CPT/Inf (2019) 8

Response

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

from 7 to 19 February 2018

The Romanian Government has requested the publication of this response. The CPT's report on the February 2018 visit to Romania is set out in document CPT/Inf (2019) 7.

Strasbourg, 19 March 2019

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POSITION
OF THE ROMANIAN GOVERNMENT

IN RESPECT TO THE REPORT ON THE VISIT TO ROMANIA CARRIED OUT BY THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT FROM 7 TO 19 FEBRUARY 2018

Bucharest, February 2019

The Romanian Government received, via the Ministry of Justice, the Report on the Visit to Romania Carried Out by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) from 7 to 19 February 2018. The Report was disseminated to all institutions concerned with the aim to take notice thereof and to respond to the recommendations, comments and requests for information coming from the CPT.

The response is made up of a point-by-point presentation of the opinions of the Romanian authorities as concerns the comments, recommendations and requests for information coming from the CPT in its Report and keeps the order of the issues looked at.

The Romanian Government reiterates the full support which the Romanian authorities are ready to grant to CPT in making available any additional information which CPT might request.

Law Enforcement

As regards the allegations on alleged acts of "physical ill-treatment", the provisions of the Criminal Code[1] are relevant and the specific instruments providing sufficient safeguards to eliminate cases of physical ill-treatment of suspects by police officers, which are classified as offences, as follows: Art. 280 - Abusive Investigation, Art. 281 - Use of ill-treatment, Art. 282 - Torture, Art. 296 - Abusive Behaviour.[2]

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[1] Law no. 286/2009, in force since 01.02.2014.

[2] **Art. 280 - Abusive Investigation**
(1) The use of promises, threats or violence against a person who is being prosecuted or on trial in a criminal case, by a prosecution body, by a prosecutor or by a judge, to determine that person to make or not to make statements, to make false statements or to withdraw statements shall be punished by imprisonment from 2 to 7 years and by banning the right to hold public office.
Art. 281 - Use of ill-treatment
(1) Subjection of a person to serving a penalty, a safety or educational measure in any other way than stipulated by legal provisions shall be punished by imprisonment from 6 months to 3 years and by banning the right to hold public office.
(2) Subjection to degrading or inhumane treatment of a person in a state of remand, imprisonment or serving a custodial security or educational measure shall be punished by imprisonment from one to 5 years and by banning the right to hold public office.
Art. 282 - Torture
(1) The act of a civil servant who is fulfilling a function which entails the exercise of the state authority or of another person acting upon the instigation of or with the express or tacit consent of such person to cause a person intense physical or mental suffering:
a) in order to obtain from that person or from a third party information or confessions;
b) in order to punish that person for an act committed by that person by or a third party or for an act that he/she or a third party is suspected to have committed;
c) in order to intimidate or exercise pressure on him/her or on a third party;
d) for a reason based on any form of discrimination, shall be punished by imprisonment from 2 to 7 years and by banning the exercise of certain rights.
(2) If the act in para.(1) resulted in bodily harm, the penalty shall be imprisonment from 3 to 10 years and banning the exercise of certain rights.
(3) Torture that resulted in the death of the victim shall be punished by imprisonment from 15 to 25 years and by banning the exercise of certain rights.

Also, having in mind these criminal policy measures, the management of the Ministry of Internal Affairs (MIA) and of the Romanian Police adopted a "zero tolerance" approach to any involvement of the staff of the ministry in committing such offences.

We highlight that the principle of zero tolerance to acts of physical ill-treatment is also reflected by the provisions of art. 43, letters c) and d) of Law no. 360/2002 *on the status of the police officer*, as further amended and supplemented, which ban police officers the use of force in any circumstances other than pursuant to legal provisions or inflicting physical or mental suffering on a person with the purpose to obtain from that person or from a third party information or confessions, to punish him/her for an act committed or allegedly committed by that person or by a third person, to intimidate or to put pressure on that person or on a third person.

As general information related to the matter in hand, we mention, as an element of legislative novelty, that the Order of the minister of internal affairs no. 14/2018 approving the *Regulation on the organisation and functioning of detention and remand establishments, and the necessary measures for their safety* hereinafter called ROFCRAP, entered into force immediately after the end of the visit of the Committee to Romania, more specifically on 18.03.2018, and its provisions implement CTP standards and recommendations.

In this context, we emphasize that during the development of the aforementioned legal provision due consideration was given both to the need to comply with the higher legal framework it enforces and to the intention to establish clear and precise rules which may be systematically and efficiently enforced in the activity of the Romanian Police.

We also point out that the actual activity involving the identification of the best legal solutions and the drafting of the rules was coordinated and performed with full awareness on the recommendations and requests of the european judicial and extra-judicial bodies in the field, especially those of the European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment or of the European Court of Human Rights.
Thus, the aforementioned order laid down procedural rules for the implementation of solutions promoted by the new legal framework adopted in 2013, including of elements of novelty in safeguarding the observance of the rights of persons deprived of their liberty, among which, e.g.: the right to purchase, the right to marriage, the right to online communication, the right to conjugal visit.

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(4) The attempt to commit the offence in para.(1) shall be punished.
(5) No exceptional circumstance, whatever its nature, regardless of whether it is a state of war or of war threats, of internal political instability or any other exceptional state, may be called upon to justify torture. Also, the order of the superior or of a public authority may not be called upon either.
(6) Pain or suffering which are the exclusive result of legal sanctions and are inherent to these sanctions or caused by them shall not be considered torture.

Art. 296 - Abusive Behaviour

(1) The use of offensive language against a person by someone during the exercise of professional prerogatives shall be punished by imprisonment from one to months or by a fine.
(2) The threat or use of physical violence or of other violence committed pursuant to para.(1) shall be punished by the penalty provided by law for that offence, whose special limits shall be increased by one third.

Also, the draft laid down requirements on the minimum living space necessary for persons deprived of their liberty, so as to ensure compliance with one of the main recurrent recommendations of CPT.
Moreover, in order to prevent the occurrence of overcrowding of prison establishments, a mechanism was created to transfer persons deprived of their liberty between establishments in case the legal accommodation capacity is exceeded, without impact on the criminal trial.

Getting back to the specific aspects raised by the Committee, with regard to the placement of custody and remand establishments of the Romanian Police under the authority of the Ministry of Justice and of the National Prison Administration, we mention the following:

The existing configuration of the prison system, which does not allow from a location viewpoint the existence of a detention establishment in every county, is likely to burden the delivery of persons deprived of their liberty when the remand measure is ordered. On the other hand, given that the person deprived of liberty may exercise remedies against the remand measure ordered against him/her, pursuant to the applicable criminal proceedings provisions, and to the periodical analysis by the court, this person should be brought before the court in an expeditious manner. Therefore, from this viewpoint, the rights and obligations of the defendant and of the judicial bodies, pursuant to criminal proceedings, may only be exercised insofar as the custody establishment is located in the proximity of courts, which requirement is fulfilled only by the custody and remand establishments under the subordination of the MIA.

Another factor with impact on the swiftness of activities undertaken by the prosecution bodies, which require the presence of the persons deprived of their liberty, is the lack of a (functional) remand establishment under the subordination of the National Prison Administration (NPA) in every administrative-territorial unit. This matter is also likely to generate additional financial and human resources costs generated by all urgent judicial activities during prosecution (repeated travels to detention establishments to take over the person deprived of liberty and escort them to another establishment or to the judicial body, possibly in a different county, or before the court, and to escort them back to prison when activities have been finalised). Along these lines, we highlight that a possible operationalisation of the remand establishment under the subordination of the NPA will not lead to dismantling its own custody and remand establishments, as the precautionary measure of *custody* (which, according to the Romanian legislation, shall not exceed 24 hours) will still be enforced in these locations, while ensuring adequate physical and human resources and costs.

In this context, we mention that the transfer of persons deprived of their liberty to the prison establishment is ordered after the indictment and having checked the legality and the merits of the precautionary measure, pursuant to the provisions of art. 348 paragraph (2) corroborated with those of art. 207 paragraphs (2) - (4) of the Criminal Proceedings Code[3] (CPC).

From a statistical perspective, having analysed the average custody duration in the custody and remand establishments under the subordination of MIA (only for persons subject to pre-

[3]Law no. 135/2010.

trial detention), the national statistics for the past 3 years indicate an average of maximum 60 days:

1. In **2016**, of the 18,565 persons deprived of their liberty, only 1,311 were in custody for a period exceeding 60 days, which represents only **7%**;
2. In **2017**, of the 18,489 persons deprived of their liberty, only 1,182 were in custody for a period exceeding 60 days, which represents **6.3%**;
3. In the period of **01.01-01.12.2018**, of the 16,464 persons deprived of their liberty, 934 were in custody for a period exceeding 60 days, which represents **5.67% of the total**;

Also, in the context where one might raise a possible lack of impartiality in the enforcement of custodial precautionary measures, we highlight that the personnel employed by the custody and remand establishments of MIA is different from the criminal investigation personnel of the judiciary police (who perform the investigation in the criminal file where the measure was ordered), and there are no subordination relations between them.

As regards the other aspects indicated by CPT, in terms of manners of spending time for persons in remand, we mention that art. 122 of ROFCRAP stipulates that each person deprived of liberty shall be granted daily at least one hour for walking. During the walk, persons deprived of their liberty may perform physical exercise.

The walk shall be taken under direct visual or video supervision, in the walking yards, endowed according to the safety regulations in force.
Also, art. 75 of ROFCRAP provides that during the time for recreational activities, the persons deprived of their liberty may read newspapers, listen to radio programmes, watch TV shows or undertake other activities, such as play chess, rummy, domino, go etc. in the detention room or in other special facilities within the establishment, in compliance with the internal regulations and separation criteria. The person in custody also has access to the library of the establishment.
Other options for activities outside the detention rooms are unpaid work for the establishment and, subject to the daily schedule provided by ROFCRAP mentioned above and to the judicial activities in which they are involved, participation of persons deprived of their liberty in recreational activities provided by it. Also, persons deprived of their liberty may exercise outside detention rooms their right to religious assistance, and their right to psychological support.

As regards the logistics of areas for activities undertaken outside the detention areas, we mention that the locations dedicated to the exercise of the right to daily walks are endowed with wall bars, bicycles and equipment for physical exercise, as well as fixed elements for rest, and the areas for recreational activities benefit from ping pong tables and a library.
Also, in order to ensure the exercise of rights pursuant to law, the General Police Inspectorate (GPI) drafted and disseminated registers to keep records on the exercise of the right to daily walk, which highlight separately, under special columns, the refusal/limitation to exercising this right by the persons deprived of their liberty, regardless the reason.

All establishments visited by the Committee benefit both from natural and artificial lighting. In this context, we mention that two of the objectives assumed under the *Timetable of*

measures[4] and accomplished so far, more specifically the standardisation of the custody and remand establishments from County Police Inspectorate Galați and County Police Inspectorate Iași were achieved according to the recommendations of the Committee, as they did not have proper lighting.

Also, as regards the recommendation on the hygiene of sleeping areas, we highlight the obligation of the administration of custody and remand establishments to ensure persons deprived of their liberty individual beds, mattresses, pillows, pillow faces, bedsheets and blankets and in wintertime, as appropriate, two blankets for each person, obligation stipulated by art. 171 paragraph (1) of ROFCRAP.

Also, we mention that the safeguard included in the CPT recommendation on aspects related to ensuring hygiene within custody and remand establishments (CRE) was transposed by the provisions of art. 41 of ROFCRAP.[5]

As regards aspects related to traumatic signs (lesions) identified by the medical staff providing medical assistance to persons deprived of their liberty, the Medical Directorate (MD) of MIA performed ongoing monitoring on the "Report on identification of traumatic signs" and submitted all subordinated units *Instructions* on how to recognise lesions which may be considered traumatic signs, according to the *Istanbul Protocol - Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment*.

We highlight here that the above-mentioned *Instructions* were included in the training curriculum for the medical staff of the medical centres under MD subordination, and training reports were drafted in each county medical centre.

We reiterate that the training topics focused mainly on the performance of an objective and impartial medical examination, with clinical description of traumatic signs, excoriations, haemorrhage, hematoma, oedema, open wounds, injuries, scratches, concussions, lacerations, point injuries, cigarette burns or burns caused by hot objects, alopecia, torn or smashed nails, fractures, dislocations, joint diseases, lesions caused by electric shocks, lesions caused by chemical substances (colour, signs of necrosis). For these types of lesions which may be associated to torture it is necessary to indicate their location, symmetry, shape, size, colour, surface (ulceration, scab, scale) and demarcation.

We also point out that the medical staff was trained to record the statement of the person deprived of liberty strictly in terms of medical history, more specifically by specifying signs,

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[4]On 17 January 2018, the Government of Romania approved the Memorandum on *"Approval of Timetable of measures for 2018-2024 to solve cell overcrowding and detention conditions, for the enforcement of the pilot judgment Rezmiveș and others vs Romania ruled by ECtHR on 25 April 2017"*.

[5]Art. 41 - (1) Before being taken to the room, persons deprived of their liberty shall be subject, as appropriate, to bathing and to other proper hygiene measures, pursuant to the rules laid down by the Ministry of Health for entering collectivity and/or recommended by a physician.
(2) On this occasion, the establishment staff shall make available to the person deprived of liberty a set of personal hygiene products whose content is established pursuant to the regulations of the Ministry of Internal Affairs on ensuring equipment, maintenance products and other specific materials. Refusal to accept such products shall be recorded in writing in the report provided by Art. 38.

pains, feelings of numbness, headache, back pain, and their intensity, frequency and duration.

In 2018 MD developed and submitted to all subordinated medical units clarifications on the identification of traumatic lesions during the medical examination before being admitted to CRAP and during the period of deprivation of liberty, and instructions on the accurate and timely completion of documents on traumatic signs. Also, the obligation to notify the prosecution bodies upon identification of traumatic lesions was permanently highlighted.

In order to ensure the effectiveness of the traumatic lesions registration and notification procedure, MD maintained permanent contact with the medical staff in the medical centres, and answered all requests for additional clarifications submitted directly, by phone or by e-mail.

In the period of 1 January 2018 - 30 October 2018, MIA registered **352** Reports on traumatic signs.

As regards the Committee concerns with "inadequate healthcare services" for persons imprisoned in the CPE visited, we mention the following:

Although the positions of medical staff within MIA may be taken only by employment from external sources or by training with the Military Medical Institute, the ministry undertakes relentless efforts to minimise the negative consequences generated by the acute lack of medical staff in the medical centres subordinated to MD, so as the health care services are impacted as little as possible. Therefore, in the medical units subordinated to MD, primary care for persons deprived of their liberty in all county and Bucharest Municipality CRAPs is provided *cumulatively* by the general practitioners in the county medical centres (38 units) or diagnosis and outpatient medical centres (3 units) in the medical network of MD, due to the significant understaffing of specialist medical personnel.

We mention that following the employment competitions organised in 2016 and 2017 for 42 positions for general practitioners - contract staff providing healthcare services in CPE - only 4 positions were taken (2 with the Medical Diagnosis and Outpatient Treatment Centre Bucharest and 2 with the Medical Diagnosis and Outpatient Treatment Centre Oradea). Thus, the low addressability, the decrease in the number of medical professionals at national level and the cease of employment from external sources in public units in 2017 had a significant contribution to the decrease of medical staff involved in providing healthcare services to persons deprived of their liberty in custody in CPEs.
In this context, given the importance of this field, it is crucial that medical staff be ensured for this activity, therefore MIA created 11 positions for medical doctors - contract-based (according to approved financial indicators) to respond to the CPT recommendation on the independence of healthcare services.

Related to the independence of healthcare services, with regard to the confidentiality of healthcare services, we mention that our institution was not notified on cases where medical staff did not comply with the professional deontological code. The status of physicians and nurses in the medical network of MIA is the same with the status of similar personnel in the national healthcare system, as they are members of the Romanian College of Physicians and of the Order of Nurses, Midwives and Medical Assistants in Romania, and have the same

professional obligations.

We also mention that one of the priorities assumed by MIA is the procurement of medical devices and equipment for medical centres, including those within CPEs. For this purpose, in order to reach the objective *"Strengthening and modernisation of infrastructure, procurement of medical equipment and devices and of an integrated IT system for the medical network of MIA",* the necessary medical devices and equipment for the medical centres within the MIA network, including CPE medical centres, are included in the Investment Programme for 2019. Also, medical equipment was purchased - specifically for certain CPE medical centres (EKG machines, defibrillators, blood pressure monitors), and the tender procedures and in the final stage.

As regards substitution treatment for opioid addicts, we mention that in 2018 MIA initiated actions to develop a cooperation protocol between MD, the National Anti-Drug Agency (NAA) and the General Inspectorate of the Romanian Police (IGRP) to provide specialist support for drug users deprived of their liberty.

I. INTRODUCTION

B. Context of the visit and cooperation encountered

Tha Romanian Government expresses its satisfaction as to the appreciation of the CPT's delegation concerning the excellent co-operation during the entire duration of the visit, having had easy access to the institutions they wanted to visit, to the documentation they wanted to see, as well as to the persons they wanted to speak with.

C. National Preventive Mechanism (NPM)

According with the Government's Emergency Ordinance (GEO) no. 48/2014 on the amendment and supplementation of Law no. **35/1997 on the organization and functioning of the Ombudsman, as well as on the amendment and supplementation of some legal acts**[6], ***the Ombudsman, through the Field on the Prevention of Torture in Places of Detention, was designated to be the sole national structure which fulfills the specific functions of national mechanism for the prevention of torture in places of detention***, in the sense of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on 18th December 2002 and ratified by Law no. 109/2009.

The structure of the Field on the Prevention of Torture in Places of Detention is as follows:
- *central structure* (with the regional center Bucharest and the districts: Buzău, Călărași, Constanța, Dâmbovița, Ialomița, Ilfov, Giurgiu, Prahova, Teleorman and Tulcea) and
- *territorial structure* made up of 3 regional centers: *regional center Alba* (with the districts: Alba, Bihor, Bistrița-Năsăud, Brașov, Cluj, Covasna, Harghita, Hunedoara, Maramureș, Mureș,

[6] Approved by Law no. 181 as of 29th December 2014, published in the Official Gazette *Monitorul Oficial al României* Part I, no. 6 as of 6th January 2015.

Sălaj, Satu-Mare and Sibiu), *regional center Bacău* (with the districts: Bacău, Botoșani, Brăila, Galați, Iași, Neamț, Suceava, Vaslui and Vrancea) and *regional center Craiova* (with the districts: Arad, Argeș, Caraș-Severin, Dolj, Gorj, Mehedinți, Olt, Timiș and Vâlcea).

According with the provisions of the GEO no. 48/2014, the total number of staff within the Field on the Prevention of Torture in Places of Detention is 23 employees and one Deputy Ombudsman, of which:
- within the central structure (including the regional center Bucharest) there are 11 employees: 4 employees as executive staff with legal background, 3 specialists (doctors, psychologists, social workers, sociologists or any other professions necessary for the performance of the specific activity) and 4 employees in the financial, remuneration, human ressources and administrative field.
- within the 3 regional centers in the territorial structure there are 12 employees, whereas each regional center has 1 employee as executive staff with legal background, 2 specialists and 1 employee as administrative staff.

After the establishment of the *criteria for the selection of staff* (based on an ordinance of the Ombudsman), *selection procedures* were organized for the occupation of the positions which require a legal background, as well as of the specialists (doctors, psychologists and social workers) – as permanent staff with the Domanin concerning the prevention of torture in places of detention.

By virtue of the Decision of the Permanent Bureaus of the Chamber of Deputies and Senate no. 1 as of 02.12.2014, *Ms. Magda Constanța Ștefănescu was appointed Deputy Ombudsman who coordinates the Field on the Prevention of Torture in Places of Detention.*

The field on the prevention of torture in places of detention regularly monitors the treatment applied on persons in places of detention in order to strenghten their protection against torture and inhuman and degrading treatment and punishment and to exercise without discrimination their fundamental rights and freedoms. The visits are conducted:
- *ex officio*, based on an annual visiting schedule, proposed by the Deputy Ombudsman for the Field on the Prevention of Torture in Places of Detention, approved by the Ombudsman, or
- *unannounced, based on any person's request* or *after having learned in any way about the existence of a situation of torture or cruel, inhuman or degrading treatment* in a detention facility.

The findings of the visits are included in a *visit report* which, in those cases in which irregular issues are found, the report is accompanied by *motivated recommendations for improvement of the treatment and conditions of persons deprived of their liberty and prevention of torture and inhuman or degrading treatment or punishment*.

In those cases in which a violation of the human rights through torture or cruel, inhuman or degrading treatment which cause an immediate risk of affecting a person's life or health is found, *an emergency preliminary report* is drafted.

The Ombudsman has the obligation to immediately seize the judicial authorities when, in exercising his duties, he finds that there is indication on the perpetration of criminal acts.

For the purpose of *re-evaluation of places of detention and formulation of evidences* information was requested and received from the public authorities which have in their

subordination places of detention, with a view to drafting the Annual visiting schedule for the Field on the Prevention of Torture in Places of Detention.

The activity of prevention of torture, both at central level and at territorial level, is conducted by the executive staff with legal background, specialists (permanent or external collaborators), as well as representatives of non-governmental organizations. The visiting teams are made up of at least one doctor, depending on the specialization necessary and one representative of non-governmental organizations.

External collaborators are selected by the Ombudsman, based on the proposals made by the Romanian Medical College, Romanian Psychological College, Romanian Sociologists' Association, Romanian Social Workers' College or by other professional associations they belong to.

With a view to the fulfillment of the functions it has, the Ombudsman organized *meetings with the representatives of professional associations* and *entered into Protocols of cooperation with: the Romanian Medical College, Romanian Psychological College, Romanian Social Workers' College, Romanian Sociologists' Association*.

The Ombudsman organized the *Interview* for the recruitment of external collaborators (doctors, psychologists, social workers, sociologists etc.), whereas, based on the results obtained and the proposals of the professional associations, the final lists of external collaborators, appointed in office by the central structure and the territorial structures of the Field on the Prevention of Torture in Places of Detention, are drafted.

Furthermore, *meetings with represenatives of non-governmental organizations were organized, aiming at their participation in the activity of the Field on the Prevention of Torture in Places of Detention* and *Protocols of cooperation were entered into with*: Romanian Association for Transparency, Romanian Group for the Protection of Human Rights (GRADO), European Association for Human Rights (AEPADO), Romanian National Council for Refugees (CNRR), Non-Governmental Organizations' Federation „Pentru Copil" (FONPC), Asociația Desenăm viitorul tău (DVT), Association ANAIS.

On 30.03.2015 a meeting was held at the Palace of Parliament with the public authorities which have in their subordination places of detention, professional associations and non-governmental organizations with whom the Ombudsman entered into Protocols of cooperation, *with the purpose to agree on some general principles about visits in places of detention.*

The Ombudsman became active *ex officio* in relation with the *conditions of detention* in Romanian prisons and ordered investigations to be conducted. Subsequently, the investigations were also extended to arrest detention centers under the subordination of the police, whereas later, based on the findings, a *Special report* shall be drafted which shall be submitted to the two Chambers of the Parliament and to the Romanian Government.

Since the Ombudsman was designated National Preventive Mechanism, *contacts have been established and fostered with the Sub-Committee on Torture Prevention and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*.

For the activity of the Field on the Prevention of Torture in Places of Detention *the budgetary ressources were allocated for the year 2015 which are necessary for the activity*

of this domain, amounting to 1,868 thousand Lei. **It has to be mentioned that the Field on the Prevention of Torture in Places of Detention does not have a budget separate from the budget of the Ombudsman, as it is a department within the institution**.[7]

From 7 to 19 February 2018, CPT conducted a periodical visit to Romania. On 7 February 2018 a meeting was held with the Ombudsman and the councellors / experts with the Field on the Prevention of Torture in Places of Detention which acts as the National Preventive Mechanism in places of detention.

As concerns the findings of the members of the CPT's delegations as written down in the Report, we would like to indicate the following:

- **Recommendation concerning the creation and organization of the National Preventive Mechanism, as well as the Recommendation concerning the filling of vacant posts**:

According with the provisions of the GEO no. 48/2014 on the amendment and supplementation of Law no. 35/1997 **on the organization and functioning of the Ombudsman**, as well as on the amendment and supplementation of some legal acts[8], ***the Ombudsman, through the Field on the Prevention of Torture in Places of Detention, was designated to be the sole national structure which fulfills the specific functions of national mechanism for the prevention of torture in places of detention***, in the sense of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on 18th December 2002 and ratified by Law no. 109/2009.

By virtue of Law no. 181 as of 29 December 2014, Romania's Parliament adopted the GEO no. 48/2014 **on the amendment and supplementation of the Law no. on the organization and functioning of the Ombudsman, as well as on the amendment and supplementation of some legal acts**.
According with the provisions of Law no. 35/1997, republished, the Field on the Prevention of Torture in Places of Detention is organized in the central structure, which also included the regional center Bucharest, and the territorial structure made up of 3 territorial centers.
The same legal act provides for the following:

- within the central structure of the Field, including the regional center Bucharest, except for the Deputy Ombudsman for the Field on the Prevention of Torture in Places of Detention there have to be a number of **11 employees**, of which: 4 employees as executive staff with legal background, 3 specialists - doctors, psychologists, social workers, sociologists or any other professions necessary for the performance of the specific activity and 4 employees in the financial, remuneration, human ressources and administrative field (art. 37 para. 4);

- within the 3 regional centers in the territorial structure of the Field on the Prevention of Torture in Places of Detention there are **12 employees**. Each regional

[7] See Annex no. 1 *Organisation chart of the Field on the Prevention of Torture in Places of Detention and the budget allocated*.
[8] Approved by virtue of Law no. 181 as of 29th December 2014, published in the Official Gazette Monitorul Oficial al României Part I, no. 6 as of 6th January 2015.

center has: 1 employee as executive staff with legal background, 2 specialists – doctors, psychologists, social workers, sociologists or any other professions necessary for the performance of the specific activity and 1 employee as administrative staff (art. 38 para. 3).

For the selection of the staff with legal background and of the specialists as permanent staff a number of selection procedures were organized.

In 2017, by virtue of the GEO no. 90/2017 on fiscal and budgetary measures, the amendment and supplementation of some legal acts and prorogation of time limits, the occupation of vacancies or temporary vacant positions within public institutions and authorities was suspended starting 1 January 2018 up until 31 December 2018**.** For the fulfillment of the role and functions of the Ombudsman, a Memorandum was submitted concerning the unblocking of 22 vacancies within the Ombudsman which was approved by the Romanian Prime Minister.

Currently, the situation of the staff employed within the National Prenetive Mechanism is as follows:

- within the 4 regional centers there are **15 employees**, more exactly 13 persons with academic background (7 lawyers, 2 doctors, 2 psychologists, 2 social workers), 2 persons with administrative duties (drivers);
- a selection procedure for one psychologist vacancy is ongoing with the regional center Bucharest;
- 3 driver vacancies were announced for the regional centers Alba, Bacău and Craiova;
- One doctor vacancy was announced for the regional center Bucharest.

For the performance of the activities of the Field on the Prevention of Torture in Places of Detention also external collaborators are recruited based on contracts for services. The external collaborators are selected by the Ombudsman based on the proposals received from the Romanian Medical College, Romanian Psychological College, Romanian Sociologists' Association, Romanian Social Workers' College or from other professional associations they belong to. Currently, the Ombudsman has **26 external collaborators** (11 doctors; 15 social workers), whereas the selection procedure for external psychologists as collaborators is ongoing following the changes in the board of the Romanian Psychological College.

As concerns external collaborators meetings were held with representatives of professional associations, supplementary agreements to already existing protocols were entered into and information was posted on the website of the Ombudsman about the conditions necessary for participation in the selection procedure for external collaorators of the NPM. Furthermore, the announcements about the selection of external collaborators are posted on the websites of the professional associations.

In accordance with the provisions of art. 36 para. (4) of Law no. 35/1997, republished, representatives of non-governmental organizations active in the field of the protection of human rights, selected by the Ombudsman based on their activity, are involved in the activity of torture prevention. The visiting team has at least one doctor, depending on the speciality needed, and one representative of non-governmental organizations (art. 39

para. 2). Consequently, the representatives of non-governmental organizations participate both in the visits of the NPM and in drafting the visiting reports.

Currently, there are protocols of collaboration in force with **26 non-governmental organizations.**

Furthermore, we would like to indicate that, according with the information communicated in 2016 by the public authorities which have in their custody persons deprived of their liberty, in Romania there are **2,318 places of detention**, of which: penitenciaries 44; centers under the subordination of the Ministry of Internal Affairs 59 (of which 51 arrest detention centers, 88 migrant centers); facilities subordinated to the Labour Ministry 2,103 (of which: children residential centers 1,445 of which 1,148 public ones and 297 private ones, retirement centers 283, of which 119 public ones and 164 în private ones; centers for adult disabled persons 375); facilities under the subordination of the Ministry of Health 34 of which psychiatric hospitals 33 and one center for the treatment of addictions.

NPM conducted in 2016 - 85 visits, in 2017 - 80 visits, and in 2018 (between 1 January 2018 and 15 November 2018), 67 visits in facilities where persons are deprived of their liberty, as follows: 8 visits in penitenciaries, 13 visits in arrest detention centers, 12 visits in children residential centers, 10 visits in centers for adult disabled persons, 12 visits in retirement centers, 7 visits in psychiatric hospitals, 5 visits in migrant centers.

- **Recommendation concerning the ensurance of the functional and financial independende**

The designation of the Ombudsman as NPM envisaged exactly the role of this institution in the protection of civil rights and freedoms as opposed public authorities, as well as its independence as opposed any other authority.

In this sense, according with the provisions of art. 2 para. (1) - (3) of Law no. 35/1997, republished, „***The Ombudsman institution is a public authority, autonomous and independent from any other public authority, under the law****. In the exercise of his powers, the Ombudsman shall be no substitute for the public authorities. The Ombudsman may not be subject to any imperative or representative mandate. No one can compel the Ombudsman to obey any instructions or orders*".

Furthermore, in accordance with the provisions of art. 37 para. (2) and (3) of the same legal act: „*During the fulfillment of their duties,* ***the external collaborators shall be subject to the same obligations as the institution's staff, with regard to maintaining the confidentiality of their work and other rules of internal discipline of the institution****. When carrying out the specific activities of the Field on the Prevention of Torture in Places of Detention****, the visiting team members are independent***".**

As regards the financial independence, the provisions of art. 51 of Law no. 35/1997, republished, provide that „*Funding the current and capital expenditure of the activity of prevention of torture and cruel, inhuman or degrading treatment or punishment shall be*

provided from the state budget ***and the funds allocated to it are part of the Ombudsman Institution's budget*****".**

Consequently, there is a budget allocated to the NPM which covers the costs for the visits and the performance of any of its other activities, whereas its budget is integral part of the Ombudsman Institution's budget. In 2018, the budget allocated to the NPM was 3.352.823,48 Lei.

The draft law (PL-X 1/2018) on the amendment and supplementation of Law no. 35/1997 **on the organization and functioning of the Ombudsman, as well as on the amendment of art.** 16 para. (3) of Law no. 8/2016 on the creation of the mechanisms provided for in the Convention on the Rights of People with Disabilities (a draft law which was submitted to Romania's President and in relation to which he raised a constitutional issue before the Constitutional Court) includes the following proposals:

- the NPM is organized and functions within the Ombudsman Institution **as a separate structure from the other fields of activity**, fulfilling the NPM specific functions in the sense of the Optional Protocol;

- in the exercise of duties, the NPM members **shall benefit unconditionally of the guarantees and support of authorities**; NPM members **cannot be held liable for the opinions expressed or for the acts they fulfill, under the law**, in the exercise of their legal duties;

- the NPM's annual budget is proposed and drafted by the Deputy Ombudsman who coordinates the NPM and is approved by the Ombudsman**.**

- **Recommendation concerning the fact that it would be preferable for staff of the NPM not to be involved in processing individual complaints**

In accordance with the provisions of art. 35 of Law no. 35/1997, republished, the Field on the Prevention of Torture in Places of Detention regularly monitors how the detained are being treated in order to strengthen their protection against torture and other cruel and inhuman or degrading treatment or punishment and to ensure that they are able to exercise, without discrimination, their fundamental rights and freedoms, by:

a) carrying out announced or unannounced visits to the places of detention, for the purpose of checking the detention conditions and the treatment of persons deprived of their liberty;

b) making recommendations to the management of the visited detention facilities, following the visits;

c) formulating proposals for amending and completing the relevant legislation or comments on existing legislative drafts in the field;

d) preparing the draft of the part on the prevention of torture of the annual activity report of the Ombudsman;

e) formulating proposals and comments on the development, amendment and supplementation of public policies and strategies on the prevention of torture and inhuman or degrading treatment or punishment, under the law;

f) liasing with the Subcommittee on Prevention of Torture;

g) analyzing, implementing, monitoring and evaluating, under the lead of the Ombudsman, international programs of technical and financial assistance, in order to achieve the goal of the Field on the Prevention of Torture in Places of Detention;

h) coordinating the activity of organizing awareness raising, education and training campaigns, on the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

i) performning any other tasks set by the Ombudsman, within the limits of the law.

According with the provisions of art. 39 para. (3) of Law no. 35/1997 on the organization and functioning of the Ombudsma**n,** republished, visits are conducted *ex officio* on the basis of the annual visitation plan, proposed by the Deputy Ombudsman for the Field on the Prevention of Torture in Places of Detention and approved by the Ombudsman, or unannounced, or following a complaint from any person, of after finding out, in any way, about the existence of a situation of torture and other cruel, inhuman or degrading treatment or punishment in a place of detention.

In the context of the duties of the Field on the Prevention of Torture in Places of Detention, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) noted in the report drafted following the visit conducted in Romania in 2016 (published in August 2017) that a clear distinction has to be made between the NPM's mandate and the other duties of the Ombudsman, as well as that petitions should not be part of the NPM's mandate.

Thus, in order to comply with the OPCAT provisions, having regard to the SPT Guidelines, concerning the national preventive mechanisms – Basic principles which rule:
"*It is the responsibility of the State to ensure that it has in place an NPM which complies with the requirements of the Optional Protocol" (*CAT/OP/12/5, Paragraph 2);
"*The mandate and powers of the NPM should be in accordance with the provisions of the Optional Protocol*" (CAT/OP/12/5, Paragraph 6);
"Where the body designated as the NPM performs other functions in addition to those under the Optional Protocol, its NPM functions should be located within a separate unit or department, with its own staff and budget (CAT / OP / 12/15, Paragraph 32).

On 14 February 2018 the Ombudsman issued Ordinance no. 8 on the observance of the OPCAT provisions concerning the preventive mandate of the Field on the Prevention of Torture in Places of Detention.

According with the said Ordinance, complaints about cases of torture, cruel, inhuman or degrading treatment in places of detention shall be processed by the Fields within the Ombudsman's Institution with reactive role, depending on the type of complaint. Only in cases considered by the Ombudsman to be exceptional cases, he may order the processing by the NPM of some complaints about cases of torture, cruel, inhuman or degrading treatment in places of detention.

With a view to observe the preventive mandate of the NPM and to strengthen the duties of the NPM, the draft law PL-X 1/2018 on the amendment and supplementation of Law no. 35/1997 on the organization and functioning of the Ombudsman, as well as on the amendment of **art.** 16 para. (3) of Law no. 8/2016 on the creation of the mechanisms provided for in the Convention on the Rights of People with Disabilities (a draft law which was submitted to Romania's President and in relation to which he raised a constitutional issue before the Constitutional Court) included a number of amendments:

- complaints about cases of torture, cruel, inhuman or degrading treatment in places of detention shall be processed, depending on the type of the place of detention, by the Fields of activity within the Ombudsman's Institution with reactive role. **The NPM shall fulfill only duties in the field of the prevention of torture in places of detention, by conducting periodical visits in these places and if the opinion of specialists is needed,** following the order of the Ombudsman, it may also process complaints and ex officio notifications. The cooperation between the NPM and the fields of activity of the Ombudsman's Institution shall be provided for in the Regulation on the organization and functioning of the Ombudsman.

Furthermore, we would like to indicate that in accordance with the provisions of art. 35 para. (1) letter h) of Law no. 35/1997 on the organization and functioning of the Ombudsman, republished, the Field on the Prevention of Torture in Places of Detention has as a duty the coordination of the activity of organizing awareness raising, education and training campaigns, on the prevention of torture and other cruel, inhuman or degrading treatment or punishment. Against this background, the experts/councellors of the Field organized and participated in a number of events dealing with the prevention of torture and inhuman or degrading treatment, like it follows:

- the workshop organized at Târgu Jiu Penitenciary with the topic "National and international legislation on the prevention of torture and dissemination of the report of activity of the NPM for 2017".
- the event organized at Craiova Pelendava Penitenciary dedicated to the prevention of torture and inhuman or degrading treatment to mark the International Day in Support of Victims of Torture.
- the workshop organized at the headquarters of the Vâlcea District Police Inspectorate (C.R.A.P. Vâlcea) with the topic „Prevention of torture and inhuman and degrading treatment in places of detention".
- the workshop organized at Craiova Penitenciary with the topic „World Suicide Prevention Day - 10 September".
- the workshop organized on 09.11.2018 at the headquarters of Craiova Detention Center with the topic „The concept of torture prevention".
- the workshop organized at the headquarters of the Dolj District Police Inspectorate (C.R.A.P. DOLJ) with the topic „Prevention of torture and inhuman and degrading treatment in places of detention".
- the debate with the topic "Human Rights – Standards, experiences and Romanian institutional practices" organized by the Faculty of Law and the Association of Titu Maiorescu University students where the following contributions were presented: "The prevention of torture and other cruel, inhuman or degrading treatment in places of detention" (Deputy Ombudsman for the Field on the Prevention of Torture in Places of Detention); "Measures to resolve the issue of prison overcrowding and improvement of conditions of detention", secretary of state with the Justice Ministry Marieta Safta; "Current approaches concerning the process of social reintegration of persons deprived of their liberty", deputy general manager of the National Administration of Penitenciaries; "An Outlook on the ECHR jurisprudence on art. 3 of the European Convention for the protection of human rights and fundamental freedoms"- Prof. dr. Nicolae Voiculescu IOSUD director - Titu Maiorescu University;
- the workshop with the topic "The interinstitutional cooperation to facilitate the social reintegration of persons deprived of their liberty"-Mărgineni Penitenciary,

an event organized by Mărgineni Penitenciary in partnership with the Territorial Branch Prahova- Romanian Social Workers' College.
- talks with representatives of Jilava Penitenciary on occasion of the "International Day in Support of Victims of Torture".
- participation in the workshop "Living library"- event organized by Slobozia Penitenciary.
- participation in the Symposium with the topic "School-the main instrument for keeping one's soul free in an oppressive environment", event organized by Bacău Penitenciary in partnership with the Territorial Branch Bacău - Romanian Social Workers' College and Romanian Psychologists's College.
- information and press campaigns organized at Gherla and Codlea Penitenciaries with the topic "The Suicide" on occasion of the World Suicide Prevention Day.
- information activity with a presentation with the topic „Observance of female prisoners rights against the background of the national and international legislation", event organized on occasion of the celebration of the International Women's Day – 8 March.
- participation in the half-yearly meeting held at Bacău Penitenciary on the exchange of experience within the Strategy for Social Reintegration according with the Government's Decision H.G. no. 389/2015 on the National Plan for the Implementation of the Strategy for Social Reintegration;
- the National Interpenitenciary Festival *InterFest*, organized by București Jilava Penitenciary.
- meeting of the representatives of the Ombudsman's Institution-Field on the Prevention of Torture in Places of Detention (NPM) and the representatives of the Immigration General Inspectorate, organized on 22 November at the headquarters of the Ombudsman's Institution with the topic „Stregthening the protection of persons accommodated in centers dedicated to asylum seekers and persons in public custody against torture and inhuman or degrading treatment".

Furthermore, in December 2018 there was a meeting of the experts/councellors of the Field on the Prevention of Torture in Places of Detention with the staff of the Romanian Police General Inspectorate with the purpose to disseminate the Field's duties, as well as to have a dialogue in the field of the prevention of torture, having in view the deficiencies found on occasion of the visits conducted in arrest detention centers.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Law enforcement agencies

1. Preliminary remarks

Paragraph 9

The draft legislation mentioned (more specifically, draft law no. PL-x405/2018 *amending and supplementing certain legal provisions in the field of public order and public security*) which aims, among others, at **reducing the necessary period for establishing the identity of a**

person to maximum 12 hours, finalised the parliamentary procedure and is currently undergoing the constitutionality review.
For a better understanding of the entire background which requires the various legislative interventions which are the object of the draft legislation mentioned, we highlight the following aspects:
The draft law includes numerous safeguards for the citizen which, through predictable legislation, will know his/her rights, the obligations they must comply with, the limitations of a police officer actions, the reasons and the conditions for using specific equipment etc.;
Similar to the context of the development of the MIA Order no. 14/2018 described above, the process of identification of legislative solutions proposed by the draft law no. PL-x405/2018 considered the result of the comparative law analysis between the Romanian legislation in the field and the legislation of other European countries, as well as the recommendations and requests of the European judicial and extra-judicial bodies in the field, especially those of the European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment or of the European Court of Human Rights.

Paragraph 10

The provisions of the Criminal Procedure Code mentioned have to be interpreted against the background not only of the express legal texts, but also against the background of their binding way of interpretation in the light of the Constitution when the Constitutional Court (CCR) ascertains and declares their unconstitutionality.
Thus, we would like to indicate that, starting with **10th of May 2018,** the text of art. 505 of CPP has to be interpreted in the light of the Romanian Constitutional Court Decision no. 102/2018 on the admission of the constitutional issue concerning the provisions of art. 505 para. (2) CPP, as well as of the phrase "*who has not turned 16*" in the wording of art. 505 para. (1) CPP, according to which:
„*46. Having regard to the above remarks, according to which, in order to comply with the constitutional provisions of art. 16, 21 and 24, for any hearing or confrontation of the juvenile aged between 14 and 18 his parents or, as case be, his legal guardian, custodian or person in whose care or under whose supervision the juvenile was placed temporarily, as well as the General Department for Social Assistance and Child Protection in the locality where the hearing is to take place shall be summoned, the Court finds, that for the restoration of the constitutionality, it is also necessary to declare unconstitutional also the phrase " who has not turned 16" in the wording of art. 505 para. (1) CPP.*
*47. In conclusion, the Court finds that, **in all cases with juvenile offenders**, the rule enshrined in art. 505 para. (1) CPP is to summon the persons expressly designated and that, only in exceptional cases, derogations from this rule are possible if the summoning would be contrary to the best interests of the child or would put at risk criminal procedures, based on some objective circumstances.*"
So it follows that the summoning of these persons became mandatory.

On the side, we would like to indicate that according with the draft law **PL-x no. 373/2018** – draft law for the amendment and supplementation of the CPP, adopted by the Parliament, but which was returned for re-examination to the Special Commission following the Decision of the Constitutional Court dated 12 October 2018, art. 31 shall be amended and it shall rule that the lawyer assists the parties or the litigants allthrough the criminal proceedings.

Thus, according with this draft law – PLX no. 373/2018, art. 31 CPP shall be amended and shall have the following wording:
„Art. 31. The lawyer assists or represents the parties or the litigants allthrough the proceedings, under the law."
The law on the amendment and supplementation of Law no. 135/2010 on the Code of Criminal Procedure (PL-x no. 373/2018) was adopted by the Chamber of Deputies on 18.06.2018. On 20.06.2018 the law was filed with the General Secretariat of the Chamber of Deputies for the exercise of the right to raise a constitutional issue in relation with the law and on 22.06.2018 it was forwarded to Romania's President for promulgation.

Three constitutional issues were raised in relation with this law:
- One was raised by the United Sections of the High Court of Cassation and Justice (*Constitutional Court file no. 945A/2018);*
***- One was raised by 94 Romanian members of the Chamber of Deputies belonging to the Parliamentary Group of the National Liberal Party, Parliamentary Group of the Save Romania Party and unaffiliated members of the Chambers of Deputies** (Constitutional Court file no. 961A/2018).*
***- One was raised by Romania's President** (Constitutional Court file no. 961A/2018).*
The Constitutional Court pronounced its judgment on 12 October, by virtue of Decision no. 663/2018, on the three constitutional issues raised as above mentioned, which the Court consolidated, it admitted the issues and dound that a number of provisons of the Law on the amendment and supplementation of Law no. 135/2010 on the Code of Criminal Procedure, as well as on the amendment and supplementation of Law no. 304/2004 on the organization of the judiciary are not constitutional.

