvement, there is an increased risk of violence and disturbances within penitentiary institutions, affecting public security.

Examples of poor detention conditions

Sanitary facilities in Penitentiary No. 13 – Chişinău

158. The majority of cells in Penitentiary No. 13 – Chişinău, representing 98.29% of the total, are equipped with internal sanitary facilities, including Turkish-style toilets and sinks (in some cases, sinks are located outside the toilet area). Three cells designated for detainees engaged in housekeeping tasks are exceptions, with sanitary blocks located outside the cells.
159. Out of 148 cells analyzed—excluding disciplinary isolation cells, decommissioned cells, and cells for detainees working in housekeeping—27 (18%) do not meet the minimum standard of one square meter per sanitary block. This highlights issues related to insufficient space for sanitary facilities.
160. Out of 151 functional cells (excluding disciplinary isolation and decommissioned cells), 39 do not provide adequate privacy when using toilets. Additionally, both communal bathrooms for women and men show significant mold presence, indicating neglect. Mold poses health risks, including respiratory problems and allergic reactions, adversely affecting detainees' physical and psychological well-being.
161. Limited access to showers, permitted only once a week, constitutes a human rights concern. In the men's communal bathroom, although several rooms are equipped with shower hoses, only one out of four is functional. Many hot water pipes are cracked, and most shower hoses are damaged. These issues, coupled with high humidity, hinder proper use and further compromise hygiene conditions already affected by mold²⁶.

Ventilation and lighting in penitentiary No. 13 – Chişinău

162. A critical issue in Penitentiary No. 13 – Chişinău is the deficient ventilation system, severely impacting air quality in cells and common areas. Persistent odors of mold and ammonia not only cause discomfort but also indicate health risks like respiratory ailments and allergies. Without an efficient mechanical ventilation system, natural ventilation through windows is essential.
163. Approximately 29% of cells (excluding decommissioned and disciplinary isolation cells) have undersized windows that do not meet adequate ventilation standards relative to cell size. This problem worsens when weather conditions prevent opening windows, exacerbating air quality issues.
164. Common areas lack any form of ventilation, leading to the accumulation of unpleasant odors and mold, representing a major vulnerability in the institution's health care system.
165. Lighting problems significantly affect detainees' psychological well-being and overall health. Natural light is crucial for mental health and preventing vision deficiencies. In 96 cells (62% of the total), the view outside is severely obstructed by walls or other structures. Alarming, three cells housing 24 detainees have no external view, while two cells with 21 detainees face only the penitentiary's interior corridor. Three disciplinary isolation cells are in the basement, with extremely limited external visibility.
166. These deficiencies contribute to deteriorating health and psychological conditions. Immediate attention to improve living conditions is essential. Artificial lighting is also inadequate; single light sources fail to meet the varied needs of multiple occupants. Insufficient lighting complicates activities like reading and can heighten feelings of isolation, worsening mental health issues. Adaptive artificial lighting tailored to individual needs is imperative.

²⁶ Ombudsman Office of the Republic of Moldova. *Raportul Privind Vizita Preventivă şi de Monitorizare Efectuată la Penitenciarul nr. 13 – Chişinău din Cadrul Administraţiei Naţionale a Penitenciarelor la Date de 2 August 2023*. Accessed October 24, 2024. <https://ombudsman.md/post-document/raport-de-vizita-la-penitenciarul-nr-13-chisinau-2-august-2023-2/>.

Accessibility for persons with locomotor disabilities

167. An analysis reveals that Penitentiary No. 13 – Chişinău is generally not adapted for detainees with locomotor disabilities, especially those using wheelchairs. Significant barriers prevent access to facilities like the medical unit or bathrooms.
168. Out of 154 cells, only two in the medical block are partially adapted, equipped with toilets and showers with support bars. However, only one cell is fully accessible; the other has a door less than 80 cm wide, too narrow for wheelchair access. This adapted cell is on the first floor and intended for individual use.
169. Although eight cells have toilet doors meeting the minimum width requirement, none are fully adapted due to other impediments like the absence of support bars and the presence of steps. Both communal bathrooms are entirely inaccessible to individuals with locomotor or sensory disabilities.
170. The lighting infrastructure does not meet the specific needs of visually impaired persons, lacking adaptive lighting solutions and essential contrast markings for orientation.

Nutrition in the penitentiary environment: critical perspectives

171. Nutrition is a vital aspect of inmate care in penitentiaries, directly impacting their health and well-being. However, detailed analysis reveals significant deficiencies in the provided dietary regime, including nutritional shortcomings and lack of dietary diversity. The neglect of detainees' needs and insufficient access to fresh, whole foods are critical issues.
172. To ensure effective recovery and reintegration, it is crucial to review and substantially improve penitentiary food policies in line with nutritional standards and individual detainee needs.
173. According to the Visit Report of the National Council for the Prevention of Torture at Penitentiary No. 13 – Chişinău, food preparation occurs in the facility's kitchen by detainees, not all of whom have culinary training. The administration asserts that all detainees working as cooks have undergone medical examinations. Daily sanitary inspections of the canteen are conducted, with entries in logs. Taste and organoleptic tests of food are performed daily, with samples collected.
174. Detainees receive meals three times a day. The administration claims that individuals requiring special diets receive personalized meals. However, most detainees complain about poor quantity and quality, describing the food as tasteless, insufficient, and low-quality. Information from the administration indicates that some products like rice and buckwheat have been removed from the menu, and no fruits or vegetables are distributed.
175. Observations noted that some detainees have refrigerators in their cells, storing food sent by relatives.
176. Similarly, during a monitoring visit to Penitentiary No. 15 – Cricova, it was found that although the food block operates with necessary authorizations and facilities, detainees are often dissatisfied with the quality, quantity, and taste of the food. Complaints include finding feathers in the food and infrequent provision of eggs. The People's Advocate Office has received multiple complaints regarding unsatisfactory food quality²⁷.

