

Council of Europe Project
„STRENGTHENING THE HUMAN RIGHTS COMPLIANT CRIMINAL
JUSTICE SYSTEM IN THE REPUBLIC OF MOLDOVA”



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REPORT

NEEDS ASSESSMENT ON THE INVESTIGATION OF TORTURE, DELIBERATE INHUMAN OR
DEGRADING TREATMENT OR PUNISHMENT IN POLICE CUSTODY IN THE REPUBLIC OF
MOLDOVA

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Abbreviations

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| CC | Criminal Code of the Republic of Moldova, no. 985 of 18 April, 2002 |
| CfPT | Council for the Prevention of Torture (National Preventive Mechanism) |
| CoM | Council of Europe Committee of Ministers |
| CPC | Criminal Procedure Code of the Republic of Moldova, no. 122 of 14 March, 2003 |
| CPT | European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment |
| EOM | External Oversight Mechanism (police complaints) |
| GPI | General Police Inspectorate |
| GPO | General Prosecutor's Office |
| MAWG | Multi-Agency Working Group |
| MIA | Ministry of Internal Affairs |
| NAP | National Administration of Penitentiaries |
| NPM | National Preventive Mechanism (Council for the Prevention of Torture) |
| OPCAT | Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment |
| OSCE | Organisation for Security and Co-operation in Europe |
| PAO | People's Advocate Office (Ombudsperson) |
| POCOCS | Prosecution Office for Combating Organised Crime and Special Cases |
| TDI | Temporary Detention Isolator |
| UN | United Nations |
| UNCAT | UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment |
| VC | European Commission for Democracy through Law (Venice Commission) |

1. Introduction

1i. *Background to the Needs Assessment*

The Needs Assessment on the Investigation of Torture, Deliberate Inhuman or Degrading Treatment or Punishment in Police Custody in the Republic of Moldova (hereinafter - the Needs Assessment) is conducted under the auspices of the Council of Europe project 'Strengthening the human rights compliant criminal justice system in the Republic of Moldova' (hereinafter - the Project), which is part of the Council of Europe Action Plan for the Republic of Moldova for 2021-2024.¹ Ralph Roche (International consultant), Graham Smith (Lead international consultant) and Victor Zaharia (National consultant) were appointed to conduct the Needs Assessment in July 2021. Support was also provided by the Project team, particularly Anastasiia Saliuk (Programme Manager), Nelea Bugaevski (Senior Project Officer), Aliona Cojocararu (Project Officer) and translators, interpreters and technicians in conducting the Needs Assessment.

The purpose of the Needs Assessment is to analyse the legislative and normative framework for investigating allegations of torture and deliberate ill-treatment in police custody in the Republic of Moldova, how laws and regulations are implemented and operationalised, and make any recommendations considered necessary to improve current arrangements. It is hoped that the Needs Assessment will assist the authorities of the Republic of Moldova and practitioners develop and improve current arrangements to prevent torture and ill-treatment.

1ii. *Methodology*

The scope of the Needs Assessment is limited to the investigation of allegations of violation of Article 3 of the European Convention on Human Rights in police custody that are the consequences of the actions of persons for whom the authorities of the Republic of Moldova are responsible. Conditions of detention and alleged violations that are not caused by such persons are outside of the scope of the Needs Assessment. Based on the analysis of documents (translated into English) and a Fact-Finding Meeting with core stakeholders (see below), the Needs Assessment is divided into three substantive areas:

- Tracing reform of the legislative and normative framework, particularly since 2017 (Lead consultant, Ralph Roche).
- Mapping current arrangements (based on the legislative and normative framework) for recording, investigating and punishing torture and ill treatment (Lead consultant, Victor Zaharia).
- Examining statistical data on torture and ill-treatment (Lead consultant, Graham Smith).

The Report is structured around the above three work areas. Section 2 provides insights from the recent past on how the Republic of Moldova legislative and normative framework has developed. Section 3 describes current arrangements for investigating

¹ <https://www.coe.int/en/web/national-implementation/projects-by-geographical-area/moldova-cjr>

allegations of torture and deliberate ill-treatment by reference to existing laws and regulations. Presentation of the available statistical data in Section 4 helps explain what is known and not known about investigations of torture and ill-treatment in police custody. The legislative and normative framework and its implementation are analysed in Section 5. The findings of the Needs Assessment are presented in Section 6, with references to sections of the Report where further details on each finding is available, and recommendations are presented in summary form in Section 7.

1iii. Fact-Finding Meeting

An online fact-finding meeting took place on 17 September 2021 at which the Council of Europe consultants discussed the current arrangements for investigating torture and ill-treatment in police custody with the following national stakeholders:

- General Police Inspectorate (Justice Interaction and Staff Inspection Divisions);
- Public Prosecution Service (Prosecution Office for Combating Organised Crime and Special Cases and Section for the Fight against Torture (Directorate for Prosecution and Forensic Science of the General Prosecutor’s Office));
- National Legal Aid Council (lawyers);
- People’s Advocate Office (Ombudsperson: Torture Prevention Division);
- Council for the Prevention of Torture (NPM);
- Non-Governmental Organisations (Institute for Penal Reforms; Moldovan Institute for Human Rights; Promo-Lex).

Council of Europe consultants are thankful to the representatives of national authorities and individuals that participated in the fact-finding meeting for their co-operation and openness.