We emphesize that art. 90 letter (a) of the CPP stipulates that legal assistance is mandatory when the suspect or the defendant is a minor, admitted in a detention or correctional facility, when in custody or arrested, even if in another case, when the measure of medical admission was ordered, even if in another case, as well as in other cases provided by law.

In the case of administrative escort to the police headquarters, the draft law PL-x no. 405/2018 mentioned above included a proposal to supplement Law no. 218/2002 *on the organisation and functioning of the Romanian Police* by introducing a new article - Art. 32^6 which provided under para. (3) that *"in case of a minor and of a person lacking legal capacity, the police officer has the duty:*

a) to inform the parents, the guardian or another legal representative on the measure ordered or, if none of them can be contacted or present, the competent authority pursuant to law;

b) not to take statements or not to request to sign documents without the presence or a legal representative or of the representative of the competent authority, except to communicate identification information."

Paragraph 11

We want to reiterate that on 17 January 2018, the Government of Romania approved the Memorandum on *"Approval of Timetable of measures for 2018-2024 to solve cell*

overcrowding and detention conditions, for the enforcement of the pilot judgment Rezmiveș and others vs Romania ruled by ECtHR on 25 April 2017".

In this context, the General Inspectorate of the Romanian Police initiated measures to increase and modernise the accommodation capacity in the custody and remand establishments, according to the approved Timetable. The new detention facilities shall comply with the international standards mentioned by ECtHR in the pilot judgment and shall guarantee minimum space of 4 sqm.

Thus, the implementation of the measures included in the *Timetable* involves the **creation of 1596 accommodation places and the modernisation of 187 accommodation places,** according to a three-stage plan, during the period of 2018-2024, with **114 accommodation places** created/modernised during **stage I - 2018.**

New/modernised accommodation places were made available for CPI Galați (**34 places**), and others will be made available for CPI Maramureș (**30 places**) and CPI Iași (**50 places**).

Also, we intend to continue activities to create new accommodation places, to commence and/or continue the objectives initiated within 8 custody and remand establishments.
In the future, the following will be created/modernised:

- in the second stage of the *Timetable:* **153 accommodation facilities**, as follows: CPI Covasna (**33**), CPI Alba (**33**), CPI Vaslui (**45**), CPI Teleorman (**22**) and CPI Harghita (**20**);
- in the third stage of the *Timetable:* **1516 accommodation facilities:** CPI Arad, CPI Giurgiu, CPI Cluj, CPI Călărași, D.G.P.M.B, CPI Argeș, CPI Brașov, CPI Constanța, CPI Dolj, CPI Prahova, CPI Botoșani, CPI Brăila, CPI Dâmbovița, CPI Hunedoara, CPI Neamț, CPI Suceava, CPI Mehedinți, CPI Tulcea, CPI Gorj, CPI Olt, CPI Bistrița Năsăud, CPI Satu Mare and CPI Vrancea.

2. Ill-treatment

Paragraph 12

The Romanian Police took actions to inform the personnel in the custody and remand establishments targeted on the CPT recommendations and ordered that the personnel of the establishments be trained on the behaviour they should adopt with persons deprived of their liberty.
In order to ensure the professional development of the CRE personnel by continuing training and to raise their awareness according to the comments submitted by the Committee, we highlight that they attend regular courses on reference issues, and centralised information indicates the following:
As regards the CRE from CPI Galați, and the CRE from CPI Iași, we mention that police staff participated in courses on human rights and prevention of discrimination and hate crime.
As general information, we want to indicate that the continuing training of staff is a priority for MIA, in order to avoid any ill-treatment situations. Thus, in the future there will be courses with similar didactic objectives; we recall here the curse of the prevention of torture

and inhumane treatment for the staff of the custody and remand establishments organised in 2018-2019 in the Multifunctional Schengen Training Centre Buzău.

Paragraph 13

According to art. 214 of ROFCRAP:
"Art. 214 (1) In order to prevent violent behaviour of the person deprived of liberty, the personnel of the establishment may use means of restraint provided by this regulation.

(2) Handcuffs and other means of restraint may be used temporarily for the immobilization of the person deprived of liberty in the following circumstances:

a) during travel to the judicial body or during the transfer, to prevent escape, in duly justified cases;

b) for medical reasons, upon recommendation and under supervision by the physician;

c) in case of aggressive, dangerous persons or persons in solitary confinement, to prevent self-harm;

d) to prevent acts of violence against other persons or destruction of goods and objects in the detention establishment.

(3) The use of means of restraint shall be subject to prior authorisation by the head of the establishment, except for cases where urgency does not allow for this, and shall be permitted only for the duration where it is strictly necessary, imposed by the specific circumstances of the case, related to security or aimed at preventing the suspects or the accused from fleeing or contacting third parties.

(4) Judicial bodies shall appreciate in the enforcement, maintaining or removal of means of restraint, while the person deprived of liberty is present before them.

(5) There are duly justified cases, when the person deprived of liberty:

a) escaped or hid, in order to evade criminal prosecution or trial;

b) committed an offence against the person, an offence which caused bodily harm or death of a person, an offence against national security, a drug trafficking offence, illegal operations with precursor chemicals or other products which might have psycho-active effects, an offence related to the regime of weapons, ammunition, nuclear materials and explosives, trafficking and exploitation of vulnerable persons, acts of terrorism, blackmail, rape, illegal restraint, assault, assault against judicial professionals;

c) escaped or attempted escape from establishments, prisons or escort, or there are indications on the intention to escape;

d) is serving a precautionary custodial measure ordered after an evaluation of the seriousness of the act, of the manner and circumstances of committing the act, of the criminal record and of other circumstances about the person, and it is considered that deprivation of liberty is necessary to remove a danger to public order;

e) displays a visible state of mental disorder;

f) self-harms or threatens with self-harm during preparations to appear in front of judicial bodies or during the travel;

g) endangers the life or the bodily integrity of the members of the escort or of other persons deprived of their liberty;

h) refuses to comply with the legal orders given by the escort personnel on the presentation in front of judicial bodies.

(6) Handcuffs shall not be used for a pregnant woman, a person over 65 years old, a person with mobility disability, a minor under the age of 16, a person whose medical condition requires the use of a stretcher or wheelchair, and in case of impairments of upper

limbs in the area subject to handcuffing, upon medical indications, except for the cases provided by para. (5) letters c), f) and g)."

The draft law PL-x no. 405/2018 mentioned above *included* a proposal to introduce a new article - art. 32^9 which provides as follows:

"(1) In the exercise of his/her professional duties, the police officer shall have the right to use means of restraint consisting in: physical force, including self-defence procedure or hitting; handcuffs or other means enabling the restraint of upper and/or lower limbs, hereinafter called means of restraint; non-lethal means; sidearms and firearms; adequate means or, as appropriate, vehicles for forced stoppage, blocking or access to vehicles or closed facilities where there are persons or property, or for removal of obstacles.

(2) The use of means of restraint shall not exceed, in terms of intensity and duration, the actual needs to reach the purpose of the intervention.

(3) The use of means of restraint shall cease as soon as the purpose of the intervention has been reached.

(4) The use of means of restraint shall be gradual, after prior verbal warning on their use and after giving the person the necessary time to comply with the legal requests of the police officer. In case of imminent acts of violence against the police officer or against another person, the means of restraint may be used without prior verbal warning […]."

Starting from the legislative models analysed, more specifically from practices imposed in police procedures applicable in other countries which use the "use of force continuum" or "danger pyramid" standard, the goal is to have in place clear and comprehensive rule so that violent or potentially violent situations may be managed using measures which are adequate for the behaviour of the targeted person.

Thus, the draft law proposes that the use of means of restraint should follow the principles of necessity, graduality and proportionality. This way, the means, the procedures and, in general, the conditions of police actions will be known by citizens as well. The principles mentioned will be reflected by accessible and predictable legislative wording which will enable citizens to understand and comply with them and to assume the consequences of a possible aggressive behaviour.

It is highly important to recall that for each level of danger which entails adequate response from the police officer the text of law provides expressly the purpose of the use of force, may it be physical force, handcuffing, non-lethal or lethal means.

In this context, we mention that the draft law will introduce a new article - art. 32^{11} which provides that the police officer has the right to use handcuffs or other means of restraint to prevent and neutralise acts of violence by any person.

In order to prevent self-harm or the occurrence of circumstances which may be life-threatening, or might endanger the health or bodily integrity of the police officer or of another person, the police officer has the right to use the means stipulated by the paragraph above, if:

a) the person escorted to the police precinct is known with violent behaviour against self, other persons or property;

b) the person escorted to the police precinct has committed or is under suspicion of having committed violent crimes or acts of terror;

c) the person escaped a lawful custodial or remand measure or evaded a precautionary measure or a custodial measure;

d) the equipment in the vehicle used for transportation or the route do not allow for other measures which should prevent acts of violence or escape;

e) the person if subject to custodial measures ordered to remove a danger to public order.

The legal provisions on the use of handcuffs or of other means of restraint stipulated by the regulations on the enforcement of penalties and on custodial measures shall apply accordingly.

Thus, there are clear rules on the use of handcuffs. To summarise, handcuffs and other means of restraint shall be used:

- to prevent or neutralise acts of violence;
- to prevent self-harm or the occurrence of circumstances which are life-threatening, or endanger the health or bodily integrity of the police officer or of another person.

As regards the CPT recommendation on access to drinking water, we mention that all police units have drinking water facilities and there have been no subjective reasons for which a persons in custody in any of these establishments was not permitted access to drinking water.

Paragraph 15

As regards the continuing training of MIA staff on the zero tolerance approach to any act of torture and physical ill-treatment, we highlight that the relevant aspects related to enhanced training of police officers in the field are reflected by:

- curriculum documents - education plans and programmes, course schedules and thematic planning, updated for each series of trainees;
- training of pupils, students and staff by development of skills necessary for specific professional requirements;
- continuing training of instructors and trainers - training plans, training programmes, continuing professional development portfolios.

Therefore, we highlight that the curriculum of the educational institutions within MIA includes the necessary and relevant topics which enable the training of professional skills for relations with citizens, so that their rights and interests may be observed and promoted pursuant to legal provisions.

The objective of the training on human rights is that police officers fulfil their professional tasks while observing and safeguarding the fundamental rights of the citizen enshrined by the Constitution and by other laws, pursuant to the Universal Declaration of Human Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms, the European Code of Police Ethics and to the provisions of the international treaties to which Romania is party.

The specific curriculum of each qualification includes topics on training in the field of European standards on the *protection of human rights, respect for diversity, combating*

torture and ill-treatment, juvenile delinquency, domestic violence, cybercrime, terrorism, analysis of and combating human trafficking and trafficking in illicit drugs, prevention of and combating corruption, professional deontology and integrity, interinstitutional cooperation etc.

As regards human rights, the training objectives are:

- the skill to understand and analyse the logic of legal documents to interpret correctly the texts of law;
- the competence to manage legal information to apply it judiciously in the activities carried out;
- identification, investigation and sanctioning of misdemeanours/offences which fall under police jurisdiction;
- observance of the rights of persons targeted by police activity;
- observance of the national, European and international legal framework on fair enforcement of working procedures with regards to observance of human rights and improvement of the intervention manner and of the management of professional situations;
- ease of communication in a dynamic environment and solving professional situations etc.

These objectives are reached by didactic activities under the thematic section *"Human rights and their observance in police activity"*.

Post high schools for the initial training of police agents according to the needs of the Romanian Police train their trainees on the following topics:

- Evidence and types of evidence in a criminal trial. Substantive types of evidence and documents;
- Hearing
- Taking evidence
- Human rights and their observance in police activity;

"Alexandru Ioan Cuza" Police Academy provides joint training of students in the field of reference by the contents of the subject-matter *Ethics and Integrity* which is studied in all faculties, in the first year of study, starting with the academic year 2018-2019.

The subject *International protection of human rights* is studied under the Bachelor law programme in the second year of study, 1st semester, as compulsory specialist subject-matter, and in the Police Faculty, *Legal protection of human rights in the field of public order and public security* is studied in the third year of study, 1st semester, compulsory specialist subject-matter.

The curriculum of the above-mentioned subject-matter for the public order and public security specialisation includes the following topics:

- *Introduction and the importance of this subject-matter for police officers*
- *Main UN documents*
- *Main European documents*
- *Lecture on ECtHR - European case law* (presents various cases involving police officers).

Also, we mention that "Alexandru Ioan Cuza" Police Academy includes the **Centre for human rights and postgraduate studies**, which administers the postgraduate programme *"Human rights in public order and public security institutions"*, with the following subject-matters:

- *Rights and fundamental freedoms of EU citizens*
- *Legal means of protection of certain categories of persons in case of international disputes or conflicts*
- *Legal protection of victims*
- *Observance of human rights in the integrated management of public order institutions*
- *Jurisdictional mechanism of the Council of Europe - ECtHR*
- *Equal opportunities and sustainable development*
- *Role of law enforcement authorities in preventing child abuse*
- As regards the continuing training of MIA staff, we mention that the Institute for Studies on Public Order provides the training course *"Prevention of Torture and Inhumane or Degrading Treatment or Punishment"* studied by police officers in the public order, criminal investigation and police transport departments.

Also, the Multifunctional Schengen Training Centre delivers training programmes for continuing training on human rights:

- Training course *"Human Rights in the Schengen Area" for police officers of the Romanian Police, which tackles ECtHR and CJEU case law;*

- Training course *"Police Institutions and Human Rights"* - two types, for police officers and for police agents.

Also, we highlight that the training centres provide *initial training courses for employees from external sources*. The curriculum of these courses includes the relevant themes in the field of human rights. The teaching activities present and practice special interview techniques and ECtHR case law. The activities are delivered by specialists of the General Inspectorate of the Romanian Police, by instructors and trainers.

As general information, we mention that ethics and integrity - as basic module of the common training module - train assertive behaviour and attitude in case of abuse and corruption. Integrity includes the behaviour in the general conduct established with the public, the media, with victims or witnesses of offences, with offenders, regardless their moral quality, and the general conduct outside work relations.

MIA permanently promotes a consistent ethical behaviour of the personnel in uniform, which is absolutely necessary, desirable and legitimate, so as to ensure better citizen comfort.

On the other hand, getting back to the draft law PL-x no.405/2018 described above, we mention the MIA, through the Romanian Police, intends to establish clear and precise rules on the use of force and of means of restraint, therefore the draft law introduced a new article - Art. 32^{12} which provides as follows:

"The police officer has the right to use batons, tonfas, teargas and /or paralysing chemical irritants, police dogs, protective shields, riot helmets, tasers, non-lethal weapons with rubber balls or other non-lethal weapons as well as other non-life-threatening means of restraint which do not cause serious bodily harm, to prevent or neutralise acts of violence when:

a) the use of physical force was not or is not likely to produce this result or

b) the person intends to commit or commits acts of violence using objects, devices, substances or animals which might endanger the life, health or bodily integrity of persons."

The text proposal complies with the "danger pyramid" standard, so that the use of force should be proportionate with the level of danger posed by the actions of the person.

Also, art. 32[13] of the draft law provides that *"the police officer shall have the obligation to request within the shortest possible period of time specialist services to provide emergency healthcare services to those persons against which tasers were used, those persons affected by the use of irritant chemicals, as well as to those persons injured by the use of means of restraint. As soon as possible, the situation shall be reported verbally and a report shall be drafted afterwards."*
The draft law provides for safeguards for the rights of individuals against which non-lethal means of restraint were used.

Also, art. 35 of Law no. 218/2002 will be amended so as to: *"ban the use of handcuffs or of other means of restraint, sidearms or firearms, and of the means provided by Art. 32[12] against visibly pregnant women, against persons with visible disabilities and against children, except for cases when they commit armed or group assault, endangering the life or bodily integrity of one or several persons."*

Thus, we appreciate that the future legal framework applicable for aspects raised by CPT on zero tolerance to physical and mental ill-treatment will respond to the recommendations of the international body.
As regards the regular communication of a strong message that ill-treatment of persons in custody (including verbal abuse, threats and psychological abuse) is unlawful, unprofessional and shall be punished accordingly, we mention the following:
IGRP undertakes systematic efforts to send the message of *"zero tolerance"* to acts of torture and ill-treatment and to disseminate it through the "Intrapol" network[9] and during the operative meetings with the management personnel of the central and territorial structure of the Romanian Police, so as to raise awareness among all police staff on the need to observe human rights.

Paragraph 16

In response to these aspects, we reiterate the elements included in paragraph 15 of the CTP report, especially those related to the initial and continuing training of MIA personnel.

Paragraful 17

As regards the aspects mentioned at paragraph 17 of the CPT Report, in terms of the objectives included in the objective on the training of medical staff to strengthen aspects related to an accurate description of injuries noted on inmates, please refer to the elements described above on the "Law Enforcement" paragraph of the CPT Report.

[9]The section "MONITORING MECHANISMS" displays the following permanent message: "Torture, punishment and other types of cruel, degrading and inhumane treatment may not be justified, regardless when they occur and regardless the circumstances."

On the other hand, in practice, we highlight that MD procedural aspects related to the records on traumatic signs were repeatedly reviewed, as follows:
- in 2015 - System Procedure no. PS-01-DM redefined aspects related to continuity planning for healthcare services, as well as aspects related to general and specialist healthcare services;
- in 2016 - System Procedure no. PS-01-DM was amended, more specifically Annex 4 of the Procedure - *Report on the identification and records of traumatic signs,* meaning that after that amendment, all sings of ill-treatment or violence shall be recorded in *Body chart templates for examining torture and ill-treatment;*
- in 2017 - instructions on the supervision and control of tuberculosis among persons deprived of their liberty were introduced.

To add to these mentions, we indicate that after the approval of ROFCRAP, medical units subordinated to MD were instructed that the procedure is applicable as long as its provisions do not conflict with the ROFCRAP provisions.

Also, as an element of legislative novelty, we mention that the system procedure no. PS-01-D.M. is currently under review. The amendments target, according to the CPT recommendation, practical aspects related to the description of ill-treatment lesions and will be followed by training sessions with the medical staff in the MIA network.

Paragraph 18

According to the provisions of art. 137 (1) of ROFCRAP *"The medical examination of the person deprived of liberty shall be performed* ***upon admission in the establishment,*** *upon the request of the person due to suspicion of disease, based on an appointment made by the medical staff in case of patients undergoing treatment or hospitalised, and whenever necessary"*, and a full medical examination shall be performed within 72 hours from admission, pursuant to the provisions of art. 238 (2) of the Regulation on the enforcement of Law no. 254/2013 on serving the penalties and custodial measures ordered by judicial bodies during the criminal trial, approved by GD no. 157/2016, as further amended and supplemented.
Also, we mention that according to the provisions of art. 31 (3) of ROFCRAP, *"the medical examination for the identification of signs of violence and contagious infectious diseases and parasitic diseases shall be performed upon admission of the person deprived of liberty in the establishment, but not later than 24 hours after admission."* Thus, we highlight that persons deprived of their liberty are subject to medical examination upon admission, and the result of the examination if recorded in the medical records and in the medical triage records which shall be filled in by the nurse, who has the obligation to notify the physician without delay, whenever necessary.

As regards reporting to the competent judicial bodies, the healthcare staff was instructed on the strict enforcement of the provisions of art. 238 (4) of the *Regulation on the enforcement of Law no. 254/2013 on serving the penalties and custodial measures ordered by judicial bodies during the criminal trial*, approved by GD no. 157/2016, as further amended and supplemented, which stipulates that: *"If the medical examination of a person deprived of liberty indicates that the person was subject to torture, inhumane or degrading treatment*

*or ill-treatment and/or displays signs of violence on his/her body, after filling in the documents, **the physician shall notify the prosecutor without delay**."* Similarly, ROFCRAP provided under Art. 32(1) that *"if the medical staff performing the medical examination finds that the person deprived of liberty displays signs of violence, was subject to torture, inhumane or degrading treatment or ill-treatment or reports acts of violence against him/her, they shall have the obligation to notify without delay the competent prosecutor's office."*

Paragraph 19

Pursuant to art. 137 para. (2) of ROFCRAP, *"medical examination shall observe the confidentiality, dignity and privacy of the person deprived of liberty, except for cases when the physician expressly requests additional supervision in particular cases, for safety and discipline and order reasons."*

We also mention that, in order to prevent possible incidents which might occur during the medical examination, for the purposes of ensuring a fair balance between the intention to protect life and the bodily integrity of the medical staff, on the other hand, MD and IGPR analysed the efficiency and appropriateness of the following measures: having an alarm button and recording the need for the presence of non-medical staff in the *Register recording medical staff requests for the presence of supervision personnel*, only in exceptional cases.
These new aspects would be included in a joint document issued by both institutions.

Paragraph 20

We mention that so far, in all CREs, during the medical examination, according to the provisions of PS-01-DM, Annex no. 4 - *"Report on identification of traumatic signs"* the body chart developed according to the Istanbul Protocol is filled in.

In CREs, healthcare services for persons deprived of their liberty are provided by the institution physicians/general practitioners in the MIA medical network. According to their professional competence, they do not have the capacity to determine a diagnosis which should indicate to what extent the traumatic lesions may be correlated with the allegations of the person on the circumstances under which they were caused, for the purpose of determining a possible causal link between them, as the referral diagnosis may only be established by the forensic professional.

In this context, it necessary to mention the provisions of art. 72 para. (4) of the *Regulation on the enforcement of Law no. 254/2013 on serving the penalties and custodial measures ordered by judicial bodies during the criminal trial*, as further amended and supplemented, which stipulates that *"in the cases provided by para. (3), the convicted person has the right to request to be examined by a forensics specialist, in prison. The forensics report shall be attached to the medical records, after the convicted person has been informed on its contents and signed accordingly."*

We also bring to the attention of CPT the fact that ROFCRAP includes similar provisions, as art. 32 stipulates as follows:

Art. 32 - (1) If the medical staff performing the medical examination finds that the person deprived of liberty displays signs of violence, was subject to torture, inhumane or degrading treatment or ill-treatment or reports acts of violence against him/her, they shall have the obligation to notify without delay the competent prosecutor's office.

(2) In this case, the medical staff shall draft a report to notify their findings, which shall be submitted without delay to the competent prosecutor's office by phone communication, by fax, electronic mail or by any means which enable the production of a written document, so as to enable the receiving authority to establish authenticity.

(3) All findings of the medical staff shall be included in the medical record.

(4) In the cases provided by para. (1), the person deprived of liberty has the right to request in writing to be examined at the detention place by a forensics specialist or by a medical professional appointed by this.

(5) The forensics report issued by the forensics specialist shall be attached to the medical records, after the convicted person has been informed on its contents and signed accordingly.

(6) *All expenses related to the medical examinations provided by para. (4) shall be paid by the applicant. In case the person deprived of liberty does not have the money in his/her account, all expenses related to the medical examination shall be paid by the prison establishment."*

Paragraph 21

As concerns the legal qualification of the acts of ill-treatment committed by law enforcement officials it can be noted that most of them were not committed inside places of detention under the subordination of the Romanian Police, but in public places (e.g. on the street) or places which by their nature are meant for the access of the public (e.g. pubs, shops etc.).

This issue is of paramount importance for the legal qualification of the act. For the existence of the offence of submission to ill treatment as provided for in art. 281 para. 2 Criminal Code it is necessary that the inhuman or degrading treatment is applied on an individual who is in custody, detained or serving a custodial security or custodial education measure. As long as this requirement is not fulfilled, it is not possible to take into consideration the offence mentioned.

At the same time, the objective aspect of the offence provided for in art. 281 para. 2 Criminal Code consists in causing suffering or privations, other than those which a legal deprivation of liberty inherently implies, by acts or ommissions which go beyond a certain degree of severity.

The jurisprudence of the ECHR in the field of violation of art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms is relevant in what concerns the terms ill-treatment, inhuman or degrading treatment, however its substance is not identical with the substance of the acts or ommissions which make the material element of the objective aspect of the offence provided for in art. 281 para. 2 Criminal Code.

As concerns the offence of torture provided for in art. 282 Criminal Code has a substance which is qualified by purpose and a certain duration in time.

Hence, any time these requirements of the incrimination texts are not fulfilled, the acts of physical, verbal aggression or threat committed by law enforcement officials are legally qualified as abusive behavior as provided for in art. 296 Criminal Code.

On the other side, from a statistical point of view, it is but natural to have more less serious acts than acts of torture or submission to ill-treatment. There are also no rejections of the courts of the decisions not to indict, motivated through the false legal qualification of the acts.

Paragraph 22

By virtue of the criminal sentence no. 474/07.11.2018 given by the District Court Timiș – Criminal Section sentences between 8 months and 3 years of imprisonment with suspension of the penalty enforcement were imposed on the defendants GAE, TD, NMG and GA for the perpetration of the offences of abusive behavior and bodily harm as provided for in art. 296 para. 2 phrase II Criminal Code in relation with art. 193 para. 2 Criminal Code and art. 194 para. 1 letter e Criminal Code, all with the application of the provisions of art. 77 letter a Criminal Code. Furthermore, the defendants were obliged in joint liability with the responsible parties in the civil lawsuit to pay damages to the hospital and the civil litigants (compensation for material damages and damages for pain and suffering). The sentence is not final.

3. Safeguards against ill-treatment

Paragraphs 25 and 26

The criminal proceedings rules in force provide for the right to inform a relative/a third party, and the applicable regulations expressly and clearly provide on the notification on the custodial/remand measure. The regulations mentioned above stipulate, similarly for both custodial measures, the right of the persons deprived of their liberty to inform personally or to have the judicial body which ordered the measure inform a member of his/her family or another persons he/she designates on the adoption of the measure and on the place of custody, immediately after the enforcement of the custody or remand measure [art. 210 para. (1) and 228 para. (3) CPC], regardless the chronological sequence of the custody establishments [art. 210 para. (3) and art. 228 para. (5), respectively]. Additionally, persons deprived of their liberty which are not Romanian citizens have the right to notify personally or through the judicial body and through the diplomatic mission or through the consular post of the country whose citizen the person is or, as appropriate, through an international humanitarian organisation, if he/she does not want to benefit from the assistance of the authorities from his/her country of origin, or through a representative of the competent international organisation, if he/she is a refugee or if, for any other reason, he/she enjoys the protection of such an organisation [art. 210 para. (2) and art. 228 para (3), respectively].

The exercise of the right to notify personally in case of custody may be limited for well-grounded reasons, recorded in a report [art. 210 para. (5) CPC], or delayed for well-grounded reasons for 4 hours at the most [art. 210 para. (6) CPC]; similar regulations on the limitation of the exercise of the right to notifications in person apply in the case of remand [art. 228 para. (7) CPC].
Additionally to the safeguards established by the criminal proceedings provisions described above, their subsequent rules and the rules provided by ROFCRAP provide specific obligations for the staff of the custody and remand establishments, as provided by art. 38 and 39 of ROFCRAP.

Also, as regards the right to notify by phone a relative or a third party upon admission, all custody and remand establishments subordinated to the GIRP have phones available both for the establishment staff, to fulfil their obligations as members of the Romanian Police, and for the persons deprived of their liberty (with no additional costs and without affecting the number of phone calls necessary to exercise the respective right).

Paragraphs 27 and 28

The issues raised have to do with the way of application and do not call for legislative intervention.

Paragraph 29

Some of the issues raised have to do with the way of application and do not call for legislative intervention; as concerns the summoning according with art. 505 CPC see the explanations under point 1, starting May 2018 the summoning became mandatory.

Moreover, we reiterate the elements detailed above, in the section answering on paragraph 10 of the CPT Report.

Paragraph 30

The Criminal Procedure Code does not contain a provision on the right of access to a doctor of persons deprived of their liberty as from the outset of their deprivation of liberty. There is, however, an exception concerning the right of access to a doctor applicable for emergency medical interventions necessary during the hearing of individuals (art. 106 CPC), but these are not exceptional situations and were included in the CPC taking into consideration the moment where they occur and the obligations of the judicial body.
As concerns the issues raised by the CPT in this paragraph, **we would like to indicate that there are legal, express and detailed legal provisions which introduce the obligation of conducting a medical check – in this respect see art. 110 corroborated with art. 72 of Law no. 254/2013**[10]**.**

[10] *„Art. 10 Application of some provisions*

We mention that according to the proposals included in the draft law no. PL-x 405/2018, quoted above, the police officer shall have the obligation to request medical support from specialist services "*if the person identified or taken to the police precinct or to other institutions displays visible signs which indicate the need for emergency medical care*" (art. 32^5).

4. Arrest detention centres

a. introduction

Paragraph 32

The issues raised require a thorough analysis and far reaching legislative and institutional amendments. They are under the scrutiny of the authorities.

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(1) The provisions of Title I, Title II, as well as of Chapters II, IV - VI and IX of Title III, as far as they are not contrary to the provisions of this Title, shall apply accordingly, except for the following provisions concerning:

a) the quarantine and observation period, provided in Article 44;

b) the right to private visit, provided in Article 69 and Article 75 (3);

c) the right to education, provided in Article 79;

d) the additional right to private visit, provided in Article 98 (1) d);

e) the permission to exit the penitentiary, provided in Article 75 (7) and Article 98 (1) e) - g);

f) the temporary accommodation in the protection room.

(2) The right of the person provisionally arrested during criminal prosecution to receive visitors and communicate with the media can only be exercised with the consent of the prosecutor who performs or supervises the criminal prosecution.

(3) The right to defence is guaranteed.

(4) Rewards shall be granted and the disciplinary sanctions shall be ordered by a commission annually appointed by the head unit, formed of one of his deputies, as chairman, the head of the custody and provisional arrest centre, an officer that is a law graduate, as members, and a secretary.

Art. 72 ***Medical examination***

(1) The medical examination of the sentenced persons shall be conducted upon receipt to the penitentiary and while serving the custodial sentence, on a regular basis, the provisions of Article 71 (4) being applied accordingly.

(2) The medical examination shall be conducted under conditions of confidentiality, by ensuring the safety measures.

(3) In case the doctor conducting the medical examination finds traces of violence or the sentenced person claims to have been subject to violent behaviour, the doctor shall be required to record in the medical record the findings and statements of the sentenced person in connection therewith or with any other act of aggression and to refer the matter at once to the public prosecutor.

(4) In the cases provided in paragraph (3), the sentenced person has the right to ask to be examined, in the penitentiary, by a forensic. The forensic certificate shall be attached to the medical record, after the sentenced person has taken note of its contents, under signature.

(5) The expenses incurred by the medical examination provided in paragraph (4) shall be covered by the applicant, unless he does not have sums of money recorded in his nominal account sheet or in the personal account. The sums spent for this purpose by the administration of the penitentiary shall be recovered, during the enforcement of the sentence, from the sentenced person, when the personal account or the account sheet shall have available cash.

(6) Upon receipt to the penitentiary, after the identification of the sentenced person, if this person suffers from a medical condition, the penitentiary shall take the measures for ensuring medical assistance in their own healthcare network or in that of the Ministry of Health."

On the other side, the issue was also raised in the context of the judgments renderred by the Strasbourg Court against Romania - ECHR, pilot judgment in the case of *Rezmiveș and Others v. Romania*[11].
As concerns the confinement of remanded prisoners in centers under the subordination of the NAP during the criminal prosecution, we would like to indicate that such a solution would lead, at least short time, to increasing the overcrowding of the penitenciary system, given that, based on the criteria of separation provided for in Law no. 254/2013: convicted persons are accommodated separately by remanded prisoners; female prisoners serve the custodial/preventive measure separately from male prisoners; young prisoners serve the custodial/preventive measure separately from prisoners aged above 21 or in special places of detention.

The transfer of remanded prisoners during the criminal prosecution stage to the NAP would lead to a reduction of the spaces for the enforcement of custodial sentences and to the allocation of some rooms/areas/sections within places of detention for the new category of remanded prisoners during the criminal prosecution stage.
In any case, having in mind the express provisions of Law no. 254/2013, such a measure requires at least two cumulative elements:
- amendment of the primary legislation in such a way as to allow for the enforcement of the measure of remand custody imposed on remanded prisoners during the criminal prosecution stage;
- allocation of material and human ressources to safeguard the efficiency of the rights of this category of remanded prisoners.

As regards the allegations on "poor healthcare services" and the recommendation that "persons on remand should not be held in police detention facilities" we mention the elements detailed above, in response to the "Law Enforcement" paragraph of the CPT Report.

Paragraph 33

As regards the aspects mentioned under paragraph 33 of the CPT Report, both in terms of the right to notify a relative or a third party about their situation as from the very moment of their admission to the custody and remand establishment, and in terms of providing the detained persons systematically, as soon as possible and no later than 24 hours after

[11] ECHR, judgment of 25 April 2017 , in the case of *Rezmiveș and Others v. Romania*, no. 61467/12, 39516/13, 48231/13 and 68191/13.
„117. With regard to pre-trial detention, the Court notes firstly that the cells at police stations have been found by the CPT and the Committee of Ministers to be "structurally unsuitable" for detention beyond a few days (see paragraphs 44, 46, 52 and 54 above). The Court also notes that it has already found that these facilities are intended to house detainees for only very short periods (see, for example, Horshill v. Greece, no. 70427/11, §§ 43-53, 1 August 2013; Chkhartishvili v. Greece, no. 22910/10, §§ 52-64, 2 May 2013; and Bygylashvili v. Greece, no. 58164/10, §§ 55-62, 25 September 2012). In view of these findings, the domestic authorities should ensure that any pre-trial detainees are transferred to a prison at the end of their time in police custody. The Court notes that the reform implemented by the Government has resulted in some reduction in the number of pre-trial detainees (see paragraph 92 above). It welcomes the steps taken and encourages the Romanian State both to ensure that this reform is pursued and also to explore the possibility of facilitating more widespread use of alternatives to pre-trial detention (see paragraphs 42 and 92 above)."

admission, with an appropriate medical examination by the medical staff, MIA wants to reassure CPT that all legislation in force if being enforced in both fields, as detailed above, in the response to paragraph 18 and n the joint response to paragraphs 25 and 26 of the Report.

Additionally, we mention that the criminal legislation in force, both primary legislation, represented by Law no. 254/2013 on serving the penalties and custodial measures ordered by judicial bodies during the criminal trial, as further amended and supplemented (art. 72) and the subsequent legal provisions - the Regulation on the enforcement of Law no. 254/2013 approved by GD no. 157/2016, as further amended and supplemented (Art. 238) and ROFCRAP (art. 26) provide for the obligation of authorities to provide a general medical examination, by the healthcare staff, for all persons deprived of their liberty, at the moment of their admission to the custody facility.

Paragraph 34

As regards the searches performed by the police officers upon admission of a person to a CRE, we mention that art. 35 para. (2) and (3) of ROFCRAP include clear new provisions, in line with the guidelines indicated by CPT in its recommendations so far, on searches; more specifically, the rules described provide that *"detailed body search shall be performed in designated areas with no video surveillance, by a police officer of the same sex as the person being searched, in conditions which do not "harm the dignity of the person deprived of liberty and in compliance with his/her right to privacy.* During the detailed body search of the person deprived of liberty, it is banned to attempt discovery of hidden objects by performance of physical exercise."

In this context, Romanian authorities recall CPT that compliance with all regulations in force within CREs is ensured pursuant to the provisions of art. 343 para. (5) of the *Regulation on the enforcement of Law no. 254/2013,* approved by GD no. 157/2016, which introduces additional safeguards for ensuring the exercise of the rights of persons during the duration of custody, regulating a hierarchical control mechanism for the activity of custody and remand establishments subordinated to the MIA, by specialist personnel, pursuant to the rules and procedures on the organisation and performance of inspections and controls.

b. regime

Paragraph 35

The persons deprived of their liberty held in custody and remand establishments of MIA are granted every day at least one hour for walking purposes, which includes also physical exercise [art. 122 (1) of the ROFCRAP]. The period allocated for the right to daily walks is established by the Internal Regulation of the establishments and it may increase gradually from minimum one hour, depending on the option of the person and on the level of occupancy of the establishment.

Other options for activities outside the detention rooms are unremunerated work for the establishment and, subject to the daily schedule established by the previously mentioned Regulation and to the judicial activities they are involved in, participation of persons deprived of their liberty in recreational activities established by the Regulation. Also, persons deprived of their liberty may exercise outside detention rooms their right to religious assistance, and their right to psychological support.

As regards the logistics of areas for activities undertaken outside the detention areas, we mention that the locations dedicated to the exercise of the right to daily walks are endowed with wall bars, bicycles and equipment for physical exercise, as well as fixed elements for rest, and the areas for recreational activities benefit from ping pong tables and a library.

As regards the community room and the fitness room for persons deprived of their liberty from CPI Cluj which were not in use at the time of the visit, according to those communicated by the management of the establishment, they noted the recommendation and they will identify solutions so that rainwater should no longer infiltrate through the ceieling of the gym.

Also, in order to ensure the exercise of rights pursuant to law, the GPI drafted and disseminated registers to keep records on the exercise of the right to daily walk, which highlight separately, under special columns, the refusal/limitation to exercising this right by the persons deprived of their liberty, regardless the reason.

c. conditions of detention

Paragraph 36

For the purposes of presenting the information requested, we recall that on 17 January 2018, the Government of Romania approved the Memorandum on *"Approval of Timetable of measures for 2018-2024 to solve cell overcrowding and detention conditions, for the enforcement of the pilot judgment Rezmiveș and others vs Romania ruled by ECtHR on 25 April 2017"*.

Thus, in order to enforce the measures included in that document, the GIRP initiated measures to increase and modernise the accommodation capacity in the custody and remand establishments, according to the approved Timetable. The new detention facilities shall comply with the international standards mentioned by ECtHR in the pilot judgment and shall guarantee minimum space of 4 sqm.

Thus, the implementation of the measures included in the plan involves the creation of 1596 accommodation places and the modernisation of 187 accommodation places, according to a three-stage plan, during the period of 2018-2024, with 114 accommodation places created/modernised during **stage I -** 2018.
New/modernised accommodation places were made available for CPI Galați (**34 places**), and others will be made available for CPI Maramureș (**30 places**) and CPI Iași (**50 places**).

Also, we intend to continue activities to create new accommodation places, to commence and/or continue the objectives initiated within 8 custody and remand establishments.
In the future, the following will be created/modernised:

- **in the second stage** of the Timetable - 153 accommodation facilities, as follows: CPI Covasna (33), CPI Alba (33), CPI Vaslui (45), CPI Teleorman (22) and CPI Harghita (20);
- **in the third stage** of the Timetable - 1516 accommodation facilities: CPI Arad, CPI Giurgiu, CPI Cluj, CPI Călărași, D.G.P.M.B, CPI Argeș, CPI Brașov, CPI Constanța, CPI Dolj, CPI Prahova, CPI Botoșani, CPI Brăila, CPI Dâmbovița, CPI Hunedoara, CPI Neamț, CPI Suceava, CPI Mehedinți, CPI Tulcea, CPI Gorj, CPI Olt, CPI Bistrița Năsăud, CPI Satu Mare and CPI Vrancea.

Paragraph 37

In the past two years, statistics indicated a significant decrease in the number of persons deprived of their liberty in custody after the criminal law and the criminal proceedings law entered into force and provided for alternative measures. Thus, 20,067 persons were in custody in 2015, and 18,565 in 2016, and this decreasing trend was maintained in 2017, when 18,489 persons were in custody.

The unpredictable dynamics of the number of persons deprived of their liberty led to shortcomings in ensuring the minimum living space recommended by CPT, however, these were isolated brief cases, and were managed accordingly by the authorities in the field. For this purpose, the Regulation on the enforcement of Law no. 254/2013 on the enforcement of penalties and custodial measures ordered by judicial bodies during a criminal trial, approved by Government Decisions no. 157/2016, as further amended and supplemented, regulated clearly on the possibility to redistribute persons deprived of their liberty to other custody and remand establishments in case the legal accommodation capacity of an establishment is exceeded, and created a unitary mechanism by involving the structure which coordinates the custody and remand establishments in the management of such issues, upon notification by the head of the establishment [art. 234 para. (2) of the Regulation].

To highlight the involvement of the national authorities in the implementation of the Committee recommendations, we mention that two of the objectives assumed under the Timetable of measures and accomplished so far, more specifically the custody and remand establishments from CPI Galați and CPI Iași are compliant in terms if ensuring the minimum living space for persons deprived of their liberty.

Paragraphs 38 and 40

As regards the aspects raised under paragraphs 38 and 40 of the CPT Report, we reiterate the general information presented in response to paragraph 37.

Also, as regards the existence of sanitary annexes which are not fully partitioned in the custody and remand establishments, two of the objectives assumed under the Timetable of measures and accomplished so far, more specifically the custody and remand establishments from CPI Galați and CPI Iași are compliant with the recommendations of the Committee.

As regards the custody and remand establishments no. 2, 4 and 8 under the subordination of the General Police Directorate of Bucharest Municipality, currently there is an ongoing repair project, however, the layout of the buildings hosting the facilities does not allow for significant changes which could fully solve the partitioning of the sanitary annex form the rest of the room. Also, the purpose of the works mentioned is to solve the problem of access to natural light of persons deprived of their liberty.
For the future, in the period of 2021-2023, we anticipate that new accommodation places will be made available/existing ones will be modernised in the custody and remand establishments under the subordination of the General Police Directorate of Bucharest Municipality, according to the objectives assumed for the third stage of implementation of the *Timetable of measures*.

d. juveniles in arrest detention centres

Paragraph 41

The recommendation was implemented by relocating the minors and youngsters in custody at the moment of the visit at the custody and remand facility no. 2 under the subordination of the General Police Directorate of Bucharest Municipality to suitable custody facilities, more specifically to the areas were repair/modernisation works were performed in the custody and remand facility no. 1; their regime is compliant with the specific rules laid down by GD no. 157/2016 and by ROFCRAP.

Paragraph 42

As regards the recruitment of human resources by CRE so as to ensure a suitable detention regime for minors, we reiterate that the *Memorandum on Approval of Timetable of measures for 2018-2024 to solve cell overcrowding and detention conditions, for the enforcement of the pilot judgment Rezmiveș and others vs Romania ruled by ECtHR on 25 April 2017,* to resize the custody and remand establishments approved 405 additional positions (79 police officer positions and 326 police agent positions) for the organisational chart of the MIA.

As regards the punctual recommendations made under paragraph 42 of the Report, more specifically that “the Romanian authorities take steps in all arrest detention centres to ensure that juveniles are held in decent conditions and provided with a purposeful regime”, with the example of the juvenile from CRE Bacău accommodated for several days in a cell with adults before being transferred to a single cell, we mention the following:

The recommendations of the Committee are reflected by the provisions of art. 256 para. (1) of the Regulation on the enforcement of Law no. 254/2013 on serving the penalties and custodial measures ordered by judicial bodies during the criminal trial, approved by Government Decision no. 157/2016 and of art. 42 of ROFCRAP; the recommendations of the

Committee were explained to the establishment staff, and the head of the establishment shall monitor compliance with the separation criteria considered upon room allocation, regulated by the legal provisions in force.

Additionally, as regards this particular case, we communicate that the verification of CRE Bacău records indicated that on the date of admission to the facility, a minor was accommodated together with two other minors and during the custody period, more specifically three days before the CPT visit, one of the two minors mentioned became of age; the day after the visit, the minor who last arrived in that room was transferred to prison, and the adult was moved to another CRE room, so that the other minor was held in custody in a single cell.

As regards the request of the Committee to be informed of the number of juveniles held in custody and remand establishments in 2017 and for the first six months of 2018 and how many of them were held for longer than one week, we mention the following:

Number of custodial operations:

- in 2017 - 1,117 (representing 6.04% of the total custodial operations) of which 457 (representing 40.9% of the total custodial operations involving juveniles) for a period exceeding one week;
- in the first six months of 2018 - 655 (representing 6.6% of the total custodial operations) of which 266 (representing 40.6% of the total custodial operations involving juveniles) for a period exceeding one week.

e. health care services

Paragraph 43

Referring to the aspects mentioned in paragraph 43 of the Report, we mainly show according to art. 158 of the ROFCRAP, the administration of drugs and food supplements to detained persons is done by healthcare professionals, a fact that has been underlined repeatedly in the trainings with subordinate medical units. With regard to the expired drug situation, all incidents are addressed in accordance with the current rules and the medical waste management procedure; the incident at Iasi arrest detention centre was solved right during the Committee visit, according to the procedure.