²⁷ Ombudsman Office of the Republic of Moldova. *Raportul Privind Vizita Preventivă/De Monitorizare Efectuată la Penitenciarul nr. 15 – Cricova al Administrației Naționale a Penitenciarelor la Data de 27 Aprilie 2023*. Accessed October 24, 2024. <https://ombudsman.md/post-document/raport-privind-vizita-preventiva-de-monitorizare-efectuata-la-penitenciarul-nr-cricova-al-administratiei-naționale-a-penitenciarelor-la-data-de-27-aprilie-2023-2/>.

177. The Council for the Prevention of Torture recommends that the penitentiary administration take measures to improve food preparation quality and involve qualified personnel by providing specialized training to detainees involved in cooking.
178. Reforming food policies in penitentiaries is an urgent necessity to ensure an adequate dietary regime supporting detainees' recovery and reintegration. Comprehensive review of food preparation and distribution procedures is imperative, including involving qualified staff and implementing rigorous hygiene and nutrition standards. Improving these aspects will enhance detainees' physical and mental health and reflect a deep commitment to respecting human rights and promoting a more humane and equitable penitentiary environment.

Penitentiary No. 13 – Chişinău: prospects for reconstruction

179. According to the National Administration of Penitentiaries, implementing forced ventilation systems in Penitentiary No. 13 – Chişinău is an extremely costly endeavor. Based on comparative costs from Penitentiary No. 16 – Pruncul, constructing such a system per penitentiary would amount to approximately 100 to 120 million lei, covering only the equipment and duct networks, excluding cosmetic or major rehabilitation of the cells. Capital repairs themselves have an average cost of about 456 euros per square meter.
180. Expanding the sanitary blocks is considered extremely difficult due to the existing floor plan, and widening the detention spaces is viewed as utopian in terms of structural consolidation. Total replacement of ceilings and floors is necessary, as they are mostly constructed from wood and clay tiles or reinforced concrete structures made from scrap metal, with a metal wear rate of about 45%. Additionally, the engineering networks for potable water supply, sewerage, electricity, and heating present a crucial challenge due to their extensive reach and high degree of wear, estimated at approximately 62%.
181. Considering all these aspects, the cost of rehabilitating one square meter of space within the penitentiary, given the constrained conditions and damaged structures, is estimated at approximately 1,600 euros per square meter. For the institution's 14,837 square meters of constructions, this amounts to a total of 23,739,200 euros. This investment would allow for the creation of reasonable conditions for housing approximately 246 detainees, meaning an investment of about 96,500.71 euros per detainee.
182. While the National Administration of Penitentiaries views the reconstruction of Penitentiary No. 13 – Chişinău as difficult and challenging to implement, the Ministry of Justice's 2023 Activity Report indicates that the implementation of the construction project for a new penitentiary in Chişinău is partially achieved. On April 26, 2023, a contract was signed for the redesign of the Chişinău penitentiary, which includes reducing its capacity from 1,536 to 1,050 places. A terms of reference was prepared for developing the technical documentation, involving the exclusion of Block A with a capacity of 392 places, the relocation of Block C, and the redesign of Block B for women with a capacity of 82 places. Additionally, the design includes the incorporation of a photovoltaic park, an alternative renewable energy source with a capacity of 2.5 MW, to fully cover the electricity consumption needs of the penitentiary.
183. Throughout 2023, solutions were examined to optimize project management. Scenarios for resetting management were discussed with the Council of Europe Development Bank (CEB) and the Ministry of Finance during a technical monitoring mission in October 2023. These scenarios were analyzed in terms of costs, advantages, risks, and future implications. Meetings were held with UN agencies such as UNDP and UNOPS at both decision-making and technical levels. The normative framework is to be modified following the validation of the final decision regarding the outsourcing of management by

the Interministerial Strategic Planning Committee (planned meeting in September 2023). It was decided to retain the project implementation unit and amend Government Decision No. 173/2014 to regulate the following aspects: delineation of responsibilities between the National Administration of Penitentiaries and the Ministry of Justice; establishing the Ministry of Justice's competence to appoint the manager and oversee and control the project implementation process (through the Supervisory Committee); designating the project implementation unit as a public institution subordinate to the Ministry of Justice or the National Administration of Penitentiaries; assigning to the National Administration of Penitentiaries the responsibility to monitor the operational activity of the project implementation unit; regulating the competencies of the Supervisory Committee; specifying the functional competencies of the Committee; describing the organizational procedure for conducting working meetings; and adjusting the structure of the project implementation unit to current needs (three staff units: manager, chief accountant, civil engineer). These amendments were discussed and agreed upon during the project supervisory committee meeting on June 28, 2023.