2. Legislative framework and recent reforms

2i. Overview

Since gaining independence in August 1991, the Republic of Moldova has enacted significant reforms as it transitions from a Communist system to a European democracy, based on respect for human rights, democracy, and rule of law. It joined the Council of Europe on 13 July 1995. This section focuses on recent reforms related to the prevention of ill-treatment, by way of strengthening of the legal regime to investigate allegations of ill-treatment.

The police in any country are the most visible manifestation of State authority, and the Council of Europe places significant emphasis on ensuring that the police perform their onerous duties in accordance with the requirements of the European Convention on Human Rights and other applicable international standards. Key elements of this include that the police themselves comply with the European Convention on Human Rights and that there are effective mechanisms in place to investigate allegations of wrongdoing by the police. This is key both to ensuring human rights compliance and to developing and maintaining confidence in the police in society.

2ii. *Council of Europe and other international standards*

The right to freedom from torture is a fundamental component of human dignity, a concept which is at the basis of the International Bill of Human Rights (composed of the Universal Declaration on Human Rights and other relevant international instruments). Article 3 of the European Convention on Human Rights creates an absolute prohibition on torture and inhuman and degrading treatment and punishment. No circumstances, not even the fight against terrorism or the need to protect the lives of others, can justify treatment in violation of Article 3.²

The Council of Europe, through the European Court of Human Rights and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), has developed a comprehensive and coherent set of standards governing the investigation of allegations of torture and inhuman and degrading treatment and punishment. In summary, the case-law of the European Court of Human Rights makes it clear that any “arguable claim” of ill-treatment must be the subject of a thorough and effective investigation, which is capable of determining what occurred.³ The investigation must be initiated promptly upon the authorities becoming aware of the claim.⁴ It must be conducted by an independent body⁵ and must also be “capable of leading to the identification and punishment of those responsible.”⁶

The CPT, through monitoring places of detention in the Council of Europe member states over more than three decades, has a detailed insight into all aspects of torture and ill-treatment during police detention. It has noted that “the existence of an independent mechanism for examining complaints about treatment whilst in police custody is an essential safeguard.”⁷

Its standard-setting work provides a detailed body of best practices, which are very practical and focused in nature.⁸ These standards cover areas such as the three fundamental safeguards for detained persons, the right to access to a lawyer, to medical examination and to notify a person of detention. These fundamental safeguards are a key method of preventing ill-treatment and ending impunity when it occurs.

The CPT also strongly recommends the creation of oversight of mechanisms such as National Preventive Mechanisms.⁹

2iii. *Law on the Public Prosecution Service*

The last five years have seen significant reforms in the Republic of Moldova criminal justice system. A key reform was the adoption of a new Law on the Public Prosecution

² *Tomasi v France*, (Application no.12850/87), Judgment of 27 August 1992, paragraph 115; *Gäffgen v Germany*, (application no. 22978/05), Judgment of 1 June 2010, paragraph 107.

³ *Gäffgen v Germany*, *op. cit.*, paragraph 117.

⁴ *Labita v Italy* (Application no. 26772/95), Judgment of 6 April 2000, paragraphs 132 -136.

⁵ *Boicenco v Moldova* (Application no. 41088/05), Judgment of 11 July 2006, paragraph 24.

⁶ *Ibid.*

⁷ “Police Custody”, 2nd General Report on the CPT’s activities, 1992, CPT/Inf(92)3, <https://rm.coe.int/1680696a3f>.

⁸ See, for example, “Preventing police torture and other forms of ill-treatment – reflections on good practices and emerging approaches”, 28th General Report of the CPT, 2018, CPT/Inf(2019)9, <https://rm.coe.int/16809420e3>.

⁹ *Ibid.*, page 4.

Service (see Section 3i, below, for how it operates in the current legislative and normative framework).¹⁰

The Law was drafted with significant assistance from the Council of Europe and other key partners. In March 2015, the Venice Commission issued an Opinion¹¹ on the draft law, together with the Directorate of Human Rights of the Directorate General of Human Rights and Rule of Law of the Council of Europe and the Office for Democratic Institutions and Human Rights of the OSCE. This Opinion was broadly supportive of the draft, noting that it represented a substantial improvement and strengthened the independence of prosecutors and improved the structure of the Public Prosecution Service. It made five recommendations for amendment to the draft law, none of which concerned specifically the structure or powers of the Public Prosecution Service concerning complaints of ill-treatment or torture against police officials.

The Law on the Public Prosecution Service created a number of specialized prosecution offices, including the Prosecution Office for Combating Organised Crime and Special Cases (POCOCSC) (see further below, Section 3i)). In a Report¹² prepared within the context of a different Council of Europe initiative, several recommendations for the proper implementation of the Law on the Public Prosecution Service were made. These related mainly to ensuring that allegations of torture are verified and handled promptly by institutionally independent prosecutors and to ensuring that jurisdictional competencies are clearly defined between different components of the Public Prosecution Service.¹³ Revision of administrative regulations and adequate resourcing was also recommended,¹⁴ along with consideration of whether the Section for the Fight against Torture should be transformed into a genuinely independent and specialised agency, separate from the Public Prosecution Service.¹⁵

2iv. 2020 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment visit

During its most recent visit to the Republic of Moldova in 2020, the CPT was “pleased to note that further progress has been made since its 2015 visit as regards the treatment of detained persons by the police.”¹⁶ The CPT also commented positively upon the greatly improved conditions of detention in a number of newly-renovated police detention facilities.¹⁷ While noting the very few allegations of complaints made to it, the CPT was concerned by the considerable, and increasing, number of cases of alleged ill-treatment by police officers reported to the Public Prosecution Service. It highlighted the need for the Moldovan authorities to “pursue their efforts to combat ill-treatment of detained persons by police officers and remain vigilant concerning any information indicative of ill-treatment.”¹⁸

¹⁰ Law No. 3 of 25 February 2016, which entered into force on 1 August 2016.