Also, we reiterate that, although the health care staff positions in MIA can be occupied only by people from outside the institution or through schooling within the Medical-Military Institute, the ministry makes efforts to minimize the negative consequences caused by the acute shortage of healthcare specialists in the health units subordinated to the Medical Directorate, so that healthcare services are affected as little as possible. Therefore, in the health units subordinated to MD, in all pre-trial units at county level and in Bucharest, the primary care for the detained persons is granted *cumulatively* by the unit/family doctors from the county medical units (38 units) or outpatient diagnosis and treatment medical centres (3 units) belonging to the MD network due to the major shortage of specialized staff.

Thus, we bring to the attention of the Committee once again that the low addressability, the decrease of the number of physicians at national level and the cessation of external source assignments in the public units in 2017 contributed significantly to the shortage in the number of healthcare personnel involved in the provision of medical assistance to the persons deprived of their liberty at the CPAD level of MIA.
With this occasion, we recall that, in order to respond to CPT recommendations regarding the independence and confidentiality of medical services, 11 medical staff positions (contractual) were created at the level of MIA.

Paragraph 44

Related to the issues mentioned in paragraph 44 of the CPT Report, we state that, any person who declares he/she is a drug user when placed in custody, (whether previously included in a substitute therapy or not) is subject to a specialist psychiatric exam in order to have a diagnosis and be prescribed a medical treatment. Subsequently, the National Anti-drug Agency is informed about these persons and the medical staff at the arrest detention centre.

In order to clarify the procedures followed by the National Anti-drug Agency (NAA) when notified of the drug users in detention, the following clarifications are required:

In its capacity of national coordinator of public policies for the reduction of drug demand and supply, NAA is responsible for formulating coherent, comprehensive and appropriate responses to any emerging community issue, including those aimed at identifying the practical ways to attract and motivate drug users that do not access specialized services and have multiple vulnerabilities.

Thus, since February 2016, NAA has implemented in Bucharest a programme that, through a specialized mobile team, provides assistance to drug users who can not directly access the community assistance services. Detained persons with drug dependence are provided assistance services through this mobile team.

The following services are provided as part of the programme: drug testing, basic medical assistance, discontinuation of drug use under medical supervision and outpatient maintenance of abstinence, prescription of substitute therapy with methadone, information and education activities of beneficiaries for preventing transfusion or sexually transmitted infections - HIV, hepatitis B and C, promoting a healthy lifestyle, and coordinating the assistance provided to drug users in the local health, psychological and social care network.

NAA has the institutional capacity to manage the provision of methadone substitution treatment exclusively in the medical offices of the pre-trial units in Bucharest.

If, when placed in custody, the detained person he/she is a drug user and is enrolled in an anti-drug programme outside prison with opiate substitution therapy, healthcare professionals notifies NAA, which takes the necessary measures to allow the continuation of the treatment. For drug users in pre-trial units under the IGRP, the county police

inspectorates ensure the transfer of the detained person to the pre-trial units within D.G.P.M.B. so as to ensure the observance of fundamental rights and to allow for a proper implementation of criminal proceedings.

NAA is the institution which makes an assessment of drug users. During the assessment process, NAA case manager identifies the relevant consumer specificities in order to select the proper program and individualize the provided services. At the same time, the case manager sets out the necessary measures and interventions in terms of drug addiction and collaborates with the medical staff within the Arrest Medical Office and the healthcare staff of the detention facility for the implementation of such measures.

If substitution therapy is needed for drug users, NAA manages the following situations:

- *Continuation of the substitution therapy* for drug users enrolled in an anti-drug programme outside prison prior to their detention or arrest;
- *Induction and stabilization of methadone treatment* for drug users who need this type of therapy, as assessment shows. The induction applies to all kind of opioids (heroin, methadone, suboxone, tramadol, morphine, fentanyl and other alike).

The substitution therapy with opioid agonists is performed in accordance with the specific legislation in the field, by daily administration of substitution drugs done exclusively by the staff designated by NAA, at the medical office for detained persons, within the structure of "Dr. Nicolae Kretzulescu" Outpatient Diagnosis and Treatment Centre. In exceptional cases, the substitution treatment with opioid agonists can be done in other designated areas at CRAP 2-11 level.

Providing specific healthcare for cases where methadone treatment is not possible:
If, upon receipt of the medical letter issued by the primary care doctor of the detained person prior to the moment of detention/hospitalization, we find that, based on medical prescription, a quantity of drugs required to ensure daily treatment by self-administration was provided and the medication can not be returned to the original supplier, methadone treatment can not be administered. As a result, symptomatic medication, prescribed by the specialist doctor, will be administered by the medical staff of the detention unit.

In case drug users need to continue the methadone substitution treatment in community, after NAA interventions, case management is ensured, as follows:

If, prior to his/her arrest, the beneficiary was in the care of a substitution treatment provider in community, the provider is notified, in order to ensure the continuity of the therapy. The NAA specialist physician sends a medical letter with details on the duration of the treatment and the administered dose of medication.

Alternatively, if the beneficiary was not in the care of any substitution treatment provider prior to pre-trial detention and arrest, the case is referred to one of the three integrated assistance programmes developed within the Centre for Drug Prevention, Evaluation and Counselling in Bucharest. The NAA specialist physician sends a medical letter with details on the duration of the treatment and the administered dose of medication.

If the drug user needs to continue the methadone substitution treatment in the detention unit, after the NAA interventions the medical staff in the unit is notified and all medical files of the detained persons are sent to the medical staff.

On the other hand, when the house arrest is ordered, the NAA case manager recommends that the program beneficiary sends a request to the judge of rights and freedoms in order to continue of the therapy, respectively the methadone substitution treatment at a designated provider, as well as its inclusion in the approved route, with the notification of the Judicial Surveillance Office.

If, following assessment, a drug user is integrated into the Program for reducing the risks associated to drug-use, hereinafter called PIT 4 (a), a personalized plan of assistance involving substitution treatment is proposed.
Methadone treatment is resumed and prescribed for drug users who, as shown by the assessment, require this type of treatment, for all cases of opiate use (heroin, methadone, suboxone, tramadol, morphine, fentanyl, and other alike) which were previously treated, but do not meet the criteria for the continuation of treatment, or if users consumed methadone and other drugs without a medical prescription.

Initiation of methadone substitution treatment for detained persons in the pre-trial units under IGRP who were not included in a programme prior to their arrest, is done only after a psychiatric exam and the identification of possible co-morbidities including psychiatric disorders as well as after a specialty diagnosis, of opioid and/ or polysubstance-related disorders - including opioids.

In case of induction, the treatment is initiated by specialized staff, according to the case manager's recommendations in the hospital units of the penitentiary. Until the hospital unit is given permission to transfer the detained person, the latter will follow the treatment according to the recommendations of the psychiatrist.

Once the drug user is stabilized, the NAA physician monitors and administers substitution treatment in the pre-trial unit where the detained person is held.

Ensuring substitute treatment for drug users has benefits for the individual and the community and also reduces social, public health and crime prevention costs.

The adaptation of work mechanisms to scientific evidence in the field and to the dynamics of consumption patterns, correlated with the development of innovative methods of coordination of integrated services of medical, psychological and social care of existing drug users in the community and in the detention system, in view of ensuring the continuity of interventions, is the institutional response appropriate to the emerging needs identified by the National Anti-drug Agency specialists over the last period of time.

In perspective, regarding the substitution treatment for opiate addicts, we generally mention that in 2018 NAA, IGRP and MD representatives had working meetings in order to develop a cooperation protocol for providing the necessary assistance for detained persons with a drug addiction. This cooperation protocol will be completed in the next period.

Regarding the Committee's finding that "the management of opioid substitution therapy (OST) was restricted to those already enrolled in an anti-drug programme outside prison", we emphasize that at the MIA level, the access of persons to treatment was not restricted, but there were situations when methadone treatment could not be administered if, upon receipt of the medical letter issued by the primary care doctor of the detained person prior to the moment of admission/hospitalization, it was found that, based on a medical prescription, a quantity of drugs required to ensure daily treatment by self-administration was provided and the medication cannot be returned to the original supplier. In this case, a new methadone treatment could not be administered but symptomatic medication prescribed by the medical practitioner was administered by the medical staff of the detention unit.
Regarding the particular situation reported by CPT regarding "a detained person with a clear history of opiate addiction and met by the CPT's delegation at Galaţi arrest detention centre", we mention that the person in question was transferred to the penitentiary after the visit of the CPT, and the information below is presented as evidenced by the medical records currently available at CRE Galati:

- The medical assistance was provided in accordance with the provisions of art. 241 of the *Implementing Regulation of Law No. 254/2013 on the enforcement of sentences and custodial measures ordered by the judicial bodies during criminal proceedings, approved by Decision no. 157/2016*[12]*, as subsequently amended and supplemented*, as well as with the provisions of art. 26 of *ROFCRAP*[13].

- Given that, at the medical exam performed at the time of the arrest, the detained person declares he/she is a "drug user" without specifying whether he/she is included in a substitution treatment programme for opioid use, a referral for psychiatric consultation was issued. As a result of this exam, a psychiatric treatment was started;

- We underline that during the detention, the detained person went through several medical consultations, for various diseases, performed by the doctor who provides the medical assistance at CRE Galati.

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[12] Art. 241 - Providing healthcare to drug users
(1) Upon their admission to the arrest detention centre, as part of the medical exam, the medical staff asks the detained person questions related to drug use.
(2) The detained person who is a drug user is referred to the specialized public health unit in order to go through a psychiatric consultation and take the necessary measures.
(3) If the detained person follows a methadone substitution treatment, the management of the arrest detention centre shall be informed in order to notify the Integrated Anti-Drug Assistance Centre and allow for the continuation of the substitution treatment.

[13] Art. 26 (...)
"(6) If the detained person declares himself a drug user, the medical staff shall inform in writing the head of the centre in order to refer the person for a specialized medical consultation. If the detained person needs medical services due to drug use and the medical conditions at the centre are not sufficient, the centre will resort to specialized health care services within the designated units according to the law, thus ensuring the case management according to the provisions of par. (8) letter c).
(7) If the detained person states that he/she is included in an integrated assistance opiate substitution programme, health care professionals who provide healthcare at centre level shall inform the head of the centre in writing and notify the National Anti-drug Agency."

Paragraph 45

For the optimal implementation of the tuberculosis prevention and control programme among detained persons at CRE level in Bucharest, in addition to the collaboration protocol between the Institute of Pneumo-physiology Marius Nasta, as coordinator of the National Tuberculosis Control Programme, IGRP and the Medical Directorate, concluded in January 2018, in October 2018 the protocol of cooperation between the IGRP, Sfântul Ștefan pneumophysiology hospital and the Medical Department for the pneumo-physiology examination was signed.

The detained persons suspected of having HIV infection or hepatitis B or C infection or who have been diagnosed with these infections on the occasion of a medical visit at the time of admission, were offered a specialized examination at hospitals of infectious diseases that confirmed or invalidated the initial diagnosis. Subsequently, depending on the diagnosis, the detained person receives specialized treatment through the infectious diseases hospitals in Bucharest or the NPA network.

Paragraph 46

The issues raised require a thorough analysis and far reaching legislative and institutional amendments.

The health care for persons deprived of their liberty is provided in accordance with:

- Law no. 95/2006 on the reform in the health care sector, republished, with subsequent amendments and supplements
- Law no. 46/2003, patient's rights law, with subsequent amendments and supplements
- Joint ordinance of the Justice Minister and Health Minister no. 429/C-125/2012 on ensuring the health care of persons deprived of their liberty under the custody of the National Administration of Penitenciaries.
- Law no. 487/2002, law on mental health and the protection of persons with psychiatric disorders, republished, with subsequent amendments and supplements
- Protocols of cooperation no. AP2114/2013 – 52465/2013 between the Health Ministry and the National Administration of Penitenciaries on ensuring the framework of cooperation in the field of enhancing the public health care services provided to detained population

The Ministry of Health upholds its point of view expressed in previous reports, namely that it does not consider that taking over into the Ministry of Health of the medical staff with the National Administration of Penitenciaries is adequate and feasible.

Moreover, the elements indicated in the reply to the paragraph of the CPT report entitled "Law enforcement" relating on the confidentiality of medical examinations are relevant. We believe that the framework to guarantee the independence and confidentiality of the work carried out by the medical staff at the pre-trial units is ensured. At the level of MIA, 11 medical staff positions (contractual) were created, in order to respond to CPT recommendation on the independence of the medical act.

As regards the psychological assistance provided to detained persons within CRE subordinated to IGRP, we mention the following:

Art. 87 of ROFCRAP provides as follows:
„(1) The psychological assistance provided to the detained person aims at providing qualified psychological support in order to ensure a proper adaptation to the detention conditions, by identifying and improving the dysfunctional states when reported, to prevent the occurrence of maladaptive behaviours, as well as to solve psychological problems.
(2) Psychological assistance is provided by the psychologist, the organization and conduct of which is based on the principles of professional ethics. Psychological assistance is performed, in specially arranged spaces, by psychologists with practice licence, employed in specialized positions within the Ministry of Interior.
(3) Psychological assistance activities are carried out at the request of the detained person or at the written request of the unit director, under the conditions of art. 88 and 193.
(4) The provision of psychological assistance is determined by the order of the Inspector General of the General Inspectorate of the Romanian Police, with the approval, as the case may be, of the Psycho-sociological Centre within the Ministry of Interior, according to the regulations in the field of psychology activity in the Ministry of Interior."

From the point of view of the application of these provisions, we mention that at the time of admission, by means of the admission report, the detained person is informed of the possibility of receiving psychological assistance while being held in an arrest detention centre, being even offered a brochure on the rights and obligations during custody.

According to art. 158 of ROFCRAP, the provision of drugs and food supplements to detained persons is done by or in the presence of the medical staff.
Regarding the issue of providing basic life-saving equipment (e.g. defibrillator and oxygen) to all arrest detention centres at national level, we bring to the attention of the Committee that one of the MIA's priorities is the purchase of medical equipment for medical offices, including at CRAP level. In this regard, we would like to inform you that the necessary medical equipment and for medical offices within the MIA network, including the CRAP medical offices, will be included in the Investment Program for 2019 of the unit in which they are located.

We reiterate that when admitted in an arrest detention centre, any person who claims to be a drug user (whether previously included in an OST program or not) is subject to a psychiatric specialist examination, which establishes the diagnosis and the medical treatment. In support of the above, we invoke the provisions of art. 26 from ROFCRAP.[14]

[14] Art. 26 of ROFCRAP:
„(6) If the detained person declares himself a drug user, the medical staff shall inform in writing the head of the centre in order to refer the person for a specialized medical consultation. If the detained person needs medical services due to drug use and the medical conditions at the centre are not sufficient, the centre will resort to specialized health care services within the designated units according to the law, thus ensuring the case management according to the provisions of par. (8) letter c).
(7) If the detained person states that he/she is included in an integrated assistance opiate substitution programme, health care professionals who provide healthcare at centre level shall inform the head of the centre in writing and notify the National Anti-drug Agency..

Detained persons suspected of having HIV infection or hepatitis B or C infection or who claimed to have been diagnosed with such infections on the occasion of a medical exam performed at admission, were referred for a special examination in an infectious disease hospital, which confirmed or invalidated the diagnosis. Subsequently, depending on the diagnosis, the detained person received specialized treatment through the infectious disease hospitals in Bucharest or the National Administration of Penitenciaries network.

We would like to point out that in the last years there have been discussions and working meetings with representatives of the Ministry of Health and the National Administration of Penitenciaries in order to identify the best solution for the provision of medical assistance to the detained persons in compliance with CPT recommendations in the context of the specificity of the health care system in Romania. So far, no solution has been identified to translate the CPT recommendation. In this respect, in order to implement CPT's recommendation, the measures taken with the Ministry of Health are to be resumed.

f. other issues

Paragraph 48

As a general rule, we would like to recall that the taking in custody of any person is ordered if there is evidence or probable cause leading to a reasonable suspicion that a person committed an offense and if such measures are necessary in order to ensure a proper conducting of criminal proceedings, to prevent the suspect or defendant from avoiding the criminal investigation or trial or to prevent the commission of another offense (art. 202 para. (1) CPC].

Therefore, in relation to the purpose of preventive measures, the exercise of all civil and political rights is restricted to those who were deprived for exercising such rights, by a final sentence, as well as to those whose restricted exercise of such rights is inherently related to safety measures (art. 7 of Law No. 254/2013 on the enforcement of sentences and custodial measure ordered by the judicial bodies during the criminal trial, as subsequently amended and supplemented).

Thus, the context of impairment of fundamental social values by committing offenses provided by the criminal law is maintained during detention, a natural consequence of which is the maintenance of the security, with an impact on the free exercise of the fundamental rights of the persons concerned. Therefore, detained or preventively detained persons in the

(8) The National Anti-drug Agency shall adopt the available and necessary measures for the continuation of the treatment according to the legal provisions in force, by:
a) checking the specific databases of the treatment provider to which the detained person is registered for evidence and assistance;
b) contacting the attending physician of the treatment provider in order to find data on the actual treatment and the daily doses of medication;
c) ensuring case management through the Centre for Drug Prevention, Evaluation and Counselling;
d) ensuring the specialized personnel and the necessary medication for the continuation of treatment and specialized assistance at centre level, through its own resources"

arrest detention centres are obliged to observe their own enforcement regime, with a view to allow for the proper conduct of the criminal proceeding, with the observance of fundamental rights (art. 111 of Law no. 254 / 2013 on the enforcement of sentences and custodial measure ordered by the judicial bodies during the criminal trial, as subsequently amended and supplemented).

Following the same rationale, the law regulates the right to visit, which is granted for security reasons, with or without separation screens (art. 139 para. (2) of Implementing Regulation of Law no. 254/2013 on the enforcement of sentences and custodial measure ordered by the judicial bodies during the criminal trial, as subsequently amended and supplemented, approved by the Government Decision no. 157/2016].

In this context, we point out that a regulation similar to that established by the Romanian state is also found in other European states, where detained persons are granted both open and closed visits.

As an example, we mention that in Liechtenstein, the type of visit granted is decided for each detainee, visits being made in rooms where a separation screen is mounted when there is a special situation in relation to the person in custody. On the other hand, in Scotland, visits are conducted under "closed visit" conditions, where the person in custody and the visitor enter the same room through different doors, separated by a glass screen.

III. B. Prison establishments

1. Preliminary remarks

Within the Romanian penitenciary system, the enforcement of custodial penalties and measures is subject to constitutional provisions, Law no. 254/2013 on the enforcement of sentences and of measures involving deprivation of liberty ordered by the judicial bodies during criminal proceedings, with subsequent amendments and supplements, the Regulation on the implementation of Law no. 254/2013, approved by virtue of the Government's Decision H.G. no. 157/2016, as well as to the provisions of subsequent legal acts (ordinances of the Justice Minister, decisions of the general director of the National Administration of Penitenciaries, internal rules and regulations applicable to places of detention).

The National Administration of Penitenciaries appreciates the positive findings of the CPT members during the visits conducted to the five places of detention, as they are findings which highlight the progresses of the penitenciary system in what concerns the improvement of conditions of detention, ensuring to persons held in prison an as generous as possible individual space, creation of a compensatory remedy, setting up rooms for interaction of children with parents held in prison, the possibility to install phones in detention rooms, inclusion of the right to on-line communication in the legislation concerning the enforcement of criminal sentences, application of the disciplinary procedure, as well as offering more types of activities to be performed by persons held in prisons.

a. prison reform

Paragraph 49

As concerns the allegations under Paragraph. 49 on decriminalization of „hundreds of crimes", some clarifications are necessary for the rigour and correct identification of the reform of the criminal law:

- **the Criminal Code effected few total decriminalization (about 10 crimes)**, justified, mainly, by the evolution of the society as compared to the years 1968-1969 (when the previous Criminal Code was adopted and entered into force). What we have in mind is the decriminalization of some crimes provided for in the previous Criminal Code: art. 166 - Propaganda in favour of the totalitarian state; art. 199 - Seduction; art. 241 – Illegal wearing of decorations or distinctive signs; art. 295 - Speculation; art. 320 – Disturbance of possession (partial decriminalization); art. 326 Beggary; art. 328 Prostitution; art. 348 Draft evasion; art. 349 - Defeatism; art. 352 – Requisition evasion.
- **Law no. 187/2012 on the implementation of Law no. 286/2009 on the Criminal Code did indeed decriminalize several crimes, but by no means can we speak of hundreds of decriminalizations**, especially if we consider that some decriminalizations were apparent (meaning that a crime provided for in a special law was indeed abolished, but the act was not decriminalized as it was considered to be a crime according with the general provisions (crimes) of the Criminal Code.

We would like to underline the fact that **Law no. 187/2012 was a laborious legislative activity and was the result of an extensive activity of research and analysis of about 300 legal acts in the criminal field or beyond the criminal field, whereas a number of more than 200 legal acts were amended, supplemented or abolished.**

Law no. 187/2012 mainly pursued the following aspects:

- abolishment of some criminal provisions provided for in special laws as a result of their inclusion in the Special Part of the new Criminal Code or for the purpose to eliminate the useless overlapping of some texts with protect the same social values;
- adaption of punishments for crimes which remain in special laws in accordance with the sanctioning philosophy of the new Criminal Code;
- updating the referrals to provisions in the Special Part of the Criminal Code to be found in texts of special laws;
- decriminalization of some acts provided for in special laws and turning them into contraventions where necessary. The observance of the principle of minimum intervention which governs the criminal legislation of any rule of law state requires the recourse to the criminal protection mechanism only in situations where the protection offered by the regulations of other legal subjects is not sufficient. For example: art. 6 of Decree no. 340/1981 on the regime of radio-electrical emitters; art. 1 of Law-decree no. 15/1990 on the prosecution, trial and punishment of speculation crimes; art. 1 of Law-decree no. 41/1990 on ensuring a climate of law and order; art. 94 of Law on waters no. 107/1996; art. 41 para. (1) letter d) of din Zootechnics law no. 72/2002.

The mere fact that 300 laws were analyzed and 200 of them were amended cannot lead to the conclusion that Romania decriminalized in 2014 hundreds of crimes.

Paragraph 50

Within the National Administration of Penitenciaries the Permanent Commission for the analysis of the degree of overcrowding in subordinated facilities, depending on the capacity of accommodation of the penitenciary system was created based on the Decision of the General Director. The Commission's role is to analyze and monitor the capacity of accommodation of subordinated facilities, calculated at 4 m^2, depending on the enforcement regimes and the categories of persons deprived of their liberty held in prisons.

Furthermore, the Commission identifies the facilities with the highest degree of overcrowding, depending on enforcement regimes, in order for them to be treated with priority in what concerns the transfer of convicted persons, with a view to balancing the numbers of persons held in prisons.

Where it is ascertained that detention facilities which have a high degree of overcrowding did not come up with transfer proposals, by virtue of art. 48 para. (8) of Law no. 254/2013 or the proposals are considered to be insufficient in terms of numbers, the Commission requests the respective facilities to look at the situation of persons held in order to come up with transfer proposals.

On 29.11.2018 the penitenciary system held 4,947 convicted persons in custody, distributed in the closed enforcement regime and had 5,916 places of detention with 3 m^2 available as individual minimum space. For making available 4 m^2 as individual minimum space for this category of detainees, the penitenciary system had, on the reference date, a deficit of about 596 places.

On 19.10.2017 the Law no. 169/2017 started to come into effect in the sense that, when calculating the sentence actually served it should be taken into consideration, no matter the regime of penalty enforcement, as a compensatory remedy, also the enforcement of the sentence under improper conditions, in which case, for each period of 30 days served under improper conditions, even if they are not consecutive, 6 additional days shall be considered served from the sentence imposed. So it follows that on the first day of the application of the new legal provisions (**19.10.2017)** a number of **529 detainees** were released after having served the sentence in full, following the application of these provisions. Until 29.11.2018 **13,456** who benefited of the provisions of Law no. 169/2017 were released. Among them **2,416** detainees were released after having served their sentence in full and **11,040** detainees were released conditionally.

As concerns the social reintegration efforts, a main line of action meant to reduce the effects of improper conditions of detention is increasing the time spent by persons deprived of their liberty outside detention rooms and their participation in activities which can turn the period of deprivation of liberty into a useful period.

After they are incarcerated, **all persons deprived of their liberty** are assessed on three levels: education, psychological assistance and social assistance. This justifies the intervention and specialized assistance during the enforcement of the sentence in the form of the *Individual plan for assessment and educational and therapeutical intervention*. The *Plan* contains recommendations for each convicted person as to the activities and programs which the person shall be involved in with the purpose to facilitate his social reintegration,

taking into consideration the human and material ressources available at each place of detention. The periodical assessment of needs and risks, as well as the individual assistance allow for the real time alleviation of possible negative influences of conditions of detention on persons held in prisons.

In accordance with the provisions of the *Regulation on the implementation of Law no. 254/2013*, the following applies for the four regimes of enforcement (maximum security regime, closed regime, semi-open regime and open regime):

- The detainees under the *maximum security regime* who do not perform work or do not participate in activities for school education or vocational training may conduct, for maximum 3 hours every day, walking activities, educational activities, psychological assistance and social assistance activities, sports and religious activities.
- The detainees under *closed regime* who, for various reasons, are not used to work, school education and vocational training activities may conduct walking, educational, psychological assistance and social assistance, sports and religious activities within the limit of at least 4 hours a day. Outside of the place of detention educational and cultural activities with the detainees in closed regime may be conducted, under constant guard and surveillance, with the approval of the director of the penitentiary.
- For detainees under *semi-open regime* the detention rooms shall be open during the day, they shall organize their leisure time and shall perform administrative and household activities, under surveillance, in compliance with the schedule established by the administration of the penitentiary. Thus, detainees under semi-open regime have the possibility to spend their free time outside the detention room, allthrough the day, participating in activities and programs dedicated to their social reintegration, as well as in activities which relate to the exercise of their rights, whereas they have to return to their rooms only for serving the meal and before the evening roll call. Convicted persons who are under semi-open regime may work and get involved in activities in the social reintegration field outside the penitenciary, under surveillance.
- Under the *open regime* room doors are open permanently (day and night), except the time necessary for serving the meals or conducting some administrative activities (organization and performance of the roll call, other exceptional situations). The open regime offers the confined persons the possibility to move unaccompanied inside the detention facility and to participate in work and in specific activities of school education and vocational training, in educational, cultural, moral, religious, psychological assistance and social assistance activities, outside the centre, without surveillance, with the obligation to return to the place of detention after the program ends.

In what concerns the five prisons vicited by the CPT team, the participation to activities specific to the field of social reintegration is as follows:

Penitenciary	Total participations in activities and programs	Average daily number / 1st half 2018	Average of participation of detainees in daily programs and activities / 6 months
Penitenciary Aiud	5761	647	8,90
Penitenciary Bacău	6937	505	13,74
Penitenciary Galați	6534	515	12,69
Penitenciary Gherla	6623	781	8,48
Penitenciary Iași	8067	840	9,60

Paragraph 51

The Romanian Government approved in its session on **17 January 2018** by Memorandum the ***Timetable for the implementation of measures 2018-2024 to resolve the issue of prison overcrowding and conditions of detention with a view to executing the pilot-judgment Rezmives and Others v. Romania, delivered by the ECHR on 25 April 2017***.
The plan of the Memorandum approved by Romania's Government on 17 January 2017 is structured for the period 2018-2024 as follows: Stage I: 2018 – new places of detention – 316, modernized places – 500; Stage II: 2,020 – new places of detention – 44; Stage III: 2,021 – new places of detention – 508, modernized places – 85; Stage IV: 2,022 – new places of detention – 3,997, modernized places – 666; Stage V: 2,023 – new places of detention – 2,730; Stage VI: 2,024 – new places of detention – 500.

The application of the measures established in the Plan of the Memorandum approved by the Romanian Government on 17 January 2018 involves the creation of a number of 8,095 new places of detention and the modernization of 1,351 places of accommodation, whereas the investments shall be funded from the following 3 sources: **Norwegian Financial Mechanism** – 1,400 new places of detention, with an estimated value of 21,007,300.00 Euros and 100 modernized places of accommodation, with an estimated value of 940,000.00 Euros; **State budget** – 4,795 new places of detention and modernization of 1,251 places of accommodation with an estimated value of 75,297,550.00 Euros; **Loan from an International Financial Institution**, according with the project initiative approved by the Romanian Government on 5

December 2017 by the Memorandum with the topic Decision on the appropriateness of financing the physical infrastructure of the Romanian prison system by a project financed from external repayable funds by which the concept of national project is proposed – Investments in prison infrastructure – 1,900 new places of detention by the construction and creation of two new prisons (Berceni Prison and Unguriu Prison).

The short time measures taken by the National Administration of Penitenciary jointly with the management of subordinated detention facilities aimed primarily at increasing the capacity of accommodation as much as possible, whereas the measures taken are indicative of the reduction of prison overcrowding.

Against this background, **in 2015** the modernization of a number of **300 places of detention** at Mărgineni and Codlea Penitenciaries was completed.

In 2016 a total number of **672 places of detention** were created by refurbishment of some existing places as follows: 208 places with Penitenciary Găești, 60 places with Penitenciary Gherla, 24 places with Penitenciary Craiova, 36 places with Penitenciary Botoșani, 6 places with Hospital-Penitenciary Dej, 148 places with Penitenciary Rahova, 32 places with Penitenciary Oradea, 4 places with Penitenciary Slobozia, 40 places with Penitenciary Tulcea, 50 places with Penitenciary Timișoara, 18 places with Educational Centre Târgu Ocna, 46 places with Educational Centre Buziaș. With Penitenciary Giurgiu 170 new places of detention were created in **2017** and 30 new places of detention in **2018.**

With the help of the ***Norwegian Financial Mechanism 2009-2014***, starting 2015, works for the modernization of 200 places of accommodation for young detainees were initiated aimed at the improvement of material conditions of detention. The works were completed in April 2017 whereas young detainees in the open and semi-open regime are already housed in these spaces. A therapeutical community with a capacity of **60 places** was built with Penitenciary Gherla for female detainees.

As concerns the construction of two new penitenciaries we would like to indicate that the contract for design services – feasibility study phase in relation with Penitenciary P47 Berceni has already been signed, whereas the tendering documentation for the purchase of services in relation with the elaboration of the technical expertise and feasibility study in relation with Penitenciary Unguriu has been elaborated and the contract for services shall be signed.

The following investments are part of the Memorandum with the topic ***Timetable for the implementation of measures 2018-2024 to resolve the issue of prison overcrowding and conditions of detention with a view to executing the pilot-judgment Rezmives and Others v. Romania, delivered by the ECHR on 25 April 2017*** and are currently in different stages like follows:

1. **Creation of new places of detention by investments:**

- New detention wing (Penitenciary Galați – 152 places) – concept paper and design requirements approved in the Technical and Economic Council on 11.12.2017, the elaboration of the feasibility study was granted the necessary funding;
- Detention wing quarantine, infirmary, reception detainees (Penitenciary Galați – 34 places) - concept paper and design requirements approved in the Technical and Economic

Council on 11.12.2017, the elaboration of the feasibility study was granted the necessary funding;

- New detention wing (Penitenciary Botoșani – 80 places) - concept paper and design requirements approved in the Technical and Economic Council on 22.12.2017, the elaboration of the feasibility study was granted the necessary funding;
- New detention section (Penitenciary Mioveni – 120 places) - concept paper and design requirements approved in the Technical and Economic Council on 18.05.2018, the elaboration of the feasibility study was granted the necessary funding;
- Detention wing no. 4 (Penitenciary Gherla – 300 places) - concept paper and design requirements approved in the Technical and Economic Council on 18.05.2018, the elaboration of the feasibility study was granted the necessary funding;
- New wing (Penitenciary Iași – 600 places) - concept paper and design requirements approved in the Technical and Economic Council on 14.09.2018 and on 14.11.2017, respectively, the elaboration of the feasibility study was granted the necessary funding;
- New detention wing (Penitenciary Bistrița – 500 places) – concept paper and design requirements approved in the Technical and Economic Council on 08.11.2018, the elaboration of the feasibility study was granted the necessary funding;
- New detention wing (Penitenciary Constanta Poarta Alba – 300 places) - concept paper and design requirements approved in the Technical and Economic Council on 21.03.2018, the elaboration of the feasibility study was granted the necessary funding;
- Detention spaces (Penitenciary Deva - 70 places) – works in progress;
- New wing Movila Vulpii (Penitenciary Ploiești – 150 places) – substantiation note approved in the Technical and Economic Council on 05.09.2013, requires the elaboration of the design requirements;
- Detention sector (Penitenciary Craiova Pelendava - 325 places) - concept paper and design requirements approved in the Technical and Economic Council on 12.04.2018, the purchase of design services for the elaboration of the feasibility study follows;

2. Turning existing spaces into new places of detention by interventions:

- Turning agro-zootechnical farm shed in detention spaces and sewage works (Penitenciary Târgu Jiu – 44 places) - concept paper and design requirements approved in the Technical and Economic Council on 09.03.2018, the elaboration of the feasibility study was granted the necessary funding;
- Detainees' dormitories within the agro-zootechnical farm (Penitenciary Mioveni – 190 places) - substantiation note and design requirements approved in the Technical and Economic Council on 06.04.2016 and on 22.11.2017, respectively, the elaboration of the feasibility study was granted the necessary funding;
- Detention wing open regime (Penitenciary Focșani – 50 places) - substantiation note approved in the Technical and Economic Council on 22.12.2016;
- Turning production workshop into detention spaces (Penitenciary Focșani – 68 places) - concept paper and design requirements approved in the Technical and Economic Council on 15.09.2016 and on 05.12.2016, respectively, the technical expertise was granted the necessary funding;
- Turning administrative spaces into detention spaces (Penitenciary Găești – 48 places) - concept paper and design requirements approved in the Technical and Economic Council on 05.07.2016 and on 14.09.2017, respectively, the technical expertise was granted the necessary funding;

- Turning production workshop into detention spaces (Penitenciary Găești – 48 places) – concept paper and design requirements approved in the Technical and Economic Council on 05.07.2016 and on 14.09.2017, respectively, the technical expertise was granted the necessary funding;
- Turning production workshops into detention spaces (Penitenciary Găești – 96 places) – currently the works are suspended until correction of irregularities;
- Turning production workshop and dormitory D5 into detention spaces (Educational Centre Târgu Ocna – 65 places) – the contract for design services in relation with the elaboration of the documentation necessary for the approval of intervention works, the technical expertise and the energy audit was signed – the documentation was received by the penitenciary and it shall be analyzed within the Technical and Economic Council;
- Turning existing spaces into detention spaces, external section Buziaș (Penitenciary Timișoara – 276 places) - concept paper and design requirements approved in the Technical and Economic Council on 05.12.2016 and on 18.05.2018, respectively, the elaboration of the feasibility study was granted the necessary funding;
- Wing 05 (Penitenciary Codlea – 80 places) – the technical project was finished, the fire security certificate was issued, the building permit still needs to be issued within the Technical and Economic Council;
- Turning agro-zootechnical farm into external section (Penitenciary Deva – 250 places) – the concept paper and design requirements need to be reviewed with a view to their approval within the Technical and Economic Council;
- Turning garment factory into detention spaces (Penitenciary Ploiești - Targșorul Nou – 240 places) – the concept paper and design requirements need to be elaborated;
- Detention wing GAZ (Penitenciary Bistrita – 100 places) - the concept paper and design requirements need to be reviewed;
- Turning Pavilion B into detention rooms (Hospital-Penitenciary Târgu Ocna – 75 places) – concept paper and design requirements approved in the Technical and Economic Council on 15.09.2016 and 05.12.2016, respectively, the design services shall be purchased;
- Turning equipment shed into detention spaces (Penitenciary Ploiești - Targșorul Nou – 90 places) – the concept paper and design requirements need to be elaborated;
- Turning GAZ spaces into external section (Penitenciary Aiud – 100 places) - concept paper approved in the Technical and Economic Council on 15.09.2016, the design requirements need to be elaborated;
- Turning production spaces into detention spaces (Penitenciary Aiud – 100 places) - concept paper approved in the Technical and Economic Council on 05.07.2016, the design requirements need to be elaborated;
- Turning production workshop into detention spaces (Detention Centre Brăila -Tichilești – 150 places) - the concept paper and design requirements need to be elaborated;

3. Modernization of existing spaces of accommodation:

- Detention spaces (Penitenciary Deva - 500 places) – works in progress;
- Modernization detention sections III and IV (Penitenciary Mioveni – 180 places) – concept paper and design requirements approved in the Technical and Economic Council on 06.04.2016 and on 31.05.2017, respectively, the elaboration of the documentation for the approval of the intervention works was granted the necessary funding);
- Modernization wing A (Hospital-Penitenciary Tg. Ocna – 85 places) – works in progress;
- Sections IV – V (Penitenciary Constanța - Poarta Albă – 486 places) – the technical project needs to be updated;

Furthermore, with a view to the improvement of the conditions of detention, some other investments, which are not part of the Memorandum approved in January 2018, are in different stages, like for example:

- Detention wing (Penitenciary Codlea – 20 places) – not yet completed;
- Detention wing (Penitenciary Baia Mare – 214 places) – the updating of the feasibility study was granted the necessary funding;
- Section VII – VIII (Penitenciary Aiud – 100 places) - the updating of the technical project was granted the necessary funding;
- Walking areas (Detention Center Brăila - Tichilești) – the acceptance procedure is suspended;
- Walking area (Hospital-Penitenciary Mioveni) – purchase of the execution of works needed;
- Walking areas (Penitenciary Mioveni) – the elaboration of the documentation for the initiation of the procurement procedure for design services with a view to updating the technical project is in progress;
- Space for the transfer – transit of detainees (Detention Centre Craiova) – the concept paper and design requirements for updating the feasibility study were approved in the Technical and Economic Council on 19.07.2018;
- Modernization visiting sector wing and organization of a walking area (Penitenciary Oradea) - the concept paper and design requirements for updating the documentation for the approval of the intervention works were approved in the Technical and Economic Council on 14.02.2013;
- Organization and furnishing of walking areas (Penitenciary Bucharest - Jilava) – the procurement procedure for updating the feasibility study and technical project was completed, the delivery of the technical documentation follows;
- Modernization and consolidation Corp B (Hospital-Penitenciary Bucharest - Jilava) - concept paper and design requirements approved in the Technical and Economic Council on 31.05.2017 and 22.05.2018, respectively, the purchase of the design services for the elaboration of the documentation for the approval of intervention works follows;
- Modernization and consolidation Corp C (Hospital-Penitenciary Bucharest - Jilava) - concept paper and design requirements approved in the Technical and Economic Council on 31.05.2017 and 22.05.2018, respectively, the purchase of the design services for the elaboration of the documentation for the approval of intervention works follows;
- Extension of detention spaces (Penitenciary Slobozia) - concept paper approved in the Technical and Economic Council on 21.09.2012, the design requirements need to be elaborated.

The overview on the capacity of accommodation of the penitenciaries visited, as reported by the administration of the respective penitenciaries through the IT application for the evidence of the capacity of accommodation, can be found in Annex no. 1.

b. prisons visited

Paragraph 52

In successive missions, numerous European bodies marked out the progress made by the Romanian penitenciary system through the implementation of the operational model of therapeutical communities, initially with the Penitenciaries Târgșor, Bucharest - Rahova and Bucharest – Jilava, later with Penitenciary Gherla.

The construction of the Therapeutical Centre „Lotus" within Penitenciary Gherla was possible through the implementation of the project „*Creation of a therapeutical centre for women within Penitenciary Gherla",* financed through the Norwegian Financial Mechanism 2009-2014, Programm RO 23 — Correctional services, including non-custodial sanctions.

The Therapeutical Centre „Lotus" has been operational with Penitenciary Gherla since 29.08.2016, whereas the activities conducted are based on the *Methodology of the therapeutical centre for women with depressia, anxiety and personality disorders,* promoted with detention facilities by virtue of letter no. 44859/DRS dated 25.08.2016.
Later on, due to some practical reasons and with a view to the enlargement of the pool of beneficiaries, the initial methodology was reviewed and the *Methodology of the therapeutical centre for women with depressia, anxiety and personality disorders and personal improvement needs* was implemented.

The actions taken for the occupation of the Therapeutical Centre continued in 2018. Furthermore, the new Methodology recommends, as compared to the previous methodology, the inclusion in the Therapeutical Centre of persons deprived of their liberty with personal improvement needs**. On 15.02.2018 penitenciaries which house female detainees, were requested to identify the female detainees who fulfill the criteria of inclusion in the therapeutical centre, irrespective of the penalty enforcement regime.**

According with the principles based on which this therapeutical centre functions and with its purpose, the facility cannot be assimilated exclusively to a "psychiatric facility", given that the population of the therapeutical centre is not selected with a view to be given a medical treatment. The therapeutical centre offers a very well structured environment, similar to a functional family, with a hierarchy which reflects various degrees of assuming responsibility and progress within the therapeutical process of the residents. This structured endeavor is based on the impact of community life and support from persons in the same situation, the centre being, as compared with the penitenciary environment, a type of environment beyond prison. According with the *Methodology*, the standard concerning the staffing of the therapeutical centre, provides for a doctor/nurse, not a psychiatrist to work within the community. However, we would like to indicate, that also in this context the National Administration of Penitenciaries is active in terms of ensuring the psychiatric health care by a selection procedure for vacant psychiatrist positions.

As concerns the capacity of accommodation of the Therapeutical Center „Lotus", the status of the 61 places of accommodation is as follows:

- 5 places for the maximum security regime — ground floor;
- 16 places for the closed regime — ground floor;
- 24 places for the semi-open regime — 1st floor;
- 16 places for the open regime — 1st floor.

The 2nd floor of the therapeutical center is not dedicated to the accommodation of the female residents, but to occupational activities (ergotherapy room, painting room, sports room, library /club).

When the visit was conducted (09 – 12.02.2018) a number of 15 female detainees (2 under maximum security regime and 13 under closed regime) housed in the ground floor rooms were housed in the Therapeutical Centre "Lotus".

On 29.11.2018 a number of 33 female residents were housed in the Therapeutical Center "Lotus" within Penitenciary Gherla, distributed as follows:

- 15 on the ground floor of the building, of which 2 female residents under maximum security regime and 13 female residents under closed regime;
- 18 on the 1st floor of the building, of which 10 female residents under semi-open regime and 8 female residents under open regime.

2. Ill-treatment

a. ill-treatment of inmates by prison staff

Paragraph 53

We think that the CPT delegation's opinions on ill-treatment of prisoners by prison staff, especially by the members of the intervention groups, were not confirmed, having regard to the fact that they are based exclusively on the statements made by prisoners which might be corroborated with injuries of older origin (scars) which cannot be confirmed and whose origin cannot be clearly identified.

Furthermore, in order to be able to ascertain the existence of any such serious acts like those described in the final report of the CPT delegation, we think that a thorough and far reaching analysis of the circumstances under which the alleged events took place, whereas the conclusions have to be supported by clear evidence.

Within penitenciaries the use of individual portable video cameras (BodyCam type) by the staff who are in charge of the surveillance of prisoners or who directly conduct activities with the prisoners, with the purpose to discourage them to commit acts of misconduct or to display a hostile attitude against prison staff, to record issues and acts of misconduct right when they occur, as well as the response of prison staff in the process of resolving issues was identified as an example of good practice. This technical solution has been implemented so far successfully in almost all prisons.

The National Administration of Penitenciaries continued the constant action started in February 2014, in the sense that issues occurred in subordinated facilities, which involved planned intervention for resolving, were investigated by the specialized structure within the headquarters.

Where acts of misconduct were identified, administrative measures were ordered and, as applicable, the competent judicial authorities were seized.

Paragraph 54

The National Administration of Penitenciaries and its subordinated facilities do not tolerate violence among prisoners, even less between prisoners and prison staff. Against this background, we would like to indicate that the applicable legal framework allows the prisoners to report any type of abuse they think they are subject to.

We think that in Penitenciary Galați, like in all detention facilities within the penitenciary system, adequate mechanisms are available for the prisoners to report issues like the ones which were reported to CPT's delegation so as to allow for the necessary legal measures to be put in place following the detailed investigation of each and every case.