184. After signing the framework collaboration agreement between the Ministry of Justice and UNOPS, the procurement process for the construction of the penitentiary will be initiated. This process is to be implemented during 2024²⁸.
185. The Promo-LEX Association notes that there are two conflicting perspectives regarding the reconstruction of Penitentiary No. 13 – Chişinău. On one hand, the National Administration of Penitentiaries considers the reconstruction to be extremely costly and difficult to implement, given the challenges related to the ventilation system, engineering infrastructure, and precarious structural conditions. On the other hand, the Ministry of Justice's 2023 Activity Report indicates partial progress in implementing a new penitentiary in Chişinău, including the signing of contracts and the initiation of the procurement process for construction.
186. These two perspectives underscore the complexity and challenges involved in managing infrastructure projects at the governmental level, highlighting the necessity for a balance between strategic objectives and operational realities. While the reconstruction of the penitentiary represents an important objective for improving detention conditions, its implementation remains subject to multiple factors and processes, including resource management, inter-institutional collaboration, and adherence to established timelines and budgets. Therefore, a comprehensive and coordinated approach is essential to ensure the project's success and sustainability in its entirety.
187. In the context of repeated failures in organizing public procurements for the reconstruction of Penitentiary No. 5 – Cahul (as previously discussed), a deficient and inefficient system in managing these processes is evident. Discrepancies between cost estimates and current costs, as well as a lack of interest from economic operators, demonstrate a lack of competence and capacity among authorities in improving detention conditions. Unused initial financial allocations and their redirection to other investments indicate improper resource management and a lack of prioritization of urgent issues.
188. It is clear that there is a systemic failure requiring immediate and consistent intervention from the responsible authorities. It is imperative that they assume responsibility and adopt concrete measures to remedy this problem, guaranteeing compliance with legal obligations and improving detention conditions.

²⁸ Radio Europa Liberă Moldova. "Noul penitenciar din Chişinău va costa mai mult, va fi gata mai târziu şi va avea mai puţine locuri." Accessed October 24, 2024. <https://moldova.europalibera.org/a/noul-penitenciar-din-chisinau-va-costa-mai-mult-va-fi-gata-mai-tarziu-si-va-avea-mai-putine-locuri/32909084.html>.

RECOMMENDATIONS

1. Strengthen the preventive and compensatory remedies system

- **Timely examination of complaints:** The Moldovan authorities must ensure that detainees' complaints concerning poor detention conditions are examined within the statutory timeframe of three months. To meet this target, the number of investigating judges should be increased, particularly in courts that handle multiple prisons.
- **Enhance accessibility and reduce evidentiary burden:** The authorities should implement legal reforms to simplify the evidentiary requirements for detainees filing complaints about their conditions of detention. Courts should adopt a balanced approach in assessing evidence, considering the limited capacity of detainees to gather and present proof under restrictive conditions.
- **Effective compensatory measures:** The compensatory remedy must ensure adequate compensation for detainees. The current monetary compensation of 100 Moldovan lei (approx. €5.10) per day spent in substandard conditions should be reviewed to ensure it aligns with European standards. Furthermore, authorities should monitor the consistent application of sentence reductions and pecuniary compensation across all cases, ensuring that such remedies are genuinely effective in compensating for violations of Article 3 of the European Convention on Human Rights (ECHR).
- **Training and capacity-building for judiciary:** Judges must receive continuous training on international human rights standards, particularly on detention conditions and the obligations under Article 3 and Article 13 of the ECHR. Special focus should be placed on handling detention-related complaints efficiently, preventing further procedural delays.

2. Develop and implement a comprehensive strategy to address prison overcrowding

- **Long-term strategy:** The Moldovan government should urgently adopt and implement a long-term national strategy for reducing prison overcrowding. This strategy should incorporate a combination of legislative reforms, policy measures, and infrastructural improvements aimed at alleviating the pressure on the penitentiary system, based on an analysis of the long-term characteristics of the Moldovan prison system, and acting on all levers in an integrated manner (entry and exit flows, duration of sentences, use of pre-trial detention) to address the root causes of overcrowding, and should involve all relevant stakeholders including civil society.
- **Expanding non-custodial measures:** In parallel to acting on the root causes of prison overcrowding, amendments to the Criminal Code should increase the use of non-custodial sentences, such as probation, community service, and electronic monitoring, particularly for non-violent offenders, while taking into account the risk of the expansion of the penal system. Authorities should encourage conditional release mechanisms and increase the rate of parole, targeting a reduction in pre-trial detention, which contributes significantly to overcrowding.
- **Review and expand conditional release provisions:** The criteria for conditional release should be re-evaluated to make it a more accessible and frequently applied measure. Penal commissions

should ensure they provide thorough reasoning for their decisions to release or deny parole, thus restoring confidence in the system and improving judicial scrutiny of parole decisions.

- **Accelerate the construction of new prison facilities:** The delayed construction of the new prison in Chişinău must be expedited. Authorities should allocate the necessary resources to complete this and similar projects across the country, particularly in prisons where overcrowding and poor detention conditions are most severe.

3. Allocate sufficient budgetary resources for prison infrastructure improvements

- **Increase financial investments:** Authorities must prioritize increasing the budget for prison infrastructure while recognising that without resolute action to address prison overcrowding, the benefits of renovations will be short-lived. This should include both immediate investments in the repair and maintenance of existing facilities and long-term funding for constructing new, modern penitentiaries to address systemic issues of overcrowding and substandard living conditions.
- **Audit of existing prison facilities:** A nationwide audit of the current prison estate should be conducted to identify specific areas requiring urgent infrastructure repairs. The authorities should implement the audit's findings with transparency, ensuring that budget allocations are directed to the most critical facilities and areas, such as improving sanitation, ventilation, and lighting in detention spaces.
- **Establish proper capacity standards:** Moldova should adopt clear, evidence-based standards for determining the maximum capacity of each detention facility, following international guidelines. These standards must take into account the specific needs of detainees, such as access to health services, recreation, and education, and should reflect individual needs rather than applying blanket figures based on cell size.