¹¹ CDL-AD(2015)005-e. Joint Opinion on the draft Law on the Prosecution Service of the Republic of Moldova, adopted by the Venice Commission at its 102nd Plenary Session (Venice, 20-21 March 2015).

¹² “Investigation of Torture and Inhuman or Degrading Treatment or Punishment in Moldova”, 16 March 2017, Eric Svanidze.

¹³ *Ibid*, paragraphs 17-19 and 22.

¹⁴ *Ibid*, paragraphs 20 and 23.

¹⁵ *Ibid*, paragraph 25.

¹⁶ Report to the Government of the Republic of Moldova on the visit to the Republic of Moldova carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 28 January to 7 February 2020, published on 15 September 2020: page 4.

¹⁷ *Ibid*, page 10.

¹⁸ *Ibid*.

While the legal framework concerning the investigation of ill-treatment by police is generally assessed as being in line with European standards, concerns have been raised regarding the practical implementation of the relevant legal provisions. Implementation is key if legal guarantees are to be effective in practice. The importance of this issue was stated most clearly and succinctly by the CPT: “the CPT recommends that the Moldovan authorities pursue their efforts to combat ill-treatment of detained persons by police officers and remain vigilant to any information indicative of ill-treatment. It should be reiterated to police officers that any form of ill-treatment of detained persons is unlawful and unacceptable and will be punished accordingly.”¹⁹

The CPT also examined the structure and functioning of the Council for the Prevention of Torture (CfPT) of the Republic of Moldova (NPM established under the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)).²⁰ A new format was introduced by the 2014 Law on the People’s Advocate (Ombudsperson).²¹ In the new format the CfPT was constituted in 2016 and a Torture Prevention Division was established within the People’s Advocate Office (PAO) to provide support. The CPT noted that, at the time of its visit in 2020, there were differing opinions regarding the mandate and functioning of the CfPT, resulting in a lack of co-ordination and overlapping exercise of functions related to its monitoring function. This highlights a theme which appears prevalent in the criminal justice system of the Republic of Moldova, i.e., the adoption of reforms which are then hampered by a lack of clarity as to the exercise of the powers provided for in those reforms.

2v. *Braguta case*

The Braguta case has gained much national and international attention, due to the specific facts and wider systemic issues that were identified in terms of the phenomenon of ill-treatment during arrest and detention in the Republic of Moldova.

On 15 August 2017, Andrei Braguta was arrested on suspicion of drunk driving and road traffic violations in the village of Ratus-Gornoe in the Orhei District. After having his blood alcohol level analysed, he allegedly assaulted law enforcement officials and was restrained and detained. Twelve days later, on 27 August 2017, he died from injuries sustained during his detention. While this case is first and foremost a tragedy for Mr Braguta and his loved ones, no single authority was responsible for ensuring his safety and welfare while in detention and a detailed report by the PAO into the circumstances surrounding his death and the ensuing investigation highlight a number of structural deficiencies.²² Detailed examination of this complicated case, which highlights the fragmented and disjointed nature of the system for ensuring the welfare of persons detained in the Republic of Moldova, in particular where detained persons are in need of medical attention, is beyond the scope of this report. The phenomenon of prisoner-on-prisoner violence, seemingly tolerated by detention staff, the failure to ensure that Mr Braguta was considered for admission to a psychiatric facility rather than a regular detention facility, and the deliberate leaking of sensitive personal information all lead to

¹⁹ Report on visit from 28 January to 7 February 2020, see above footnote 16, paragraph 19.

²⁰ <https://www.ohchr.org/en/hrbodies/opcat/pages/opcatindex.aspx>.

²¹ Law No. 52 of 3 April 2014

²² Special Report on investigation’s results from Office about the case of death of the national Andrei Braguta into state custody (developed under Article 22 (2) Law on The People’s Advocate (Ombudsman) No. 52/2014).

the conclusion that the system is in need of further reform to ensure that it operates effectively. While the tragedy has led to a range of investigations and an acknowledgement by the authorities that change is needed, the fact that the system could suffer what was described by Mr Braguta’s family’s lawyer as a “short circuit”²³ is deeply concerning. The case highlights the need for better training of police officers and prosecutors in their work, particularly in relation to vulnerable detainees.

Of particular interest to this Needs Assessment, the PAO Report found the General Police Inspectorate (GPI) and National Administration of Penitentiaries (NAP) failed to comply with their duty to report Mr Braguta’s injuries, which were consistent with acts of torture or ill-treatment, to the Public Prosecution Service (see further in Section 3ii, below).²⁴ More generally, the circumstances surrounding the case raise concerns with the effectiveness of current oversight and accountability arrangements, which will be considered further in Section 5, below.