Against this background, we would like to mention the following ways in which prisoners may act in order to report acts of aggression committed against them by the prison staff:

– the right to confidential phone conversations provided for in art. 133 of the Government's Decision no. 157/2016, **with the indication that in Penitenciary Galați phones are installed in detention rooms, in school, walking areas and other areas to which prisoners have access all through the day;**

– ensuring a permanent consultation program with prisoners, both daily, by the heads of sections, and weekly by other staff on higher positions and the **enforcement judge, a professional entity having his office in each place of detention within the penitenciary system and permanently fulfills his mandate at the place of detention;**

– prisoners' unlimited right to petition ensured according with art. 129 of the Government's Decision no. 157/2016, including by sending a written request to the prison administration and enforcement judge; against this background we would like to mention that within penitenciary system there is a large number of requests and petitions made by persons held in prisons, which is a proof of the fact that this channel of communication of prisoners with the prison administration is open at all times;

– dunlimited right to correspondence ensured according with the provisions of art. 130 of the Government's Decision no. 157/2016;

– right to visit with family members and other persons ensured according with the provisions of art. 138 of the Government's Decision no. 157/2016;

– all incidents involving physical and sexual aggression, including those reported / not confirmed are registered, investigated and reported to the National Administration of Penitenciaries and the Justice Ministry, with indication of the legal measures ordered in each case.

As concerns the phrase "the delegation documented, including with medical evidence, numerous cases of severe physical ill-treatment", we think that the acts referred to cannot be confirmed only based on documents which emerge following an investigation grounded mainly on detainees' allegations, without corroboration with the statements made by all parties involved, as well as with other pieces of evidence which are likely to depict in an objective way the circumstances under which the alleged acts were committed and, consequently, to lead to establishing the real state of affairs.

In all cases in which a member of the staff used physical force and immobilization means or techniques on a prisoner, the prison staff prepared the Prison staff report on using immobilization means and techniques which is a document which presents the circumstances which led to the use of force, the way in which force was used, as well as the reason for which this measure was adopted. The purpose of this report is to explain that the actions

were indeed necessary, reasonable and to prove that force was used in compliance with the legal provisions.

Within the medical check in conditions of confidentiality, in case traces of violence are found or the convicted person complains about violence, the medical staff who conducts the medical check prepares the information note on the aggression / injury / self-aggression found, registers in the medical file the issues found and the prisoner's declarations about them or about any other aggression and immediately seizes the prosecutor. The forensic certificate has to be requested expressly by the prisoner and is attached to the medical file.

Furthermore, part of the management of incidents is also the creation of the incident file which contains all documents related to the incident, including video recordings, materials which can be used as evidence within the investigation of any criminal charges by the competent authorities.

As concerns the facts presented in relation with Penitenciary Galați, the prison management seized the competent investigation authorities in all cases in which prisoners reported alleged aggressions committed by the staff, including situations in which, for the purpose of restoration of order and discipline, the use of immobilization means and techniques was necessary, which is indicative of the fact that the management of Penitenciary Galați does not tolerate such acts from staff, which is also known by the prisoners.

At Penitenciary Galați a number of 179 operational incidents (aggression among prisoners, self-aggressions, material damages and individual resistance to comply with the legal provisions) were registered in 2017, whereas the members of the intervention group were involved only in 22 incidents to resolve them and in only 17 cases they were forced to use immobilization means and techniques, that is 9.49 %. Having regard to this percentage, we think that the policy of Penitenciary Galați was to manage incidents by using communication techniques and where these communication and negotiation techniques were not successful the intervention structure was involved, in all cases as a last resort.

As concerns the specific cases presented in the CPT report under this paragraph, the following state of affairs emerged as a result of internal checks:

i. In January 2018 one single incident in which the use of immobilization means or techniques by the members of the special intervention group was necessary, more exactly on 12.01.2018, the prisoner involved in the incident was D.I. The traces of violence found following the medical check conducted on the prisoner do not match those indicated by the CPT delegation in its report paragraph 54 point I.

As concerns this incident the administration of Penitenciary Galați became active on its own motion on the very same day on which the incident occurred. What followed was an internal investigation at the end of which the authorities above Penitenciary Galați were informed and the competent criminal investigation bodies were seized. At this point in time proceedings are ongoing in the file dealt with by the competent prosecution office.

According with the provisions of art. 219 of the Regulation on the implementation of Law no. 254/2013, approved by virtue of the Government's Decision H.G. no. 157/2016, concerning

the objectives of the disciplinary procedure, *"In penitentiaries, order and discipline shall be rigorously established and maintained, in order to ensure collective and individual security, as well as a well-organized life in common"*.
Concrete measures ordered following the incident at Penitenciary Galați:

- information of the National Administration of Penitenciaries;
- information of the enforcement judge;
- initiation of the disciplinary procedure against the detainee involved;
- seize of the Prosecution Office attached to the Local Court Galați;
- re-briefing of the officer in charge of the area, based on signed minutes, about the obligation of video recording the incident all through its management until relocation of the prisoner;
- re-briefing of the guard, based on signed minutes, about the provisions of the Criminal Code art. 193 and art. 283, Law no. 293/2004 art. 49 letter d), Ethics code of the penitenciary administration staff art. 6 para.1 letter b) and para. 2 letter a);
- re-briefing of the team leader and members of the special intervention group, based on signature, about the obligation for the members of specialized structures to wear protection helmet all through their intervention;
- dissemination of the conclusions concerning the incident occurred among the staff involved in the management of the incident.

Having regard to the fact that the prisoner requested to be brought to the Forensic Laboratory, on 15.01.2018 an order was issued to this effect, so he was brought to the Forensic Laboratory Galati where it was ascertained that the prisoner had a split of the left costal arch VI, fracture of left posterolateral costal arch VIII and one left periorbital bruise.

Given that at the moment when the incident occurred the prisoner did not display these traces of violence, the prison management ordered on 16.01.2018 the prisoner to be housed in other detention room during the disciplinary investigation, without affecting his rights in accordance with the provisions of art. 30 para. 1 of the Government Decision no. 157/2016 regating the Regulation on the implementation of Law no. 254/2013: *„During the disciplinary investigation, on the proposal of the chief of section, the director of the penitentiary may decide, for security reasons or in order to prevent the acts of obstructing the truth or of influencing the outcome of the disciplinary investigation, on the accommodation in another space of detention of the detainee investigated for a disciplinary misconduct, in compliance with the criteria of separation related to sex, age and regime of execution and without affecting the rights provided by the Law."*

The chief of section heard the prisoners housed in room E3.12 in which the prisoner D.I. was housed between 12 – 16.01.2018 in relation with the traces of aggression which the prisoner displayed and the declarations made indicated the following:

- the declaration made by prisoner B.F. is indicative of the fact that up until 15.01.2018 the prisoner deținutul D.I. did not display any trace of aggression around his left eye and before he left for the Forensic Laboratory he noticed that he had a blue eye, so he asked him what happened and the answer of D.I. was that it was his business;
- the declaration made by the prisoner C.M. is indicative of the fact that on 14.01.2018 at around 17:00 the prisoner D.I. asked the prisoner V.Z. to hit him because the next day he was supposed to go to the Forensic Laboratory and wanted to accuse the prison officers. The prisoner V.Z. did not want to be a party to that, which made him also ask prisoner C.M. to hit him, whereas the latter also rejected the idea. As he did not find anyone to do it, he went to

the bathroom attached to the detention room and about five minutes later when he came out he had a red eye which was also a bit swollen.

- the declaration made by the prisoner V.Z. is indicative of the fact that on 14.01.2018 at around 17:00 the prisoner D. I. asked him to punch him in his left eye because the next day he was supposed to go to the Forensic Laboratory and wanted to accuse the prison officer whom he had hit on 12.01.2018, but he said no, which made him also ask prisoner C.M. if he wanted to hit him and he also said no. Later the prisoner went to the bathroom and when he came out he had a red and swollen left eye.

ii. In July 2017 no incidents are registered with Penitenciary Galați in which the use of immobilization means or techniques by the members of the intervention group or by other officers was necessary. In December 2017 the members of the special intervention group were involved in two incidents in which, in both cases, no use of immobilization means or techniques was necessary, given the fact that the prisoners respected the orders they got. Having regard to the lack of any data concerning the prisoner mention in the CPT report, of any hints or piece of evidence about the alleged act, the prison administration was not able to investigate the case, whereas mention should be made of the fact that the prisoner had numerous channels of communication for reporting the acts of aggression, see the information further above.

iii. In June 2017 one single incident was registered with Penitenciary Galați in which the use of immobilization means or techniques by the members of the special intervention group was necessary, more exactly a case of group violence among prisoners on the sports field where five prisoners hit each other. Given that the prisoner T.I.F. did not comply with the instructions to stop hitting prisoner G.C., the members of the special intervention group (EOS) interphered in order to prevent the bodily harm of the victim, using for this purpose the baton, techniques associated with constraint of the joints and immobilization means (metal handcuffs). One tonfa strike in the upper left arm was applied, as well as one in the right buttock, both strikes being admitted according with the applicable legislation.

iv. In December 2017 two incidents were registered as described under point ii.) in the present paragraph. We think that the information presented by the CPT delegation under this point do not match the incidents registered with Penitenciary Galați in the period indicated and the alleged victim of the acts of aggression also did not report them.

v. In all situations in which the use of immobilization means or techniques by the members of the special intervention group was necessary in 2015, incident files were drafted which also include documents and other documentary evidence in relation with the management of the incident (including video recordings), whereas the documents can be made available to the competent criminal investigation authorities. No incident was identified in the prison to match the description in the CPT Report.

We would like to indicate that in all situations in which the use of immobilization means or techniques against prisoners was necessary, the respective prisoners were brought to the infirmary and, depending on the recommendation of the prison doctor, to public

hospitals. In all cases in which prisoners requested a forensic opinion or the examination by a doctor outside the penitenciary system, this right was ensured no matter if the prisoners had or had not the financial means needed. In all cases in which prisoners complained about acts of aggression committed by the staff, the management of Penitenciary Galați seized the criminal investigation authorities.

Paragraph 55

The National Administration of Penitenciaries and its subordinated facilities do not tolerate by any means reprisals against prisoners who complained before the CPT delegation on occasion of its visit to Romania. In this respect point by point conclusions were presented and detailed under Paragraph 54.

Furthermore, both before the CPT visit and after its mission in Romania ended, the National Administration of Penitenciaries investigated all accusations made by prisoners, personally or conveyed by their family via petitions addressed directly or through other public institutions or non-governmental organisations.

In conclusion, the National Administration of Penitenciaries do not identify evidence as to the allegation that the management of Penitenciary Galați could be an accomplice to acts of unjustified aggression against prisoners, having regard to the fact that in relation with all cases registered measures like the ones presented further above were taken.

Paragraph 56

Within the Romanian penitenciary system both the physician's and the nurses' statute are based on professional independence. We would like to indicate that the medical staff, even if employed with the penitenciary system, complies with all regulations of the Ministry of Health in terms of profession and training. Both physicians and nurses are full members in the field specific professional organizations, more exactly the Romanian Medical College and the General Nurses' Association which are organizations that defend the honour, liberty and professional independence of the medical staff in the exercise of their profession and ensure the observance of the obligations of the medical staff versus patient and public health.
Against this background, having regard to the applicable legal provisions concerning the statute and ethics code of the medical staff[15], the entire professional activity of the medical staff within the penitenciary system is dedicated exclusively to the protection of

[15] Decision of the Romanian Medical College No. 3/2016 dated 4 November 2016 on the amendment of the Decision of the National General Assembly of the Romanian Medical College No. 2/2012 on the adoption of the Statute and Medical Ethics Code of the Romanian Medical College, published in the Official Gazette Monitorul Oficial no. 981 dated 7 December 2016, as well as the Decision of the National General Assembly of the Romanian General Nurses' Association No. 1 dated 10 February 2009 on the adoption of the Romanian General Nurses' Association, *published in the Romanian Official Gazette, Part I*

life, health and physical and mental integrity of human beings and the representative professional organizations ensure that their professional independence is protected.

On the other side, this is also reinforced by the provisions of the law on the enforcement of criminal sentences which under art. 72 para. (3) it rules that este stipulat faptul că „In case the doctor conducting the medical examination finds traces of violence or the sentenced person claims to have been subject to violent behaviour, the doctor shall be required to record in the medical record the findings and statements of the sentenced person in connection therewith or with any other act of aggression and to refer the matter at once to the public prosecutor."

So we think that the findings mentioned in the Report drafted following the control conducted at Penitenciary Galați by the Control Body of the Ministry of Justice as a central authority, ranking higher than the National Administration of Penitenciaries, are objective and reflect the real status quo, having regard to the fact that no elements were identified to prove the alleged acts of physical and sexual aggression committed by the prison staff against prisoners.

Paragraph 57

i. As concerns the allegations of three prisoners from Penitenciary Aiud who said that on 05.10.2017 they were taken out of their cell by the head of Section 4 and subjected to baton blow, we would like to indicate that the results of the investigation are not consistent with the issues mentioned in the CPT's final report.

ii. As concerns the prisoners who alleged that in December 2017 he had been hit by the officer in charge of Section 4 with Penitenciary Aiud, we would like to mention that the respective prisoner was not identified in order to be able to start an investigation.

Between October and December 2017 no complaints of prisoners were registered with Penitenciary Aiud concerning staff abuse, whereas prisoners were brought to the infirmary regularly according with the weekly schedule, as well as on request. These issues had not been reported within the weekly hearings conducted by the prison manager and were also not approached in complaints addressed to other public institutions or to the enforcement judge whose office is in the prison.

Furthermore, nurses who work in 12h shifts, distribute the medication every day on detention sections and on this occassion prisoners may inform them on their personal health issues and may request medical health care.

iii. Following the verifications it emerged that the incident in Penitenciary Bacău took place on 22.07.2016, at around 14.00, at the transit point when 4 remand prisoners belonging to the category high risk for the place of detention arrived at the prison. In fact, the prisoners P.A., A.P.P., T.B. and L.C. refused to be housed in the detention room as decided by the prison administration and did not want to leave the transit point. According with applicable procedures, a negotiation was initiated with the prisoners involved in the incident, whereas

also the members of the special intervention team were also called. The use of communication and negotiation techniques did not show any results as the prisoners continued to refuse to go to the detention room.

According with the applicable procedures, the intervention of the intervention team was ordered with the purpose of bringing the prisoners to the detention room as decided the prison administration. The prisoners became aggressive therefore an intervention was necessary in which immobilization means and techniques were used. After the intervention, the prisoners were brought to the infirmary for a specialized medical check. **We indicate that in all cases in which traces of violence are found or the convicted person complains about violence, the medical staff who conducts the medical check prepares the information note on the aggression / injury / self-aggression found, registers in the medical file the issues found and the prisoner's declarations about them or about any other aggression and immediately seizes the prosecutor.**
Following the incident, also the following measures were ordered at Penitenciary Bacău:

- incident reports were drafted in relation with the prisoners involved in the incident;
- the enforcement judge with Penitenciary Bacău was informed;
- the National Administration of Penitenciaries was informed;
- the Section's educator and the prison's psychologist were informed;
- the prisoners were monitored starting the day on which the incident occurred according with the decision of the National Administration of Penitenciaries no. 467/2015 as regards the way of action of the interdisciplinary specialized commission for the reduction of aggressive behavior among prisoners.

Subsequently, prisoners T.B. and A.P.P. complained before the enforcement judge about the intervention of the intervention group. **By virtue of court protocols no. 74 and no. 76 dated 08.08.2016, the enforcement judge dismissed the complaints of A.P.P. and T.B as not grounded.** The prisoners challenged the court protocols issued by the enforcement judge before the Local Court Bacău, but withdrew their challenges after some court sessions.

iv. According with the duty schedule and control schedule no section chief was on duty or in control at Penitenciary Gherla in the night of 24 to 25 December 2017 as mentioned in the CPT Report. Furthermore, following the analysis of operative documents, no incident occurred in the night of 24 to 25 December 2017 was identified and on that date the administration of the place of detention was not informed about any case of aggression committed by the prison staff on prisoners. Furthermore, the medical staff did not receive any information as to such an incident in the reference period.

v. The medical records at Penitenciary Iași are indicative of one single prisoner who was housed in the protection room on 02.02.2018 in compliance with the legal provisions in the field. The prisoner did not display any traumatic marks suggesting that he had tried to hang himself. Furthermore, none of the prisoners subjected to medical examination on the respective day did not display characteristic lesions and none of them reported any such incident. As concerns the prisoner housed in the protection room also the criminal investigation authorities were seized following his threatening the staff.

vi. On 05.02.2018 one single act of aggression was reported, which, according with the prisoner's declaration, was caused by another prisoner, whereas no elements were identified to confirm an alleged act of aggression committed by the staff. Another incident took place on 07.02.2018 when the prisoner with a speech disorder mentioned in the CPT report assaulted a prisoner housed in the same room when they left the room for their walk, which required the intervention of the staff who used the immobilization meand, as well as relocation of the respective prisoner in the protection room, whereas all these actiosn were conducted in compliance with the legal provisions.

vii. On 06.02.2018 three cases of aggression among prisoners and one self-harming were registered, however, no prisoner reported any act of aggression committed by the prison staff. Between 01.08.2017 and 10.02.2018, out of the total number of 111 aggressions reported by prisoners, 15 were reported as having been committed by the prison staff, whereas later none of those allegations were confirmed.

In all other cases of physical aggression reported the prisoners involved were brought to the infirmary for medical attention, whereas measures for the prevention of similar negative incidents were taken and the criminal investigation authorities were seized with a view to holding the culprits liable, plus the prisoners were brought upon their request to the forensic laboratory according with the legislation applicable.

Paragraph 58

The lawmaker ruled that no person serving a custodial sentence or order shall be subject to torture, inhuman or degrading treatment or other forms of ill-treatment, whereas the violation of these provisions is punishable according with the criminal regulations.
If the administration of a place of detention finds that acts of aggression were committed among prisoners or suspects acts of ill-treatment or torture committed on prisoners, it has the obligation to seize the criminal investigation authorities, as well as the enforcement judge, in compliance with the legislation on the enforcement of criminal sentences.
Based on the applicable legislation[16], any person deprived of its liberty has the right to address petitions to the administration of the place of detention, to the enforcement judge, to courts, NGOs specialized in the field of the protection of human rights, to the NPM within the Ombudsman's Institution, as well as to other public authorities and institutions. Prisoners have the right to seize the institutions they find competent with any issues relating to the enforcement of custodial sentences.
Furthermore, the fact that prisoners reported to the members of the CPT delegation aspects which do not have anything to do with reality and which are meant to put the staff in bad light can be indicative of the fact that they are not inhibated by the intervention structures or other categories of staff and do not have fears about possible *„reprisals"* which could appear following their requests or complaints.

[16] Law no. 254/2013 on the enforcement of custodial sentences and orders imposed by the judicial authorities during the criminal proceedings, with subsequent amendments and supplements;
Regulation on the implementation of Law no. 254/2013, approved by virtue of the Government's Decision H.G. no. 157/2016;
Law no. 544/2001 on the free access to information of public interest;
Government's Ordinance no. 27/2002 on petition solving regulations;

By Ordinance of the Minister of Justice no. 2748/2010 the Manual on the management of incidents was approved which has two volumes as follows: Volume I – Management of operative incidents and Volume II - Management of critical incidents. These documents refer to operative teams and special operative teams, whereas they also establish the principles based on which the staff of these structures intervenes in the management of operative and critical incidents. The contents of the manuals above mentioned is classified according with the applicable legislation.
The *Manual on intervention procedures specific to specialized structures* is a continuation of *Volume I – Personal safety*, approved through the Decision of the general director of the National Administration of Penitenciaries no. 429/2011 and is, alongside this one, a document of absolute necessity for the Romanian penitenciary system in terms of the regulation of all situations concerning the use of force, immobilization means and techniques.

As concerns the use of immobilization means and techniques, the whole staff within the penitenciary system who is involved in direct activities with prisoners participates in professional training activities at local and central level. Against this background, the National Administration of Penitenciaries constantly conducts information and monitoring activities, ensuring at the same time the technical support necessary for the performance of these activities at high standards.
Volume I of the *Manual on the use of immobilization means and techniques* is the legal framework based on which the specialized staff, trained, equipped and endowed in an appropriate way, acts, by reactive and planned intervention, for solving incidents which might require the use of force. At the same time, the manual also deals with the way in which specialized intervention teams are created, organized, function, are trained, equipped and endowed.
We would like to indicate that these intervention structures were created and organized so as to ensure a professional intervention within the management of incidents, removing the possibility for abusive behavior against prisoners.
Furthermore, the employment of these structures for interventions is dedicated exclusively to the prevention and fighting of illegal, not authorized or disturbing acts which might affect the life, health, physical integrity of prisoners, prison officers or other persons and which would pose a risk to missions or normal activities within prisons.

For safeguarding a legal, efficient and safe intervention, the intervention structures act based on the following fundamental principles: the principle of the protection of human beings, principle of legality, security, proprortionality of force, principle of graduality, principle of no surprises, as well as the principle of the lowest risk.
All these procedures are dedicated to ensuring the respect of all rules and recommendations established by international organisations in the field of the protection and respect of the rights of prisoners.

The training of the members of the intervention structures within the prisons subordinated to the National Administration of Penitenciaries and of the staff in the operative sector contains module dedicated to the training in the following areas:

– the management of operative incidents which might occur in prisons subordinated to the National Administration of Penitenciaries and on vehicles during the transportation of prisoners;

– use of communication and negotiation techniques as a basic rule in the management of conflicts in which prisoners are involved;

– application of immobilization means;

– granting first aid;

– aspects concerning the respect of human rights;

– recommendations of the members of the CPT delegation following the visit in year 2014;

– video recording of the way in which an incident shall be managed;

– dissemination of the findings in relation with the processing of video recordings of hw incidents were managed;

– contents and management of incident files, as well as of other operative documents.

The general elements pertaining to the above mentiones issues were introduced also into the training activity of the other members of the operative staff (monitoring, escorting), as well as of executive and management staff, with the purpose to know certain ways of action in order to be able to supplement the measures taken by the specialized staff in case of a reactive or planned intervention.

In September and October 2018 two professional training sessions were organized with the members of the staff with the detention safety and enforcement regime section, with a duration of two weeks each, at training centers located in each geographical region, whereas the obligations of staff members during the interventions were reiterated.

This is indicative of the fact that the knowledge, respect and application of the national and international legislation in the field of the respect of fundamental human rights and freedoms is a professional obligation of the prison staff overall, which is expressly provided for in the preamble to the *Manual on associated structures for special security measures, constraint and control, as well as for the use of immobilization means and techniques, Volume I – Personal safety*. The National Administration of Penitenciarie reiterated the necessity for the respect of the legal provisions as concerns torture, inhuman or degrading treatment or other ill-treatment in relation with prisoners by addressing the following letters to the subordinated prison facilities:

– letter concerning the consolidation of the information of prison officers about system obligations in terms of the staff activity;

– letter concerning the use of immobilization means;

– letter concerning the need for the operative staff to be informed about the procedural provisions in the *Manual on the management of incidents, Volume I – Management of operative incidents*.

Depending on the incidents occurred within the Romanian penitenciary system, the National Administration of Penitenciaries shall remind the staff the fact that torture or any form of degrading or inhuman punishment or treatment are absolutely forbidden and cannot be tolerated under any circumstance and shall be fought with the measures needed.

By *Law no. 254/2013 on the enforcement of custodial sentences and orders imposed by the judicial authorities during the criminal proceedings* it was ruled that the right to medical health care is guaranteed, no matter the legal situation of prisoners, whereas the health

care, treatment and care in prisons are ensured with qualified staff free of charge upon request or any time necessary.
Non-medical staff shall bring the prisoners to the infirmary, taking into consideration the separation criteria, having no competence "of selection based on medical criteria". Medical emergencies are defined by the applicable legal provisions and the prisoners' right to health care may not be limited in any way, whereas the prisoners shall be brought to the infirmary in the order of their registration in the infirmary register and/or in accordance with the planning effected by the medical staff. Medical emergencies, as they are defined in the Manual of operative procedures, shall be brought immediately to the infirmary where the necessary measures are taken by the medical staff present, within their competencies and in compliance with the applicable legislation.
With a view to fulfill the CPT recommendations, we would like to indicate that actions shall be initiated to ensure the video surveillance of the stairs which bring one to the buildings where prisoners are housed. Penitenciary Gherla shall also purchase and install video cameras both in the staircase A and in the staircase B in detention wing 1 and the existing obsolete cameras shall be replaced.
Penitenciary Iași purchased surveillance cameras which shall be connected to the CCTV system. The management of Penitenciary Galați ordered the creation of a working group in charge of making steps for the endowment of the prison with an integrated system of electronic surveillance which shall cover all spaces where the access of prisoners is permitted.

In 2017 a number of 68 visits of non-governmental organisations and 73 visits of representatives of the Ombudsman's Institution took place within the penitenciary system. From among the visits of the representatives of the Ombudsman, 5 visits dealt with alleged acts of violence committed by the staff against prisoners and 3 visits dealt with alleged acts of violence committed among prisoners.
In 2018 until 29.11.2018 a number of 50 visits of non-governmental organisations and 73 visits of representatives of the Ombudsman's Institution took place within the penitenciary system. From among the visits of the representatives of the Ombudsman, 8 visits dealt with alleged acts of violence committed by the staff against prisoners and 4 visits dealt with alleged acts of violence committed among prisoners.
The visits conducted by non-governmental organisations in 2017 and 2018 did not deal with alleged acts of violence committed by the staff against prisoners or with alleged acts of violence committed among prisoners.
So it follows that also on occasion of these visits conducted by non-governmental organization or the representatives of the Ombudsman's Institution in prison facilities prisoners had the possibility to report any acts which they consider to be a violation of their legal rights or any forms of aggression committed against them.

Paragraph 59

The National Administration of Penitenciaries permanently promotes and watches over the respect of the rules of conduct, values and moral principles which the public servant within the penitenciary system has the obligation to comply with both in his private life and in his professional activity, in accordance with the provisions of the Ethics code of the staff

employed with the penitenciary administration, approved by virtue of Ordinance no. 2794/C dated 8 October 2004.
Any prisoner has the unlimited possibility to address complaints against any conduct of prison staff by:

- petitions addressed to any entities which he considers to be competent;
- chosen barrister who has unrestricted access to the penitenciary, under the law;
- complaints addressed to the enforcement judge;
- complaints addressed to prosecution offices or courts;
- consultations granted by the prison management staff;
- standard requests for internal use.

The whole staff within the penitenciary system is trained in the field of the respect of the rules of communication in relation with persons deprived of their liberty. Any complaint concerning the violation of the way in which staff speaks with the persons deprived of their liberty is investigated and the necessary legal measures are adopted.

Paragraph 60

As concerns the obligation referred to under this paragraph we would like to indicate that this obligation does exist.[17]
Against this background mention should be made of the provisions of art. 72 of Law no. 254/2012, with subsequent amendments and supplements, The medical examination
(1) The medical examination of the sentenced persons shall be conducted upon receipt to the penitentiary and while serving the custodial sentence, on a regular basis, the provisions of Article 71 (4) being applied accordingly.
(2) The medical examination shall be conducted under conditions of confidentiality, by ensuring the safety measures.
(3) ***In case the doctor conducting the medical examination finds traces of violence or the sentenced person claims to have been subject to violent behaviour, the doctor shall be required to record in the medical record the findings and statements of the sentenced person in connection therewith or with any other act of aggression and to refer the matter at once to the public prosecutor****.*
(4) In the cases provided in paragraph (3), the sentenced person has the right to ask to be examined, in the penitentiary, by a forensic. The forensic certificate shall be attached to the medical record, after the sentenced person has taken note of its contents, under signature. (...)"

We would like to indicate that the medical staff within the penitenciary system is well aware of the importance of the investigation of cases of torture and other cruel treatment and applies all legal provisions in the field, however, mention should be made of the fact that in Romania the forensic medicine has the duties concerning the performance of reports, examinations, certificates with a view to establishing the truth in relation with crimes against life, physical integrity and health of persons or in other situations as provided for in the legislation.

[17] See observations under point 6 concerning Paragraph 30 of the CPT Report.

Against this background, the National Administration of Penitenciariesa signed in December 2015 a protocol of cooperation with the National Institute of Forensic Medicine „Mina Minovici" in order to ensure the specific framework for the performance of forensic investigations when the subject of the forensic investigation is a person deprived of his liberty, as well as of the exchange of professional information with a view to training the medical staff within the penitenciary system, concerning the Romanian state's obligations, in accordance with international standards concerning the human rights.

So far a number of 4 meetings were held (Iaşi, Cluj, Craiova, Bucharest) of forensic doctors, doctors within the penitenciary system and representatives of courts and prosecution offices attached to courts where all aspects concerning forensic reports were discussed with a focus on the procedure for performance of examinations, investigations on prisoners, with a view to establish the possible causes that might damage the life, physical integrity and health of prisoners, as well as the development of interinstitutional communication relations, **such meetings being schedules for the future, as well.**

Paragraph 61

The issues referred to have to do with the application and do not require legislative interventions. See for example art. 159 para. (8) of the Regulation on the implementation of Law no. 254/2013, according to which potrivit căruia: „*The obvious signs of aggression shall be written down in a special register which shall record the year, month, day and hour of the medical examination, the identification data of the detainee, the description of the traces of violence, their origin according to statements of the detainee and the doctor's recommendations."*

Law no. 254/2013 on the enforcement of custodial sentences and orders imposed by the judicial authorities during the criminal proceedings provides in art. 72 para. (3) like follows: „*In case the doctor conducting the medical examination finds traces of violence or the sentenced person claims to have been subject to violent behaviour, the doctor shall be required to record in the medical record the findings and statements of the sentenced person in connection therewith or with any other act of aggression and to refer the matter at once to the public prosecutor."*

Decision no. 157/2016 on the approval of the Regulation on the implementation of Law no. 254/2013 provides under art. *162 Measures occasioned by finding traces of violence the fact that* *(1) In case the medical examination establishes that a detainee shows signs of violence, the doctor shall have the obligation to document the findings in the medical record, to immediately notify the prosecutor and to inform the director of the penitentiary, the provisions of Article 159 (8) being applied accordingly.*

(2) In the cases provided in paragraph (1), the detainee shall have the right to request, in writing, to be examined by a forensic doctor or by a doctor outside the penitentiary administration system."

As concerns the incident referred to, the issues were dealt with point by point and in detail under Paragraph 54, point i. Against this context, we would like to remind of the measures ordered following the incident occurred in Penitenciary Galați:

- information of the National Administration of Penitenciaries;

– information of the enforcement judge;
– initiation of the disciplinary procedure against the detainee involved;
– seize of the Prosecution Office attached to the Local Court Galați;
– re-briefing of the staff about the incident occurred instruirea personalului cu privire la incidentul produs;
– dissemination of the conclusions concerning the incident occurred among the staff involved in the management of the incident.

As concerns the case described, we would like to indicate that the criminal file no. 132P/2018 is pending with the Prosecution Office attached to the Court of Appeal Galați and deals with the aspects raised by prisoner ID. Up until now, 7 members of the staff of Penitenciary Galați were heard by prosecutors, as well as 5 prisoners, among them the prisoner concerned.

b. prison intervention groups

The acts described are under criminal investigation in file no. 132/P/2018 registered with the Prosecution Office attached to the Court of Appeal Galați.

Paragraph 62

The penitenciary system has the obligation to watch over the protection of the physical and mental integrity of prisoners, consequently the prevention of any such dangers and to avert the occurrence of incidents with serious consequences is an absolutely necessary and mandatory component of the prisons' operative activity.

Within the Romanian penitenciary system there are 44 facilities which house persons deprived of their liberty, whereas the general rule in terms of the management of incidents is that the management of incidents is ensured by the especially designated staff from among prison staff, which are employed on positions in the detention safety and enforcement regime sector. Against this background, teams designated for the management of incidents are created ad-hoc as soon as an incident involving prisoners is reported.

Out of the total number of 44 detention facilities subordinated to the National Administration of Penitenciaries where, only 16 prisons have specialized intervention structures with staff which is appropriately trained and equipped for solving the incidents. The specialized structures are active based on the principle of mobility of action, as they are dedicated to solving various types of incidents expressly provided for in the documents applicable; mention should also be made of the fact that rules and procedures of incident specific intervention were elaborated and implemented, depending on the role it has within the action.

The need for upholding intervention structures is based to a great extent also on architectural characteristics of prisons which require for the accommodation of prisoners under the maximum security regime and closed regime in large rooms. Against this background, in order to be able to fight in an efficient way and with minimum risks the violent actions of prisoners we think that upholding the specialized intervention structures is necessary.

Furthermore, based on the principle of mobility of action, the specialized intervention structures ensure the operative support also to the other facilities in the same geographic region in case the possibilities of intervention at local level are exceeded.

Paragraph 63

As concerns the management of intervention groups, with a view to eliminate any deficiencies, in what concerns the management of incidents, as well as in order to ensure legal and efficient interventions, the National Administration of Penitenciariesa informs subordinated facilities on the need to have in mind the following:

I. The members of the intervention structures are active through planned intervention only to discourage and manage operative and critical interventions which occur in facilities which are subordinated to the National Administration of Penitenciary. All intervention actions of the members of the specialized structures which involve the use of immobilization means and techniques are recorded on cameras by an operator who was designated and trained for this purpose.

It was underlined that these structures were organized and created in order to ensure a professional intervention within the management of incidents, whereas the focus is strictly on the prevention and averting any possible acts of abuse, by keeping a strict track of these actions through the following documents:

- register for the evidence of the members of associated structures for special safety, constraint and control measures (contains: date and time whn the materials were received, number of identification of the protection helmet, function and role within the intervention);

- intervention plan;

- report of the staff specialized in the management of incidents through planned intervention who shall use/used immobilization means and/or techniques.

The National Administration of Penitenciaries also implemented the recommendation made during the previous CPT visit concerning the registration of incidents, use of means of constraint and of intervention group operations, so the Register for the evidence of the members of associated structures for special safety, constraint and control measures was supplemented with a field dedicated to the number of the incident file.

II. Within actions of intervention it is necessary that:

- the actions of intervention of intervention structures are conducted under the command of the area officer or the person designated to manage the incident;
- the members of staff in action are equipped according with the type of incident in which they were requested to intervene. It is mandatory for them to wear protection helmet with the identification number allocated to each member of the intervention structure and both identification badges;
- all actions conducted on prisoners respect the principle of proportionality and graduality as conerns the incident occurred and that they are stopped by all means as soon as the situation is under control;

- each time the documents to be included in the incident file are prepared.

III. The obligation to video record incidents:

The area officer or the person designated to manage an incident tales the necessary measures so that the person trained video records actions within the management of an incident, more concretely:

- actions within the management of the incident occurred, by using the communication and negotiation techniques with the prisoners involved;
- warning of the prisoner before the intervention;
- intervention of the specialized staff on prisoners, an action with involves the use of immobilization means or techniques;
- presentation at the infirmary for the medical check (we would like to remind that this activity is mandatory for any intervention on a prisoner and for this reason the video recording is conducted for the entire period in which the prisoner has a violent behavior); this activity is conducted with respect to the confidentiality of the medical act;
- relocation/bringing of the prisoner into the detention room and, if needed, immobilization.

According with the Manual on the use of immobilization means and techniques – volume II – dedicated to the intervention of specialized structures, approved through the decision of the National Administration of Penitenciaries, the decisions of directors by which the activities of the members of operative groups were established shall be reviewed every year so that they are not used for activities which are normally conducted by the guards.
In 2017 the National Administration of Penitenciaries approved within the Department Detention Safety and Enforcement Regime all daily decisions of of prison directors by which the places and times for the actions of the members of operative groups were established.

In those cases where issues concerning the non-compliance with the rules on the respect of the confidentiality of the medical act in the process of the video recording of the management of incidents will be found, the necessary correction measures shall be ordered, depending on the seriousness of the respective misconduct.

Paragraph 64

We reiterate the ideas mentioned at the beginning of the previous paragraph concerning the creation and functioning of intervention structures, namely that it is only one third of all prisons have such structures specialized in the use of immobilization means and techniques.

The management of incidents within detention facilities is an essential component of detention safety and, at the same time, of ensuring the respect of prisoners' rights, especially in terms of the interdiction to subject any person serving a custodial sentence or order to torture, inhuman or degrading treatment or other ill-treatments.

Where the restoration of order and discipline disturbed by prisoners' acts is needed, the intervention is ensured with specialized staff. The specialized staff ensures an immediate

and qualified capacity of reaction for the management of operative and critical incidents which occur in prisons.

In order to ensure a legal, efficient and safe intervention, intervention groups intervene based on the following fundamental principles: protection of human beings, legality, security, proportionality of use of force, graduality, no surprises and minimum risk.
All these rules are dedicated to the respect of all norms and recommendation of international organizations in the field of the protection and respect of prisoners' rights. The members of intervention structures are evaluated regularly in theory and practice in the field of the management of operative and critical incidents thorugh actions of intervention.
Against this background program of specific training are established which are meant for all members of intervention structures and which include structured topics according with the duties as definied in the applicable legislation, so that the application of ill-treatments on prisoners due to the lack of knowledge of internal and international regulations in the field can be prevented. The purpose is for the participants to learn the abilities necessary so that their reactions are proportional with the seriousness of the incident, respect the order of activities defined for the management of incidents, treat prisoners with respect, justice and equality and in all situations to refrain from subjecting prisoners to torture, inhuman or degrading treatment or other ill-treatments.
We would like to indicate that, starting December 2011, a braod and constant process of professional training was initiated with the National Administration of Penitenciaries, at central level, dedicated to the staff within the penitenciary system which works in the detention safety and enforcement regime sector. This activity was organized on levels of complexity of situations which can be encountered in practice, under the direct coordination and participation of specialized officers within the central penitenciary administration, in all 8 operative geographic regions. The professional training was organized on modules with specific modules, depending on the categories of staff participating, as follows:

Module I (introductory level) – dedicated to members of intervention structures and based on basic specific notions in the context of the management of operative incidents, as well as specific procedures conducted by them (knowledge of the internal and international legislation in the field of the application of immobilization means, immobilization means and procedures for their application, self-defense techniques, communication skills and techniques, first aid measures and exercises), as well as the management of operative incidents;

Module II (average level) – dedicated to agents and officers with leading and executive function (within the operative sector) in the field of learning and exercise of procedures specific for the management of critical incidents. The module also combines elements specific to module I with elements specific to command structures within the groups created for the management of critical incidents, for an integrated approach of this mechanism;

Module III (advanced level) – dedicated to the whole staff within the operative sector, together with negotiators, members of the intervention structures and deputy managers for detention safety and enforcement regime as incident commanders and incident deputy commanders. Module III is mainly a practical module, based to a great extent on the practical exercise of the notions learnt in module II, necessary for solving critical incidents within the incident team, on the three components: command, negotiation and intervention,

with the participation of all roles in the command room, negotiation rooms and incident room within the National Administration of Penitenciaries.

Having regard to the fact that the policy of the Romanian state is to solve any conflict through negotiation, a broad process of training of the prison staff was initiated in prisons in the field of communication and negotiation means and techniques, meant to de-escalate conflict situations in order not to be in the position to use force through intervention.

As a whole, we think that the existence and functioning of these specialized structures is a special type of ressorces, use in exceptional situations, which strengthens the general rule of using a set of measures specific to dynamic safety within current activities conducted with prisoners, so the abolition of the intervention structures created within the penitenciary system is not an appropriate approach, given the existence of a large number of rooms in which large numbers of high risk prisoners are housed.

Against this background, the management of activities within the daily programs is conducted with the qualified staff planned to work in the guarding and escorting sector, by the involvement of the staff in positive professional relations with prisoners, meant to ensure the mutual trust in the staff at each place of detention, as well as the mutul respect and cultivation of a sense of safety in the prison environment. Such an approach of dynamic security is implemented also within the Romanian penitenciary system, for which reason the penitenciary administration is aware of the fact that this approach is likely to facilitate the permanent knowledge of the individual and collective concerns and problems prisoners are faced with. Such an approach ensures the preservation of a climate of order and discipline among the prison population and facilitates the process of management of potential dysfunctions by sending them, according with hierarchical relations, to managerial teams for allocation, management and solving by the competent departments.

We would like to remind that, in the light of the provisions of ***art. 51 point 2 of Rec (2006)2 of the Committee of Ministers to the member states on the European Prison Rules,*** *„The security which is provided by physical barriers and other technical means shall be complemented by the dynamic security provided by alert staff who know the prisoners who are under their control."*

Furthermore, art. 65 letter C of ***Rec (2006)2 of the Committee of Ministers*** *provides that "There shall be detailed procedures about the use of force including stipulations about: (…) c. the members of staff who are entitled to use different types of force."*

Paragraph 65

The staff of the intervention structures have the professional obligation to wear protection helmet with the number of identification allocated (applied on the back part of the protection mask) and the two identification badges applied on their equipment (on the chest and upper arm).

As concerns the same topic, the representatives of the non-governmental organization APADOR–CH requested the National Administration of Penitenciaries that *„the same number on the back part of the helmet be visible on a badge attached to the chest of each member of the intervention structure. The figure or the figures on the badge should be marked on a contrasting background (for example black on white background) and large enough to be visible from a distance of at least 8-10 m".*

We would like to indicate that this recommendation was implemented by the amendment and supplementation of the Decision of the general director of the National Administration of Penitenciaries on the approval of the Manual on associated structures for special security, constraint and control measures, volume II – Intervention of specialized structures, under chapter 3 – *Standard equipment and endowment of the members of associated structures for special security, constraint and control measures:*

Against this background, it was ordered to attach in a visible manner on the equipment (as applicable, blouse, T-shirt, multifunctional vest) on the left side of the chest and on the left arm chest high one badge in black colour with white figures representing the order number on the protection helmet. The mode of attachment of the badge on chest is Velcro type, the size of the badge is 10 cm length and 5 cm broad, with the figures 4 cm high.
The way of allocation of individual identification numbers, as well as the marking of the equipment are similar to those used by other intervention structures which are operational within the national system of ensuring the public order.

Balaclavas are worn by the members of the intervention structures in compliance with the following two rules:

a. inside the detention facilities, the balaclava shall only be worn under the protection helmet, while conducting the actions of intervention and other activities approved, in order to ensure a climate of order and safety, as well as in order to prevent any incidents;

b. during missions outside the detention facilities, the balaclava shall be worn under the bullet-proof helmet.

Furthermore, the management of incidents in which priosners are involved requires the legal use of physical force and immobilization techniques, so the protection of the identity of the staff of specialized structures which intervene is necessary. Prisoners have the possibility to seize the competent authorities when they think that the way of action in terms of the management of incidents was not legal, whereas the identification of the staff who intervened shall be conducted based on minutes of identification.

As concerns the working hours of the members of associated structures for special security, constraint and control measures in 4 shifts (24h on duty and 72h rest), we would like to indicate that they are in compliance with the labour legislation.

In addition, they are issues concerning the application of the legal provisions, there is no need for express legislative interventions. There are no express provisions concerning the use of balaclavas.

Decision no. 543/2012 on the approval of the Internal rules and regulations of the National Administration of Penitenciaries:

„Art. 44 (1) The working hours within the Administration shall be between 8:00 and 16:00.

(2) By way of exception, for the performance of temporary activities with specific character, work can be performed also in other intervals, with the obligation to ensure the appropriate compensation with free time.
(3) The working hours of the structures which work with the public shall be established by the prison director, in accordance with the complexity of the work, in compliance with the legal working hours and appropriate allocation of the volume of work.
(4) The working hours of the staff in operative duty 24 h a day shall be established by way of decision of the general director.
(5) The working hours shall be established with the consultative approval of the representative labour unions."

Paragraph 66

For each incident managed by the prison staff, no matter if the intervention structure is involved or not, the incident file is elaborated which contains all documents related to an incident and which is indicative of the legality of all measures ordered.
According with the Manual on the management of incidents - Volumul I Management of operative incidents, approved through the Ordinance of the Justice Minister no. 2748/C/2010, the following documents shall be attached to the incident file:

- the logs of the area officer, shift supervisor and director.
- the reports drafted by the members of the staff after their active role in the management of the incident ended. Each member of the staff who plays a role in the incident shall draft a report of activity when his role ends or when his shift ends. This shall be done before the person leaves the prison.
- Copies of all incident reports or reports on possible criminal acts.
- Copies of the reports of all examinations conducted by the prison doctor or other persons involved in the incident. They shall be filed, introduced in a sealed envelope, with the signature of the prison doctor.
- Reports of the management staff, including in case of operative incidents, of the officer in charge of the area where the incident takes place, for the purpose to review or investigate the incident.
- Copies of all reports or correspondence in relation with the incident between the prison director and/or the National Administration of Penitenciaries.
- Copies/transcripts of all graphs used during the incident. Graphs are additional instruments, used during the inciedent by negotiators, command team and at the place of incident as sources of immediate information for the reference materials.
- Any other documents or copies of documents which are related to the incident.
- The video annex, on DVD digital support (video images recorded by the designated operator who records all the stages of the management of the incident).