4. Improve healthcare services for detainees

- **Integration of prison healthcare within the national health system:** The authorities should accelerate the accreditation process for medical units within penitentiary institutions to ensure that detainees receive healthcare services that meet national and international standards. This includes ensuring that medical facilities are adequately staffed, equipped, and supervised, and placed under the authority of the Ministry of Health.²⁹
- **Specialized medical care:** The Ministry of Justice, in collaboration with the Ministry of Health, must ensure that detainees have access to specialized medical care, particularly for those suffering from chronic conditions or severe illnesses. Detainees should be allowed access to civil hospitals when necessary, and logistical or financial challenges in transferring detainees for medical care should be addressed urgently.
- **Humanitarian release for seriously ill detainees:** Introduce and implement clear regulations for the humanitarian release of detainees who are seriously ill and unable to continue serving their sentence due to their medical condition. This would align Moldova with European norms on compassionate release.

²⁹ Such transfer of responsibility for prison healthcare to the Ministry of Health is supported by the CPT and "corresponds to a Europe-wide trend" as it can "help ensure optimum healthcare for prisoners and implement the general principle of the equivalence of care in prison with that of the wider community". See CPT, Report on the visit to Estonia, CPT/Inf (2024) 26, 2024, quote para. 64 (Accessed on 29 October 2024).

- **Medical insurance for detainees:** Ensure that detainees are included in Moldova's general healthcare insurance system, thus allowing them access to essential health services in line with the country's broader health policies.

5. Ensure transparency and accountability in prison administration

- **Accurate reporting on detention conditions:** Penitentiary institutions must be required to provide accurate and transparent reports to the judiciary regarding detainees' living conditions. There should be legal consequences for submitting false or misleading information in judicial proceedings related to compensatory mechanisms, including penalties for prison administrators found to have provided erroneous information.
- **Independent monitoring of detention conditions:** Strengthen the role of independent oversight bodies, such as the Council for the Prevention of Torture and national human rights institutions, in regularly monitoring detention conditions. Their findings should be publicly available, and prison administrations should be required to implement recommendations arising from these inspections.
- **Prisoner complaint mechanism:** Establish a streamlined, independent complaint mechanism through which detainees can report violations of their rights without fear of reprisal. Complaints should be handled promptly, and the outcomes should be communicated transparently to both the detainees and the public.

6. Reform legal provisions to clarify compensatory mechanisms

- **Address legal uncertainties:** The Moldovan legislature should amend the relevant provisions of the Code of Criminal Procedure and other laws to provide clarity on the compensatory mechanism for poor detention conditions. This includes specifying the rights of pre-trial detainees, clarifying whether the remedy applies retroactively, and ensuring consistent application of compensatory remedies.
- **Transitional provisions for new laws:** When amending the legal framework, the legislature should include transitional provisions that explicitly outline how new laws apply to ongoing cases. This will help avoid discrepancies and ensure that detainees have access to remedies under the legal framework in place at the time their complaints were filed.

7. Promote judicial efficiency and reduce procedural delays

- **Increase judicial capacity:** The number of judges assigned to detention-related complaints must be increased to handle the growing volume of cases more efficiently. This may include establishing specialized judicial panels or courts to exclusively handle cases involving detention conditions, ensuring quicker resolution times.
- **Streamline the appeals process:** Legal reforms should streamline the appeals process for cases concerning detention conditions, particularly those involving compensatory mechanisms. Clear guidelines should be introduced to limit the timeframes for appeals, ensuring that detainees' cases do not remain unresolved for extended periods, sometimes lasting several years.

8. Expand and strengthen non-custodial measures

- **Wider use of probation and alternative sanctions:** Authorities should promote greater use of probation and alternative sanctions such as community service, particularly for non-violent offenders, while taking into account the risk of the expansion of the penal system. A review of the

current sentencing framework should be conducted to reduce reliance on custodial sentences, aligning Moldova with European practices aimed at reducing prison populations.

- **Improve the functioning of the probation system:** The probation system should be strengthened through better funding, enhanced training for probation officers, and improved coordination between probation services and the judiciary. This will encourage greater use of probation as an alternative to incarceration and help reduce recidivism rates.
- **Awareness and training:** Public authorities, including judges and prosecutors, should be trained on the benefits of non-custodial measures, with an emphasis on rehabilitative justice. Training programs should be developed in collaboration with international partners to promote best practices in sentencing and corrections.

9. Address the needs of vulnerable detainees, including those with disabilities

- **Accessible detention facilities:** Prisons should be made accessible to detainees with disabilities. This includes installing appropriate infrastructure such as ramps, adapted sanitary facilities, and accessible medical units, ensuring that individuals with disabilities can live with dignity while incarcerated.
- **Individualized support for vulnerable detainees:** Authorities should provide individualized support for detainees with physical or mental disabilities, ensuring they receive adequate care, rehabilitation opportunities, and support in preparing for reintegration into society.



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SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

**MINISTRY OF JUSTICE OF THE REPUBLIC OF MOLDOVA
GOVERNMENT AGENT**

No. 06/9934

Chisinau, 6 November 2024

REPLY

to the Joint Communication of Promo-LEX Association, the People's Advocate Office
and the European Prison Litigation Network
in the *I.D. v. the Republic of Moldova* group of cases (no. 47203/06)

1. The Government of the Republic of Moldova (hereinafter "the Government") hereby submit their position in reply to the Joint Communication lodged on 25 October 2024 by Promo-LEX Association, the People's Advocate Office and the European Prison Litigation Network (hereinafter "the Communication") concerning the general measures taken at national level for executing the *I.D.* group of cases.