2vi. *Case-law of the European Court of Human Rights concerning the Republic of Moldova*

The European Convention on Human Rights was ratified by the Republic of Moldova in 1997. Since then, there have been 473 judgments of the European Court of Human Rights concerning the country, 413 of which found at least one violation of a right guaranteed by the European Convention on Human Rights. Of these, 110 found a violation of Article 3 of the European Convention on Human Rights, with nine finding that a person had been subjected to torture. The remaining 101 found violations of the right to freedom from inhuman and degrading treatment and punishment. There has been a reduction in the number of findings of violations of Article 3 in recent years. Recent cases concerning the Republic of Moldova have highlighted failures in ensuring effective investigations into allegations of torture or ill-treatment. In the *Trocin* case,²⁵ the European Court of Human Rights found a violation of the investigative obligation, where credible allegations of serious ill-treatment by police were not subjected to an effective investigation. The European Court of Human Rights noted that the Public Prosecution Service accepted the police version of events “without reservation and without verification”.²⁶

In another recent case, *Mitu v Moldova*,²⁷ the European Court of Human Rights found a violation of investigative obligations, due to the taking of inadequate steps to investigate allegations of ill-treatment by police during a person’s detention. Other recent cases involving Article 3 concern a failure to adequately investigate the sexual abuse of a 5-year-old child²⁸ and a failure to protect victims of domestic violence from their abuser, a serving police officer.²⁹

²³ https://www.ipn.md/en/case-of-braguta-caused-short-circuit-in-legal-system-of-7978_1040338.html.

²⁴ See Special Report, footnote 22, above, pages 13-14.

²⁵ (Application no. 23847/19), Judgment of 16 March 2021.

²⁶ *Ibid*, paragraph 61.

²⁷ (Application no. 23524/14), Judgment of 30 June 2020.

²⁸ *A.P. v Moldova*, (Application no. 41086/12), Judgment of 26 October 2021.

²⁹ *Munteanu v Moldova* (Application no. 34168/11), Judgment of 26 May 2020.

3. Current arrangements for the investigation of allegations of torture and ill-treatment in police custody

In this Section, current arrangements for investigating allegations of torture and ill-treatment based on existing laws and regulations are explained.

3i. Overview of the offices and sections of the Public Prosecution Service with responsibilities for combating torture and ill-treatment

The Public Prosecution Service is an integrated system comprising prosecutors' offices: the General Prosecutor's Office (GPO); specialized prosecutors' offices (Anticorruption Prosecution Office and POCOCSC) and territorial prosecutors' offices.³⁰ POCOCSC is based in Chisinau and exercises powers throughout the Republic of Moldova.³¹ It is organised in sections managed by deputies of the POCOCSC Chief Prosecutor and includes a section for carrying out criminal investigations in which an Anti-Torture Office is based.³²

Based in the GPO, the Directorate for Prosecution and Forensic Science contains the Section for the Fight against Torture.³³ The Section is in permanent contact with territorial prosecution offices by way of regular written and oral reporting cycles and has responsibility, *inter alia*, for:

- torture and ill-treatment investigation policy, including a) proposals for legislative and regulatory reform; b) ensuring compliance with the legislative and normative framework; c) recording information on the registration, conduct, and outcome of investigations; d) notification of alleged offences and criminal proceedings; e) streamlining practice; f) initiating and, where applicable, notifying the competent authority overseeing disciplinary proceedings of breaches of law, non-compliance or inappropriate compliance with the obligations of all personnel involved in proceedings concerned with combating torture and ill-treatment; g) identifying and examining circumstances that may contribute to acts of torture and ill-treatment;
- providing practical and methodological help to prosecutors from territorial offices and the POCOCSC engaged in torture and ill-treatment criminal investigations and proceedings; and
- dealing with specific torture and ill-treatment cases as instructed by the Prosecutor General or a Deputy Prosecutor General.³⁴

3ii. Identification of cases, recording and referral to the Public Prosecution Service

A broad range of mechanisms exists to bring deliberate violations of Article 3 of the European Convention on Human Rights in police custody to the attention of the prosecutors' offices of the Public Prosecution Service. They include the regular police

³⁰ Article 7(1) of the Law on Public Prosecution Service no. 3 of 25 February 2016, entered into force on 1 August 2016.

³¹ Article 4 of the Law on Specialised Prosecution Offices no. 159 of 7 July 2016.

³² Regulation on activity of the Prosecution Office for Combating Organised Crime and Special Cases approved by Order no. 7/28 of 17 February, 2017 of the Prosecutor General, paragraphs 9, 10, 12.

³³ Regulation on Public Prosecution Service approved by Order no. 24/28 of 24 September, 2016 of the Prosecutor General, Chapter IV, Structure and Organisation of the Prosecutor's Office, Section 1, paragraph 4

³⁴ *Ibid*, Chapter V, Directorate for Prosecution and Forensic Science, Section 6, Section for the Fight against Torture.

complaints mechanism; complaints lodged during the criminal process; reporting mechanisms of the employees of the detention institutions, referral by the PAO and NPM; or direct notification by prosecutors.

Victims of abuse, their relatives, non-governmental organisations, lawyers etc. can use existing avenues of complaints to bring cases to the attention of the authorities (for example, to managers of detention authorities; their superiors; prosecutors; or the Ombudsperson).