The incident files are registered under a name which allows future identification: place of the incident, data and time when it occurred, type of the incident and some descriptive elements for the incident identification. Furthermore, in order to include all relevant details concerning the circumstances of the incident and the measures ordered in all stages of its management, the reports drafted and attached to the file incident require the indication of

the name of the prisoners involved in the incident, as well as of those present, even if they did not participate, members of the staff, position, name and family name and the role of the staff involved in the management or present at the place where the incident occurred, the immobilization means applied, the communication techniques used, reference to the time and place where the incident occurred, short description of the incident and of the actions taken for its management, with mandatory indication of the medical attention given to the persons involved in the incident.

For an efficient management of incident files, the legislation in the field prohibits the removal of documents from the incident file, except for some thoroughly justified situations. As concerns the reports of the members of intervention structures, the template is defined in the Manual on associated structures for special security, constraint and control measures, as well as for the use of immobilization means and techniques, Volume I – Personal Safety, approved by virtue of the Decision of the general director of the National Administration of Penitenciaries and Volume II – Intervention of specialized structures, approved by virtue of the general director of the National Administration of Penitenciaries.
The ideas concerning the functioning and training process of the members of the intervention structures were presented in detail under Paragraph 64.

c. July 2016 prison riots

Paragraph 67 and 68

All incidents which occurred during the riot in Penitenciary Iași in July 2016 are under investigation by the competent judicial authorities based on the complaints filed by the prison administration. For the efficient consideration of evidence, the prison administration and the National Administration of Penitenciaries made available to the investigation authorities all data and information requested.

Under Paragraph 68 of the Report it is said that between 11.07.2016 and 09.08.2016, according with the provisions of art. 72 para. 3 of Law no. 254/2013, Penitenciary Iaşi sent to the Prosecution Office attached to the Local Court Iaşi a number of 71 notes of information concerning medical examinations conducted in the prison's infirmary on prisoners who reported acts of aggression committed by other prisoners or by the employees of the National Administration of Penitenciaries.

After having looked at these notes of information, the prosecutors within the Prosecution Office attached to the Local Court decided to become active *ex officio* in 27 cases as they found indication about the perpetration of the crimes of abusive behavior as provided for in art. 296 Criminal Code (in 22 cases), battery or other acts of violence as provided for in art. 193 Criminal Code (in 2 cases) and rape as provided for in art. 218 Criminal Code (in 3 cases).

The 22 files dealing with the crime of abusive behavior as provided for in art. 296 Criminal Code were taken over by the Prosecution Office attached to the Court of Appeal Iaşi in accordance with Ordinance no. 214/2015 given by the general prosecutor with the Prosecution Office attached to the High Court of Cassation and Justice.

In the period 10.08. – 26.08.2016 the complaints made by Penitenciary Iaşi based on the provisions of art. 72 para. 3 of Law no. 254/2013 were registered with the Prosecution Office attached to the Court of Appeal Iaşi, the complaints dealing with the medical examination of 26 prisoners who alleged to have been aggressed by the members of the intervention teams.

In the same period the complaints of 14 prisoners from Penitenciary Iaşi were registered with the Prosecution Office attached to the Court of Appeal Iaşi, the complaints dealing with allegations of physical and verbal aggression by the members of the intervention groups within the prison on 12 and 13 July 2016.

Having regard to the fact that the complaints of the prisoners and the complaints of the prison referred to the way in which the intervention teams acted with the purpose to de-escalate the riot in Penitenciary Iaşi, the merging of the cases was ordered for a better act of justice.
The Emergency Clinical Hospital *Sfântul Spiridon* and the Forensic Institute Iaşi were requested to provide data and information on the medical examinations and forensic investigations conducted in relation with the prisoners from Penitenciary Iaşi concerning the existence of lesions caused by aggression.

The National Administration of Penitenciaries communicated that the security forces involved in the management of incidents and immobilization techniques through planned intervention were the following:

- The intervention structure within the Penitenciary Iaşi (members of the operative group – a dedicated structure specialized in planned interventions);
- The specialized structures within the District Iaşi Gendarmerie Inspectorate;
- The specialized structures within the Mobile Gendarmerie Group Bacău;
- The specialized structures within the District Iaşi Police Inspectorate (Department for Special Actions).

The members of the structures above mentioned participated directly in the activities conducted for the restoration of order in detention spaces and for this purpose joint teams were created for the following activities meant to restore order:

- Warning of the prisoners and extraction of the protesters from detention rooms;
- Immobilization of prisoners involved in violent actions;
- Presentation of the prisoners on which immobilization means and techniques were used at the infirmary;
- Relocation of prisoners from the rooms affected by violent actions;
- Preparation of prisoners for transfer.

Penitenciary Iaşi also communicated that the security forces involved in the de-escalation of the riot were made up of 4 joint teams, more exactly staff of the intervention structure from the prisons (SASS members), S.A.S. staff from the District Iaşi Police Inspectorate and gendarms from the District Iaşi Gendarmerie Inspectorate and of Mobile Gendarmerie Group Bacău, which intervened in order to restore order.

Each team had the role to act simultaneously in one detention room each in order to restore order and extract those prisoners who committed acts of destruction and disobeyed the orders.

Based on the data and information communicated, it was ascertained that the forces actively involved in the de-escalation of the riot in Penitenciary Iaşi were made up of special statute workers within the police forces and the prison and of jendarms (military) from district and regional gendarmerie units.

Against this background, the competence of dealing with the case was declined, based on the capacity of the persons involved, to the Military Prosecution Office Iaşi as emerging from the ordinance dated 18.10.2016.

The prisoners who filed criminal complaints were informed about the fact that the case was passed on to the authority mentioned.

The pace in which the criminal investigation acts were conducted by the prosecutor within the Prosecution Office attached to the Court of Appeal Iaşi in the criminal file no. 509/P/2016 was checked by the Judicial Inspection based on the documents no. 6646/IJ/1511/DIP/2016 and no. 375/IJ/77/DIP/2017 upon request of prisoners TDI and IIC.
On 21.10.2016 the Military Prosecution Office attached to the Military Distict Court Iaşi was allocated the file no. 509/P/2016 of the Prosecution Office attached to the Court of Appeal Iaşi, dealing with the complaints of NMF and others, in their capacity as prisoners with Penitenciary Iaşi, against the members of the intervention teams within the prison and the gendarms with the District Iaşi Gendarmerie Inspectorate and Mobile Gendarmerie Group Bacău, concerning the acts committed on 12 and 13 July 2016.
The case was registered under the number 369/P/2016 with the Military Prosecution Office attached to the Military District Court Iaşi and is still pending.

Paragraph 69

As indicated under Paragraph 65, the staff of the intervention structures on duty has the obligation to wear protection helmet with the identification number allocated and two identification badges. In this was, their identification is easy based on the number allocated to each member of the intervention structure.
Operation rules both for the command and for the specialized teams are defined in the specialized manuals elaborated to this effect by the Ministry of Justice, with applicability within the prison system.
Without any exception, all members of the intervention structures wear badges with their identification numbers, allthrough the management of incidents.

d. inter-prisoner violence

Paragraph 70

The National Administration of Penitenciaries elaborated and ordered measures for the application of the *Strategy for the reduction of aggressive behaviours in the penitenciary system*, which is a broad, multi-disciplinary activity conducted in all prisons and where zero

tolerance for any act of aggression is a must for the whole staff of the penitenciary administration.
All incidents which involve violent actions of prisoners are registered in operative documents, with no exception form this rule, specific safety measures are adopted and the competent judicial authorities are seized.

Paragraph 71 and 72

The first case identified in Penitenciary Bacău:
Following the verifications, it emerged that the incident refers to the one occurred in Penitenciary Bacău on 12.02.2018, at around 16:00, when the guard on detention section E4 took the prisoner S.C. out of the detention room for educational activities. The guard noticed that the prisoner had a bruise at his left eye. The prisoner said that he had been physically aggressed in the detention room ony day before by the prisoners E.R. and L.P.L. Following this incident, the following measures were taken:

– The prisoners involved in the incident were brought to the infirmary where it was ascertained that the alleged victim has a *bruise at his left eye* and *left sub-clavicular excoriation*, whereas the alleged assailants did not have any traumatic marks.

– The prisoner S.C. was kept at the infirmary, his hospitalization with the District Hospital Bacău was not necessary.

– The prosecution Office attached to the Local Court Bacău was seized;

– The enforcement judge within Penitenciary Bacău was seized;

– The National Administration of Penitenciaries was informed via e-mail about this incident;

– The section's educator was informed;

– The prison's psychologist was informed;

– Incident reports were drafted in relation with the alleged assailant prisoners;

– The alleged assailant prisoners were monitored starting this incident according with the decision no. 467/2015 issued by the National Administration of Penitenciaries;

– The alleged victim was brought on 13.02.2018 to the Forensic Laboratory S.J.M.L. Bacău, where he received a forensic certificate.

In accordance with the Romanian applicable legislation, the detention facility has the obligation, when it determines that a criminal offence was committed, to seize the criminal investigation authorities. According with the applicable legislation, the criminal investigation authorities hear the victim and, upon the victim‘s complaint, the criminal prosecution is started.
By Ordinance no. 1712 dated 15.05.2018 issued by the prosecutor attached to the Local Court Bacău the case was closed because the prisoner S.C. did not want to file a criminal complaint as a victim in relation with the perpetration of the offence of battery or other acts of violence as provided for in art. 193 para. 1 Criminal Code.
We assume that the other two prisoners who were held in the same room as S.C. and in relation to whom the CPT Report indicates that they are aggressed are prisoner S.D.D. and prisoner M.A. The latter two prisoners were brought to the infirmary on 13.02.2018 and no traces of physical violence were found on them.

The second case identified in Penitenciary Bacău:

Following the verifications, it emerged that the issues indicated in CPT Report refer to the incident in which prisoner P.D.I was involved who reported on 02.01.2018 at 21:00 to the guard and the shift supervisor that he had been physically (not also sexually) aggressed by the prisoners D.G.D. and H.I.D. The prison administration adopted the following measures:

- The prisoner P.D.I. was relocated to another detention room within the section immediately after the prison staff was informed, more exactly on 02.01.2018;
- The prosecution Office attached to the Local Court Bacău was seized;
- The enforcement judge within Penitenciary Bacău was seized;
- The National Administration of Penitenciaries was informed about this incident;
- The section's educator was informed;
- The prison's psychologist was informed;
- The prisoners involved in the incident were brought to the infirmary in order to receive medical attention according with the applicable procedures;
- Incident reports were drafted in relation with the alleged assailant prisoners and the disciplinary procedure was initiated;
- The prisoner P.D.I. was brought to the Emergency Ward with the City Hospital Bacău, where he was diagnosed with „fractured tip of nasal pyramid", no sexual aggression diagnosed by the specialized staff;
- Furthermore, in order to avoid that the victim meets the assailants on the section, the victim was relocated on another detention section on 03.01.2018;
- The assailant prisoners were monitored starting the day when this incident occurred, according with the decision no. 467/2015 of the National Administration of Penitenciaries nr. 467/2015 concerning measures to reduce aggressive behaviours.

No elements were identified to confirm that the prisoner had been involved prior to 02.01.2018 in other incidents with the prisoners D.G.D and H.I.D.

By Ordinance no. 356 dated 23.02.2018, issued by the prosecutor with the Prosecution Office attached to the Local Court Bacau, the case was closed because the prisoner P.D.I. did not want to file a criminal complaint as a victim in relation with the perpetration of the offence of battery or other acts of violence as provided for in art.193 para. 1 Criminal Code.

Third case identified in Penitenciary Bacău:

Following the verifications, it emerged that another incident refers to the incident occurred on 09.01.2018, given that on 08.01.2018 no incident was registered. When brought to the infirmary, the prisoner C.G.R. alleged that he had been sexually aggressed in the detention room by the prisoner C.M.

In this case the administration of Penitenciary Bacău took the following measures:

- The prisoners were brought to the infirmary for medical examination, but the alleged victim did not show any traces of aggression;
- The prisoner C.G.R. was relocated from the detention room to the infirmary on 09.01.2018 as a protection measure, in order to prevent subsequent negative events, whereas one single room with additional bed was available in the prison's infirmary.
- The prosecution Office attached to the Local Court Bacău was seized;
- The enforcement judge within Penitenciary Bacău was seized;
- The National Administration of Penitenciaries was informed via e-mail about this incident;
- The section's educator was informed;
- The prison's psychologist was informed;

– The prisoner C.M. was monitored starting the day when this incident occurred, according with the decision no. 467/2016 of the National Administration of Penitenciaries nr. 467/2015 concerning measures to reduce aggressive behaviours;

– An incident report was drafted in relation with the alleged assailant prisoner and the disciplinary procedure was initiated;

– On 11.01.2018 the prisoner C.M. was relocated on another detention section, more exactly section E4, in order to prevent him from meeting the the allged victim and in order to prevent him from trying to hinder the establishemsnt of the truth or to influence the result of the disciplinary investigation.

There is no information to confirm that the prisoner C.G.R. had been involved prior to 09.01.2018 in any incident with the prisoner C.M.

The prisoner C.G.R. refused in writing on 12.01.2018 to be brought to the District Hospital Bacău for specialized examination. Later, he was hospitalized in a penitenciary medical facility for post sexual aggression examination, whereas the result of the paraclinical analyses was negative. The result also confirmed that no sexually transmitted disease was passed to the victim.

By Ordinance no. 365 dated 13.02.2018 issued by the prosecutor with the Prosecution Office attached to the Local Court the case was closed „because there is no criminal act", given that the prisoner C.G.R. declared before the criminal investigation authority that „he does not identify with the complaint filed by the management of Penitenciary Bacău, given that he was not sexually abused".

In relation with the acts committed in Penitenciary Bacău the prosecutors with the Prosecution Office attached to the Local Court Bacău became active *ex officio* for the perpetration of the crimes of battery and other acts of violence and rape as provided for in art. 193 para. 1 Criminal Code and art. 218 para. 1 Criminal Code and the investigations are conducted within file no. 7984/P/2018.

The case identified in Penitenciary Galați:

The young man referred to (A.S.G.) returned to Penitenciary Galați on 16 February 2018 in the afternoon and was housed alone, upon request, to ensure his protection. We would like to indicate that the prisoner was allowed to walk outside in the open every day. Furthermore, according with the approved program, all detention rooms are scheduled for sports activities, for keeping the prisoners' physical and mental tone, at least twice a month, based on the tables approved by the prison management.

The prisoner was transferred to Penitenciary Galați on the second day of the visit of the CPT delegation to Penitenciary Galați, on the 16 February (Friday, 15:40) and was housed in room E7.7. The conclusion that *he had been provided with no support and had not been offered the possibility of outdoor exercise* refers to the 17 February 2018, a non-working day. Against this background, we would like to indicate that the participation of a prisoner to sports activities (conducted under the coordination of a sports monitor) is possible, according with the applicable legal framework, based on a previous schedule. We would also like to indicate, that within the prison, there is staff dedicated to conducting reintegration activities with prisoners Saturdays and Sundays, according with the approved schedule, and who can provide information, support, as the case might be, upon request.

Up to his transfer to the Educational Centre Târgu Ocna, the prisoner had the support of the psychologist, social worker and Orthodox priest (who conducted individual activities with this

prisoner). Starting April 2018, the prisoner A.S.G. was included in group activities, sports and recreational activities, moral and religious activities and educational thematic competitions.

We would like to indicate that, within Penitenciary Galați, the measure of permanent monitoring by the social reintegration staff was ordered with the purpose to maximize the opportunities of participation to activities.

As concerns the incidents occurred in Penitenciary Galați the Prosecution Office attached to the Local Court Galați conducted criminal investigations within file no. 962/P/2018. The case was closed based on Ordinance dated 16.04.2018 as concerns the perpetration of the crime of battery and other acts of violence and rape as provided for in art. 193 para. 2 Criminal Code and art. 218 para. 1 Criminal Code. The grounds for closing the case were that there is no criminal act (the rape) and that the victim withdrew his criminal complaint (the battery and other acts of violence).

Paragraph 73

Within the *Strategy for the reduction of aggressive behaviours in the penitenciary system*, a set of mandatory principles was elaborated in 2014 meant to support the pro-active attitude of the subordinated staff versus prisoners, the lack of tolerance for aggressive acts, the swiftness in filing the criminal complaints and their processing, justice in establishing the disciplinary sanctions.

During the quarantine and observation period activities of initial evaluation and intervention are conducted, medical checks are performed and measures of information and documentation are ordered, under surveillance, in compliance with the conditions as provided for in the Regulation of the implementation of the enforcement law. In this period the behavior and personality of prisoners are observed, hygiene education activities are conducted and the prisoner's educational, psychological and social needs are evaluated with the purpose to establish the intervention and assistance areas.

The initial allocation of prisoners in detention rooms expressly dedicated to quarantine and observation is conducted taking into consideration the separation criteria provided for by the legislation, whereas potential problems in terms of adjustment to prison life, acute depressions, self-harming, suicide attempts, acts of aggression etc. are under strict monitoring. We would like to underline the fact that during the quarantine and observation period the participation of all prisoners to the Program for adjustment to prison life is mandatory.

The National Administration of Penitenciaries sent to the prison administrations the information on "Conducting a semi-structured interview by psychologists with prisoners on the day of their incarceration (to the extent possible during the working hours) or the next morning, at the latest, with the purpose to identify, as soon as possible, the presence/absence of the suicide risk. The full psychological assessment will be conducted later, during the quarantine and observation period."

The Plan for the implementation of the *Strategy for the reduction of aggressive behaviours in the penitenciary system* – 2017 includes, under the specific objective III – *Supplementation of the legal framework concerning the interventions necessary for the management of aggressivity in the penitenciary system*, activity III.1 – **Conducting short activities – like *The psychology pill* – oriented to stress-relief, reduction of impulsivity and increase of self-control among underaged and juvenile prisoners.**

Furthermore, the Plan for the implementation of the *Strategy for the reduction of aggressive behaviours in the penitenciary system* – 2018 also includes the same line of action (specific objective III - *Supplementation of the legal framework concerning the interventions necessary for the management of aggressivity in the penitenciary system*, activity III.1 - **Conducting short activities oriented to stress-relief, reduction of impulsivity and increase of self-control among underaged and juvenile prisoners.**

Paragraph 74

All prisoners who alledge having been sexually aggressed or if the doctor finds signs in this respect, no matter if the prisoners request or not to be examined by the forensic, they are recommended to have a specialized examination in medical facilities outside the prison system. All prisoners have the possibility to request and to receive daily, upon request or any time necessary, medical and psychological assistance under conditions of confidentiality of the medical act.

Furthermore, the prison doctor, as well as other decision makers, offer consultations to any prisoner who requests it. Against this background, in any situation in which a vulnerability was identified, the necessary measures for solving the issues raised were taken immediately.

As concerns the social reintegration efforts, the *Specific programme for psycho-social assistance for the reduction of relapse in cases of sexual abuse* is implemented within the penitenciary system, starting 2009.

The target group is made up of sexual offenders, irrespective of age, who fulfill the following criteria:

- Male person, convicted based on a final court decision for a crime against sexual liberty (in order to eliminate any suspicion as to the perpetration of the crime);
- Same type of crime (rape, sexual abuseacelaşi tip de faptă (viol, molestation of underaged persons etc.).

The purpose of the programme is to offer, both to psychologists and to the entire staff who conducts direct activities with prisoners, starting from tried and tested theoretical and practical models, a *practical guide on the reduction of general and sexual relapse*, through intervention on associated dynamic risk factors.

e. deaths in prison and prevention of suicide (and self-harm)

Paragraph 75, 76 and 77

As concerns the CPT's assertion that every death of a prisoner should be the subject of a thorough investigation to ascertain, inter alia, the cause of death, the facts leading up to the death, including any contributing factors, we would like to indicate that legal provisions are in place within the Romanian penitenciary system which rule that, in case of death of a prisoner, the prison administration has to immediately inform the enforcement judge, the prosecution office and the National Administration of Penitenciaries, the family of the dead prisoner, a closed person or, as case might be, the legal representative.

Furthermore, the prison administration has the obligation to investigate the circumstances under which the death occurred, **after prior and immediate information of the prosecutor who conducts the criminal investigation, mandatory in such cases.**

In order to establish the death cause, the facts leding up to the death the autopsy is mandatory, as well as the forensic death certificate has to be issued; all this activity is the attribute of the forensic institute subordinated to the Ministry of Health.

Furthermore, the spouse or kins up to 4th degree inclusively or another person designated by them have access to the medical file, the forensic death certificate and any other document concerning the prisoner's death.
The inhumation of the deceased person is done by the family, relatives or other closed persons. In their absence or in case they refuse to, the inhumation is done by the local authorities where the prison is located.

For the purpose of inhumation the forensic death certificate and the death certificate are given in original to the person's relatives so they will know the causes which led to the death.

If the convicted person's health or his/her physical integrity was seriously affected, the medical staff has the obligation to draft a medical report, to note the findings in the medical file, as well as the convicted person's declarations about them or about any act of aggression and to inform the prison management. **Also in this case the prison administration has the obligation to immediately inform the enforcement judge, the criminal investigation authorities and the National Administration of Penitenciaries, the convicted person's family, a person closed to him/her or, as case might be, the legal representatives**. The information requires the consent of the convicted person, if it can be expressed.

i. As concerns the case in Penitenciary Aiud following the verifications it emerged that the following measures were ordered in relation eith the incident occurred on 13.06.2017:

- Resuscitation maneuvres were initiated by a member of the special operative team and by the nurse on duty. After about 6 minutes the resuscitation maneuvers were taken over by the emergency medical team which arrived at the place where the incident occurred; at 22:59 the resuscitation maneuvers were taken over by the second emergency medical team arrived at the place where the incident occurred, this time under the coordination of a specialized doctor. The resuscitation maneuvers took 1 h and 18 minutes, but with no positive result, so at 23:41 the doctor present there ascertained the death of the prisoner.

- The criminal investigation authorities were seized by phone and they started the investigation concerning the way in which the incident occurred. Having regard to the fact that two police officers were present, the shift supervisor promptly answered all requests, **so that they started the investigations right during the resuscitation maneuvers**, requesting statements to be made by the victim's cell mate and by the staff involved, as well as measures of conservation of the evidence in the detention room by sealing it.
- The shift supervisor drafted an incident file which contains all the documents concerning the actions conducted within the prison for the management of the incident, **whereas the file was made available later on to the competent judicial investigative authority.**

In order to clear up of aspects concerning the negative incident, the management of Penitenciary Aiud seized the Prosecution Office attached to the Local Court Aiud immediately. As subsequent measures, the prison administration ordered, in terms of psycho-social assistance, the measure of re-evaluation of all prisoners known with suicidal history.

Furthermore, measures were taken for the improvement of the flow of communication inside the prison between the representatives of interested sectors: enforcement regime, medical sector and social reintegration sector concerning monitored prisoners with suicidal risk (for example, more concrete reference is made to changes which can be noticed in the physical appearance of the monitores prisoner, the ideas expressed, the degree of involvement in the activities of the daily programme etc.)

ii. As concerns the first case in Penitenciary Iași about the prisoner P.C. it emerged that the victim had been aggressed by the prisoner S.V.C. on 23.06.2017 at 4:30, whereas the following measures were ordered by the prison administration in relation with this case:

- at 04:47 the nurse on the night shift was informed by the guard on section 7 that the prisoner C.P. was hit in his head with a metal bar by the prisoner S.V.C.;
- the nurse went to the room where the incident had occurred and found prisoner C.P. lying on the floor, unconscious, with multiple contusions on his head;
- the National Emergency Hotline 112 was called and shortly thereafter a medical team arrived at the prison. The prisoner was initially taken to the Emergency Ward of the Hospital Sfantul Spiridon and then he was referred to the Hospital for Neuro-Surgery N. Oblu, where he was hospitalized on the Anesthesia and Intensive Therapy Ward with the diagnosis cranial and cerebral trauma, in coma III degree, Glasgow score 4;
- on the same day of 23.06.2017 the criminal investigation authorities were seized, whose representatives came to the prison and started the investigations (they heard the prison staff, as well as the prisoners whi witnessed the incident).

Prisoner C.P. died in the hospital on 28.06.2017, 5 days after his hospitalization.

iii. As concerns the second case in Penitenciary Iași concerning the prisoner S.V.C., following the verifications it emerged that on 02.10.2017 at 01:30 the medical staff on the night shift was informed by the guard on section 7 that the prisoner S.V.C. did not display, visually, any vital signs.

Measures ordered at Penitenciary Iași in relation with this incident:

- the nurse went to the detention room where the nurse found the prisoner in cardiopulmonary arrest, for which reason the nurse started the resuscitation maneuvers and requested an emergency medical team;
- the mergency medical team arrived at prison at 01:49 and continued the resuscitation maneuvers until 02:13 when the death was ascertained;
- the room was sealed for the purpose to secure the evidence necessary for the performance of the investigation by the competent authorities;
- the criminal prosecution authorities were seized and they showed up for conducting the investigations (they heard the medical staff and the witnesses).
- the family members of the deceased person were informed;
- the medical death file was completed after the autopsy conducted by the Forensic Institute Iași as soon as the forensic death certificate was issued;
- after the visit of the CPT delegation to Penitenciary Iași first aid training courses were conducted in this prison for the staff and for the prisoners.

As concerns the successive relaocation to detention rooms of the prisoner S.V.C., others than those related to his transfer from other prisons, we would like to indicate as follows:

- 4 of the relocations appeared to be necessary following the re-organization of the prisoners, on which occasion all prisoners are questioned about compatibility and potential frictions with the other prisoners they are supposed to be accommodated with, in order to prevent potential incidents;
- two relocations were conducted upon his request;
- three relocations were ordered preventively in order to avoid potential incidents following the frictions with the other cell mates;
- two relocations to the infirmary of Penitenciary Iași were ordered after he returned from Penitenciary Bacău when he said he had voluntarily swallowed foreign bodies and one relocation was necessary when the prisoner alledged he had been sexually assaulted by another prisoner which made Penitenciary Iași seize the criminal investigation authorities.

As concerns the death of the prisoner C.S.V. in Penitenciary Iași we would like to indicate that the criminal investigation authorities became active ex officio and the case was registered under the number 527/P/2017 with the Prosecution Office attached to the District Court Iași.

By virtue of the ordinance dated 02.10.2017 the initiation of the in rem criminal prosecution was ordered in relation with the perpetration of the crime of murder as provided for in art. 188 para. 1 Criminal Code.

The coroner conducted the investigation at the place of death on 02.10.2018 between 05:20 and 06:00. Witnesses were heard, more exactly the prisoner P.C. (the only cell mate), M.V., I.L. – prison guards and I.I.P. – nurse. The conclusions of the forensic report drafted by the Forensic Institute Iași are indicative of the fact that the death of the victim C.S.V. was violent and caused by the acute cardio-pulmonary insufficiency which was the result of a cranial-cerebral trauma reflected in epicranial hemorrhagic infiltration, acute subdural hematoma, subarachnoid hemorrhage and irradiated cranial vault fracture at the skull base. The traumata were caused most probably by falling from the same level, whereas the auto or heteropropulsion shall be established in the course of investigations. The rest of the traumatic lesions identified at the necroptic examination (bruises and excoriations) could

have been caused by hitting with or on blunt objects, they date back before the death and did not have tanatogenerating role. The toxicologic result of the samples collected from the body indicated the presence of carbamazepine and of one of its metabolites in therapeutical dose and did not indicate the presence of ethyl alcohol, methyl alcohol, ethylene glycol, drugs and pesticides.

The case is still under investigation.

Furthermore, from a legislative perspective there are legal provisions which accommodate the requirements of the CPT delegation. For example:

- **art. 52 of Law no. 254/2013: „***(1) In case of death of a sentenced person, the administration of penitentiary shall promptly notify the judge in charge of the supervision of the deprivation of liberty, the Prosecutor's Office and the National Administration of Penitentiaries, the family of the deceased, a close person of the sentenced person or, as the case may be, the legal representative. (2) Carrying out the forensic autopsy and releasing the medical death certificate shall be mandatory requirements."*
- **art. 115 of Decision no. 157/2016 on the approval of the Regulation on the implementation of Law no. 254/2013** *„(6) In all situations where the death of a detainee is recorded, the staff of the place of detention shall be have the obligation to take measures to preserve the place where death occurred and the possible means of evidence. (7) In the event of death, the administration of the penitentiary shall have an obligation to investigate the circumstances of the death, with the prior and immediate information of the prosecutor conducting the criminal investigation."*
- **art. 79 – 82 of the Ordinance no. 429/2012 on ensuring the health care of persons deprived of their liberty held in the custody of the National Administration of Penitenciaries;**
- **art. 138 para. (2) of the Ordinance no. 429/2012 on ensuring the health care of persons deprived of their liberty held in the custody of the National Administration of Penitenciaries** *„(2) Deaths shall be reported nominally to the Medical Department within the National Administration of Penitenciaries."*

This means that no legislative interventions are necessary, given that the applicable legislation already provides for rules concerning the investigations which have to be conducted in case of a prisoner's death, more exactly both securing the place where the incident occurred and of potential means of evidence and, following the qualification de jure of any death as „suspect death", information of the competent prosecutor with a view to performing the criminal prosecution, if needed. It can be noted that, whenever a death occurs in prison, the performacy of autopsy by specialized institutions is mandatory, irrespective of the prison system.

Paragraph 78

First of all, the issue raised is linked with the state's policy in the field of the enforcement of criminal sentences. It shall be taken into consideration in the framework of a future action of amendment and supplementation of the dedicated piece of legislation, namely Law no. 254/2013.

The understanding of behavioural models within the prison environment, by the development of strategies, mechanisms, specialized interventions, is a priority for the penitenciary system, given the need to ensure within the entire system specific activities and working methods, integrated in recuperative efforts adapted to the psychological characteristics and needs of personal development of persons with suicidal risk.
Against this background, we would like to indicate that in 2014 the *Strategy for the reduction of aggressive behaviours in the penitenciary system* was implemented within the penitenciary system, with a multidisciplinary approach: social reintegration, detention safety and enforcement regime, medical, prevention of crime and terrorism. The *Strategy's* objective is the reduction of aggressive behaviours of persons deprived of their liberty on the two dimensions: self-aggressive behaviours (self-harm, suicide attempts, suicidal behaviours - parasuicide, suicide) and heteroaggressive behaviours (aggressions/assaults among persons deprived of their liberty, assaults on the staff).

We would also like to indicate that, for the purpose to monitor the implementation of the provisions of the *Strategy*, annually, representatives of the Department Detention Safety and Enforcement Regime, Social Reintegration Department, **Medical Department** and the Subunit Guarding and Escorting of Transferred Prisoners within the National Administration of Penitenciaries conduct as multidisciplinary teams monitoring visits in penitenciaries.
By virtue of the decision of the general director of the National Administration of Penitenciaries the application in penitenciaries of the guide *Clinical manual of the risk of violence (self-aggressive, suicidal and heteroaggressive behaviours)* was approved. The guide is dedicated to the *prison staff who conducts direct activities with prisoners* and includes psychopathology elements with relevance for the field of mental health of persons held in prisons, as well as some ways of application of instruments which are specific to these parameters.
One of the sections of the guide is dedicated to suicidal behavior, including the identification of the risk of suicide in detention facilities. The material is structured so as to organize and guide interventions on several fields of activity, specific to the various categories of staff involved in direct activities with prisoners/persons confined: *doctor, nurse, social worker, priest, educator, section chief, officer with the detention safety department/shift supervisor, guard (allocated to the section where the prisoner is housed)/escort officer*.
The psychiatrist and the psychologist are directly involved in the identification, assessment, diagnose and intervention in case of risk of suicide.
The Manual was disseminated among all prisons and is available for the training of the staff who conducts direct activities with prisoners.
Furthermore, the following recommendation was made to all prisons: to conduct a semi-structured interview by psychologists with prisoners on the day of their reception in prison (where this is possible during the working hours) or the next morning, at the latest, with the purpose to identify the presence/absence of the risk of suicide. The full psychological assessment shall be conducted subsequently during the quarantine and observation period.

Several programs and activities in the field of psychological assistance concerning the issue of suicide were implemented within the penitenciary system:

- in 2009 the *Program for specific psychological assistance and prevention of the risk of suicide* which is a practical guide for the assessment of the risk of suicide, prevention and intervention in crisis, so as to be a useful instrument of action both for specialists and for the entire staff who conducts direct activities with

persons deprived of their liberty. The general objective of the programe is to reduce the prisoners' behaviours with suicidal risk by reduction of depression;

- in 2012 the *Campaign for prevention and information for the support of prisoners in existential crisis* has been implemented. The campaign's main objective is the training of support prisoners and the monitoring of prisoners with risk of suicide, whereas the support activities for prisoners with risk of suicide are supposed to continue twice a month, beyond this date, depending on the needs existing in each prison;
- in 2015 the *Program for the training of support prisoners for prisoners in existential crisis* was implemented, its purpose being the reduction of the number of suicidal risk behaviours among prisoners;
- in 2018 the *Program for specific psychological assistance for the reduction of the risk of suicide*, based on the *effort to identify the complex aspects of suicide* through the analysis of several protective and vulnerability factors. The psychologist's intervention depends on the type of vulnerability (degree of risk the risk of suicide) and the intensity of behavioural dysfunctions. Furthermore, the program also emphasizes another very important aspect which is part of the prevention of relapse, namely: *monitoring* of the evolution of the person with risk of suicide.

As concerns the instruments of assessment used by the psychologist, we would like to indicate that, according with the applicable legal provisions, the specialized department (within the central penitenciary administration) provides the staff working in the field of psychological assistance at each place of detention instruments for the identification of the psychological needs and risks.
All efforts have been made for the elaboration and implementation of these instruments:

- approval of using the *screening for psychological assessment*, approval of using the *Instrument for the assessment of social assistance needs of prisoners held in penitenciaries*, by virtue of the Decision of the general director of the National Administration of Penitenciaries;
- implementation of the provisions of the Decision of the general director of the National Administration of Penitenciaries concerning the piloting of the *Standard instruments for the assessment of the activity of prisoners,* whereas by virtue of the Decision of the general director of the National Administration of Penitenciaries the continuation of the piloting of these instruments was approved.

Except for the instruments elaborated and made available to the specialized department, the improvement of the professional qualification of each psychologist is the responsility of each psychologist, according with the legislation which covers this professional field.
The Ethics Code of the psychologist's profession states that the psychologist *elaborates and applies methods and techniques of psychological assessment and assistance* for measuring the intelligence, abilities, skills and other psycho-human characteristics, interprets the data collected, establishes the psycho-diagnose, the prognosis and forwards the recommendations which he considers necessary, as case might be.

We would like to indicate that, based on special laws, psychologists conduct their professional activity in accordance with the duties they have as defined in their professional statute and employer's rules and regulations and job description. Within his professional expertise framework, the psychologist decides on the choice and application of the most

suitable psychological methods and techniques, depending on the stage of enforcement and the identified needs of prisoners.

As concerns the health care, all prisoners who are brought to the infirmary for injuries as a result of self-harm are examined by the doctor/nurse on duty, they receive primary health care and, as case might be, are referred for specialized investigations depending on the seriousness of the case and later they are recommended to seek psychiatric examination.
Furthermore, ever since reception in prison, prisoners are assessed by the prison doctor and, where specialized assessments/re-assessments are needed, they are scheduled for the performance of specialized investigations, including psychiatric examinations.
Legislative aspects which refer to the application of disciplinary sanctions for acts of self-harming and suicide attempts are presented in detail further below under Paragraph 131.
The recommendation in the CPT Report paragraph 131 which refers to the non-inclusion of self-harming acts and suicide attempts in the category of disciplinary offences shall be taken into consideration in the elaboration of the draft law for the amendment and supplementation of Law no. 254/2013.

3. Conditions of detention

a. regime for sentenced prisoners

Paragraph 79 and 80

First of all, the issue raised is linked with the state's policy in the field of the enforcement of criminal sentences. It shall be taken into consideration in the framework of a future action of amendment and supplementation of the dedicated piece of legislation, namely Law no. 254/2013.

In a legal sense, the enforcement regime is the totality of rules, rights, obligations, programs and activities which aim at ensuring a good cohabitation so as to encourage behaviours, attitudes and abilities which shall influence in a positive way the social reintegration of prisoners. Custodial sentences are enforced under one of the following regimes: high security, closed, semi-open and open.
The applicable legal provisions provided for a ***progressive*** or ***regressive*** regime for the enforcement of sentences, whereas convicted persons have the possibility, under the law, to pass from one regime into the other. *Progressive* means that the person passes from an enforcement regime into a lower regime in terms of its degree of hardship, whereas *regressive* means the person passes from a certain enforcement regime into a stricter enforcement regime.

In each prison there is a *commission for the establishment, individualization and change of the regime of enforcement of custodial sentences*, made up of: the prison's director who is also the commission's president, the head of the unit or office for regime application and the head of the unit or office for education or the head of the unit or office psychosocial assistance, in accordance with the provisions of art. 32 of the Law. The commission for the

individualization of the regime of enforcement of custodial sentences conducts its activity, as a rule, once a week.

The regime of enforcement of the custodial sentence is established by the above mentioned commission in its first meeting after the period of quarantine and observation ended or after the application of the temporary regime. For the establishment of the enforcement regime the following legal criteria shall be taken into consideration:

a) Duration of the custodial sentence;
b) Degree of risk of the convicted person;
c) Criminal record;
d) Age and state of health of the convicted person;
e) The convicted person's conduct, positive or negative, including in previous detention periods;
f) The needs identified and the abilities of the convicted person, necessary for the inclusion in educational, psychological assistance and social assistance programs;
g) The convicted person's wish to work and to participate in educational, cultural, therapeutical, psychological support and social assistance activities, moral and religious activities, schooling and vocational training.

The change of the enforcement regime is decided by the same commission as when the enforcement regime is established. The commission has the obligation after enforcement of 6 years and 6 months, in case of life imprisonment, of one fifth of the imprisonment punishment, as well as when the reason which determined the non-application of the maximum security regime ended, to analyze the conduct of the convicted person and his/her efforts for social reintegration and to draft a report which shall be communicated to the convicted person based on his/her signature.

The change of the regime of enforcement of custodial sentences into the immediate lower one in terms of its hardship can be ordered, taking into consideration the type and way in which the crime was committed, if the convicted person:

a) had a good conduct as emerging from the rewards granted and sanctions applied and did not do anything which indicates a constant negative behavior;
b) made the necessary efforts within the work performed or got actively involved in the activities established in the Individual plan for assessment and educational and therapeutical intervention.

The change of the enforcement regime into a stricter one can be ordered in any stage of enforcement if the convicted person committed a crime sau was subject to a disciplinary sanction for a very serious disciplinary misconduct or several acts of serious disciplinary misconduct.

Both in case of the establishment of the enforcement regime and in case of the change of the enforcement regime, the decision of the commission may be challenged, under the law. Against this background, prisoners may complain against the decision of the commission before the enforcement judge and then they may challenge the enforcement judge's decision before the court.

In the sense of the recommendations in the CPT Report, the National Administration of Penitenciaries shall propose the amendments of the provisions of Law no. 254/2013, as follows: „In article 39 para. (3) shall be amended and shall have the following wording: *(3)*

*The decision for determining the regime of enforcement of custodial penalties shall be notified to the sentenced person together with an indication of the **grounds for the decision**, existing means of redress and time for exercising it. Against the manner of determining the regime of enforcement, the sentenced person may file a complaint with the judge in charge of the supervision of the deprivation of liberty, within 3 days from the date when the decision establishing the regime of enforcement of custodial sentences was communicated."*

„In article 40, para. (11) shall be amended and shall have the following wording: *(11) The decision for determining the regime of enforcement of custodial penalties shall be notified to the sentenced person together with an indication of the **grounds for the decision**, existing means of redress and time for exercising it. Against the manner of determining the regime of enforcement, the sentenced person may file a complaint with the judge in charge of the supervision of the deprivation of liberty, within 3 days from the date when the decision establishing the regime of enforcement of custodial sentences was communicated."*

After incarceration all persons deprived of their liberty are assessed from an educational, psychological and social point of view, whereas the conclusions of the assessment are the basis for the *Individual plan for assessment and educational and therapeutical intervention* in which the activities and programmes are included which eah convicted person will be involved in for the purpose of his/her social reintegration. The assessment of the needs and risks, as well as the individualized assistance allow for the mitigation in real time of the potential negative influences of overcrowding and, in general, of conditions of detention.
The programmes or activities included as recommendations in the *Individual plan for assessment and educational and therapeutical intervention* are considered mandatory for the convicted persons after they are informed of and sign the participation agreement.

Paragraph 81

The National Prison Administration's main line of action is to revise and develop the *Social Reintegration Programs and Activities Offer,* corresponding to all fields of recuperative intervention. This is a goal of the National Strategy for Social Reintegration, approved by Government Decision no. 389/2015.

As regards the inclusion of young adults under custody in activities, at the level of prisons, mention is to be made that this is a "vulnerable category", to be addressed with priority from the perspective of educational, psychological assistance and social assistance endeavours.

At the level of educational centres and detention centres, current activities are scheduled and organised in observance of the following priority lines of action, as laid down in *Order no. 1322/C/2017 of the Minister of Justice approving the Regulation for the organization and performance of educational activities and programs, of psychological assistance and social assistance in detention facilities subordinated to the National Prison Administration:*

- the minimum time spent by the accommodated persons outside their rooms, involved in activities and programs, shall be of 6 hours, so as to benefit from an appropriate degree of social interaction;

- accommodated persons shall take part every day in physical education or sports activities, and every week, they shall be involved in occupational activities, such as hobbies;
- at least once during a calendar month, there shall be a contest of an educational nature organised, to be attended by accommodated persons;
- access to the library is allowed, every week, for all accommodated persons, and at least once a month, book-related activities shall be organised for them;
- in the centre or in the community, artistic or culture dissemination activities shall be organised every month, in cooperation with public institutions, non-governmental organizations or associations, the costs of such activities to be supported, as the case may be, by the management of the facility or outside partners;
- with a view to fostering their relationship with the civil society, in educational centres and detention centres, activities shall be organised, in observance of the law, in the community intended to the accommodated persons, with a monthly frequency.

b. the regime for pre-trial prisoners (men and women)

Paragraph 82

The daily schedule specifies, broken down by hours, the work time, the time available to the inmate and rest time, but also the time intended for the performance of administrative-household, cleaning, hygiene, walking, schooling and vocational training activities, educational, psychological and social assistance, religious, sports, recreational activities and the exercise of certain rights.
The planning of activities during the daily schedule is aimed at the inmates spending as much out-of-cell time as possible.

Pre-trial prisoners shall attend, after having been surrendered to the prison, for 21 days, the *Adaptation to deprivation of liberty programme*, during which they shall be informed on the applicable laws in effect, interior order rules, are subject to educational, psychological and social appraisals.

Further on, until a final ruling is issued against them, they may take part in sport – in the sport ground or gym, in semi-structured, religious activities, they may borrow books from the prison library.

Depending on the identified needs, pre-trial prisoners shall benefit from individual counselling in the educational, psychological or social assistance field, as the case may be. In consideration of the fact that pre-trial prisoners are waiting a final ruling, there is no relevance to planning their sentence or including them in long-term endeavours. Upon demand, pre-trial prisoners may attend, as “audience”, any social reintegration actions, in observance of custody legality and safety criteria.

Mention is to be made that, on 29 November 2018, Bacău Prison held in custody 15 young adults (14 men and one woman) on remand, included in various programmes and activities:

- the literacy programme, in respect of persons who cannot be schooled;
- sport, including in the afternoon, in order to extend out-of-cell time;

- moral-religious activities;
- project-based semi-structured activities;
- activities dedicated to illiterate inmates;
- psychological and social counselling;
- self-knowledge and personal development programmes;
- psychology pill.