2. From the outset, the Government would like to reiterate their position submitted in the [Action Report](#) of 10 October 2024 (hereinafter "the Action Report"), while also acknowledging the commendable efforts of the joint submission's authors in fostering democracy in the Republic of Moldova through the monitoring, promotion and defence of human rights and the fortification of civil society. Nevertheless, the Government deem it imperative to clarify several issues raised in the impugned Communication.

3. As a preliminary remark, it should be noted that the Communication in question does not mention in any way the latest Action Report submitted by the domestic authorities, nor does it make any reference to the measures already reported to the Committee of Ministers. In fact, many of the issues referred to in the Communication were largely dealt with in the Action Report. Therefore, the Government will focus mainly on the aspects which were not treated in the Action Report. Where an issue highlighted by the authors of the Communication coincides with the information included in the Action Report, only a general clarification will be made with reference to the Action Report.

4. The first issue reflected in the Communication refers to the efficacy of the preventive and compensatory mechanisms. The authors pointed to a low rate of admissibility of complaints filed by detainees regarding conditions of detention contrary to Article 3 of the Convention. They indicated that approximately 37% of complaints had been either dismissed or not fully satisfied. The fact that they also included therein complaints that had not been fully satisfied led to an artificial increase of the rate of dismissed complaints, which does not reveal the real situation in this regard. Even when a complaint has not been fully satisfied, it still means that the person who suffered from poor condition of detention has obtained redress. Therefore, these complaints should be included in the number of satisfied complaints. As previously stated in the Action Report, out of 3829 of requests solved in 2023, 2826 (i.e. 74%) were admitted. On the contrary, 543 complaints were dismissed, which represents a ratio of 14%. The remaining number of 460 complaints refers to situations

when the judicial proceedings were terminated on other legal grounds. Given this clarification, it is obvious that the vast majority of complaints are admitted and that the remedy is not affected by a low rate of admissibility. The same conclusion is valid for 2022, when only 15% of complaints were dismissed.

5. In the context of enhancing the mechanisms for addressing complaints filed by detainees, it is important to highlight the adoption of Order no. 210/2024 of the Director of the National Prison Administration. This regulatory framework establishes comprehensive guidelines for the examination of complaints related to criminal enforcement matters. The main objective of this normative act is to streamline and optimize the complaint process, ensuring greater efficiency, accountability and transparency.

6. The authors also mention in their Communication the alleged administrative deficiencies which contribute to perceptions of inefficacy within the system. Complaints that have been rejected due to jurisdictional issues were given as an example of so-called deficiencies. The Government note that this argument is rather speculative as the authors have not explained the reasons for relinquishment of jurisdiction. Moreover, they did not mention the existence of divergent case-law regarding jurisdictional issues when dealing with this type of cases. In this context, the number of complaints declined due to jurisdictional issues (391 in 2023 and 515 in 2022) can reasonably be explained by errors admitted by convicts and pre-trial detainees.

7. The affirmation that the duration of legal proceedings can extend to up to two years or even five is exaggerated. These cases represent rather regrettable exceptions than widespread practices. As indicated in the Action Report, for the period 2022-2024, the Superior Council of Magistracy has not received any complaints from detainees about alleged delays in the examination of complaints concerning poor detention conditions. Accordingly, there are no relevant elements pointing to the systematic nature of such alleged delays.

8. Similarly, significant delays in the consideration of appeals on points of law were invoked. In this connection, the Government note the immediate enforceability of the court ruling finding that the detainee has been detained in conditions contrary to Article 3 of the Convention (Article 473/4 § 9 of the Code of Criminal Procedure) and the reduced term constitutes the sentence actually served (Article 473/4 § 10 of the Code of Criminal Procedure). Thus, in essence, the issue raised does not affect the situation of the detainees. They benefit from the reduction of the sentence immediately after the investigating judge's ruling and are released from detention when the term of imprisonment expires following the application of the compensatory mechanism.

9. In respect of the application of the compensatory mechanism in the event of interruption of the term of detention, or when the convicted person submits selective claims relating to different periods of detention, the Court's findings in *Hadji v. the Republic of Moldova* (nos. 32844/07 and 41378/07, § 14, 14 February 2012) should be taken into account. The Court emphasized that, where the applicant was detained on the base of the same criminal proceedings, but there was a period of interruption against which he did not complain, claims in respect of periods prior to the interruption are to be declared inadmissible if they were brought within a period exceeding six months.

10. As to the applicability of the compensatory mechanism for the periods before 01 January 2019, the Government note that no decision has been rendered rejecting

the complaints alleging poor conditions of detention for previous periods, except for the periods prior to the ratification of the Convention by the Republic of Moldova. The admissibility filter was applied only to establish whether the complaint fell within the time-limit of 6 months from the date of release, or no later than 4 months from the moment of release from the place of detention. Similarly, it should be noted that the formula for compensation for detention in conditions contrary to Article 3 of the Convention is identical and applies uniformly to both pre-trial detainees and convicted persons, so that there are no grounds for invoking certain inconsistencies arising from the status of the person.