Interested persons can also use procedural avenues available during the criminal process. If harm is caused by an investigation (standard or special), the suspect/accused, their legal representative or defence counsel may file a complaint with the Prosecutor managing the investigation (filed with a prosecutor or criminal investigative body). After a complaint has been filed with a criminal investigative body it must be referred, together with explanations, to the Public Prosecution Service within 48 hours. Any statement, complaint or other circumstance that may substantiate a suspicion that a person was subjected to torture or ill-treatment it shall be examined by a prosecutor under separate procedures as set out in article 274 of the Criminal Procedure Code (CPC).³⁵ If the victim/complainant disagrees with the result of the Prosecutor's examination or does not receive a response within the timeframe provided by law they may file a complaint with an investigative judge.³⁶

In criminal proceedings, evidence shall not be admitted and hence shall be excluded from the case file, may not be presented in court or used to substantiate a sentence or any other court judgment, if obtained by violence, threats or any other means of coercion; violation of the rights and liberties of a person; or essential violation by the investigating body of the provisions of the CPC.³⁷ Evidence obtained in one of the ways described above may be used as evidence to confirm the respective violations and the guilt of the persons who accepted them.³⁸ The court that identifies such an act during trial proceedings shall issue along with the judgment an interlocutory ruling by which the act shall be brought to the notice of the respective bodies, officials and prosecutor.³⁹

Legislation requires that employees of detention institutions report to the Public Prosecution Service all cases of alleged acts of torture or ill-treatment: in 2013 a specific Regulation, commonly referred to as Order 77, was adopted.⁴⁰ The aims of the Regulation are to: a) create mechanisms for identifying, registering, reporting and examining allegations of torture and ill-treatment; b) ensure effective interdepartmental cooperation and standardization of practice; c) application of international and national legislation; and timely responses by the Prosecutor's Office to such acts.⁴¹

³⁵ Article 262, CPC.

³⁶ Article 300, 313, CPC.

³⁷ Violation of the constitutional rights and liberties of a person or of the provisions of criminal procedural law by depriving participants in proceedings of these rights; or by limiting guaranteed rights that affect or could affect the authenticity of the information, document or object obtained: CPC, article 94.

³⁸ Article 94, CPC.

³⁹ Article 218, CPC

⁴⁰ Regulation on the procedure of identification, registration and reporting of alleged cases of torture, inhuman or degrading treatment, GPO Order no. 77/2013 of 31.12.2013 (hereinafter - Order 77).

⁴¹ I. General Provisions, Point 2, Order 77.

Employees of law enforcement agencies are obliged to report to the Public Prosecution Service all cases of torture or ill-treatment that become known to them in connection with or outside the performance of their duties, regardless of whether the case has been reported to their superior.⁴² Correspondingly, police officers, employees of the penitentiary system, medical workers in medical institutions of all types and levels are obliged to notify the Public Prosecution Service whenever they learn about mistreatment. Information has to be forwarded to the Public Prosecution Service when a person complains that they have been subjected to torture or ill-treatment; a person has died or there are visible bodily injuries; or there are other grounds to suspect that a person has been subjected to such acts as a result of the conduct of a law enforcement official.⁴³ Following receipt of a complaint, statement or other information about an alleged act of torture or ill-treatment, the details must be entered in the Register designated for that purpose and immediately, but not later than 24 hours, forwarded to the territorial or specialized prosecutor's office in whose area the institution operates. This obligation applies whenever employees of an institution receive information about alleged acts of torture or ill-treatment from any source, including the media.⁴⁴

Along with zero-tolerance of any act of torture or ill-treatment perpetrated by police, every officer is obliged, under the protection of anonymity, to inform his/her superiors in writing of such acts. Police officers are also obliged to inform the Public Prosecution Service of all cases when physical force, special means or firearms are used, regardless of the consequences, immediately, but not later than 24 hours.

Prosecutors responsible for investigating cases of torture and ill-treatment shall, within the limits of their territorial jurisdiction, verify periodically, but not less than once every six months, compliance with the obligation to identify, record and report cases.⁴⁵

When performing its preventive function as the NPM (during visits to police custody places, for example), the CfPT may become aware of a specific case of torture or ill-treatment. Except in serious cases, when it is the only mechanism to lodge a complaint, the NPM should not normally deal with the complaint.⁴⁶ The reactive mandate of the PAO does include receiving, reviewing and responding to complaints of alleged violations of human rights, as well as making recommendations to the authorities on the recovery of rights and powers to intervene with the competent authorities and initiate disciplinary or criminal proceedings against the alleged perpetrator.⁴⁷

Interested persons can directly notify the Public Prosecution Service of allegations of torture and ill-treatment in police custody. In addition, if a prosecutor reasonably suspects that a crime has been committed, they shall immediately register the case ex officio notification in order to commence a criminal investigation.⁴⁸

⁴² Order 77.

⁴³ *Ibid* Part 2, paragraph 1.

⁴⁴ Order 77.

⁴⁵ *Ibid*.

⁴⁶ This is not a limitation established in law; it derives more from the preventive practices of the NPMs.

⁴⁷ Articles 16, 18, 22, 25, Law no 52 from 03.04.2014 on the People's Advocate (Ombudsperson).

⁴⁸ Articles 262, 265, CPC.