Galați Prison held in custody, on 29 November 2018, 15 young adults on remand, who attended the following social reintegration endeavours:

- educational programme implemented every day – *Literacy;*
- theme contest – "Saint Andrew the Apostle";
- therapy group – progress, growth and development group "Start now, with what you have!";
- moral-religious counselling;
- psychological counselling;
- educational counselling;
- Group liturgical religious activities;
- Sports (football) – 1 activity/week;

Library activity - 1 activity/week.

c. maximum security regime

Paragraph 83 and 84

The maximum security regime consists of providing strict guarding, escorting, accompanying and supervision measures and restricted freedom of movement for inmates, while conducting educational, cultural, therapeutic activities, psychological counselling and social, moral-religious assistance, schooling and training, allowing the possibility to be transferred in the service regime immediately lower, as degree of severity.
Inmates held in the maximum security regime take part in educational programs and activities, psychological assistance and social assistance, individually or in small groups, in especially arranged premises, under permanent supervision.
According to the applicable criminal laws in force governing the service of sentences, the maximum security regime initially applies to prisoners serving life sentences or sentences of more than 13 years, as well as to prisoners posing a risk to the security of the establishment.
Exceptionally, the nature and manner of committing the offence, as well as sentenced in person may lead to the inclusion of the sentenced person into the regime of enforcement right below as regards the degree of severity (closed regime).

The maximum security regime shall not apply to the sentenced prisoners:
a) who are older than 65;
b) pregnant women or women nursing children up to one year of age;
c) persons falling in the 1st degree of invalidity, but also those suffering from severe mobility disorders.

In determining the risk posed by an inmate to the security of the prison establishment, the following criteria shall be taken into consideration:
a) the criminal offence was committed by using fire weapons or cruelty;
b) prison break or abandoning the work place in this sentence or in any previous sentences;
c) attempted prison break, forcing the safety devices or destruction of safety systems;
d) unjustified failure by the inmate to come back at the time and date specified in the prison leave notice;
e) bringing in, holding or trafficking in weapons, explosive materials, drugs, toxic substances or any other items and substances which endanger the safety of the prison, of the missions or of the persons;
f) instigating, influencing or taking part in any manner whatsoever the occurrence of revolts or taking of hostages;
g) taking part in organised criminal groups, coordinating criminal or terrorist activities;
h) violence acts resulting in grievous bodily harm or death, against the staff or other persons;
i) information on the psycho-social profile, deriving from the assessments required by the relevant regulations in force.

The initial assessment of the inmates' risk for the safety of the prison shall be conducted by the Commission for determining, calculating and changing the regime for the service of custodial sentences, upon the calculation and determination of the service regime.
Upon determining the risk for prison safety, the commission shall convene once every 6 months and reassess the status of persons in this category in light of the criteria listed above, with a view to maintaining or ceasing the measures specifically relating to the risk for prison safety. In respect of sentences shorter than 2 years and 6 months, the term for reassessing the risk to prison safety is as determined in accordance with Article 40 (2) of Law no. 254/2013 on the service of sentences (after having served one fifth of the duration of the prison sentence).
Inmates shall only be included in the category of those posing a risk to the prison safety after the decision determining or changing the service regime has become enforceable, in accordance with the law.

Paragraph 85

The envisaged consideration relates to the regulatory policy, in criminal service matters. Emphasis shall be placed on a future endeavour to amend and supplement the framework law in this field, more specifically Law no. 254/2013.
Nevertheless, mention is to be made that no one is automatically placed in the maximum security regime.

Thus, in accordance with Article 34 (1) of Law no. 254/2013, the maximum security regime initially applies to prisoners serving life sentences or sentences of more than 13 years, as well as to prisoners posing a risk to the security of the establishment.
Nevertheless, the assessment shall be conducted on a case by case basis, because Article 34 (1) of Law no. 254/2013 allows the classification of persons in the closed regime: *"Exceptionally, the nature and manner of committing the offence, as well as sentenced in person may lead to the inclusion of the sentenced person into the regime of enforcement*

right below as regards the degree of severity, under the terms established by the Regulation implementing this Law."

Furthermore, **Article 35 of Law no. 254/2013** provides several categories of persons which shall not fall, *ope legis*, in the **maximum security regime:**

a) prisoners older than 65;
b) pregnant women or women nursing children up to one year of age;
c) persons falling in the 1st degree of invalidity, but also those suffering from severe mobility disorders.

We further note that the domestic regulation complies with ***Recommendation Rec(2003)23 of the Committee of Ministers to member states on the management by prison administrations of life sentence and other long-term prisoners*, considering that long-term prisoners consist of persons sentenced to single or resulting sentences of 5 years or more.**

Now, in light of the fact that the domestic law refers to 13-year sentences, it excludes 3 categories of inmates, allows the classification of inmates sentenced to more than 13 years in the closed regime, we believe that this regulation cannot be deemed to be excessive.

As regards the status of persons classified in the maximum security regime, as indicated herein above, this category covers persons having committed highly severe offences – imprisonment for more than 13 years (unlike the CoE assessment, in the interpretation of which long-term sentences are those starting from 5 years imprisonment.

Additionally, having regard to the standards set forth in EPR *("27.1 Every prisoner shall be provided with the opportunity of at least one hour of exercise every day in the open air, if the weather permits.*

27.2 When the weather is inclement alternative arrangements shall be made to allow prisoners to exercise.") and Mandela Rules *("Rule 23 1. Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.")*, we believe that the domestic standards are better, since they allow more out-of-cell time.

Having regard to the provisions of Articles 57 and 58 of Government Decision no. 157/2016:

*"Article 57. **Daily schedule***

*(…) (2) Prisoners in the maximum security regime who are not employed or do not take part in schooling or training shall be involved, **within minimum 3 hours per day, activities such as walking, educative activities, psychological assistance and social assistance, sport and religious activities**. (…)*

*Art. 58. **Walking***

*(1) Prisoners in the maximum security regime who are not employed, do not take part in educational, psychological assistance and social assistance programmes or do not attend schooling or training are entitled to **at least two hours' daily walk, in especially arranged yards outdoor**.*

*(2) Prisoners in the maximum security regime who are employed, take part in educational, psychological assistance and social assistance programmes or attend schooling and training are entitled to **at least one hour walk per days**.*

(3) Prisoners in the maximum security regime who are serving disciplinary sentences in isolation, are entitled to at least one hour walk per day, in especially arranged yards outdoor. (…)"

In this context, the legal text refers to the manner in which activities may be performed in case of inmates serving their sentences in closed and maximum security regimes.
Prisoners in closed regime attend educational, cultural, therapeutic, psychological counselling and social assistance, moral-religious, schooling and training activities, in groups, inside the prison, under guard and supervision.
Inmates in maximum security regime take part in educational, de psychological assistance and social assistance programmes and activities, individually or in small groups, in especially arranged areas, under permanent supervision.
Prisoners in the maximum security regime who are not employed or do not take part in schooling or training activities shall undertake, for minimum 3 hours per day, walking, educational activities, psychological assistance and social assistance, sport and religious activities.
At the level of the prison system, a *Standardised offer of educational, psychological assistance and social assistance activities and programmes* is available, which is diversified and customised every year, by each and every prison facility, taking into account the beneficiaries' needs.

At the end of 2017, the *Offer* included 87 programmes and activities broken down into three fields: Education (53 programmes, out of which 8 for minors, 2 for young adults and 4 for women); psychological assistance (13 programmes – relevant assistance, 5 programmes – general assistance and 4 therapy communities dedicated to former drug addicts, in particular, 1 therapy centre for women with depression, anxiety and personality disorders); social assistance (7 programmes and 5 types of social treatment groups).
The standardised offer also includes short-term semi-structured activities, allowing to roll over as many inmates as possible, with a view to increasing out-of-cell time. The intervention tiers cover: fostering knowledge, creativity, development and exercise of practical, artistic, literary, musical, plastic arts, technical skills, maintaining the appropriate muscle and mental tone, through sports and recreational activities, moral and religious assistance, anger management, restructuring of behaviour and critical thinking development, but also facilitating social insertion, including by involvement of the community support network, some of these programmes being initiatives of institutional partners, implemented by the latter.
Less than homogeneous representation of inmates' attendance in such programmes and activities is however influenced by other factors, too: architectural particulars of the detention premises, access to human and material resources, level of socio-economic development of the prison insertion area, etc.
At the level of the system, there is permanent concern to boost the involvement of prisoners serving their sentence in the maximum security regime in activities able to facilitate their social reintegration.

Paragraph 86

The concern expressed here pertains to the regulatory policy in criminal service matters. Emphasis shall be placed on a future endeavour to amend and supplement the framework law in this field, more specifically Law no. 254/2013.

Whereas we may accept the idea that assessment inside a service regime in connection with custodial sentences should occur more often (for instance, every 6 months), we have trouble accepting the regulation to allow the change of sentence service regimes every 6 months.

Mention is to be made that such a possibility, which exists in the Romanian law, in reliance upon the provisions of Law no. 275/2006 (until 2014), did not yield the outcome which you expected, and a situation occurred where prisoners convicted to extremely severe sentences (life detention, in particular, 30 years imprisonment) came to be classified in the open regime within one and a half years (transfer from one regime to another could occur after the lapse of minimum 6 months).

Besides, this solution was also criticised in a (RO – EU) assistance project between 2009 and 2010 – **Project for Institutional Twinning between Romania and Germany** TF 2007/19343.01.08 – "Assistance for enhancing the respect of human rights in prisons and improving the efficiency of the Romanian penitentiary system": *"Observing that the assessment of the serving regime is conducted at fixed periods of time, of maximum 6 months, and the legal conditions for transfer to a more lenient regime exclusively relate to the prisoners' conduct,* ***the situation may be reached where, in a relatively short time span, an inmate could be transferred from the maximum security regime to semi-opened or even opened regimes****.*[18]*"*

Now, reverting to the previous regulation, where persons sentenced to extremely severe sentences come to be classified in the open regime within one year and, this would contradict the very purpose of the sentence and fundamentally impair the re-education and social reintegration of the sentenced person, while it is obvious that, having regard to the severity of the sentence, a period of 6 months (out of a hypothetical period of 30 years) is irrelevant when determining a good knowledge of the sentenced person, and, within short periods of time, which do not allow an actual opportunity to consistently know and assess the inmate, such inmate could be "freed", in an open regime.

In such cases, it would also be difficult to argue that proof of social reintegration is sufficient after 6 months, when compared to the long period left to serve from the sentence.

At the same time, in respect of each inmate, including those classified to serve their sentence in maximum security regime, a *Customised plan of assessment and educational and therapeutic intervention* is drawn up, setting forth the educational, psychological assistance and social assistance activities and programmes in which they are to be involved during their detention, in accordance with the legal provisions (Article 107 (3) of Government Decision no. 157/2016). The above-mentioned *Plan* shall be supplemented and amended whenever necessary, depending on the needs identified upon specialised assessments. *Customised plans* shall regularly be reviewed (necessarily before the commission meetings) and, depending on the degree to which goals are met in respect of various types of activities/programmes in which they were involved, new recommendations may be issued. The revised version of the *Plan* contains the consent of the management of the detention facility, by the signatures of commission members, but also the informed consent of the person deprived of liberty, who shall also sign it.

[18] S.I. Ilina, C.I. Ciobotaru, M. Fink, K. Hobe, Guidelines for the activity of delegated judges and prison staff, Project for Institutional Twinning between Romania and Germany TF 2007/19343.01.08 – "Assistance for enhancing the respect of human rights in prisons and improving the efficiency of the Romanian penitentiary system", Bucharest, 2010

The methodology on rewards granted for persons in the custody of the National Prison Administration, in reliance upon the *Credit system for inmates taking part in educational, psychological and social assistance activities and programmes, in lucrative activities, but also in case of risk* was implemented in 2013, at the level of the system, by decision of the general manager. This is a method to emphasize the endeavours of a person during the service of their sentence, but also negative behaviours penalised. The credit system is a unitary, objective, predictable system, increasing the awareness of prisoners and conferring the custodial sentence a recuperative feature, through involvement in educational, psychological and social assistance activities and programmes, in lucrative activities, but also in risk mitigation, thus boosting their motivation in adopting a prosocial behaviour.

Having regard to the recommendation in the CPT Report, the National Prison Administration will look into the opportunities to increase the efficiency of the current credit system for inmates taking part in educational, psychological and social assistance activities and programmes, in lucrative activities, but also in case of risk.

At the level of the National Prison Administration, there is under way a revisiting of the *bill of Law for amending and supplementing Law no. 254/2013 on the enforcement of sentences and of measures involving deprivation of liberty ordered by the judicial bodies during criminal proceedings*. By the end of the ongoing year, the bill of law will be submitted to the Ministry of Justice, to be completed and implemented.
In this context, the laws governing the service of criminal sentences will be amended, with a view to stipulating the obligation for the management of the detention facility to notify, in writing, to each sentenced person, the reasons having underlain the decision to impose or to change the service regime of their custodial sentences.

Paragraph 87

The measure consisting of the use of handcuffs has, according to the legal provisions, an exceptional nature; please see, for example:
- Art. 16 of Law no. 254/2013
"(1) The use of handcuffs or other means of restraint shall only be permitted in situations where other measures to maintain the order and discipline among inmates have failed to be effective in one of the following situations:
a) in order to prevent the escape of inmates during the transport of inmates;
b) in order to protect inmates from self-harming or in order to prevent injury to other persons or damage to property;
c) in order to restore the order and discipline, as a result of opposition or resistance of inmates to a disposition of the judicial bodies or staff of the place of detention.
(2) The means of restraint that may be used for the purpose specified in paragraph (1) shall be established by the regulation provided in Article 15 (3).
(3) The use of means of restraint shall only be permitted during the period for which it is strictly necessary.
(4) The use of means of restraint shall be carried out gradually, without exceeding the actual needs of restraining of inmates, and shall cease as soon as the purpose of the intervention was achieved.

(5) The use of means of restraint must have been previously authorised by the director of the penitentiary, except for the cases where the emergency does not allow it, a situation which is immediately notified to the director.
(6) The judiciary bodies shall take into consideration the application, maintenance or removal of means of restraint, while the inmates are brought before them."

- Article 26 of Law no. 254/2013
"Using the means of restraint and weapons, the temporary accommodation of the inmate in the protection room and the surveillance through cameras shall be brought, in writing, to the knowledge of the judge in charge of the supervision of deprivation of liberty."

- Article 15 of **Decision no. 157/2016 approving the Regulation for the enforcement of Law no. 254/2013 on the enforcement of sentences and of measures involving deprivation of liberty ordered by the judicial bodies during criminal proceedings**
"(1) The use of means of restraint shall be carried out gradually, without exceeding the actual needs of restraining of inmates, and shall cease as soon as the purpose of the intervention was achieved, in observance of the provisions of Article 16 of the Law.
(2) The standard intervention and restraint procedures are set forth in the regulation specified in Article 15 (3) of the Law.
(3) In case of bedridden inmates, admitted to a healthcare facility, metallic handcuffs may not be used. The model for means of restraint for bedridden persons used in healthcare facilities and the manner in which they are to be used shall be stipulated in the regulation referred to in Article 15 (3) of the Law.
(4) Physical force maybe used, in accordance with the legal provisions, in cases of self-defence, escape or active or passive physical resistance against an order stipulated by Law, this regulation and the pieces of legislation subsequent thereof.
(5) Any intervention taking place in observance of the proportionality principle between the intervention method and the cause having generated it, while not using unreasonable violence.
(6) The decision of the general director of the National Prison Administration shall set forth the method for filling out the registry stipulated in Article 106 (1) (c) of the Law."

- Article 26 of **Decision no. 157/2016**
"Using the means of restraint and weapons, the temporary accommodation of the inmate in the protection room and the surveillance through cameras shall be brought, in writing, to the knowledge of the judge in charge of the supervision of deprivation of liberty, with celerity, by means of a written letter."

- The risk assessment criteria and procedure– Articles 27, 28 of **Decision no. 157/2016**
- Article 62 and Article 254 – on escorting and accompanying persons deprived of liberty, of Decision no. 157/2016
- Order no. 1676/2010 approving the Regulation on the safety of detention facilities subordinated to the National Prison Administration.

As regards the regulatory intentions, mention is to be made that the draft Order of the Minister of Justice approving the Regulation governing the safety of detention facilities subordinated to the National Prison Administration contained texts emphasising the exceptional nature of this measure, as follows:

*"**Article 12**. (3) Using handcuffs or other means of restraint listed in this Regulation is only allowed in the cases stipulated by law, where other measures for maintaining order and discipline among inmates proved inefficient, the applicable procedures being as described in the manual referred to in Article 16 (r) of this Regulation."*

Section 3. Taking prisoners out of their cells

*"**Article 110**. (1) Taking persons deprived of liberty out of their cells, with a view to undertaking the activities set out in the daily schedule, shall be performed by the wards.*
(2) The delivery-receipt of persons deprived of liberty moving outside the section shall take place in the access area, after they are registered in the special registry dedicated thereto and confirmed by signature of the recipient person.
(3) Persons deprived of liberty subject to the maximum security regime and in respect of which it is estimated that increased security measures are required, the persons deprived of liberty against which the disciplinary measure of isolation is imposed, accommodated in the protection room, as well as those posing a risk to prison safety shall be taken out of their cells, as a matter of rule, in the presence of the head of section/head of shift or of a person appointed by the manager of the detention facility and, necessarily, in the presence of a sufficient number of members of personnel, appropriately equipped with means of restraint, alarm and communication.
(4) In reliance upon the authorization issued by the manager of the detention facility, the categories of persons deprived of liberty, set forth in paragraph (3) may be subject to means of restraint, in accordance with the legal provisions.
(5) The means of restraint may also be imposed against persons deprived of liberty who are potentially aggressive to other persons, subject to the written approval of the manager of the detention facility, in reliance upon the proposals/notices issued by the head of section or other persons conducting direct activities with inmates.
(6) Regularly, but no later than 7 days after the application date or after the date of the last review, the status of persons in relation to whom means of restraint were ordered inside the detention facility, upon being taken out of their cell, will be revisited by the head of the detention section who, after consultation with the psychologist and educator of the section, suggests to cease/maintain/change the safety measures enforced. An analysis shall be conducted for each and every person deprived of liberty and shall contain the legal, disciplinary status, the reason for which the means of restraint were applied, their application along the routes and, as regards the activities in which they are involved, the suggestions to cease/maintain/change the safety measures enforced and shall be kept with the head of the safety department.
(7) The measures proposed by the head of the detention section, in accordance with the conditions of paragraph (6) shall be endorsed by the head of the prison regime enforcement department, head of the detention safety department, deputy manager for safety of detention and prison regime and approved by the prison warden.
(8) As regards the enforcement or cessation of safety measures, stipulations shall be made in operative documents, but also in the Escorting History Form."

*"**Article 190**. The staff appointed to escort persons deprived of liberty shall be endowed with portable video cameras, connection means, means of restraint and with individual alarm-warning devices, in case of jeopardy or upon the occurrence of incidents, connected to the dispatch unit of the detention facility, in accordance with Annex no. 8."*

*"**Article 229**. (1) In undertaking escort, guard and supervision missions for persons deprived of liberty brought to the seat of judicial bodies, means of restraint may be used as a safety measure, as follows:*
a) in connection with persons deprived of liberty, irrespective of the regime in which they serve their penalties, who are in a visible state of mental distress, who hurt themselves, threat to hurt themselves, the conduct or disciplinary history of which may endanger the life or physical integrity of staff members, their own, of other persons, but also in the case of those refusing to obey legal orders issued by the staff of the escort or by judicial bodies;
b) during the movement from the means of transport to the remand rooms and from the remand rooms to court rooms, when movement takes place on routes shared with the public or in justified cases, subject to the warden's approval, when movement cannot take place in a safe manner.
(2) Persons deprived of liberty suffering from severe mobility medical disorders and women who are far along in their pregnancy are exempted from the enforcement of means of restraint, when taken outside the detention facility.
(3) The type of means of restraint used in escort, guard and supervision missions in connection with persons deprived of liberty brought to the offices of judiciary bodies is stipulated in Article 12, save for letters (e) and (m) hereof.
(4) In respect of persons deprived of liberty posing a risk to prison safety, remote electronic supervision systems may also be used."

CHAPTER IV. Standard intervention and restraint procedures
*"**Article 332**. (1) Intervention and restraint procedures shall take place in observance of the provisions of Article 16 of the Law.*
(2) Intervention and restraint procedures shall be used with a view to settle operational and critical incidents and shall only be used for as long as they are necessary and commensurate with the summary of facts.
(3) Incidents are of two types: operational and critical.
(4) Associated structures for special security, restraint, and control measures are as follows:
a) intervention brigades;
b) operative groups;
c) operative teams."

"Article 334. (1) The appropriate commensurate use of intervention and restraint procedures is a matter of fact and shall be analysed on a case by case basis, having regard to the action itself, depending upon the circumstances.
(2) The factors to be taken into account when analysing the commensurate nature are as follows:
a) the number, physical size, age and gender of the person deprived of liberty, when compared to the staff who is forced to make use of force;
b) whether there are any weapons whatsoever at the site of the incident;
c) the time, venue or other relevant items."

*"**Article 336**. (1) The use of intervention and restraint procedures shall always stop after order disturbed by the inappropriate conduct of the person deprived of liberty is restored.*
(2) The use of intervention and restraint procedures, depending on the circumstances, is commensurate if the use of other efficient or less harmful alternatives could not restore the rule of law."

*"**Article 342**. The principles underlying the use of means of restraint by the associated structures for special security, restraint, and control measures, and the manner in which they are undertaken during an operational and critical incident are as follows:*
a) The principle of legality– any measure enforced with a view to maintaining order and discipline shall comply with the applicable legal provisions in force;
b) The principle of security – maintaining order and discipline in prisons is absolutely necessary upon the conduct of guard, escort, and supervision missions, both inside, and outside the detention facility;
c) The principle of commensurate use of force – physical force and means provided to them are used only where the unlawful actions of the person deprived of liberty could not be annihilated through the other non-violent means;
d) The principle graduality – means that the staff should gradually use the restraint and control means and techniques;
e) The principle least surprise – means to previously notify and summon the person on the impending use of force and means provided to them, and provide the time required to cease any unlawful action;
f) The principle of minimum risk – consists of selecting the most appropriate means of intervention with a view to avoiding any harm to physical integrity;
g) The principle of protecting human beings – means to give first aid in case of any harm to the physical integrity or health, but also refraining from using unreasonable violence."

The criteria and procedure to determine the risk are set out in Articles 27 - 29 of the Regulation for the implementation of Law no. 254/2013 on the enforcement of sentences and of measures involving deprivation of liberty ordered by the judicial bodies during criminal proceedings, as approved by Government Decision no. 157/2016.

As regards the specific case of Gherla Prison, as described footnote no. 62 of the CPT report, mention is to be made that inmates designated as high-risk for the safety of the detention facility are not handcuffed in the case where they leave their cell and move inside the detention facility, save for exceptional cases. For instance, during 2018, decisions were issued to enforce means of restraint when moving to the activities inside the detention facility for a single person deprived of liberty, following his involvement in a severe operational incident (unauthorised climbing of heights). In February 2018, in Gherla Prison, there have been 21 inmates posing risks to prison safety, at present, their number is of 7, and for 6 of them, no decisions have been issued to enforce means of restraint while moving inside the prison. Even where decisions have been issued to enforce means of restraint against inmates posing risks to prison safety, they are regularly revised. **In Gherla Prison, during medical examinations, inmates posing risks for prison safety are not handcuffed.**

The draft Regulation on the safety of detention facilities subordinated to the National Prison Administration was posted on the website of the Ministry of Justice on 28 August 2018, for public debate purposes. **The above-mentioned draft contains provisions concerning the regular analysis of safety measures ordered by the management of the detention facility against their prisoners, in observance of the case-law of the European Court of Human Rights,** as follows:

"Article 110

(1) Persons deprived of liberty shall be taken out of their cells, in view of performing the activities set forth in the daily schedule, by the wardens.

(...)

(6) ***Regularly, but no later than 7 days after the application date or after the date of the last review, the status of persons in relation to whom means of restraint were ordered inside the detention facility, upon being taken out of their cell, will be revisited by the head of the detention section who, after consultation with the psychologist and educator of the section, suggests to cease/maintain/change the safety measures enforced. An analysis shall be conducted for each and every person deprived of liberty and shall contain the legal, disciplinary status, the reason for which the means of restraint were applied, their application along the routes and, as regards the activities in which they are involved, the suggestions to cease/maintain/change the safety measures enforced and shall be kept with the head of the safety department."***

d. material conditions

Paragraphs 88 and 89

In respect of this concern, mention is to be made that, during cold periods, detention rooms in Aiud Prison are appropriately heated, in line with the heating schedule approved by the prison management, thus providing a suitable temperature. The compliance with the heating schedule and the cell temperature is permanently monitored.

The windows of cells and sanitary annexes inside Aiud Prison are calibrated so that they provide appropriate natural lighting and suitable ventilation (provided that they are opened in order to air the interior). Mould and high moisture existing in certain rooms is the result of malfunction and/or damages occurred in the plumbing or heating installations, which have led to infiltrations in the thick walls of multi-storied buildings, such effects being extremely difficult to remove in time, and the remedy of which is a permanent concern.

Except for the cells in Sections E7 and E8 (building undergoing intervention works such as investigations), all other cells are included in the "Annual Plan for Current Repairs and Maintenance" in 2018, in particular 188 rooms in sections E1, E2, E3 and E4 (Cellular), 47 cells in sections E5 and E6, 12 cells in section E9 and 2 cells in section E10. Since the CPT visit, which took place in February 2018 until 29 November 2018, current repair works have been performed in 206 cells, consisting of repairs on the inside finishing (plastering, priming, painting, coating of wood joinery, and wall and floor tiles in the sanitary annexes, repairs of titivated cement floors, repairs of the wood or PVC joinery), repairs of plumbing, heating and electrical installations, but also repair beds and metallic grids, and, by the end of 2018, all envisaged cells will be repaired.

Kindly note that, with a view to providing the appropriate detention conditions by means of current repair and maintenance works inside in Aiud Prison, budget funds have been allocated, amounting to RON 202,800 for 2016, RON 98,000 for 2017 and RON 272,118 for 2018.

In reality, having regard to the age and wear and tear of the detention buildings in Aiud Prison, for the purpose of maintaining such buildings at the appropriate level of key requirements and providing their functions, but also for improving the detention conditions,

the general condition of cells is maintained at the required level through continuous maintenance and current repair works, through annual plans.

The facility will take steps to include all detention wings on the investment list of the prison system, in order to allow the performance of intervention works such as investments, so that they become compliant with the minimum detention requirements laid down in the relevant laws in force.

The measure to close the detention facility is not a solution able to be implemented, considering the lack of accommodation premises in the prison system, which would result in an even higher level of overcrowding in the other prison facilities.

Paragraph 90

In financing agreement no. 5/29699 of 11 April 2014 on the implementation of the project "*Increasing the capacity of the prison for minors and young adults in Bacău to comply with the relevant international instruments on human rights*", in program R023 "*Correctional services, including penalties not depriving of liberty*", funded through the Norwegian Financial Mechanism 2009-2014, but also the works contract for building the target "*Upgrading the sections for young adults in Bacău Prison*" stipulated that, out of the two detention sections built, one will be especially built and arranged for the open regime, and the other one for the semi-open regime, and "*any departure from the legality, regularity and compliance with the domestic and/or European provisions, but also with the provisions of the contracts or other arrangements duly concluded in reliance upon such provisions*" shall be deemed to be an irregularity.
Mention is to be made that persons deprived of liberty take part in activities and programmes, depending on the educational, social and psychological assistance requirements identified, in reliance upon a *Customised Plan* drawn up further to assessments, but also in accordance with their participation consent.
Moreover, in practice, there are frequent the cases where inmates refuse to take part in various social reintegration activities, for instance, in favour of TV programmes which they wanted to watch or for other personal reasons.
On 29 November 2018, Bacău Prison held in custody 14 young adults on remand, who were accommodated in cells, 10 persons in one cell and 4 persons in another cell, each benefiting from 2.5 sqm of individual area. The management of the detention facility permanently takes steps to increase the number of accommodation premises dedicated to young adults on remand, depending on the evolution of the number of persons deprived of liberty, both based on final sentence, and on remand.

The general manager of the National Prison Administration approved the change of profiling for Bacău Prison, a change that will allow to allocate, for young adults on remand, a number of 2 cells, with an accommodation capacity of 10 places, calculated in reference to the provision of an individual area of 4 sqm.

Paragraph 91

At the beginning of February 2018, the National Prison Administration requested all subordinated units to order the following measures meant to improve the accommodation conditions: remove the beds installed at the 3rd level, as far as practicably possible; undertake specific activities, with a view to removing the excess luggage in the cells and move them to the unit's storage; manufacture and place ladders ensuring easy access to the upper bed.
In 2017, in each detention wing of Bacău Prison, current repairs were carried out, consisting of plastering, repairs on inside fittings, repairs on the heating, plumbing, and electrical installation. Such activities have also been performed in 2018, but also whenever the inmates which noticed malfunctions. Since the latest visit of CPT, which took place in February 2018 and until 29 November 2018, current repair and maintenance works were performed at the level of all cells of Bacău Prison.

Considering that the plumbing installation in sections E4, E5 and E6 became increasingly damaged over time, at the end of 2017, current repair works have been undertaken on the water supply pipe, but also on the sewerage pipe, because, given the high wear and tear of the pipes, there have been infiltrations from the 2nd floor down to the semi-basement. Furthermore, starting from March of the current year, a working team made up of inmates was set up in the prison unit, aimed at sanitising every cell in section E4.

With a view to providing appropriate detention conditions through current repair and maintenance works, in Bacău Prison, budget funds of RON 81,000 were allocated for 2016, RON 100,800 for 2017, and RON 66,500 for 2018.
As regards the existence of insects, mention is to be made that, in 2017, at the level of this unit, 3 general disinfection operations have been conducted by a specialised company, the last one over the period ranging between 05 and 15 December 2017. Moreover, disinfection was also performed on a case-by-case basis, by the staff of the facility, under the guidance of the hygienist assistant, whenever a request was made or the existence of insects was noticed. During 2018, a disinfection and pest control operation was conducted by a specialised company, but also 34 individual actions, by the unit staff.

As regards the condition of mattresses, Bacău Prison purchased 486 fireproof mattresses at the end of 2016, which were provided to the inmates on 28 February 2017.

As regards the distribution of beds, the prison management provided to each inmate an individual bed. The bed on the 3rd level was installed approximately 85 cm from the ceiling of the room, the risk for involuntary accident being low. In the doctor's room inside the unit, there were no notifications of accidental trauma caused because of the way in which the beds were located.

Additionally, as regards the provision of tables and chairs for the prisoners to eat their meals, but also an individual lockable space, in the draft budget for 2019, Bacău Prison requested chairs, tables, metallic shelves and sets of metallic beds with drawer and ladder.

Paragraph 92

According to the data recorded by the National Prison Administration, in Galați Prison there are 475 persons deprived of liberty and an occupancy index of the accommodation capacity of 138%, in reference to the requirement to provide an individual living space of 4 sqm. Mention is to be made that decreasing the number of persons deprived of liberty held in Galați Prison will continue, depending on the dynamic of inmates existing in the entire prison system.

In Galați Prison, sanitary annexes corresponding to certain cells contain mould and dampness because of the obsolete drainage system of bathrooms on the upper floors and because of the high number of inmates accommodated in such rooms. The two detention blocks where the prisoners are accommodated have been commissioned starting from 01 November 1995 (maximum security regime), and on 26 October 2001.

All sanitary annexes in Galați Prison are separated from the cells through a PVC door, with panel, or wood joinery, thus ensuring the privacy of their users. No sanitary annex has a bathroom door facing the cell, natural airing is made directly to the outside of the detention building.
Toilets are equipped with 0.75 x 0.40 m windows, made of PVC joinery or wood joinery. They allow airing of sanitary annexes and avoid the formation of mould.
Between 2016 and 2017, current repair works have been performed in 35 cells (works including repairs of plastering, putty finishing, painting, repairs of hydro-insulation and ceramic tiles in the sanitary annexes, replacement of doors, windows, plumbing, lighting, water supply installations, etc.), but also sanitization works in cells and sanitary annexes, whenever required. Since the latest CPT visit, which took place in February 2018 and until 29 November 2018, current repair works have been performed in 24 cells, which included repairs on interior plastering, putty finishing, inside plastering, replacement of joinery existing in sanitary annexes with PVC joinery, painting, repairs of wall and floor tiles, replacement of items and elements of the plumbing (vandal proof) and electrical installations.
Nevertheless, because of the fact that the works have been performed with inmates selected for work (not skilled in the field) under the guidance of the 3 footmen of the unit, the works have been carried out in a rhythm which was not sufficient for covering all works required in the unit.

With a view to ensuring appropriate detention conditions, between 2016 and 2018, in Galați Prison, budget funds were allocated for Article 20.02 – current repairs, amounting to:

- RON 78,200, for 2018;
- RON 98,250, for 2017;
- RON 150,000, for 2016.

During winter, cells are heated by the own heating plant and the distribution network for heating agent. Radiators are made of cast iron, and the number of elements have been determined upon design, depending on the air volume to be heated, the location of the room in reference to the cardinal points, the number of outside/inside walls or the floor on which the cell is located.

According to the provisions of the applicable laws in force, starting from 2018, daily monitoring was performed, by means of thermo-hygrometers, of the cell temperatures during the cold season, and it was found that the heating network is well-designed, the temperature in cells constantly exceeding 19°C. At the level of the unit, there were no cases where heating agent was not supplied to cells.
Starting from 2015, Galați Prison took steps to improve the detention conditions, and thus 200 metallic beds were purchased, with ladder and individual metallic drawer, for keeping private goods, 844 fire-proof polyurethane foam mattresses with cotton cases (the oldest mattresses have been purchased in November 2015), 775 polyurethane foam pillows, 855 wool blankets and other bedding items (sheets, pillow cases, etc.).

The goods which can be received, purchased, kept and used by inmates have been provided in Annex 1 to the Regulation for the implementation of Law no. 254/2013, approved by Government Decision no. 157/2016. In the said annex, bed linen was provided to be white.

Upon request, subject to approval by the management of the unit, inmates may receive, through the Visitation Sector, bed linen and blankets, the colour of which will be determined by means of the applicable laws in force. The white colour of bed linen was set forth for budget reasons and, for hygienic and sanitary purposes, within the meaning that it may easily be washed, together with other items, without the risk of colouring, thus also ensuring saving of resources. Persons deprived of liberty may opt between receiving bed linen from their family members or bed linen provided by Galați Prison.

Each inmate has access to drinking water on a permanent basis, 24 hours per day, without restriction. With a view to improving water quality, the old main water supply pipe was replaced with polyethylene (PEHD) pipe, and inside pipes in detention buildings were replaced with polypropylene (PPR) or metal pipe in the sanitary annex mains. For the purpose of avoiding loss and discontinuance in water supply to cells, all flaws occurred in the plumbing installations are immediately remedied.

Starting from May of 2018, Galați Prison increased the bathing programme, providing an hour and a half hot water to all cells every day.
As for building new accommodation facilities, mention is to be made that the concept notes and design drawings have been approved, in order to build 2 new detention wings.

Paragraph 93

Cells in Gherla Prison are sanitised on a regular basis, as a matter of rule once a year, and, for this purpose, there is a cell dedicated to the relocation of inmates during the performance of sanitization works (room 8A). Upon cell sanitization operations, including repair works and replacement of plumbing or electrical installations are performed.

Since the latest visit of CPT, which took place in February 2018 until 29 November 2018, current repair works were carried out in 32 cells, which included plastering, painting, repairs on hydro-insulation and wall and floor tiles, repairs on the plumbing installation.

With a view to providing appropriate detention conditions through current repair and maintenance works, in Gherla Prison, budgetary funds amounting to RON 490,000 were allocated for 2016, RON 60,000 for 2017 and RON 20,000 for 2018.

Current repair works required to be performed for the purpose of preserving the buildings in the units' property in the best operation and safety conditions for accommodating the inmates, but also to improve the working conditions for staff, may only be performed subject to the approval issued by the Regional Commission for Historical Monuments of Cluj-Napoca and after issuance of building permits, in accordance with the applicable laws in force.

The management of Gherla Prison considers a priority the installation of buzzers in the cells provided with double security railing, in the case where access of inmates to the door is prevented or hindered by the first protection railing.

During the cold season, a temperature of at least 19°C was provided in every room. Temperature is measured every day and recorded in the special registry set up for that purpose.

The cells of Gherla Prison are equipped with two-level beds, starting from April of 2018, and there are no more 3-tier bunk beds in the unit.

Considering that the property of Gherla Prison consists of buildings erected in various periods (1540-2016), with various functions and, consequently, different structural systems, but also because of the obsolete infrastructure of the buildings where inmates are accommodated in Gherla Prison, at the level of detention wings, no other structural changes may be performed allowing to increase the accommodation capacity. In that respect, with a view to building a new detention, state of the art wing, with an accommodation capacity of 300 places (maximum security and closed regimes), there is under way a Feasibility Study drawn up for this investment target.

Paragraph 94

Given that, further to the conclusions deriving from the technical expert appraisal, the detention wing Block A was emptied and closed, re-building operations have commenced, and its demolition was ordered. The status of documentations concerning a new detention building (other than emptied) is undergoing the preparation of Feasibility Study.

As regards the detention wing Block B, mention is to be made that, between 2015 and 2016, with a view to providing appropriate detention conditions, current repair works were performed in cells, consisting of repairs of plasters and painting, but also the inspection and replacement of plumbing, electrical and heating installations. Additionally, in 2017, current repair works have been performed in 16 cells in Sections E1, E3, E7, E8 and E9, but also in the walking yards inside the unit, consisting of repairs of the hydro-insulation and ceramic tiles in sanitary annexes, plaster finishing, painting, repairs of the wood joinery and metallic doors of sanitary annexes, repairs om the plumbing and heating installation.

At the same time, since the latest visit of CPT, which took place in February of 2018 until 29 November 2018, current repair works have been performed in 6 cells of Section E8, 11 cells of Section E9, but also in 12 cells of Section E10, consisting of repairs of metallic doors, plastering, painting, plaster finishing, repairs of ceramic tiles, repairs of the plumbing installation. Additionally, maintenance works have been performed in 81 cells of sections E1, E3, E4, E5, E6, E7, E8, E9, E11. The funds allocated with a view to ensuring suitable detention conditions through current repair or maintenance works, amounted to RON 305,000 for 2016, RON 161,990 for 2017 and RON 473,403 for 2018.
Additionally, at the end of 2016, Iași Prison has purchased 775 fire-proof foam mattresses, with cases.

As regards disinfection and pest control operations, mention is to be made that they have been performed in observance of OMS 119/2014, namely 1 disinfection every quarter and 1 pest control every half year. At the same time, disinfection operations are also conducted on an additional basis, whenever insects are noticed; thus, between 01 January 2017 and 01 November 2018, 4 pest control actions, 7 general disinfection and 33 partial disinfection operations were carried out.

Paragraph 95

As for **Gherla Prison**, please note that the sanitary annexes and cells in Sections E3, E4 and E8 will be sanitised with priority over the other cells inside the unit. Until 29 November 2018, all cells inside Sections 3 and 8 have been sanitised, but also the cells in Detention Section 4.
Mention is to be made that sanitary annexes and accommodation rooms corresponding to the detention wings of Gherla Prison are regularly sanitised, while plumbing installations are permanently in operation.

In respect of **Iași Prison**, in 2018, current repair works have been performed in 17 cells in Detention Wing Block B. Additionally, it is estimated that the commissioning of Detention Wing Block A in 2022, holding approximately 720 new detention places, intended for the maximum security and closed regimes.
The National Prison Administration has ordered its subordinated units to remove any additional beds installed, depending on the number of prisoners, so that to provide a more extensive living space.

Paragraph 96

In March 2018, **Law no. 61/2018 amending and supplementing Government Ordinance no. 26/1994 on food rights, during peacetime, for the personnel in the national defence, public order and national security fields has been enacted**, published in Official Gazette of Romania no. 227 of 14 March 2018.

The above-mentioned piece of legislation achieved an updating of the provisions set forth in *Government Ordinance no. 26/1994* in terms of considerations such as: inserting the phrase "*person deprived of liberty*" in the title of the normative act; removing from the legal text

the phrase "*offenders*", whereas in Romania the deprivation of liberty may not be imposed based on a civil penalty; equalising caloric standards of food rations of persons held in custody or on remand with that of sentenced persons; setting forth minimum caloric standards for food rations of persons deprived of liberty, etc. Law no. 61/2018 set forth the minimum caloric standards of food rations for persons deprived of liberty, based on determinations made by nutrition experts, as regards the daily required caloric intake of a person.

After the enactment of amendments and supplementations to primary laws (Government Ordinance no. 26/1994 on food rights, during peacetime, for the personnel in the national defence, public order and national security fields and of persons deprived of liberty), 2 orders of the Minister of Justice have been drawn up and enacted, completing the reform of the legal frame in respect of the food provided to persons deprived of liberty:

- **Order no. 3146/C/2018 of the Minister of Justice approving the financial values of food rations for persons deprived of liberty**, published in Official Gazette of Romania no. 761 of 4 September 2018.

The above-mentioned order stipulates an increase in the value of financial food rations for persons deprived of liberty. Thus, for instance, from RON 3.76 per day per person, VAT not included, corresponding to the current value of ration 17 (the benchmark norm, to be provided to adults, sentenced to imprisonment or life detention, but also to those against which an educational measure involving deprivation of liberty was imposed), for this food ration, the new value was set at RON 5.51 per day per person, VAT not included.

- **Order no. 3147/C/2018 of the Minister of Justice approving the Regulations for the provision of food rights to persons deprived of liberty in the prison administration system**, published in Official Gazette of Romania no. 761 of 4 September 2018.

With a view to improving the quality of menus served to persons deprived of liberty, Order no. 3147/2018 of the Minister of Justice contains several changes to the structure of food rations and additional clarifications have been set out in connection with feeding the persons deprived of liberty, both those forming the majority of prison population, and for those with specific needs, for instance the followers of other religions, requiring lent food or certain food regimens (vegetarian). Among the novelties added by the normative act, please note: changes in the structure of food rations aimed at leading both to an improved quality of the menus served, and an increase in the financial value of food rations for persons deprived of liberty; drawing up a new classification of the categories of persons deprived of liberty, according to the laws governing the service of criminal sentences; regulations on the preparation methods of food for persons deprived of liberty with special needs, either permanent or temporary.

For instance, in respect of the most representative food ration - ration no.17 for sentenced persons, the financial value increased from RON 4.01 per day per person (VAT included) up to RON 6.00 per day per person (VAT included), in respect of food ration no. 15 for minors from RON 5.83 per day per person (VAT included) up to RON 7.75 per day per person (VAT included) or in respect of food ration no.18 for sick persons and pregnant women, from RON 4.73 per day per person (VAT included) up to RON 6.99 per day per person (VAT included).

The increase in the financial values of food rations allows the qualitative improvement and appropriate diversification of menus served to persons deprived of liberty.
The second order provided qualitative and quantitative changes in the structure of food rations and food supplements, by inserting new food sorts, but also by supplementing existing food rations.

Thus, in respect of food ration no. 17, the following changes were made in the structure of food sorts:

Goods	UoM	Previous ration	Current ration	Difference
"Telemea" cheese	g/day/person	20	40	+20
Beef (new)	g/day/person	-	40	+40
Canned vegetables	g/day/person	45	100	+55
Fresh fruit (new)	g/day/person	-	50	+50
Fresh vegetables	g/day/person	300	400	+100

Mention is to be made that, in accordance with the recommendations of nutrition specialists, minimum and maximum caloric standards were set for each food ration, ensuring the nutritional and energetic requirements for each category of inmates, depending on the efforts made, age and health.

e. exercise yards

Paragraph 97

Walking yards inside Bacău Prison are cleaned every day, by inmates selected for that activity, under the coordination and monitoring of the detention unit staff. The limited area in Bacău Prison influences the size of walking yards and implicitly, the high number of inmates practicing activities inside them.
In Bacău Prison, sports activities and programmes are performed, under the coordination of a sports monitor, specialising in this field, in especially arranged premises, subject to the approval of the unit's physician.

Paragraph 98

In consideration of CPT's findings, in the walking yards of Aiud Prison, low horizontal metal grille mesh will be demolished. Additionally, the unit will take steps with a view to upgrading the walking yards, an activity also involving, in addition to other works, the provision of sanitary annexes and sewerage.

As regards the arrangement of metal mesh in the walking yards inside Iași Prison, mention is to be made that it is only placed above those intended for the maximum security and remand regime, located near the outside fence of the prison.

In light of CPT's findings referring to the walking yards of Gherla Prison, upon completing the construction of the new food block, the current area used for the purpose of preparing inmates' food may be arranged as area intended for walking.