11. The authors referred to the alleged ambiguity concerning monetary compensation. They asked whether monetary compensation for convicted persons applies to the entire period of detention in inhuman conditions or only to the part that could not be reduced due to mathematical limitations (e.g., periods not divisible by ten as per the reduction formula). The Government point out that in the event of a finding of detention in conditions contrary to Article 3 of the Convention, the court shall reduce the sentence of the convicted person, and in respect of the remaining period of detention for which the reduction cannot be applied, the court shall order the payment of compensation of up to two conventional units (one conventional unit represents MDL 50) for each day of detention in poor conditions. In that respect, no ambiguity or inconsistency in the application of the form of compensation can be invoked, since the reduction of the term of imprisonment is applied first and, in the case of periods for which this mechanism cannot be applied, monetary compensation is awarded. Thus, the convicted person cannot be compensated twice by the simultaneous application of the two forms of compensation for the same period of detention in poor conditions.

12. With regard to the arguments that the amendments made by Law no. 245/2023 have worsened the situation of pre-trial detainees, it is noteworthy that, according to these amendments, the formula for reducing the sentence by applying the compensatory mechanism has been standardized in order to ensure fairness and exclude the invocation of any discriminatory criteria. Moreover, in *Draniceru v. Republic of Moldova* (no. 31975/15, 12 February 2019), the Court noted that the new remedy introduced by Laws no. 163 and no. 272 was adopted, in principle, in accordance with the criteria set out in the *Shishanov* judgment and that it could be considered *a priori* effective for challenging inadequate conditions of detention in the Republic of Moldova. Therefore, the formula of reduction from 1 to 2 days of detention for every 10 days of detention in poor conditions is not inconsistent with the level of satisfaction granted by the Court.

13. Concerning the task of submitting the report on the claims indicated in the convicted person's complaint, it should be noted that, according to Article 473/2 § 1 of the Code of Criminal Procedure, the complaint against the administration of the penitentiary institution concerning the conditions of detention shall be submitted to the court with territorial jurisdiction over the penitentiary institution where the convicted person is held or, as the case may be, from which he/she was released. Thus, the report under Article 473/3 § 3 of the Code of Criminal Procedure shall be submitted by the representative of the penitentiary institution in which the applicant is detained or from which he/she has been released, corresponding to all the claims indicated in the complaint, which may also refer to other penitentiary institutions. Therefore, where the complaint concerns conditions of detention in more than one institution, the relevant information shall be requested and systematized in a single

report submitted by the prison institution which is responsible for the representation in that judicial procedure.

14. As regards the alleged demand of excessive proof by the courts, the Government consider that this allegation does not correspond to reality. As results from the examples illustrated in the Action Report, the national courts apply the presumption of improper conditions of detention, according to which the burden of proof is on the penitentiary institution to demonstrate that the prisoner was held in appropriate conditions of detention. It should also be noted that the burden of proof in this category of litigation lies with the prison institution whose conditions of detention are the subject of the claim, being obliged to submit a reasoned report corresponding to the claims alleged, as expressly follows from the provisions of Article 10 § 3/1 and 473/3 § 2 of the Code of Criminal Procedure. Under Article 473/2 § 2 of the Code of Criminal Procedure, it is incumbent on the detainees to formulate the claims by indicating data on the period and place of detention, as well as a detailed description of the material conditions that seriously affect their rights. Thus, the request to detail the claims concerning the conditions of detention does not require the presentation of evidence in order to substantiate them, but rather a submission of a clear and concise indication of the objections to the conditions of detention which the applicants seek to challenge. Only if the applicants have certain evidence substantiating these claims, they are entitled to attach it. The relevant legal provisions on this presumption are clear and unequivocal. Furthermore, the Communication does not contain any concrete examples where the national courts have required or applied an excessive burden of proof.

15. The Communication contends that penitentiary institutions consistently provide inaccurate or distorted information to the courts in the context of evaluating complaints concerning prison conditions. This statement is unsubstantiated. The reports provided are based on accurate and reliable data, drawn from official records maintained by the penitentiary institutions.

16. As regards the distinction between a pre-trial detainee and a convicted person, the legal framework is quite clear. According to the wording of Article 65 § 3 (1) of the Code of Criminal Procedure, the person whose sentence has become final is called a convict, if the sentence is, in whole or in part, a conviction. Thus, the status of a convicted person will be obtained only after the sentence of conviction has become final. In addition, Article 466 of the Code of Criminal Procedure sets out the cases in which a judgment becomes final. On the contrary, Article 295 § 1 of the Enforcement Code establishes that a pre-trial detainee is a person to whom a preventive measure has been applied. In summary, these legal provisions provide sufficient details to clearly distinguish between the two statuses.

17. The Communication also contains several additional remarks on the alleged lack of clarity of the legal provisions. The Government observe that the legislator simply cannot foresee all possible situations that may arise in the process of law enforcement. Different scenarios may arise and the most important thing is to create a general legal framework containing essential regulations. Further, it is up to the judiciary to deal with particular cases which inevitably could not be covered by the legal provisions and to duly interpret the latter. It takes time to establish uniform case-law. Moreover, no concrete court decisions indicating the different judicial interpretations have been described in the Communication.

18. The second aspect reflected in the Communication concerns the population in prison establishments. The authors indicated that the persistent overcrowding was

exacerbated by inefficient management practices and an incoherent calculation of detention capacities. To address these shortcomings, as mentioned in the Action Report, a working group has been set up to develop a methodology for calculating the maximum capacity of a prison in line with the international standards in this area. The draft is in the procedure at the Ministry of Justice. This is an important step forward to get a clearer view of the situation in prisons and to intervene with a series of much more concrete and effective measures.