3iii. Public Prosecution Service competency to investigate torture and ill-treatment

Investigation of the crimes of torture, inhumane or degrading treatment set forth in article 166¹ of the Criminal Code (CC) is under the exclusive competence of Public Prosecution Service prosecutors.⁴⁹ Any statement, complaint or other information serving as grounds to suspect that a person has been subjected to torture or ill-treatment shall be immediately filed with or transmitted to the Public Prosecution Service to be investigated, and the decision whether or not to initiate proceedings must be made within 15 days.⁵⁰

Torture and qualified/aggravated torture cases (article 166¹ paragraphs (3) and (4) of the CC) are investigated by the POCOCSC.⁵¹ Inhuman or degrading treatment cases (article 166¹ paragraphs (1) and (2) of the CC) are investigated by territorial prosecutors' offices.⁵²

3iv. Parallel criminal and disciplinary proceedings

In parallel with criminal proceedings initiated by the Public Prosecution Service the public authority in which a person alleged to have committed an act of torture or ill-treatment works is obliged to initiate an internal workplace investigation.⁵³ The internal investigation is to start immediately after registration and transmission of information on the alleged acts to the Public Prosecution Service. The workplace investigation may be initiated following petition by a citizen; self-notification report; or notification by the criminal prosecution body, a court judge or information from other sources.⁵⁴ The Public Prosecution Service has powers to initiate disciplinary proceedings for breaches of law and failure to fulfil or inadequate fulfilment of their duties by criminal investigation officers, employees of fact-finding bodies, special investigation bodies and those responsible for registering notifications.⁵⁵

An internal workplace investigation may be initiated against persons who knew or should have known about an act of torture or ill-treatment and did nothing to prevent or report it. If the workplace investigation is initiated for disciplinary offences regarding acts of torture or ill-treatment in police custody, it shall be submitted in writing within 24 hours to the Internal Protection and Anti-Corruption Service⁵⁶ and Staff Inspection Directorate of the Ministry of Internal Affairs (hereinafter - MIA).⁵⁷

The duration of the workplace investigation shall not exceed 30 days (not taking into account annual, study, medical or maternity/paternity leave, or the time taken by other law enforcement bodies to reach a decision on the subject matter of the investigation).

⁴⁹ CPC, article 270.

⁵⁰ CPC, article 274 (3¹).

⁵¹ CPC, article 270²; Law on Public Prosecution Service, article 9.

⁵² CPC, article 270.

⁵³ Order 77, point 1. The particularities of the conduct of inquiries into alleged cases of torture, inhuman or degrading treatment. Correlation of the service inquiry with criminal procedure.

⁵⁴ General Police Inspectorate, Order no. 407 from 18.09.2018 on the approval of the Standard Operating Procedure "Initiation and conduct of workplace investigations", appendix 2 Procedure on initiating and conducting workplace investigations, (hereinafter - GPI Order 407 appendix 2) point 5.

⁵⁵ Article 6, Law on Public Prosecution Service no. 3 of 25 February 2016.

⁵⁶ Point 12 (1) and (2) Regulation on the organisation and functioning of the Internal Protection and Anti-Corruption Service of the MIA, approved by MIA Order no. 300 of 15.10.2014.

⁵⁷ GPI Order 407 appendix 2, point 26.

In such cases, the terms of reference of the workplace investigation may be suspended on consideration of a report submitted to the official, or delegated person, who ordered the initiation of the workplace investigation. Suspension of the workplace investigation shall not exceed six months from the date of the alleged disciplinary offence.⁵⁸ A disciplinary sanction cannot be applied if more than six months have passed since the alleged disciplinary offence, and in cases following review or control of economic and financial activity not after two years from the date of the offence.⁵⁹

If the outcome of the disciplinary investigation reveals other criminal offences, the committee or subdivision which carried out the investigation shall inform the Public Prosecution Service directly and without delay. If, in the course of investigating an allegation of torture or ill-treatment, the Prosecutor finds that the conduct of the person has been contrary to laws or regulations other than the CC or of human rights and freedoms, the matter shall be referred to the authority in which the person is employed for examination under the framework of an official disciplinary investigation.

4. Statistical data

4i. Overview

With exclusive competency to investigate and prosecute acts of torture and ill-treatment the Public Prosecution Service owns and publishes statistical data on allegations and criminal proceedings initiated under article 166¹ offences of the CC in GPO annual activity reports. Relying on their own inspection and monitoring activities and those of the CfPT (NPM) the PAO publishes statistics on their observations, including injuries sustained by persons that come into contact with police, in annual reports. In addition, in collaboration with the Soros Foundation the PAO included statistical data that they have obtained in a 2020 Thematic Report. Although the MIA/GPI may refer to statistical data in reports, they do not routinely publish data they collect on torture and ill-treatment.

4ii. *2020 statistical data on torture and ill-treatment cases recorded by the General Prosecutor's Office, People's Advocate Office and Ministry of Internal Affairs/General Police Inspectorate and made available to the Needs Assessment*

In Table 4ii, below, statistical data on torture and ill-treatment available to the Needs Assessment are presented.⁶⁰ The first column of the Table gives the name of the body that has collected the data (i.e., the owner of the data). The second column sources the data by year, publication title (or Needs Assessment request) with references to the source document. The third column describes the statistical data and, where data are available, annual trends.

⁵⁸ *Ibid*, point 10.

⁵⁹ *Ibid*, point 24.