Additionally, in all existing walking yards, sanitization and reconditioning works have been performed on benches in the rest areas. Walking yards provide sheltering arrangements during rain and snowfall, in each yard, there is flowing drinking water and access to public phone.

With a view to complying with CPT's recommendations, prison units will be instructed to remove low metal grilles located in walking yards, insofar as the architectural and safety conditions allow.

4. Women prisoners

Paragraph 99

Between 04 and 07 June 2018, upon instruction of the general manager of the National Prison Administration, in Iași Prison and Bacău Prison, an assessment, support and guidance mission was undertaken by a team of officers within the Directorate for Detention Safety and Prison Regime. Following the above-mentioned mission, the management of the National Prison Administration approved the change in the profile of Bacău Prison, within the meaning that such prison will no longer hold women prisoners, included in semi-open, closed and maximum security regimes for the service of sentences. Women prisoners, included in the above-mentioned regimes for the service of sentences, shall be transferred to other specialised units.

According to the data recorded at the level of the National Prison Administration, on 29 November 2018, Bacău Prison held in custody, an aggregate number of 457 prisoners and an occupancy index in the accommodation capacity of 107%, calculated depending on the provision of an individual living space of 4 sqm.

In each wing of Bacău Prison, in 2017, current repair works were performed, consisting of plastering, repairs of the heating, plumbing and electrical installation. The plumbing installation corresponding to the wing having a height limit of semi-basement + ground floor + 2 floors, hosting detention sections E4, E5 and E6, became increasingly damaged over time, and, in that respect, at the end of 2017 and in March 2018, current repair works were performed on water supply and sewerage pipes, because, following cracks, there were infiltrations in the walls on the 2nd floor down to the demi-basement.
In respect of the presence of insects, disinfection and pest control operations, and the condition of mattresses, the opinion of the institution was extensively detailed in paragraph 90.

As regards the provision of individual hygiene items, in 2016, a new order was prepared and approved in connection with individual and collective cleanliness and hygiene items, an order which laid down the minimum and maximum amounts of hygiene items. According to such new order, the minimum quantities are larger than as stipulated in the old order (*e.g.*: toothbrushes 4 pieces per year, as compared to 2 pieces per year, toothpaste 12 tubes per year, as compared to 6 tubes per year, toilet paper 24 rolls per year, as compared to 12 rolls per year, menstrual pads, 12 packs of 10 items per year, as compared to 6 packs per year, shampoo 6 pieces per year, not provided in the former order, etc.). Individual cleanliness and hygiene items are distributed to inmates every month, in the amounts stipulated in the normative act.

Mention is to be made that, in December of 2017, at an institutional level, a framework agreement was concluded over a period of 2 years, for procuring personal hygiene items, and the individual units will conclude subsequent agreements in that regard. This endeavour will achieve uniformity at the level of the entire system, in respect of providing the same type of items, without any differences among units.

Paragraph 100

The concerns regarding the relocation of women prisoners have been addressed in paragraph 99.

Social reintegration activities and programmes
During observation and quarantine, women undergo specialised assessments, in line with these three fields: education, psychological assistance and social assistance.
The outcome of initial assessment underlie the preparation of the ***Customised plan for educational and therapeutic assessment and intervention***, recording, in the order of their priority, recuperative interventions concerning the prisoner. The *Plan* needs to be dynamic and be subject to regular revision, as the proposed activities are accomplished. Recommendations are worded in such a manner as to allow the assessment of the progress achieved by the beneficiary woman prisoner.

In accordance with the legal provisions and international normative provisions in force, taking into account the psychosomatic particulars of women prisoners, in 2008, the National Prison Administration upheld at the national level, the ***Compendium of educational and psychosocial assistance programmes for women held in detention establishments*.** The programmes in the *Compendium* comply with the women's learning need in the non-formal educational context, and are oriented towards acquiring/training general skills and abilities required for their socio-professional and family integration after serving the custodial sentence.

The compendium includes four programmes:

– Healthy mind in a healthy body – educational programme in the health field (individual and collective hygiene, family planning, prevention of illness, etc.);

– Parental rights and responsibilities – programme for the acquisition and development of parental responsibilities (mother's role in the relationship parent/child, acquiring the abilities to overcome hardship and social vulnerability);

– Parental education – information and education programme in the field of child raising and development (development stages of children, relationship models between mothers and children, corresponding to every stage, etc.);

– Marital and family relationships – information programme in the field of marital and family life (broken down by gender, dysfunctional behaviours in couples, personal institutional resources identified in cases of crisis, possibility for behavioural change).

Despite showcasing such specificity items, the range of recuperative activities and programmes intended for women does not exclude extensive-scope endeavours, providing for learning activities, with differentiated content for each category of inmates– For instance: ***The Education through Sport Programme***.

In addition to the structured-type recuperative endeavours organised in prisons, women prisoners may also take part in occupational and leisure activities. The purposes of this type of activity envisages: fostering knowledge, creativity, the development and exercise of practical, artistic, literary, musical, art, technical skills, but also maintaining appropriate physical and mental tonus.

The relevant laws applicable in this field stipulate that each sentenced person will be allowed minimum one hour of outdoor walk every day, depending on the regime in which the custodial sentence is served, as described in paragraph 95.

The case-law of the European Court of Human Rights stipulates the provision of a minimum individual living space in detention rooms of 4 sqm for each inmate. Nevertheless, in the case *Mursic v. Croatia*, the Court ruled that providing a living space of 3 sqm, compensated through administrative measures, within the meaning that more out-of-cell time is provided, **does not amount to inhuman or degrading treatment.**

In order to compensate for the lack of living space of 4 sqm, inmates may take part in activities conducted outside their cells, the daily schedule being differentiated depending on the profile of the prison, on the regime in which the sentence is served, on the age, health, involvement in lucrative or other activities, season, but also depending on the days of rest.

In accordance with the provisions of the *Regulation for the implementation of Law no. 254/2013, approved by Government Decision no. 157/2016*, in respect of the four detention regimes – maximum safety, closed, semi-open and open-, the following are stipulated:

– Persons deprived of liberty classified in the *maximum security regime*, who are not employed or do not take part in schooling or training activities, shall undertake, within minimum 3 hours per day, walking, educational, psychological assistance and social assistance, sport and religious activities.

– *Prisoners in the closed regime* who, for various reasons, are not used for work, in schooling and training activities, shall undertake walking, education, psychological assistance and social assistance, sport and religious activities, within minimum 4 hours per day. Outside the detention facility, educational and cultural activities may be performed, with inmates in the closed regime, under continuous guard and supervision, subject to approval of prison warden.

– In the *semi-open regime*, cell doors are open throughout the day, and inmates may organize their free time and become involved in administrative-household activities, under supervision, in observance of the schedule set by the administration. Thus, inmates in the semi-open regime may spend their free time outside their cell, throughout the day, and take part in activities and programmes dedicated to social reintegration, but also in activities

relating to the exercise of their rights, and will only go back to their cells for meals and before the night call. Sentenced persons who serve their sentence in semi-open regime may work and conduct activities in the field of social reintegration, outside the prison, under supervision.

– In the *open regime*, cell doors are permanently opened (day and night), save for the time necessary for serving the meals or performing administrative activities (organization and performance of calls, other exceptional cases). Open regime affords inmates with the possibility to move unaccompanied inside the detention facility, to work and to attend educational, cultural, therapeutic, psychological counselling and social assistance, moral-religious, schooling and training activities, outside the detention facility, without supervision, and shall have an obligation to go back to their accommodation place at the end of the schedule.

Consequently, the law governing the service of sentences and of measures involving deprivation of liberty ordered by the judicial bodies during criminal proceedings sets forth the minimum walking time which prison units need to provide to persons deprived of liberty, and the management of such units will maximize such walking time, depending on the architectural features.

In this context, mention is to be made that this recommendation will be taken into account in preparing the bill of Law for amending and supplementing Law no. 254/2013, on which occasion the timeliness to increase the minimum time allocated for walking activities every day will be reviewed.

Paragraph 101

Matters of interest referring to the accommodation of women prisoners in Bacău Prison have been extensively detailed in paragraph 99.
According to the applicable laws in force, the prison where the sentenced person will serve their custodial sentence is determined by the National Prison Administration. In determining the prison, consideration shall be given that it is located as close as possible to the residing town of the sentenced person, also taking into account the service regime, the safety measures to be taken, the needs for social reintegration identified, gender and age.

The distribution of persons deprived of liberty by detention facility, depending on each category, shall take place in observance of the Decision of the general manager of the National Prison Administration of 11 October 2016 on profiling detention facilities subordinated to the National Prison Administration.

In order to obey the principle of closeness to the residing town of sentenced persons, at system level, profiling has been undertaken for the custody of women prisoners in several units, corresponding to the geographical areas of the country, as follows: Arad Prison (Western Region), Bacău Prison (Eastern Prison), Craiova Prison (South-Eastern Oltenia Region), Gherla Prison (North Western Region), Constanța - Poarta Albă Prison (South-Eastern Region), Ploiești - Targșorul Nou Prison and Mioveni Prison (Southern Muntenia Region).

Bacău Prison will hold in custody women prisoners included in the open regime for the service of sentences. For the purpose of their accommodation, the unit will dedicate a detention section with 30 places.

The National Prison Administration and its subordinated units will continue the endeavours initiated for extending the detention sections intended to hold women prisoners in custody.

Paragraph 102

The envisaged considerations refer to difficulties in enforcing the legal provisions and not genuine system issues.
Thus, in accordance with Article 36 (5) of Law no. 254/2013, *"**The safety measures specific to the closed regime** shall apply to sentenced persons, other than those within the maximum security regime**, temporarily transferred to another prison, for presentation before the judicial authorities.**"*

Additionally, in accordance with Article 109 of Government Decision no. 157/2018: *"**Measures adopted in case of inmates transferred for a short period of time to another prison***
(1) The notice referred to in Article 103, in the case of inmates temporarily transferred for presentation before the judicial authorities or for any other reasons, shall also contain information concerning the possibility for prior scheduling of a potential visit.
*(2) **Inmates shall be accommodated in especially arranged detention sections or cells, with the application of Article 36 (5) of the Law. Rights shall be granted depending on the detention regime in which they are classified. (...)**"*

As expressly stipulated by law, inmates in transit shall benefit from rights in accordance with **the detention regime in which they are classified, obviously in observance of human dignity, and dissatisfied persons shall have at their disposal an independent mechanism of complaints submitted to the supervisory judge and court of law, in accordance with Article 56 of Law no. 254/2013.**

The cell within Iași Prison, to which CPT's report refers and in which prison women were accommodated, was 17.48 sqm, was provided with 8 beds and was equipped with a sanitary annex and shower, operational at the time of CPT's visit.
Additionally, at the time of CPT team's visit, in the detention section where the room intended to accommodate women prisoners was arranged, the supervisory service of women personnel was scheduled.

Issues of interest relating to the provision of individual hygiene items have been detailed in paragraph 99.

5. Healthcare services

a. introduction

Paragraph 103

In prison units there are medical rooms with a status similar to family medical rooms in the public health care network. In that context, mention is to be made that, in family medical rooms in the public health care system medical services for health/palliative care, personalised diets, physiotherapy/rehabilitation may not be provided (as they do not possess the required skills).

According to the regulations for the implementation of the framework agreement, all such services are supplied by specialised outpatient or other medical service suppliers, depending on the funds allocated from the health insurance house. Ill inmates benefit from medical care in line with the domestic healthcare regulations and are regularly admitted to prison hospitals for assessment/re-assessment of their illness or in facilities of the public healthcare network.

Medicines are exclusively handled by medical staff (physician, pharmacy assistant, general medical assistant). There is a procedure for the administration of psychiatric treatment, which will be performed by medical staff, while medicines for chronical diseases are dispensed in accordance with Joint Order no. 429/2012 of the Minister of Justice and Minister of Health.

Paragraph 104

To the assertion that there is conflict of interest of the medical staff, proven by the inappropriate documenting of injuries, please note that, at the level of the medical room inside the prison, the recording of potential injuries takes place as follows:

– Description of injuries as accurate as possible, including through anatomic-topographic drawings and recording thereof in the register of traumatic injuries (aggression) in the consultation register, in the medical chart and in a notice of information to the Prosecutor's Office and the unit warden;

– An information note to the Prosecutor's Office is also delivered in the case where the inmate states that he was bullied although there are no traces of physical violence on his body;

– Recording the inmate's statements in connection with the circumstances and manner in which the injuries occurred;

– Upon written request of the inmate, arrangements shall be made to take him to the Forensic Medicine Department or to be seen by a physician outside the prison system.

Workers in the operative sector ("prison officers") have no duties of filtering the inmates scheduled for the medical room, while the medical staff shall comply with the professional deontology and laws governing the prison system. At present, the members of the medical

room in charge of primary medical care shall wear different medical attire and will not be in charge of escorting/accompanying the inmates to the medical rooms.

- As regards the transfer of medical staff in prisons under the coordination of the Ministry of Health, mention is to be made that it is not possible, in consideration of the fact that the Ministry of Health cannot provide, for persons deprived of liberty, primary (family medicine) and dental medical care. At national level, family medicine/dental medicine services are not subordinated to the Ministry of Health. They are the segment of private medical care, a specialised and self-standing supplier, under contractual relationship only with the social health insurance house. The Ministry of Health plays an administrative role in setting forth the regulations aimed at standardising the supply of medical services.
- In respect of providing health care in other specialties or in hospital regime, take-over is not possible in this case, either, because the Ministry of Health does not have subordinated healthcare units able to provide territory coverage depending on the location of prison units and, at national level, most sanitary units with beds are subordinated to local public administration authorities or to the private medical network (the potential involvement of such institutions would be required).

Nevertheless, as an alternative to the remarks of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), according to which medical staff in the prison system needs to be independent from the personnel of the detention facility, steps have been taken to take over medical rooms, including the staff thereof, in the flowchart of hospital prisons, so that the definite independence of medical staff from the management of the detention facility could be emphasized.

Healthcare for persons deprived of liberty shall be granted in accordance with the following:

- Law no. 95/2006 on the reform in the healthcare field, republished, as subsequently amended and supplemented
- Law no. 46/2003, patient right law, as subsequently amended and supplemented
- Joint Order no. 429/C-125/2012 of the Minister of Justice and the Minister of Health on the provision of health care to persons deprived of liberty held in custody by the National Prison Administration.
- Law 487/2002, on mental health and the protection of persons suffering from mental disorders, republished, as subsequently amended and supplemented
- Cooperation Protocol no. AP2114/2013 – 52465/2013 entered into between the Ministry of Health and the National Prison Administration on the provision of a cooperation framework on increasing the public health services granted to the population of the detention system.

The Ministry of Health stands by its standpoint delivered upon the previous reports, in particular, it does not believe it is either suitable or feasible to take over the medical staff of the National Prison Administration to the Ministry of Health.

Paragraph 105

The existence of consultation registers with various uses inside the medical rooms is governed by the legal provisions, jointly prepared by the Ministry of Justice and by the Ministry of Health. The recommendation for different medical records to be exclusively contained in the electronic system where patients' data should be entered cannot be implemented at present, having regard to the usefulness (proven in practice over time) of such records, considered to have a medical – legal value similar to the medical chart, both in respect of the aggregation of statistical medical data, and upon the numerous requests of courts of law and of the Governmental Agent for ECHR.

Nevertheless, the Medical Supervisory Directorate will look into the possibility for CPT's recommendation to *successively decrease* the use of multiple registers in parallel with the increasing use of the existing electronic system where medical data is entered.

b. staff and access to a physician

Paragraph 106

Data of interest regarding the provision of health care for persons held in custody has been detailed in paragraph 58, **among which we hereby reiterate that the non-medical staff does not perform any filtering, but merely makes sure that they are taken to the medical room, having regard to the separation criteria.**

Paragraph 107

Mention is to be made that steps were consistently taken to hire medical staff, however, the expected outcome was not achieved. Please note that the difficulty faced in respect of shortage of skilled medical staff is also manifested at national level, in the public health care network. In that context, the prison system identified a solution to contract the provision of medical services, in the case of Bacău Prison, by a single family medicine physician, interested to perform work in the prison system.

As for the case regarding the erroneous dispensing of medication, the physician changed his option in relation to the therapeutic conduct in front of the emergency cabinet. (the Algocalmin vial was given to be drunk with water to the inmate suffering from dental pains, in the medical room). Inmates are persuaded that the therapeutic effect is more efficient if applied locally (effect conditions by the unshakeable belief of inmates that "this is the cure"). Supervisory agents perform no filtering whatsoever, but only make sure that the prisoners are taken to the medical room, having regard to the separation criteria.

Paragraph 108

There was no case where staff within Galaţi Prison encouraged the inmates to inflict harm upon themselves, in order to benefit from emergency health care, and the CPT delegation indicated no specific instance, based on which an investigation could be undertaken into such cases.

Paragraph 109

Upon the psychiatric physician position becoming vacant, Gherla Prison and the National Prison Administration have taken steps to organize a contest for that position. In the first stage, on 03 August 2018, contest was initiated for the position, but there were no applicants, which is why the endeavours were continued with the Ministry of Health to grant a permit, for the purpose of resuming the procedure.

As regards the allegation that there was no psychiatric input, this is astonishing, considering that the specialist psychiatrist of Gherla Prison, even though he had ceased his employment by resignation several days before the CPT visit (05 February 2018), extended his services and attended the meetings with CPT members.

During the employment of the psychiatrist with Gherla Prison, inmates were permanently assessed and re-assessed, on a regular basis, which means that, at the time of the inspection, there was psychiatric data available. At present, psychiatric consultations take place at the Military Hospital of Cluj-Napoca, with the same psychiatric physician who previously worked in Gherla Prison.

As for the allegation that “access to the health care service was filtered by prison officers”, please note that the role of supervisory staff is not to filter access to healthcare services, but to write down in the medical attendance sheet the requests of persons deprived of liberty, with a view to providing health care, an attendance sheet that is immediately handed over to the medical staff, in accordance with Article 105 (1) of the Regulation on the safety of detention facilities subordinated to the National Prison Administration, approved by Order no. 1673/C/2010 of the Minister of Justice.

Paragraph 110

In Iaşi Prison, in March 2018, a contest was organized to fill three medical nurse positions, out of which two positions have been filled, while the head GP position was filled by contest in September.

Access to healthcare services is not filtered by prison officer, inmates may make appointments with the medical room, depending on the consultation schedule, while emergencies are processed at any time. The medical room of Iași Prison was always understaffed, because of the complexity and difficulty of the activities performed, this being a general characteristic of the healthcare system in Romanian prisons. Nevertheless, consistent steps were taken to provide prisoners with access to specialized consultations,

through entering into cooperation agreement with specialized healthcare service providers and by taking prisoners at least three times a week in healthcare facilities of the public network.

As for the fact that prisoners had to stand before the doctor's consultation table with their heads bowed, we believe that there is no genuine concern of prisoners taken to the medical room being bullied, that "obedience" attitude is not genuine, many times the prisoner's conduct to the medical staff is inappropriate, as they are defiant and threaten the medical staff.

Paragraph 111

At present, there is under way an employment process of medical staff, also proposing a job of medical registrar with Iași Prison. In the Romanian healthcare system, there are no medical nurses specialising in psychiatry or psychology, as a matter of rule, they are specialized as general medicine nurses.

As concerns the recommendation to revise all health care staffing levels, please note that at the level of the prison system, in preparing staffing standards, domestic healthcare regulations and CPT recommendations have been taken into account, standards which may regularly be revised, or whenever necessary.

In respect of finding a new procedure for visiting the medical room, upon the prisoner's request, by placing a paper in a box on their landing/wing indicating the reason for the request, please note that this is not feasible, because, at present, the method used is beneficial and is achieved, in line with the legal provisions in force, by registration with the attendance register of the medical room, an officially registered document, but also standardized requests having the status of official, registered document, and which may be found in the prison file held for each and every prisoner.

The envisaged concern refers to the regulatory policy in criminal sentence service matters. Whereas this recommendation relates to a specific issue identified by the team of experts, by observing the mechanisms already existing in the domestic law (exercising the right to petition and to correspondence, control mechanism of supervisory judges for deprivation of freedom and complaint submitted to the court of law, against its court minutes), we believe that, at the time, no such regulation is necessary.

In respect of healthcare insurance, please find, herein below, a statistic of the occurrence of the control mechanism by the supervisory judge in charge of the deprivation of liberty and complaint submitted to the court of law, against its court minutes:

Between **2014 and 2017**, at the level of the prison system, **1,770 court minutes** have been lodged and admitted by the supervisory judges and **570 judgments** admitted, the object of which consists of exercising the rights. During the same reference period, **984 court minutes** and **408 judgments** have been lodged and admitted by courts of law, the object of which consists of the **failure to observe accommodation conditions** *(overcrowding and its subsequent effects)*. They have been enforced by the National Prison Administration.

Number of complaints ADMITTED by the supervisory judge in charge of the deprivation of liberty

	2014	2015	2016	2017	Total
Liberty of conscience, opinions and freedom of religion	0	0	5	0	5
Right to information	5	2	5	6	18
Right to consultation of personal documents personal	8	7	3	5	23
Right to legal assistance	0	0	0	0	0
Right to petition	0	1	2	0	3
Right to correspondence	4	1	1	1	7
Right to telephone calls	2	4	4	1	11
Right to on-line communication	0	0	4	5	9
Right to daily walk	4	4	2	4	14
Right to receive visits	22	31	38	19	110
Right to be informed of a family situation	0	0	0	1	1
Conjugal rights	22	75	95	52	254
Right to receive, to purchase and to own goods	16	16	20	54	106
Right to medical assistance, treatment and healthcare	17	21	33	35	106
Right to diplomatic assistance	0	0	0	0	0
Right to marriage	0	0	0	0	0
Right to vote	1	0	0	0	1
Right to repose and weekly rest	0	1	0	0	1
Right to work	4	8	6	12	30
Right to education	2	2	3	2	9
Right to food, attire, bedding	13	13	35	17	78
Right to minimum accommodation conditions (provide living space of 4 sqm)	48	331	397	208	984
TOTAL	178	514	653	422	1770
Number of resolutions enforced	**170**	**494**	**591**	**371**	**1634**

Number of complaints ADMITTED by courts of law

	2014	2015	2016	2017	Total
Liberty of conscience, opinions and freedom of religion	0	0	2	0	2
Right to information	0	1	2	1	4
Right to consultation of personal documents personal	1	1	2	1	5

Right to legal assistance	0	0	0	0	0
Right to petition	0	0	0	1	1
Right to correspondence	2	0	0	1	3
Right to telephone calls	0	1	1	0	2
Right to on-line communication	0	5	2	1	8
Right to daily walk	0	0	0	0	0
Right to receive visits	2	4	7	5	18
Right to be informed of a family situation	0	0	0	1	1
Conjugal rights	6	8	9	5	28
Right to receive, to purchase and to own goods	1	4	6	15	26
Right to medical assistance, treatment and healthcare	6	11	18	6	41
Right to diplomatic assistance	0	0	0	0	0
Right to marriage	0	0	0	0	0
Right to vote	0	0	0	0	0
Right to repose and weekly rest	0	1	0	0	1
Right to work	3	6	4	2	15
Right to education	2	0	0	0	2
Right to food, attire, bedding	1	1	3	0	5
Right to minimum accommodation conditions (provide living space of 4 sqm)	21	85	257	45	408
TOTAL	45	128	313	84	570
Number of resolutions enforced	**45**	**121**	**306**	**81**	**553**

Paragraph 112

As regards the recommendation to purchase medical equipment (defibrillator and EKG), please note that healthcare is provided in primary medicine medical rooms authorized by the Ministry of Health, through public health directorates, subject to the approval of CASAOPSNAJ (health insurance house), in accordance with the applicable law in force. The minimum mandatory equipment required for receiving operation permits needs to comply with the provisions of Order no. 153/2003 of the Ministry of Health, which does not stipulate the obligation for such equipment to exist in primary medicine medical rooms. In that regard, the possibility to purchase such medical equipment will be analysed.

c. medical consultation on admission and recording of injuries

Paragraphs 113 and 114

In Bacău Prison, inmates undergo a comprehensive medical examination when surrendered to the detention unit, continued by para-clinical examination during quarantine, filling out the medical chart, in order to determine work suitability and food regimen. Blood analyses for blood-transmissible viruses (HIV, VHB, VHC) are voluntary, subject to prior counselling.

In Gherla Prison, there is no specific form exclusively intended for women, however, all medical information and concerns are recorded, by anamnesis, upon drawing up the medical chart (including the latest period, the latest intercourse, number of births, number of abortions, etc.). As regards the recommendation to implement a specific examination form for women, please note that after surrender to the prison, all persons deprived of liberty undergo an assessment in educational, psychological and social terms, the conclusions thereof serving as basis in setting forth the *Customized plan for educational and therapeutic assessment and intervention*. The assessment of needs and risks, but also customized assistance, allow to mitigate any concerns identified.

As regards newly admitted inmates, during the clinic and epidemiologic supervision, the health condition, the manner in which the inmate observes individual and collective hygiene rules is monitored and health educational activities are conducted, meant to prevent sexually transmissible diseases. The inmates may request, in accordance with the domestic healthcare laws, in exchange for payment, the performance of blood analysis for blood transmissible diseases (HIV, VHB, VHC) or, following a specialized medical examination, they may benefit free of charge, of recommended investigations. These categories of analyses are carried out in the public healthcare network or by admission to the prison hospital.

Paragraph 115

In the prison system, there is a mandatory medical examination taking place both upon arriving at the prison, and upon transfer from the unit, including in the case of persons in transit. Access to healthcare is similarly provided upon request and for medical emergencies, but also for the other persons held in custody by the unit, for serving their sentence.

Paragraph 116

Medical staff always see inmates involved in physical/sexual aggression, and record any injuries found in an especially dedicated register, referred to as Traumatic Injury Register. Each position (running number) in the *Traumatic Injury Register* matches an *Information Note*, which details the injuries found by means of a morphologic description, but also by means of an annex containing the topographical illustration of potential trauma marks, pre-defined topographical anatomic drawings, as provided in the *Istanbul Protocol and Minnesota Protocol*. Such medical information read together with the information concerning the circumstances under which the event took place serve to draw up the immediate notification of facts, to be delivered to the territorial Prosecutor's Office unit and to inform the

supervisory judge in charge of the deprivation of liberty, concerning the incident which resulted in bodily violence traces.

This procedure was submitted in the form of instructions delivered to subordinated units.

Additionally, in the case where the inmate does not declare the physical aggression, but the injuries found are indicative of potential aggression, the procedures described above are enforced, by initiating proceedings with the territorial Prosecutor's Office.

On the other hand, the finding regarding the absence of a trauma register contradicts the considerations above (paragraphs 60 and 72) in connection with the existence of too many medical registers.

This is already regulated, both in the applicable laws – Order no. 429/2012 of the Minister of Justice on providing healthcare to persons deprived of liberty, and in the draft of the new Order of the Minister of Justice on providing healthcare to persons deprived of liberty found in the detention facilities subordinated to the National Prison Administration, stipulating as follows:
"Article 11. (1) Upon arriving in a prison unit, newly-entered persons deprived of liberty, which arrived by transfer, received from criminal investigation bodies again, further to discontinuance in serving the sentence, after having escaped or when coming back from permitted leave shall undergo the following measures:
a) performance of a general clinic examination, for the purpose of finding any signs of aggression, addiction, mental disorders, suicide risk, identifying any infectious, contagious and parasite diseases which require isolation from collectivity until full cure or admission to a specialized hospital unit and for knowing any pathologic history and chronic diseases which require the immediate admission of appropriate medication therapy and food diet;"

"Article 149 If, further to medical examination, it is found that the person deprived of liberty has traces of violence or they represent that they suffered ill-treatment, the physician has an obligation to record any findings in the medical chart and to notify the management of the unit, which shall immediately notify the prosecutor."

The draft Order on providing healthcare to persons deprived of liberty found in detention facilities subordinated to the National Prison Administration stipulates as follows:
"Article 10 - (1) The medical examination shall be carried out upon receiving in the detention facility the following categories of persons:

a) received from policy authorities;
b) arrived after discontinuance in serving their sentence;
c) arrived by transfer;
d) in transit;
e) received again from police authorities;
f) apprehended after having escaped;
g) coming back after permitted leave from prison or educational or detention centre.

(2) Persons deprived of liberty set forth in paragraph (1) above shall undergo a general clinic examination, aimed at identifying any infectious, contagious and parasite diseases, acute or chronic illness, obvious signs of aggression, and take any medical measures required, including admission in a healthcare unit, as a case may be."

"Article 11 – (1) All considerations concerning trauma injuries found upon presentation shall be recorded both in the medical chart, and in a standardised register, the "Trauma Mark Register", according to the guidelines of the Office of the United Nations on documenting torture and other cruel, inhuman or degrading treatment.
(2) The year, month, date, and time of the medical examination shall be recorded, as well as the identification data of the person deprived of liberty, the detailed description of traces of violence, in accordance with the professional competence, the origin thereof, according to the statements of the person deprived of liberty and medical recommendations.
(3) If any marks of violence are found upon surrender, the physician and manager of the unit shall refuse the receipt and request the police officer surrendering the person deprived of liberty, to take them to the forensic medicine department; the nature of traumatic injuries and determining the requisite nexus fall in the jurisdiction of forensic physicians.
(4) When sentenced persons are received in the detention facility, the provisions of paragraph (3) shall not apply, and any measure of presentation to the forensic medical facility and notifying the competent bodies shall be taken by the administration of the detention facility."

We believe that the regulations set forth in the draft are sufficiently detailed in this respect and no further considerations are required.

d. confidentiality

Paragraph 117

The legal provisions uphold the principle of confidentiality, any issues identified pertain to law enforcement, and not to the need for new regulations in the field.

- Article 72 (2) of Law 254/2013: *"Medical examination should take place in a confidential setting, with the necessary security precautions"*
- Article 159 (6) of the Regulation for the implementation of Law no. 254/2013 on the enforcement of sentences and of measures involving deprivation of liberty ordered by the judicial bodies during criminal proceedings: *"(6) Medical examination shall take place in observance of confidentiality and privacy of the relevant inmate."*

Inmates are consulted in a confidential setting; among the physician and most patients, there is a positive therapy relationship; the presence of custodial staff was only requested where the consulted inmate posed a risk for any of the prison staff categories or for the other inmates. Nevertheless, if the medical staff requests custodial staff to be present, the latter does not become involved or influence the medical act. Such exceptions are aimed at observing the patient's privacy by any means.

Additionally, there have been no other cases where the supervisory staff in prison units requested or put any pressure on the medical staff to determine them to conduct medical examinations in their presence.

The applicable laws in force stipulate, with a view to protecting medical staff, the possibility to request the presence of non-medical staff, when examining an inmate classified as posing

a risk. The staff in the sector for safety of detention and prison regime shall obey the confidentiality laws, including where the supervision takes place during a medical act.

Paragraph 118

Irrespective of the encoding method used (mixture of: signs, letters, numbers etc. or using colours), there is a risk for such codes to be found out. Existing encoding, currently in use, have been drawn up in accordance with the standards accepted at international level and transposed in domestic practice.
Encoding the diagnosis in the medical/psychiatric/psychological fields amounts to an international practice. Please find examples herein below:

– Medical diagnosis encoding – *INTERNATIONAL CLASSIFICATION OF DISEASES– drawn up by the World Health Organization (using numbers), TABLE LIST OF DISEASES ICD-10-AM – at national level, drawn up by the Ministry of Health (using numbers and letters), etc.*

– Encoding psychological/psychiatric diagnostics – DSM = The **Diagnostic and Statistical Manual** of Mental Disorders (**DSM**) drawn up by the American Psychiatric Association–APA- (using numbers), ICD 10 = International Statistical Classification of Diseases and Related Health Problems 10th Revision*, at national level, drawn up by the Ministry of Health (using numbers and letters).*

At present, CVMC abbreviation matches the phrase **Medical – Surgical Vulnerable Case, and not Medical – Contagious**, there is a major difference in the presentation of medical cases. The abbreviation **Medical – Surgical Vulnerable Case** is necessary, not clearly specifying the patient's disorder, but emphasising the potential vulnerability of that patient for medical and surgical reasons, with a view to protecting them and the escorting/supervising staff, similarly to universal caution. **It is our opinion that there is no stigma or breach of confidentiality.** The information supplied is limited to what is necessary for preventing a severe risk to the person held in custody or to other persons, without indicating any diagnostic, and without preventing the Patients Law. Additionally, the medical charts of persons deprived of liberty are delivered in closed envelope to other departments, and may not be viewed by non-medical staff.

e. psychiatric care

Paragraph 119

Inmates suffering from severe psychiatric disorders serve custodial sentences in reliance upon a warrant issued in reliance upon a final court decision. The court of law is the only authority competent to order the service of custodial sentences in prison units or in hospital prisons and for special security measures, by means of the sentence ruled in the case.

Psychiatric care is recommended **only** by the specialist psychiatrist, and physicians of that unit shall arrange the prescription of treatment, but not be competent to change it. Psychiatric treatment is given under direct observation of the medical staff.

As for the assertion that in Aiud Prison inmates were not monitored by a psychologist or psychiatrist, please note that, in the above-mentioned unit, five psychologists are working, each assigned to certain detention sections. Thus, the psychologist assigned to Section E1 has in the Specialist's Schedule group work (in particular programmes, as well as activity projects) and individual work (psychological counselling, information meetings). Addressing the issues of inmates with mental disorders is a priority both for the psychologist, and for the representatives of the other structures – warden of section, head physician. The main step taken by the psychologist in relation to inmates suffering from mental disorders from the beginning of the ongoing year is individual counselling on relevant concerns.

Thus, in the past 6 months, 8 inmates suffering from psychiatric disorders have consistently benefited (as a matter of rule, once a week) by counselling for psychiatric patients (multiple counselling). Depending on the needs of inmates suffering from psychiatric disorders, counselling also addressed other specific concerns, such as: aggression (7 prisoners), suicide risk (5 prisoners); psychological counselling in crisis (3), psychological counselling dedicated to persons facing a vulnerability risk (7).

Cases are continuously monitored, each employee involved in direct activities with inmates suffering from psychiatric disorders have the competence and obligation to report any matters of concern to the members of the multi-disciplinary team: physician, psychologist, warden of section.

Additionally, considering that the mental health is a fundamental component of individual health, this is a major goal pursued by the healthcare policy of the prison system. This, with a view to adopting measures necessary for protecting mental health, the prison healthcare system keeps records and classifications, drawn up in observance of the Law on mental health and the protection of individuals suffering from mental disorders. Furthermore, at the level of detention facilities, organization/fitting out activities have been initiated in connection with areas specialised for psychiatric facilities, necessary to be supplied to persons deprived of liberty inflicted by mental disorders.

Paragraph 120

The Romanian authorities have identified as solutions for tackling the need to provide psychiatric care, in the following prison units:

– The provision in the staffing standards for the healthcare field, approved by decision of the general practitioner of the National Prison Administration, of a psychiatrist position in all prison units, in line with the European recommendations (therefore, for the beginning, psychiatrist positions have been provided in the units with above-average numbers of prisoners (Jilava, Rahova, Gherla, Mioveni, Giurgiu, Craiova, Botoşani, Iaşi, Arad, Bistriţa, Mărgineni, Galaţi, Timişoara) and then, gradually, flowcharts will be resized for the medical staff. Additionally, in 3 hospital prisons, there are psychiatric sections managing the cases of psychiatric patients with periods of aggravated psychiatric disorder;

– From a legislative perspective, in the draft joint order between the Ministry of Justice and the Ministry of Health concerning the healthcare activity provided to persons in custody in the prison system, a chapter was provided dedicated to healthcare assistance for persons

suffering from mental disorders. Mention is to be made that the above-mentioned draft normative act is still undergoing the stage of consultation at the level of specialised directorates within the Ministry of Health, and, when the Ministry of Justice will receive the last standpoints, the draft will be completed for approval.

– As regards the organization and operation of special sections dedicated to persons suffering from severe psychiatric disorders, in accordance with Article 73 (6) of Law no. 254/2013, please note that, upon the preparation of this material, out of the 38 prison units, detention centres, educational centres:

- **30 prison units have identified areas** in view of fitting out rooms intended for the accommodation of inmates suffering from psychiatric disorders, of which:
  - **16 units have completed the works** - more than 85% of the requirements (Arad Prison, Bistrița Prison, Botosani Prison, Bucharest Jilava Prison, Bucharest-Rahova Prison, Constanța - Poarta Albă Prison, Craiova Prison, Deva Prison, Drobeta-Turnu Severin Prison, Focşani Prison, Gaesti Prison, Gherla Prison, Giurgiu Prison, Mioveni Prison, Oradea Prison, Slobozia Prison, totaling 32 rooms with 115 beds;
  - **14 units have not completed the works,** which are in various stages of implementation and fitting out:
    - 1 unit could not fit out such area, because of overcrowded prisoners (Bacău Prison);
    - 13 units are currently trying to receive permits/make purchases/fitting out (Aiud Prison, Baia Mare Prison, Codlea Prison, Galați Prison, Iași Prison, Miercurea Ciuc Prison, Satu Mare Prison, Târgu Mureș Prison, Timișoara Prison, Tulcea Prison, Vaslui Prison), out of which 2 units (Brăila-Tichilești Detention Centre, Târgu Jiu Prison) estimate that works will be completed by the end of 2018;

- **8 units have not identified the required premises**:
  - 4 units because of overcrowded prisoners: Brăila Prison, Mărgineni Prison, Ploiești Prison, Ploiești-Târgșorul Nou Prison;
  - 3 units have had no inmate suffering from severe psychiatric disorders (CE Buziaș, CE Târgu Ocna, Prison Craiova-Pelendava);
  - 1 unit estimates that such works may be performed in the budget year 2019 (Craiova Detention Centre).

– Out of 6 hospital prisons:

- **3 hospital prisons have completed works in a ratio of 80-90%** (Constanța-Poarta Albă Hospital, Dej Hospital, Mioveni Hospital).

In terms of the professional education, mention is to be made that the Romanian authorities takes care of the specific training of healthcare secondary staff in the nursing techniques for patients with special needs, including with mental disorders.

Additionally, the National Prison Administration is preoccupied by filling in the vacant positions for psychiatrists in prison units (Rahova, Craiova, Galați, Gherla, Giurgiu, Mioveni), and thus, at the level of October 2018, there is under way a contest for filling the 6 positions of physicians specialised in this field.

f. drug misuse and transmissible diseases

Paragraph 121

As concerns the commission's recommendation for the Romanian authorities to ensure a comprehensive strategy for the provision of assistance to prisoners with drug-related problems in the prison system, mention is to be made that such strategy is already in place, the provision of healthcare to drug addicts held in custody takes place in observance of Order no. 1216/C-1310-543 of 18 May 2006 on the implementation of integrated healthcare, psychological and social assistance programmes for drug addicts held in custody, issued by the Ministry of Justice, the Ministry of Administration and Interior and the Ministry of Health.

As early as 2008, in the units subordinated to the National Prison Administration, activities have been undertaken in respect of persons deprived of liberty currently in replacement treatment with methadone, under the coordination of the UNODC (United Nations Office on Drug and Crime), and the National Prison Administration was awarded in 2011 by the Office for Europe of the WHO (World Health Organization), for good practices in relation to the Health in Prisons Programme.

Under the aegis of UNODC, a Good Practice Guideline (Clinical Guidelines: Replacement Treatment of Opioid Dependence) was drawn up by well-reputed practitioners, specialists in the field, approved by the Ministry of Health, by the Romanian College of Physicians, the Romanian Association for Psychiatry and Psychotherapy and acknowledged by the National Prison Administration, also including special categories (co-infectious HIV/VHB/VHC; multi-addicts; minors; pregnant women), also setting forth the guidelines for maintenance programmes with replacement medication, but also complementary psycho-social interventions in replacement therapy.
Additionally, in cooperation with the National Antidrug Agency (A.N.A.), medical staff in the prison system is trained in connection with issues relevant for drug users and healthcare necessary to be provided for such category of persons deprived of liberty, the last training was organised between 11 and 12 October 2018 and was attended by 27 persons, who were "*certified for basic training in the drug field*".

- As for the implementation of the syringe exchange programme, please note that, in the prison system, since as early as 2008, the following units have been appointed and may implement the syringe exchange programme at any time, upon the inmates' request:
    - *Bucharest Jilava Prison – program leader*
    - *Bucharest Jilava Hospital Prison*
    - *Bucharest Rahova Prison*
    - *Bucharest Rahova Hospital Prison*
    - *Giurgiu Prison*
    - *Craiova Prison*
    - *Ploiești Târgsorul – Nou Women Prison*
    - *Constanța - Poarta Albă Prison*
    - *Mioveni Prison*
    - *Mioveni Hospital Prison*

At present, the multidisciplinary teams assigned for the implementation of the said programmes, there are no applications from inmates, to be included in the syringe exchange programme.

Paragraph 122

Having regard to the matters pertaining to transmissible diseases, to the fact that HIV/AIDS infection and viral etiology hepatitis (A, B, C and D) amount to a major public health concern, given the manner and ways of transmission, but also because of their implications to prison and general population health, at the level of the prison system, specific regulations have been enforced, ordering measures to disseminate, as early as their arrival in prisons, information on HIV/SIDA infection and viral A, B, C and D hepatitis. Additionally, particular focus is placed on the following categories of inmates: newly-arrived inmates undergoing the quarantine period; inmates identified as forming part of risk groups (former drug users, with tattoos, with personal antecedents of self-inflicted harm, piercing). For them, an epidemiologic questionnaire is filled out and, on a monthly basis, in all prison units, healthcare education sessions are held, conducted by the medical staff. Additionally, please note that the National Prison Administration has concluded, starting from 2013, cooperation protocols with various non-governmental entities (*Association of Patients with Hepatitis Illness of Romania, the Clinic Hospital for Transmissible and Tropical Diseases "Dr. Victor Babeş", the National Union of Organisations of Persons Infected with HIV/SIDA, Romanian Harm Reduction Network*) in the healthcare field, with a view to providing the materials required for running tests for B, C hepatitis and HIV.

As for the finding, by CPT team, that in Iaşi Prison they met two prisoners who had been placed alone in separate infirmary cells because they had HIV, please note that, in that case, at the time of the visit, they were admitted to the infirmary of the unit following an aggravation of their diseases, in accordance with the recommendations of specialist physicians in the public healthcare network.

Paragraph 123

The identified concern pertains to the regulatory policy in the service of criminal sentences matters. This refers to a future step of amending and supplementing the framework law in this field, in particular Law no. 254/2013.

According to the provisions of the Declaration of Malta[19], physicians need to observe the right of anyone to dispose of medical decisions. This may involve difficult assessments, because the true opinions of persons who refuse food may not coincide with their apparent will. Any decision will lack moral force if involuntarily made, by using threats, group pressure or

[19] World Medical Association. *Declaration of Malta on Hunger Strikes*, November 1991, revised in October 2017, no. 4, 21, 22, available at: https://www.wma.net/policies-post/wma-declaration-of-malta-on-hunger-strikers/ http://www.wma.net/en/30publications/10policies/h31/index.html, accessed on 31 October 2018.

coercion. Persons in hunger strike shall not be administered, by force, a treatment which they refuse.
In respect of refusal of food, the obligation of prisons arises from the time when the person deprived of liberty declares that they refuse to feed. From that moment, prison officers have to immediately fulfill all duties set out in the legal provisions. The obligation of prisons consist in undertaking the intermediate steps until the person deprived of liberty is heard by the supervisory judge in the shortest time possible. If the prison staff fail to fulfill the duties set out by law, the **supervisory judge in charge of the deprivation of liberty may intervene, insofar as failure to fulfill such duties interfere with the exercise of any of the prisoner's rights.**
In other words, **the judge may intervene during the above-mentioned procedure, upon the prisoner's notice, if any of the prisoner's rights is impacted by the conduct of the prison officers.**

Please note that the procedure of food refusal is detailed in **Law no. 254/2013:**
"Article 54. Food refusal

(1) In case a sentenced person intends to refuse food, notifies the supervisory officer verbally or in writing and submits to such officer any possible applications concerning the grounds for food refusal.

(2) In case there are indications that the sentenced person does not eat, but this person does not notify verbally or in writing their food refusal, the supervisory officer shall ascertain this situation ex officio.