19. In addition, referring to overcrowding which, in the authors' opinion, continues to be a critical problem as a result of the excessive application of pre-trial detention and the low rate of release on parole, the Government draw attention to the fact that over the last 4 years the prison population has decreased by about 1000 persons and the arrest rate is one of the lowest in Europe. A significant decrease in the prison population is therefore evident. This decrease was also determined by the effective measures undertaken in this regard at domestic level, such as early release on parole, replacement of the unexecuted part of the sentence with a milder sentence, and the compensatory mechanism for detention in conditions contrary to Article 3 of the Convention.

20. In the same context, the national authorities, jointly with the Council of Europe, are working on the elaboration of the Action Plan on the prevention and reduction of overcrowding in Penitentiary No. 13. It is also notable to mention that the actions included in this Plan could be subsequently applied to other institutions where overcrowding will be identified.

21. At the legislative level, by Law no. 136/2024 (in force since 07 September 2024), the following amendments were made to the Criminal Code:

- a. ensuring equitable treatment of persons who have reached the age of 18 but have not reached the age of 21 and who are to be sentenced to life imprisonment (Article 70 § 3/1 of the Criminal Code);
- b. revision of the category of imprisonment (from semi-open to open type) in the case of a sentence of imprisonment for the commission of minor offenses (Article 72 § 2 of the Criminal Code);
- c. in the case of persons sentenced to life imprisonment, the minimum term of imprisonment to be served in order to be eligible for early release on parole has been reduced from 30 to 25 years (Article 91 § 5 of the Criminal Code);
- d. the conditions for replacing the unexecuted part of the custodial sentence by a more lenient sentence have been revised, *i.e.* the institution will be applicable to all categories of offenders convicted of offenses of all seriousness, including life imprisonment (Article 92 § 1 of the Criminal Code).

22. As regards the remark that the rate of releases from penitentiary institutions is decreasing, the Government reiterate the argument set out in § 19. It should also be noted that prisoners mainly request the application of the provisions of Article 92 of the Criminal Code (the replacement of the unexecuted part of the sentence by a more lenient sentence), and not as much the provisions of Article 91 of the Criminal Code (regulating the release on parole). At the same time, in addition to these options, there are other alternatives such as the reduction of the sentence by applying the compensatory mechanism, the application of pardon and amnesty (Law no. 243/2021), which do not involve the supervision of the probation body.

23. With regard to penal policies aimed at reducing the pressure on the penitentiary system, it is worth noting the approval, by Government Decision no. 417 of 12 June 2024, of the Regulation on the procedure of medical examination of

seriously ill prisoners for the application of release from execution of sentence or for the replacement, revocation of pre-trial detention, as well as of the List of serious diseases that prevent persons from being in detention. Based on this regulation, prisoners who suffer from serious illness would be released from the execution of their prison sentence or would have this punishment replaced. As a result, the prison population will decrease and more medical resources will be available for prisoners remaining in detention who need medical care but do not meet the conditions for release.

24. In the same vein, the affirmation that a severe, retributive penal policy and a rigid, non-individualized execution system is maintained is inaccurate, because detainees have access to a wide range of activities that are designed to improve their social skills and prepare them for release. In this connection, it is important to underline that prisoners have access to counselling services, behavioural change and educational programs.

25. As concerns conditions of detention, a comprehensive list of measures was presented in the Action Report. The only conclusion that can be reached after reading the list is that the national authorities, taking into consideration the economical situation in the country, are genuinely trying to do their utmost to improve detention conditions. In the context of the Republic of Moldova, the aspiration to establish prisons that meet modern standards of detention can be achieved only by relatively moderate but consequent investments. This is exactly what domestic authorities do. Furthermore, the authors themselves recognize that the implementation of the progressive execution system will contribute significantly to the modernization of penal system.

26. In order to develop the infrastructure of the penitentiary administration system, ongoing improvement and equipment activities are carried out annually. At the same time, actions with systemic impact are undertaken, namely ensuring the continuity of ongoing projects, as follows:

- a. The reconstruction of Penitentiary No. 10 – the executed works included the reconstruction of three blocks:
 - I. Block A – a three-storey detention sector with divided cells of 2-3 persons each, equipped with sanitary blocks separated from the rest of the rooms, with the capacity to accommodate 105 persons and the possibility of division by detention regimes;
 - II. Block B – a three-storey study block for the training of juvenile prisoners;
 - II. Block C – the medical block.
- b. The construction of a 650-seat Arrest House in Balti – Phase I of the project has been completed and includes basic works of the general planimetry electrical networks, the water and sewage systems, the ventilation system (of the detention blocks and the connecting tower between them). Phase II of the project envisages interior and exterior finishing works of the regime blocks, construction of the logistics infrastructure, the administrative area, and in addition to the security perimeter, a food block with warehouses will be built.
- c. The reconstruction of Penitentiary no. 5 – standard documentation was prepared for the procurement of reconstruction works that will represent a new sector with modernized infrastructure for 300 accommodation places. The estimated cost of the project is MDL 145,000,000. This year, public tenders were held on the purchase of construction works, but no economic operator participating in the above-mentioned procurement procedures qualified. At the

moment, the procedures for contracting the technical responsible and author's control are initiated.

27. Regarding the high-capacity rooms, the Government note that in recent years, the penitentiary administration has been carrying out extensive works on the compartmentalization of these rooms (so far, the high-capacity rooms of the following penitentiary institutions have been compartmentalized: Penitentiary No. 4, Penitentiary No. 5, Penitentiary No. 8, Penitentiary No. 15).

28. As regards the alleged inadequate application of non-custodial measures, reinforcing the severity of sentences and exacerbating overcrowding issues, these issues were covered in the Action Report. The new Risk and Needs Assessment tool (RNA) and an Individual Sentence Planning (ISP) protocol are the main instruments designed to take into account the specific needs and to uniformize the approach to prisoners' management.