⁶⁰ The GPI informed the Needs Assessment that due to time constraints they were unable to provide the Needs Assessment with statistical data in advance of the 17 September Fact-Finding Meeting.

Table 4ii: Statistical data available to the Needs Assessment on allegations of torture and ill-treatment, investigations, criminal and disciplinary proceedings and outcomes

| Owner | Source | Description | | |
|---------------------|---|--|---------------------|---|
| GPO | 2020 Activity Report ⁶¹ | <p>Disaggregated data by department, including police, are not published in the Activity Report. For each year between 2014 and 2018 the GPO recorded a relatively consistent total number of torture and ill-treatment allegations (a low of 622 and a high of 687). There was a 30% increase in 2019 (up to 876), followed by a 36% fall in 2020 (down to 563). There was a 61% reduction in the total number of self-referrals⁶² (from 437 down to 172) between 2019 and 2020.</p> <p>A 27% fall in the total number of torture and ill-treatment criminal proceedings initiated each year was recorded between 2014 and 2019 (down from 118 to 86), followed by a fall of 45% in 2020 (down to 47).</p> <p>In 2020, of 199 torture and ill-treatment investigations, 22 cases were submitted to court, including proceedings against 11 police officers. 17 persons faced article 166¹ CC Criminal trials, including one police officer who was convicted and fined.</p> | | |
| GPO | Needs Assessment requests ⁶³ | In 2020 the GPO recorded torture and ill-treatment allegations against 429 police officers in referrals, of which 186 were against investigation officers. ⁶⁴ 5 involved police officers in Temporary Detention Isolators (TDI); and 73 in police inspectorates excluding TDIs. | | |
| PAO | 2020 Annual Report ⁶⁵ | The PAO reported a 23% fall in the number of recorded ‘injuries from police’ between 2019 and 2020 (down from 306 to 237). | | |
| PAO/Soros | 2020 Thematic Report ⁶⁶ | <p>The Thematic Report states that on 18 December 2020 the GPI informed the PAO that there were nine criminal cases proceeding against GPI employees.</p> <p>It was reported that up to the same date allegations were recorded against officers in seven police inspectorates, with the following outcomes:</p> <table border="1" data-bbox="614 1691 1388 1729"> <tr> <td>Under investigation</td> <td>2</td> </tr> </table> | Under investigation | 2 |
| Under investigation | 2 | | | |

⁶¹ GPO, 2021, Annual Activity Report for 2020: 3.4.3, Combating the phenomenon of torture and ill-treatment.

⁶² Cases investigated on own motion of GPO.

⁶³ Two requests for additional data made to the GPO following examination of the data published in the Annual Activity Report for 2020.

⁶⁴ Six referrals involving minors also recorded.

⁶⁵ PAO, 2021, Report on the Observance of Human Rights and Freedoms in the Republic of Moldova in 2020, page 187. http://ombudsman.md/wp-content/uploads/2021/06/Raport-2020-FINAL-RED_18-iunie.pdf.

⁶⁶ PAO and Soros Foundation Moldova, 2020, Thematic Report: Compliance with the fundamental guarantees of detention and pre-trial detention in police inspectorates, (hereinafter - PAO/Soros Thematic Report). http://ombudsman.md/wp-content/uploads/2020/12/Raport_Retinere_2020_OAP_FSM_FINAL-proiect_pe-site.pdf.

| | | | |
|------------|------------------------------------|---|---|
| | | Investigation discontinued due to lack of cooperation by complainant | 1 |
| | | Management action (warning) | 2 |
| | | No evidence of misconduct | 6 |
| | | Examination by the PAO of GPI registers during inspection visits revealed 25 reported incidents of suspected ill-treatment in six police inspectorates. | |
| MIA | 2020 Progress Report ⁶⁷ | The MIA reported that 16 allegations of ill-treatment, abuse or discrimination were referred to the Public Prosecution Service in 2020. | |

4iii. Observations

It is evident from Table 4ii that there is a lack of statistical data on torture and ill-treatment in police custody and the limited data that are available are confusing. For 2020 there is a lack of clarity on the number of allegations recorded against police officers in general, and the number of allegations specifically relating to persons detained in police custody. According to the GPO there were 429 referrals against police officers, of which 186 involved investigation officers.⁶⁸ The PAO recorded 237 'injuries by police'. The MIA reported that 16 allegations against police officers were referred to the Prosecutor's Office. Relying on information provided by the GPI, PAO/Soros reported that there were allegations against 11 officers, and evidence of 25 suspected cases in GPI registers examined by the PAO during visits. The five referrals recorded by the GPO as having taken place in TDI premises in 2020 is the only metric that is clearly within scope of the Needs Assessment. Amounting to 0.33 per TDI or 0.71 per 1,000 detainees,⁶⁹ this is a surprisingly small number.

5. Analysis

5i. Introduction

The current arrangements in place lead to a very formalised system of dealing with complaints of torture and ill-treatment. The focus of any effective system of investigation should be on ascertaining the truth and facilitating the application of legal consequences by the appropriate authorities (prosecutorial, judicial and disciplinary). As the sections above and discussion below show, the system in place does not facilitate this.