(3) The supervisory officer shall notify immediately the head of the detention section about the matters provided in paragraphs (1) or (2), who shall hear the sentenced person and shall take appropriate measures, if the matters invoked fall under its jurisdiction. In case the sentenced person remains determined to refuse food, ***the head of the section shall inform the manager and the physician of the prison****.*

(4) If the sentenced persons serve a custodial sentence in a close regime or in a maximum security regime, the head of the section shall order their accommodation in the infirmary or in another cell, ***alone or together with other persons involved in the procedure provided in this Article, in view of a close supervision and medical monitoring****, without having any foodstuff and tobacco products on them.*

(5) If the sentenced persons serve a custodial sentence in semi-open or open regime, the head of the section shall ***order their accommodation in the infirmary, under close supervision and medical monitoring****, without having any foodstuff and tobacco products on them.*

(6) If the sentenced person accommodated under the terms of paragraphs (4) and (5) refuses to receive 3 consecutive meals, the head of the section shall notify the prison warden.

(7) The prison warden shall hear the sentenced person and shall notify the supervisory judge in charge of the deprivation of liberty, if they maintain their decision, stating the reasons for food refusal. From the time of notifying the supervisory judge in charge of the deprivation of liberty, the sentenced person shall be considered to be in a situation of food refusal.

(8) If the matters notified by the sentenced person envisage issues related to Articles 39, 40, 56 and 104, the supervisory judge in charge of the deprivation of liberty shall be under the obligation to hear to the sentenced person, following to solve, by court minutes, the notified matters.

(9) If the matters notified by the sentenced person do not cover aspects related to Articles 39, 40, 56 and 104, the supervisory judge in charge of the deprivation of liberty can hear the sentenced person.

(10) After the hearing, if the sentenced person remains determined to refuse food, the supervisory judge in charge of the deprivation of liberty can make proposals to the prison warden.

(11) In the cases provided in paragraphs (3), (7) - (9), if the sentenced person refuses to give statement, this shall be recorded in relevant minutes.

*(12) **The prison administration shall be under the obligation to temporarily transfer the person that refuses food to a medical institution within the medical network of the Ministry of Health and to notify the family of the sentenced person or someone close to the sentenced person, in case the health or bodily integrity of the sentenced person is seriously affected by their food refusal**.*

(13) If the sentenced person declares before the supervisory judge in charge of the deprivation of liberty that it renounces the food refusal, the prison warden shall be notified.

Article 55. Cessation of food refusal

The cessation of food refusal by the sentenced person shall occur in the following situations:

a) by written or verbal statement;

b) by the acceptance of food, which is offered daily, at fixed hours, by the prison administration;

c) by ascertaining the fact that they have eaten, directly or based on investigations or on specialty clinical determinations."

As it may be noticed from the review of legal provisions, relocation to another room is under no circumstance a penalty, but is aimed at providing close supervision and medical monitoring, and therefore is intended as a protection measure.

There is no question that placing the person who refuses food in such a room cannot involve their isolation or infringement of rights expressly regulated in normative acts, specific for the regime in which that person is classified.

As deriving from perusing the provisions of Law no. 254/2013, anyone who is dissatisfied may resort to the independent mechanism of complaints filed to the supervisory judge and to the court of law, in accordance with Article 56 of Law no. 254/2013, so that the concerns identified could be cases of unsuitable law enforcement, and not issues of the legislative system, deriving from a deficient legal frame.

Virtually, in the case where a sentenced person intends to refuse food, they shall notify the supervisory officer verbally or in writing and submits to such officer any possible applications concerning the grounds for food refusal. In case there are indications that the sentenced person does not eat, but this person does not notify verbally or in writing their food refusal, the supervisory officer shall ascertain this situation ex officio.

The supervisory officer shall initiate the relevant form for the food refusal procedure and immediately notify the head of the detention section, in connection with the inmate's intention to refuse food or the existence of any indication that they do not eat. The head of the detention section hears the sentenced person and take the necessary measures, if the envisaged matters fall under his jurisdiction. If the sentenced person remains determined to refuse food, the head of the section will notify the prison warden and physician.

Additionally, the head of the detention section may request for the inmate to be heard by the educator or psychologist appointed by the head of the social reintegration sector.
According to the legislation, if the sentenced person serves a custodial sentence in the closed or maximum security regime, the head of section orders that they be accommodated in the infirmary or in another cell, alone or together with other persons undergoing the food refusal procedure, **under close supervision and medical monitoring**, without having any foodstuff and tobacco products on them.

If the sentenced person serves a custodial sentence in semi-open or open regime, the head of the section will order them to be accommodated in the infirmary, **under close supervision and medical monitoring**, without having any foodstuff and tobacco products on them.
Before performing such relocation, the inmate is heard by the physician, who will notify them on the potential damaging consequences they risk. If the inmate remains determined to refuse food, they are consulted by a physician, the date and outcome of the consultation being recorded in the specific form for the food refusal procedure and in their medical chart. If the inmate renounces the decision to refuse food, the physician will specify so in the form.

If the sentenced person refuses to eat three consecutive meals, the head of the detention section will notify the prison warden. The prison warden hears the sentenced person and notifies the supervisory judge in charge of the deprivation of liberty, if they remain determined in their decision, specifying the reasons for food refusal. From the time when the supervisory judge in charge of the deprivation of liberty is notified, the sentenced person will be construed to be in a situation of food refusal. In the cases provided by law, supervisory judge in charge of the deprivation of liberty has an obligation to hear the person subject to food refusal.
Following the above-mentioned hearing, if the sentenced person remains determined in the decision to refuse food, the supervisory judge in charge of the deprivation of liberty may issue recommendations to the prison warden. If the sentenced person declares before the supervisory judge in charge of the deprivation of liberty that they renounce the food refusal, the prison warden will be notified accordingly.

The prison administration has an obligation to temporarily transfer the person in the food refusal situation to a medical institution in the healthcare network of the Ministry of Health and to notify the family of the sentenced person or someone close to them, of the health or bodily integrity of the sentenced person is severely impaired because of the food refusal.
On a daily basis or whenever necessary, the prison physician visits the inmate who refuses food and performs a clinical examination, writing down any relevant considerations in the consultation registry and, as the case may be, in the medical chart. During the food refusal, the staff in the education and psychological assistance sections will act through one-on-one counselling, notifying the inmate on the risk of continuing that form of protest.
Cessation of the food refusal by the sentenced person will occur in the following situations: by written or verbal statement; by the acceptance of food, which is offered daily, at fixed hours, by the prison administration; by ascertaining the fact that they have eaten, directly or based on investigations or on specialty clinical determinations. Upon ascertaining the cessation of food refusal, the inmate is relocated to a cell appropriate for the service regime to which they were distributed.

It may be noticed that, at the level of the detention facility, different categories of staff are involved, within the limit of their jurisdiction, in settling matters for which inmates

resort to the form of protest consisting of food refusal. In this procedure, the accommodation option is aimed at providing close supervision, monitoring and provision of healthcare, but also for supplying education and psychological assistance services, through one-on-one counselling.

Additionally, at the level of the central administration, in the Social Reintegration Directorate, inmates are monitored if they exceed 10 days since the start of food refusal. In such cases, the appointed officer within the directorate will have daily dialogues, until the inmate renounces this form of protest, with the psychologist in charge of the case in that unit, in connection with the status of the inmate and the psychological assistance steps to be taken.
Furthermore, persons in custody of the prison system may file complaints or challenges, without limitation, both to the management of the detention facility, and to any national, international, governmental or non-governmental institution which they think competent to settle the issues raised by them.

Inmates who protest in the form of food refusal are kept under daily monitoring, in accordance with the applicable laws in force, by the physician or nurse, and biometric data will be recorded in a dedicated register. We believe that the physicians in Iași Prison have appropriate knowledge of liver physio-pathology and biochemistry, including the Krebbs cycle, and are able to accurately discriminate the cause of hypoglycaemic disorders.
Going on and coming out of food refusal are most of the times methods to put pressure on the prison staff (for instance – the inmate states that they will come out of the food refusal if relocated to a desired cell or sent to another prison).
In February 2018, in Iași Prison, there were no cases of food refusal recorded, so that the room described in the report was not used.

6. Other issues

a. reception and first night procedures and information to prisoners

Paragraph 124

The programme intended for inmates newly arrived in the prison "*Becoming accustomed to the conditions of deprivation of liberty*" is performed by an educator, and information is supplied depending on the level of understanding of every inmate. Attendance of that programme is mandatory. During working sessions, attendants are provided with information on the relevant laws governing the service of their sentences, interior regulations in the prison, the penalty and reward system, access to educational, psychological assistance and social assistance services, etc.
In the case of literate inmates, information is supplied individually, with the educator detailing the topics of interest and answering any questions. From a methodological perspective, having regard to the level of education of the imprisoned population, the supply of general scope information to inmates exclusively in writing, in order to be read, is avoided.
In the case of inmates who do not speak Romanian, information materials provided to them are translated (in the following languages: English, French and Hungarian).

b. prison staff

Paragraph 125

The National Prison Administration took steps to correctly and relevantly staff the prison facilities, and drew up, in the first stage, staffing standards by categories of prison units, and later, together with the management thereof and with social dialogue partners, they implemented such standards to each prison unit, so that the optimum required positions were determined for the prison administration system.

By decision of the general manager of the National Prison Administration, the Staffing Standards by fields of activity and categories of prison units have been approved and, afterward, the Standard for the distribution of positions in tiers, departments of activity at the level of subordinated units in the prison administration system was approved. Thus, there is one staffing standard in terms of numbers and one setting forth the hierarchical level of the position.

The implementation of staffing standards at the level of prison units indicated that 20,102 jobs are necessary, as compared to the 15,041 jobs provided by Government Decision, upon completion of the standardization process. Mention is to be made that the above-mentioned optimal requirement complies with the applicable legal provisions in certain sectors of activity, laying down a certain number of jobs with mandatory force, and the legal workload is observed.

Having regard to the optimum job requirements, objectively substantiated, in accordance with the applicable legal provisions and the workload by departments of activity, the National Prison Administration has taken steps with the Ministry of Justice, in order to supplement the number of jobs stipulated, so that, within a reasonable timeframe, the optimal requirements are satisfied.

The endeavours aimed at supplementing the provided jobs have led to favourable results, and the system of prison administration received, in 2017, an additional 1,000 jobs.
Such jobs were distributed in prison units based on a mathematic algorithm, consisting of the difference between the number of jobs provided and the optimal requirements for each prison unit, and the outcome was that a percentage of 78% of the optimal requirements was satisfied for all prisons, considering that, at first, certain prisons only had 58%, 62% or 63% staffing. Virtually, this first block of additional jobs was aimed at balancing prison units and providing an infusion of jobs for the most understaffed units. Such jobs were provided in the flowcharts of prison units in 2018.

Additionally, in 2018, flowcharts for all units subordinated to the National Prison Administration have been reissued so that they match or comply with the optimum required number of positions.

In the past two years of activity, in particular 2016 and 2017, 3104 employees have been lost (by retirement, resignation, demise, dismissal), versus 3182 new employments (by content and the distribution of graduates of education establishments educating staff for the prison

system), which means that any contest organised in this period, for vacant positions, did not result in an increase of the staff numbers, because of the losses incurred.

As for the steps taken in 2018 for filling the vacant positions, please be informed of the following:

– from the education establishments educating staff for the prison system, 362 graduates have been distributed;

– contests were organised for 416 jobs in the National Prison Administration and the units subordinated thereto;

– employments from other prisons have been seconded or relocated to units with major staffing shortage.

Please note that contests have been held for such positions taking into account the requirements of units, the overcrowding degree of detention facilities and the staffing shortage.

Paragraph 126

For the purpose of staff training, the National Prison Administration conducts training activities through courses, given by trainers or posted on e-learning platforms. Thus, in the training year 2018, courses have been held – Communication and conflict management; Human rights – Discrimination prevention methods, in particular for Roma population, in particular CPT – governing laws, concepts, visiting system and situational tests - contained in the Catalogue of continuous training courses for administration system staff.

Additionally, Iași Prison, as part of its continuous training of staff, taking place by means of an e-learning platform, for 2018, has posted a course entitled Protection of human rights in prison units – covering the following topics:

1. Committee for preventing torture and inhuman or degrading treatment, role and mission;
2. Basic regulations governing the activity of the Committee for preventing torture and inhuman or degrading treatment;
3. Minimum mandatory regulations on the accommodation conditions for persons deprived of liberty;
4. Liaising methods and techniques with persons deprived of liberty in accordance with CPT rules and regulations;
5. Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules.

Iași Prison and Galați Prison, respectively, have in place during initial training, a training module on Human Rights, in which trainers showcase concepts pertaining to the rights of persons deprived of liberty and the Minimum rules on inmate treatment, but also international standards and the concept of prison normalization (healthy prison).

Between January 2017 and September 2018, in Galați Prison, pursuant to the training plans, 27 officers within the operative sector have attended training activities on the topic “Committee for preventing torture and inhuman or degrading treatment, role and mission”.

Paragraph 127

In accordance with Law no. 80/2018 of 28 March 2018, approving Government Emergency Ordinance no. 90/2017, *on certain tax-budget measured, amending and supplementing normative acts and the extension of deadlines*, the National Prison Administration may hold contests or examinations for filling vacant jobs, irrespective of the date when they became vacant, **under the proviso that they are within the staffing expenses** approved for that purpose in the budget.
Thus, depending on the financial resources available to them, on the staffing standards and shortage of personnel in the prison administration system, the National Prison Administration will continue to organise contests for vacant jobs.

Paragraph 128

By filling out and signing, in 2016, the ***Statement to comply with the values, principles, goals, actions and deadlines set forth in the National Anticorruption Strategy for 2016-2020***, the National Prison Administration undertakes a role to implement anti-corruption policies throughout the prison system, for the purpose of preventing this phenomenon, in line with the provisions of Government Decision no. 583/2016 *approving the National Anticorruption Strategy for 2016-2020.*
Consequently, starting from 2017, the National Prison Administration has drawn up, is implementing and monitoring the goals and activities laid down in the ***Integrity Plan of the National Prison Administration and of the units subordinated thereto for 2017-2020***.

Furthermore, with a view to supplementing and upholding the steps set forth in Government Decision 583/2016, in reliance upon the provisions of Order no. 1993/2014 of the Minister of Justice *for the organization and performance of corruption prevention activities in the National Prison Administration and the units subordinated thereto,* in the prison system, the following activities will also be undertaken:

1) In every prison establishment, a **task force** is in place, made up of heads of the structures in that unit, who have the obligation to enforce the Guidelines on risk management at the local level.
The management of corruption risks consists of all processes relating to the identification, description, assessment and hierarchy of institutional and individual factors fostering or determining the perpetration of corruption offences, the preparation and enforcement of measures required to prevent the occurrence and to contain the effects thereof.

2) In order to support the task force, at local level, an **integrity officer** is appointed, aimed at supporting corruption prevention endeavours, provide ethic counselling to the staff and monitor the compliance of behavioural rules by the latter.

3) The specialised structure in the National Prison Administration, through local representatives and having regard to the nature of duties laid down in the normative acts for organization and operation, supports the task force through:

a. anti-corruption information and training;

b. the preparation of information products aimed at informing the internal or external legal beneficiaries (e.g.: prison warden or other institutions holding corruption prevention and fighting powers) for the latter to order appropriate measures.

When data is acquired that corruption offences may have been perpetrated by the prison system staff, the competent institutions are informed accordingly. If the whistleblower of the potential corruption offence wishes their identity to be protected, this will be taken into account in preparing informational products for the competent institutions.

As for the occurrence of this phenomenon at the level of the prison system, please note that, in 2017, in reliance upon the data provided by the prison system unit, only one corruption case was reported.
Last, but not least, each employee in the prison system also has the capacity of **whistle-blower** and, consequently, may report to the competent bodies anything which could be classified in the category of corruption acts/offences.
At the same time, they shall fall under the provisions of Law no. 571/2004 for the protection of staff of public authorities, public institutions and other units reporting law breaches.

c. discipline and security measures

Paragraph 130

In accordance with the applicable laws in force, the period for heating agent supply is ordered by decision of the unit warden, depending on the outside temperature. Thus, in accordance with the relevant normative acts, the heating period for urban type consumers starts after, for 3 days in a row, between 18:00 – 6:00 hours, average temperature values of outside air is + 10 °C or lower, and heating stops after, for 3 days in a row, the average temperature of outside air exceeds + 10 °C, between 18:00 - 6:00 hours. Additionally, heating agent is supplied according to a schedule approved by the unit management.

In respect of the rooms where the disciplinary penalty of isolation takes place in Galați and Iași Prison, please note that they benefit from the same heating conditions as all other cells.
Starting from 2018, in Galați Prison, in accordance with the legal provisions, the cell temperature during the cold season is monitored on a daily basis by means of thermo-hygrometers, and it was found that the heating network is appropriately designed, as cell temperature consistently exceeds 19°C. This is also proven by the fact that inmates keep the windows of their rooms open during winter days. At the same time, kindly keep in mind that there was no discontinuance in the supply of heating agent to the cells. Additionally, cell temperature is monitored every day in Iași Prison, too, and it was found that temperature is constant and provide a nice inside climate.

Paragraph 131

The envisaged concern pertains to the regulatory policy in the service of criminal sentences matters. This refers to a future step of amending and supplementing the framework law in this field, in particular Law no. 254/2013.

The disciplinary status of sentenced persons resorting to self-harming or attempted suicide was addressed at the level of the National Prison Administration and the latter delivered to the Ministry of Justice all remarks and suggestions to amend the legal frame, issued in the said context.
Please note that persons deprived of liberty resort to self-harming, most of the times, in order to create an environment of pressure in the detention facility, with a view to obtaining advantages in excess of the rights of persons deprived of liberty.

The data concerning self-harming behaviour, from all units in the prison system, have been recorded and analysed, by the National Prison Administration, starting from 2010, from a multi-disciplinary perspective. Among the reasons of persons deprived of liberty who have resorted to self-harming, the following have been identified: relocation to another cell, the wish to take part in shopping, although the store was closed, confiscation of prohibited items, request to be rewarded by leave to exit the prison, request of medication in the absence of doctor's order, previous preparation of an incident report, no cigarettes or coffee, request to be transferred to another facility, conflicts with other persons deprived of liberty, dissatisfaction in relation to their legal status. Furthermore, self-harming has a negative psychological impact on the other inmates.

A potential effect entailed by the implementation of such recommendations could also be the concealment of violence used by other inmates, so that they are not penalised (by claiming self-harming to justify the traces of violence).
Infringement of this interdiction and whether it is useful to enforce a disciplinary penalty, could however be analysed in reference to the health condition of every person deprived of liberty, namely their mental disorders.
Consequently, we hereby want to clarify that this recommendation, which refers to the failure to classify self-harming and attempted suicide in the category of misconduct, will be taken into account in drawing up the bill of Law amending and supplementing Law no. 254/2013.

Paragraph 132

Whether it is appropriate to amend the provisions of Article 101 (4) of Law no. 254/2013 was analysed by the National Prison Administration, and the latter delivered to the Ministry of Justice all remarks and suggestions to amend the legal frame, issued in the said context.

Paragraph 133

Repeal of the disciplinary penalty consisting of ***withdrawal of the right to visits, for a period of maximum 3 months***, was analysed by the National Prison Administration, and the latter delivered to the Ministry of Justice all remarks and suggestions to amend the legal frame, issued in the said context.

Please note that inmates are motivated by granting visitation rights by members of their families, which determines them to have a behaviour compliant with the regulation governing the service of sentences and incentivising them to comply with the internal regulations laid down by the management of the detention facility. Additionally, connection with the family members may also be kept by persons deprived of liberty by their right to telephone calls, correspondence or on-line communication.

Lifting this type of penalty would result in the enforcement of more severe or more lenient penalties, without keeping the proportion between the offence committed and the penalty enforced.

Furthermore, in accordance with Article 226 (4) and (5), of the Regulation for the implementation of Law no. 254/2013, approved by Government Decision no. 157/2016,
"(4) While serving the disciplinary penalty of isolation, inmates are not taken out for work, do not attend cultural-educational and sport activities, are deprived of the possibility to keep or use radio-TV devices and information technology equipment.
(5) While serving the disciplinary penalty of isolation, inmates will be refused the right to receive goods, to receive visits, except for visits from their attorneys, officials or diplomatic representatives, to make telephone calls, but also to go shopping, except for any items they may require for petitioning, correspondence, smoking and personal hygiene".
Our opinion is that, for the time being, lifting this type of disciplinary penalty is not appropriate, especially in the absence of an alternative of the same nature, in terms of the impact entailed on the inmate's behaviour, which the disciplinary board could use during the disciplinary process.

Paragraphs 134, 135 and 136

According to the laws governing the service of criminal sentences in force, sentenced persons are accommodated alone or in shared cells. During disciplinary investigation, upon the proposal of the head of section, the prison warden may order, for safety purposes or with a view to preventing anything which could prevent finding the truth or influence the outcome of the disciplinary research, the inmates investigated for having committed any misconduct to be accommodated in another detention area, in observance of the separation criteria pertaining to gender, age and regime and without violation of the rights provided by law. The disciplinary investigation lasts, depending on the case, until the disciplinary investigation file is closed or until the decision of the disciplinary board becomes final.

The person or persons appointed to conduct the disciplinary investigation notify the inmate on the reason why the disciplinary procedure was initiated and the fact that the inmates may request to submit evidence. The preliminary investigation is aimed at clarifying the incident, in all its respects, and means hearing the sentenced person being investigated and looking into their defences. **Consequently, the inmates are aware of the reason why their accommodation in another detention area was ordered.**

Accommodation of sentenced person in separate areas shall not be mistaken for the disciplinary penalty of isolation and does not result in any withdrawal of the rights conferred by law.

Furthermore, the sentenced persons may file complaints to the supervisory judge in charge of the deprivation of liberty, against the measures limiting the exercise of rights conferred in this law, adopted by the prison administration, within 10 days after having become aware of the measure adopted. The supervisory judge in charge of the deprivation of liberty supervises and controls the legality during the service of sentences and custodial measures.
Rooms where persons held in custody are accommodated are recorded in the operative documents, managed by the detention facility (individual accommodation chart, register for entry/exit of persons deprived of liberty in/from the detention section) and in the computer software recording the data of persons deprived of liberty.
The National Prison Administration has notified the prison units of this requirement, and consequently, the segregation of inmates during disciplinary investigation will cease as soon as the reasons requiring such measure cease.

Paragraph 137

The identified concern pertains to the regulatory policy in the service of criminal sentences matters. This refers to a future step of amending and supplementing the framework law in this field, in particular Law no. 254/2013.

Where a person deprived of liberty resorts to self-harming, the measure of temporary accommodation in the protection room will be taken, an area especially arranged and fit out so that the person deprived of liberty can inflict no other injuries upon themselves. Accommodation in the protection room may last for maximum 24 hours. During the segregation in the protection room, the inmate benefits from psychological counselling. Before the expiry of the 24-hour timeframe, the physician and psychologist draw up a report on the medical condition, conduct and conclusions relating to the mental and behavioural condition of that person, to be submitted to the prison warden. During the segregation in the protection room, the inmate is monitored by the medical staff, who is under the obligation to assess their condition whenever necessary, but no less than once every 4 hours. The supervisory staff monitors inmates who are temporarily accommodated in the protection room, by keeping under observation the physical and mental state and informing the decision makers on any deterioration in the health or the impending occurrence of negative events.

In the Romanian prison system, with a view to preventing and managing suicide cases, the following endeavours will be taken, at system level:

- **Suicide risk assessment.** Since the person deprived of liberty is surrendered to the prison, the psychologist undertakes a *psychological assessment*, pursuing the following goals:

- accurate identification and diagnosis of any psychological concerns;
- identification of intervention needs and issuing recommendations, focusing on crisis situations (identification of suicide risks, etc.);
- maintaining the best operation level and avoid any exaggeration of mental concerns;
- assessing the adjustment potential of the person deprived of liberty.

- **Psychological counselling.** Persons held in custody by the prison system may benefit, depending on the identified risks, counselling for the mitigation thereof. Thus, the psychologist conducts psychological counselling and crisis intervention, upon the request of persons held in custody, of members of the staff in direct contact with the latter or by their own initiative.

- **The specific psychological assistance and suicide risk prevention programme**

The general goal of the programme is to minimize suicide risk behaviours by persons deprived of liberty, by minimising depression, aiming to:

- consistently enforce prevention regulations to risk groups;
- using specialised intervention in cases of crisis;
- avoiding, insofar as possible, the outcome in the cases of suicide under observation.

- **The specific psychological assistance programme dedicated to persons suffering from mental disorders**

The main goals of the programme are as follows: risk mitigating by specialised assistance provided to persons deprived of liberty diagnosed with mental disorders, compensation or balancing in psycho-behavioural plan and *mitigating cognitive, behavioural and emotional alterations* of persons deprived of liberty suffering from psychiatric disorders.

- **Prevention and awareness campaigns in support of persons deprived of liberty, facing an existential crisis,** implemented at system level, the main goal of which is to mitigate suicide risk behaviours by persons deprived of liberty.
- The programme **Training inmates to support persons deprived of liberty facing an existential crisis**

The purpose consists of minimising the number of suicide behaviours among prisoners, by:

- providing consistent monitoring of persons identified as facing a suicide risk;
- providing support in addition to the psychological assistance performed by prison specialists, in relation to suicide-risk inmates.

- **Strategy for mitigating aggressive behaviours the prison system**, implemented throughout the system, starting from 2014, provides a multi-disciplinary approach to persons deprived of liberty, manifesting aggressive (self-harming and harming others) behaviours, so that efforts are joint both in terms of psychological assistance, but also healthcare and safety measures and prison regime.

d. contact with the outside world

Paragraph 138

Fostering contact with the outside world is one of the goals in social reintegration efforts (Article 11 – Cooperation with the community by Decision of the general manager.
Mention is to be made that exits in the community, by various categories of prisoners, initiation and preservation of cooperation relationships with the governmental institutions that could play an important role in social reintegration, in particular General Directorates for Social Assistance and Children Protection, County Employment Agencies, Probation Services, Prevention Centres, Anti-Drug Assessment and Counselling, education institutions, but also various NGOs with which cooperation protocols have been concluded.

Paragraphs 139 and 140

With a view to maintaining the connection with the family and for keeping contact with various persons and organizations, the prison administration allows visits to the inmates.

Inmates are entitled to receive visits in especially arranged premises, under visual supervision of prison staff, directly or by means of electronic systems.
Inmates may be visited by family members or caregivers. Subject to the inmate's consent, it may also be visited by other persons, subject to written approval by the detention facility manager.
Depending on the regime in which they serve their custodial sentence and on their conduct during detention, inmates may receive closed (screened) visits, with separation devices, such as booth, or open visits. Screened visit is granted for inmates in the maximum security regime or closed regime and sentenced prisoners, for which the regime has not yet been decided. Open visit is granted to inmates in the semi-open and open regime.
Exceptionally, **open visits may also be granted to inmates for which the regime for the service of sentence has not been decided, inmates subject to the maximum security regime or closed regime,** with the approval of the prison warden, in the following circumstances:

a) to incentivise prisoners in their best behaviour, who take active part in lucrative, educational, psychological assistance and social assistance activities and meet the goals set forth in the Customised plan for educational and therapeutic assessment and intervention and for incentivising inmates having contributed to the prevention of confirmed risk cases;

b) upon special occasions, such as birthdays, marriage, birth of a child, death of a family member;

c) upon the request of CPT members, in particular of the Sub-Committee for the prevention of torture and inhuman or degrading punishment or treatment within the United Nations Organization, upon visits paid by them to prisons.

The number of visits to which the inmates are entitled is as follows:

a) inmates falling under the open regime shall benefit from 6 visits every month;

b) inmates falling under the semi-open regime shall benefit from 5 visits every month;

c) inmates for which no regime was decided for the service of their sentence shall benefit from 5 visits every month;

d) inmates falling under the closed regime shall benefit from 5 visits every month;

e) inmates falling under the maximum security regime shall benefit from 3 visits every month;

f) pregnant women or who have given birth, for the period in which they are nursing their child in the detention facility, shall benefit from 8 visits every month.

Persons on remand during their trial are entitled to 6 screened visits every month.
The legal frame sets forth the principle of transfer from one regime to another, on a progressive or regressive basis, depending on their behaviour while serving their sentence. Thus, by applying the progressive/regressive system, inmates are encouraged to be on their best behaviour, motivated by the benefits of more lenient detention regimes. No difference among safety measures would cause effects on two tiers, in particular increased vulnerability of activities taking place in prisons, but also the incentivising factor, with a view to taking steps to a more permissive regime for the service of sentences.
The rights of persons deprived of liberty are not restricted, but merely conditioned by safety measures specific to each regime, to be determined in accordance with the law.

In this context, please note that the domestic laws lay down the instances where screened or open visits may take place – Government Decision no. 157/2016:
*"Article 139. **Manner in which visits may take place***

(1) Depending on the regime in which the custodial sentence is served and on the conduct adopted during the detention, inmates may receive visits, as follows:
a) closed (screened) visits;
b) open visits.
(2) Closed visit is granted to inmates in the maximum security regime or closed regime and sentenced persons for which the regime in which they will serve their sentence has not been determined.
(3) Open visit is granted to inmates in the semi-open and open regime.
(4) Exceptionally, open visits may also be granted to inmates for which the regime for the service of sentence has not been decided, inmates subject to the maximum security regime or closed regime, with the approval of the prison warden, in the following circumstances:
a) to incentivise prisoners in their best behaviour, who take active part in lucrative, educational, psychological assistance and social assistance activities and meet the goals set forth in the Customised plan for educational and therapeutic assessment and intervention and for incentivising inmates having contributed to the prevention of confirmed risk cases;
b) upon special occasions, such as birthdays, marriage, birth of a child, death of a family member;
c) c) upon the request of the members of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, in particular of the Sub-Committee for the prevention of torture and inhuman or degrading punishment or treatment within the United Nations Organization, upon visits paid by them to prisons. (...).”
As it may be noticed, granting of open visits is the rule in case of inmates classified in the semi-open and open regimes.

Additionally, **as regards inmates in the maximum security regime or in the closed regime, an analysis is performed, on a case by case basis, which may allow open visits to take place if this is deemed necessary by the prison administration in order to incentivise prisoners in their best behaviour, who take active part in lucrative, educational, psychological assistance and social assistance activities and meet the goals set forth in the Customised plan for educational and therapeutic assessment and intervention and for incentivising inmates having contributed to the prevention of confirmed risk cases, or for special occasions, such as birthdays, marriage, birth of a child, death of a family member.**

Having regard to the legal provisions quoted above, we believe that the domestic law allows flexibility in granting open visits even in the case of prisoners classified in the maximum security and closed regimes, without any other procedure setting forth an absolute presumption when only screened visits may be granted for these categories of inmates.

Paragraph 141

Starting from 2016, the fitting out status of **areas for interaction between children and parents in custody,** in the visit Sectors, is monitored:

– in 34 prisons, areas are appropriately fitted out and used for the purpose for which they were created;
– in 2 other prison units, fitting out works are under way in these areas.

For instance, in the case of Aiud Prison, the building where visitation rights are granted was subject to capital repairs in 2016. The area dedicated to open visits was customised in the same year, so that to increase the comfort of children visiting their parents who are serving a custodial sentence. The area became more children friendly by affixing paintings in pastel colours and by installing shelves on which wooden, plush and Lego toys were placed.

Paragraph 142

In respect of the case found in Bacău Prison, please note that connections were fostered with the support environment, including with the children of women prisoners (but also of men prisoners), through inter-institutional cooperation with the General Social Assistance and Children Protection Directorates, in respect of children benefiting from special protection measures. Social visits were paid in the visit sector, where the relevant institutions deemed appropriate for the persons deprived of liberty and their children to meet. Visits were arranged by social worker specialists within the prison, in cooperation with the General Social Assistance and Children Protection Directorates in various counties, and they encouraged the direct, unmediated relationship between mothers and children.

Persons deprived of liberty have benefited from specific counselling for the purpose of preserving/restoring family relationships. The prison administration does not have available, in accordance with the legal provisions, money intended to facilitate visits between children and parents. Nevertheless, external partners (NGOs) have been identified to finance the journey of children up to parents in custody.

In the visit sector of Bacău Prison, there is an area fitted out and dedicated to visits between parents and children, where the walls of the room are painted with various cartoon characters. In the area, there are toys and a TV set.

Paragraph 143

At present, in accordance with the applicable law, any expenses incurred in relation to telephone calls are borne by the sentenced persons.

In line with the recommendations contained in the CPT Report, the National Prison Administration will suggest an amendment to the provisions of Law no. 254/2013, as follows: "In Article 65, paragraph (3) will be amended and will read as follows:

(3) The expenses incurred by making phone calls shall be covered, as a matter of rule, by the sentenced persons. Prisoners with no money, within the meaning of Article 60 (4), shall benefit, upon request, of funds from the prison administration to make national phone calls, in accordance with the provisions set out in the Regulation for the implementation hereof."

"In Article 65, a new paragraph will be inserted after paragraph (3), *i.e.* paragraph (3^1), reading as follows:

(3^1) If the sentenced persons do not have the necessary money at the time when the application is submitted for telephone calls in order to acquire the documents laid down in Article 99 (5), expenses incurred in relation to telephone calls are borne by the prison administration. Any money spent in that regard by the prison administration will be recovered, while serving their sentence, from the sentenced person, when the personal account or accounting sheet shows available funds."

Paragraph 144

As for the concern identified in Bacău Prison, please note that, when the foreign person first arrived in Bacău Prison, individual meetings were organised in order to find any issues of adjustment to the detention environment. He was informed of the rights of persons deprived of liberty and was provided with the correspondence addresses of competent institutions.

The right to on-line communications is granted in accordance with the provisions of Article 66 of Law no. 254/2013, in conjunction with the provisions of Articles 134-136 of the Regulation for the implementation of Law no. 254/2013, approved by Government Decision no. 157/2016.

The target group consists of the categories of inmates/admitted persons who, because of the long distance between their residence and the prison, or for other reasonable reasons, are not visited by family members, caregivers or other persons, in particular:

– inmates/admitted persons, in their best behaviour, who take active part in educational, psychological assistance and social assistance programmes and activities recommended in the *Customised plan for educational and therapeutic assessment and intervention*, or who work;
– young adults in the prisons for young adults;
– persons admitted in detention and educational facilities;
– women in prisons or sections dedicated to women;
– inmates admitted in hospital-prisons;
– inmates which the National Prison Administration ordered, for objective reasons, to be transferred to serve their custodial sentence in a unit that is not close to their residence.

Inmates/admitted persons will benefit from the right to on-line communication based on warden's approval, **upon the suggestion of the social worker or of another representative of the social reintegration department holding similar responsibilities or, upon the request of the inmate/admitted person, accompanied by a report drawn up by the social worker or — by another representative of the social reintegration department, holding similar responsibilities.**

The Committee's recommendation to extend this means of communication with the support environment will be analysed upon the initiation of procedures for amending and supplementing the provisions in the Regulation for the implementation of Law no. 254/2013, approved by Government Decision no. 157/2016.

e. complaints and inspections

Paragraph 145

The identified concern relates to the regulatory policy in the service of criminal sentences matters.
By means of Law no. 275/2006, the legal frame governing the service of sentences saw a modern development of the Romanian prison system, by appointing a delegated judge in relation to the service of imprisonment sentences, so that the service of such sentences started to take place under the supervision, control and authority of a judge, ensuring full legality in serving the sentence.
In furtherance of the provisions laid down in the previous legal frame (Law no. 275/2006), the institution of supervisory judge in charge of the deprivation of liberty, in the terminology currently established by means of Law no. 254/2013, amounts to a reinforcement and strong expression of the Romanian law-maker's option for an efficient control of the manner in which persons are deprived of liberty (irrespective of the detention facility: prison, custody and remand centres, remand centres, educational centres, detention centres for minors).
It is important to emphasize that the **supervisory judge in charge of the deprivation of liberty does not form part of the prison administration,** although they physically work in the premises of the prison administration. **He holds judiciary authority throughout the performance of activity, and is independent from the executive power (prison administration), also maintaining his capacity and status as judge.**

In other words, in fulfilling his duties, the supervisory judge in charge of the deprivation of liberty is independent, impartial and only observes the law. Any person, organization, authority or institution has an obligation to observe the independence of the supervisory judge in charge of the deprivation of liberty and provide the latter with the documents and information requested [Article 3 (1) and (6) of the Regulation for organising the activity of the supervisory judge in charge of the deprivation of liberty].
In accordance with Article 9 (1) of Law no. 254/2013, *"the supervisory judge in charge of the deprivation of liberty **shall supervise and control that the legality of custodial sentences and measures of deprivation of liberty is ensured, by exercising the duties established by this Law**."*
We believe that the assertions contained in the report, in connection with the lack of independence of magistrates, without giving any details justifying them, **amount to severe infringements of the constitutional principles protecting the activity of judges, their independence in office and that decision making is fully provided by all domestic laws.**
Thus, expenses incurred in exercising the right to petition and the right to correspondence are borne, as a matter of rule, by the sentenced persons. If such persons do not have the money required, expenses incurred in fulfilling the right to petition by applications and complaints submitted to judiciary bodies, courts of law or international organizations the jurisdiction of which is accepted or acknowledged by Romania and in fulfilling the right of correspondence with their family, attorney and with non-governmental organizations operating in the field of protecting human rights are borne by the prison administration.

Additionally, in the prison system, Decision of the general manager of the National Prison Administration no. 488/2016 was drawn up on the procedure for dispensing materials necessary for fulfilling the right to petition and the right to correspondence by the persons deprived of liberty in the detention facilities. This decision applies to persons deprived of liberty who do not have the pecuniary means, as defined in Article 131 (2) of the Regulation for the implementation of Law no. 254/2013, approved by Government Decision no. 157/2016.

The Constitution of Romania, Chapter II – Fundamental rights and freedoms, Article 51 (1) sets forth the citizens' rights to approach public authorities through petitions. At the same time, paragraph (4) of the above-mentioned article stipulates the obligation of public authorities to provide answers to the petitions received, within the time frames and subject to the conditions set forth in the law.

The right to petition and the right to correspondence are guaranteed for persons deprived of liberty and, by means of the legal frame governing the service of criminal sentences, in the cases where the petition timeframe also includes any application or motion delivered to public authorities, public institutions, judiciary bodies, national and international courts of law. **The correspondence and replies to motions are confidential and may only be held within the limits and under the conditions laid down by law.**

The chairman of the court of appeals, having jurisdiction over the prison, a custody and remand centre, a remand centre, an educational centre or a detention centre appoints, every year, one or several supervisory judges in charge of the deprivation of liberty. The supervisory judge in charge of the deprivation of liberty fulfils the following duties:

a) settles complaints submitted by inmates, in fulfilling the rights stipulated by law;

b) settles complaints concerning the determination and change of regimes for the service of sentences and educational custodial measures;

c) settles complaints submitted by inmates concerning the enforcement of disciplinary penalties;

d) takes part in the food refusal procedure;

e) attends, as chairman, the meetings of the parole commission;

f) fulfils any other duties set forth by law.

In fulfilling their duties, the supervisory judge in charge of the deprivation of liberty may hear anyone, may request information or documents from the administration of the detention facility, may carry out inspections on site and has access to the individual files of prisoners, registers and any other documents or records required in fulfilling the duties stipulated by law. Minutes issued by the supervisory judge in charge of the deprivation of liberty which became enforceable, but also the written instructions handed down to the administration of the detention facility in the food refusal procedure, under the law, are mandatory.

It is hereby further noted that persons deprived of liberty are entitled to receive, at any time, in a confidential setting, visits of their **attorney**, and be provided with the premises and facilities required for ensuring the right to legal assistance. At the same time, sentenced persons may consult their chosen attorney, in any issue of law forming the object of administrative or court proceedings. Consultation with the attorney, whether chosen or appointed *ex officio*, takes place on a confidential basis, subject to visual supervision.

The screening fitted out in the office of the supervisory judge in charge of the deprivation of liberty in Aiud Prison was installed upon his request, and not by initiative of the prison administration. The request was the result of direct and indirect threats by the inmates, targeting the judge.

MINISTERUL JUSTIȚIEI

The Ministry of Justice response to paragraph no. 56 of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)'s Report following the visit in Romania during 07 - 19 February 2018

The Ministry of Justice received, through the Ministry of Foreign Affairs, the report of European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) regarding the last visit to Romania, during 07 - 19 February 2018. The report was communicated to all concerned institutions with the demand to be analyzed, to take the measures it deems necessary and to communicate to the Ministry of Justice the institutional response on the measures taken to implement the recommendations formulated within the CPT report.

Also, taking into consideration the important matters provided in pragaraph no. 56 of the CPT report concerning the carrying out of a comprehensive review by the central authorities on the deeds of ill-treatment by prison staff of the Galati Penitentiary to persons deprived of their liberty, we show the following:

As the result of the preliminary observations presented to the Romanian authorities on 19 February 2018 in Bucharest, by Therese Rytter, a full control by the Control Body of the Minister of Justice (CBM) at the Galati penitentiary was ordered.

Following the visit performed in February 2018 by the CPT delegation and the inspection performed by the Control Body of the Minister of Justice, **administrative measures**[1] were adopted by Galati Penitenciary as follows:

a. The unit leadership organized and held information meetings with the prison's staff. As topics, both the issues raised by the CPT delegation and the recommendations submitted by the Control Body of the Minister of Justice were discussed;
b. Individual bodycam camcorders are going to be purchased for all personnel carrying out direct activities with the inmates, including the members of the special intervention team. In this respect, at Galati Prison, 75 individual portable video cameras were purchased and operationalized. Moreover, an internal operational procedure was developed in this respect. Besides, the staff provided with cameras was trained on devises use;
c. Members of the special intervention team were trained, emphasizing the need to record all the specific activities carried out, underlining the fact that the video recording is the guarantee of a proper legal intervention and, at the same time, a piece of evidence for the prison administration in case of undue treatments allegations applied to the inmates;
d. A place for serving the inmates isolation disciplinary sanctions was identified and set up. It was decided that this room should be used exclusively for these situations, in order to avoid confusion created about the situation of detainees for whom the

[1] The information was communicated by the National Administration of Penitenciary.

measure of individual accommodation was ordered during the period of disciplinary research or for operative reasons;

e. By the daily decision on unit no. 84 of 07.05.2018 issued by the director of the place of detention a working group was set up to draw up a note on the logistical needs for providing the penitentiary with a video surveillance system for all areas where people deprived of their liberty (clubs, access stairs, etc.) have access, as well as arranging a space in which to operate an electronic surveillance center.

The National Prisons Administration leadership emphasized the statement that they do not tolerate acts of aggression exercised by the prison staff against the inmates. The National Prisons Administration reiterate their determination to cooperate with the criminal investigation bodies in case when acts of aggressions exercised by the prison staff against the inmates take place.

Furthermore[2], on March 16, 2018, preliminary remarks made by the visiting team requesting that measures be taken in order to carry out research in respect of the facts identified during the visit to the Galați Penitentiary, were transmitted to the General Prosecutor of the Prosecutor's Office attached to the Galați Court of Appeal (sheet no. 3 of the preliminary observations).

By means of the letter no. 2462/II/6/2018 of March 21, 2018, the Prosecutor's Office attached to the Galați Court of Appeal informed that the Prosecutor's Office attached to the Galați Tribunal made an **ex officio notification** on March 20, 2018 regarding the abusive conduct offense, provided by art.296 paragraph 2 of the Criminal Code.

By order no. 414/P/2018 of August 8, 2018 of the Prosecutor's Office attached to the Galați Court, it was ordered the closing of the case under the aspect of committing the specified offense.

Subsequently, by means of the order no. 6052/II/6/2018 of October 24, 2018, the first prosecutor of the Prosecutor's Office attached to the Galați Tribunal ordered refutation of the ranking solution and the reopening of the criminal prosecution. The order was sent[3] to the preliminary chamber judge at the Galați Court, in order to confirm the reopening of the criminal prosecution.

At the time of transmitting this document to the CPT, the case is pending at the Galați District Court, and the results of the criminal investigations on the facts identified during the visit to the Galati Penitentiary will be communicated in the final response of the Romanian authorities to the CPT Report.

Regarding the automatic publication procedure, we hereby inform you that the Romanian authorities' consent to the publication of the CPT report and the response of the Romanian Government will be communicated to the CPT, as in previous situations, at the same time with the submission of the Romanian Government's response to the CPT report.

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[2] The information was communicated by Prosecutor's Office attached to the High Court of Cassation and Justice.

[3] Pursuant to art. 335 parag. 4 of the Criminal Procedure Code.