29. Improving the probation system is also a relevant issue on the authorities' agenda. This is confirmed by the still ongoing implementation of the Council of Europe Project "Strengthening the prison and probation reforms, provision of health care and treatment of patients in closed institutions in the Republic of Moldova" (2021-2024). The project aims, *inter alia*, to strengthen the institutional capacity of the Probation Service and to ensure multidisciplinary cooperation with other actors through more effective implementation of community sanctions and measures to support the social reintegration of offenders.

30. The authorities have also been invited to question why a significant portion of allocated funds is directed toward a single institution (Penitentiary No. 13). As comprehensively mentioned in the Action Report, priorities regarding renovation works are set on the basis of the inventory results. Therefore, the authorities adopt this rational approach to allocate more resources to the penitentiary institution most in need of them in order to avoid as far as possible the violation of prisoners' fundamental rights.

31. The Communication referred to the conditions of detention in Penitentiary No. 13. While further steps will be taken to improve the situation, it would be inappropriate not to note the major work that has been done. The Action Report contains all the necessary information. In this context, the authors' stance appears paradoxical: they simultaneously criticize the authorities for excessive financial investment in Penitentiary No. 13 while lamenting the detention conditions existing therein.

32. Aspects concerning nutrition in the penitentiary system were also analysed in the Action Report. The main achievement in this regard relates to the amendment of Government Decision No. 228/2024 on minimum standards for food and substitutes for prisoners and standards for personal hygiene items. Accordingly, the food provided will be diversified in order to ensure a sufficient amount of energy and nutrients for prisoners.

33. With reference to the project of the new penitentiary in Chisinau, it is noted that according to Law No. 158/2024, Amendment No. 2 to the Framework Loan Agreement between the Republic of Moldova and the Council of Europe Development Bank for the realization of the Chisinau Penitentiary Construction Project was ratified. Thus, the United Nations Office for Project Services (UNOPS) – a UN agency specialized in the implementation of large infrastructure projects, will be responsible for part of the procurement necessary for the construction of the new penitentiary in Chisinau, as well as will monitor and supervise the technical stages, control quality and manage

risks. Other changes to the Framework Agreement have also been made under Amendment No. 2 as follows: the project completion deadline was extended to 31 December 2028; the prison will have a capacity of 1050 places; the financial contribution from the Government amounts to € 25.9 million, following an increase in the cost of the project.

34. In this context, the authors accused the authorities of improper resource management and a lack of prioritization of urgent issues. However, this critique stems from a limited understanding of the broader context and the strategic considerations at stake. The authors asserted that an estimated amount of EUR 23,739,200 was required for the renovation of Penitentiary No. 13, which equates to approximately EUR 96,500.71 per prisoner. In contrast, the proposed new penitentiary in Chisinau, designed to accommodate 1,050 detainees, is projected to cost EUR 75,900,000, translating to around EUR 72,285 per prisoner. Given these financial parameters, it is evident why the national authorities are prioritizing the construction of the new facility. The authors' argument would carry more weight if the authorities had neglected Penitentiary No. 13 entirely. However, this is not the case. The Action Report provides comprehensive information detailing the renovation efforts already undertaken, including tables illustrating the ongoing commitment to improving the existing facility. Ultimately, the decision to invest in the new penitentiary should be seen not as a dismissal of the needs of Penitentiary No. 13, but as a necessary step towards addressing systemic challenges within the penal system. By expanding capacity and improving infrastructure, the authorities are making a strategic investment in the future of correctional services, aiming to enhance rehabilitation opportunities and overall inmate welfare.

35. In respect of the current daily monetary compensation of MDL 100 (approximately EUR 5.10) allocated for individuals enduring substandard conditions, the Government draw attention to the Court's findings in the case of *Draniceru v. the Republic of Moldova* (no. 31975/15, 12 February 2019, § 40). The Court determined that this compensation, when evaluated in the context of practices of other States, could not be deemed unreasonable.

36. The recommendation concerning trainings for judiciary, long-term strategy and prisoner complaint mechanism has been fully addressed in the Action Report.

37. While the authors advocate for a nationwide audit of the current prison estate, their argument lacks sufficient rigor and clarity. Given that investments and measures are already systematically implemented based on biannual inventories of buildings and technical networks, the call for an additional audit appears redundant. This existing process effectively identifies necessary upgrades and maintenance, ensuring that resources are allocated efficiently. Therefore, diverting funds and efforts towards a separate audit may not only be superfluous but could also undermine the effectiveness of the current operational framework.

38. Regarding the adaptation of cells in Penitentiary No. 13 to meet the needs of inmates with mobility disabilities, the Government emphasize that there is no urgent necessity to equip and arrange all 154 cells with such facilities. This conclusion is based on statistical data, which show that only 4 individuals with such needs are incarcerated in this facility, and they are placed in the 2 cells that actually meet the required standards. Furthermore, in the context of the Constitutional Court's Decision No. 15 of 9 July 2024, national authorities are obligated to provide personal assistance services to persons with severe disabilities from childhood and to blind persons with severe disabilities.

39. To conclude, the Government wish to emphasize once again that the improvement of conditions of detention is a paramount priority at domestic level. The initiatives detailed above and the measures previously reported underscore the Government's unwavering commitment to upholding human dignity in detention facilities. The domestic authorities are steadfast in their dedication to executing timely and sustained actions that comply with the international standards and also significantly elevate the standards of treatment within the domestic prison system.



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