The Republic of Moldova is a small country, with a population of 2.6 million and finite financial and human resources available to respond to allegations of torture and ill-treatment. These resources are not, in our view, being used in an optimum manner. While the situation does appear to have improved in recent years as regards the number of allegations of torture and ill-treatment, the situation regarding the investigation of those allegations is less positive. Differences of opinion between relevant authorities regarding competencies and obligations (as commented on by the CPT, see Section 2iv,

⁶⁷ MIA, 2020, Progress Report on Implementation of the Action Plan on reducing maltreatment, abuse and discrimination against the persons in Police custody for the years 2017-2020, Action Point 4.2.4.

https://politia.md/sites/default/files/raport_de_progres_rele_tratamente_2020_en.pdf.

⁶⁸ Out of a total of 563 referrals in 2020, 172 were self-referred by the Prosecutor's Office: a figure is not given for the number of self-referrals involving police officers.

⁶⁹ 7,064 persons were detained in TDIs in 2020: GPI (2021) *Police Annual Activity Report for 2020*, page 7.

above) can serve to undermine the effectiveness of investigations. Complainants are likely to be deterred by the complexity of the arrangements and may well be disillusioned by undue procedural complexity. This can lead to a failure to properly sanction individual violations and also allow structural issues or repeated unlawful actions by individual law enforcement officers.

A summary of the relevant European Convention on Human Rights standards concerning torture and ill-treatment is set out in Section 2vi above. As stated by the European Court of Human Rights, there will be a violation of Article 3 of the European Convention on Human Rights where the domestic legal system “fails to provide practical and effective protection of the rights” guaranteed by it.⁷⁰ It is accordingly of critical importance that the system functions effectively, with common understanding and application of competencies by the different authorities charged with responding to allegations of torture and ill-treatment. Analysis below of system effectiveness is separated into two parts, examining the effectiveness of current arrangements to record and report allegations of torture and ill-treatment and, then, investigation of allegations.

5ii. Recording and reporting allegations

The Council of Europe Committee of Ministers (CoM) have published guidance for Member States on compliance with the European Convention on Human Rights criteria for the effective investigation, including of acts of torture and ill-treatment and involvement of victims in proceedings.⁷¹ Regardless of whether a complaint has been made the authorities are obliged to commence an investigation into an arguable allegation that there has been a violation of Article 3 of the European Convention on Human Rights.⁷² The threshold for a state investigating on its ‘own motion’ is not a high one⁷³ and is predicated on the existence of effective procedures to record and report allegations. According to the GPI all allegations of torture and ill-treatment in police custody are recorded in police inspectorate registers and referred to the Public Prosecution Service.⁷⁴ The PAO inquiry into the death of Andrei Braguta, however, found that the GPI did not refer the case to the Public Prosecution Service, and nor did the NAP when he was first transferred to a penitentiary (see above, Section 2v). In testimony to the Needs Assessment, stakeholders disputed the accuracy and reliability of registers and disparities between published GPO, GPI and PAO/Soros statistical data on allegations confirming that there is room for improvement in current recording methods. These concerns with ineffective recording and reporting practice reinforce the importance of effective Public Prosecution Service monitoring of GPI compliance with the duty to identify, record and report cases (see Section 3ii, above). The Needs Assessment did not have access to police inspectorate registers or Public Prosecution Service monitoring reports, and we are unable to comment on individual register entries, their reliability as a full and accurate record or the effectiveness of Public Prosecution Service monitoring. Research on the content and effectiveness of GPI registers as a means of recording allegations of torture and ill-treatment would contribute to

⁷⁰ *Beganović v Croatia* (Application no. 46423/06), Judgment of 25 June 2009, paragraph 71.

⁷¹ The five effective investigation criteria are adequacy; thoroughness, impartiality and independence; promptness; and public scrutiny. Eradicating impunity for serious human rights violations Guidelines adopted by the Committee of Ministers on 30 March 2011 at the 1110th meeting of the Ministers’ Deputies, H/Inf (2011) 7, Parts IV and VII, pages 11-13 (hereinafter CoM Guidance). <https://rm.coe.int/1680695d6e>

⁷² *Ibid*, pages 47-48.

⁷³ *Stefan Iliev v Bulgaria* (Application no. 53121/99), Judgment of 10 May 2007, paragraph 47.

⁷⁴ Order 77, point 5.5 requires institutions to maintain a register of referrals to the Public Prosecution Service.

understanding of the strengths and weaknesses of existing methods, and how they may be improved. It is further suggested that consideration should be given to the feasibility of alternative methods, electronic recording for example, that may be updated up to the conclusion of all proceedings relating to the allegation.

It is understandable that persons detained in police custody, for reasons that do not need to be rehearsed here, do not always complain of abuse. In order to ensure that allegations of torture and ill-treatment are brought to the attention of the authorities it is incumbent on all criminal justice practitioners (including judges, prosecutors, lawyers, medical practitioners and police officers of every rank) to refer cases to the Public Prosecution Service as soon as possible after discovery. Inevitably, there are cases of non-reporting which needs to be addressed by training on the obligations to record, investigate and punish ill-treatment as laid down in the Republic of Moldova legislation and in compliance with European Convention on Human Rights standards. Particularly deserving of mention, here, are applications by defence lawyers to have evidence obtained as the result of ill-treatment excluded in criminal proceedings or to protect their clients from further interferences with their human rights. Lawyers told the Needs Assessment that judges tend to be unsympathetic to such applications and we were informed by the Public Prosecution Service that they are not aware of any interlocutory rulings following decisions by judges to rule evidence inadmissible.

5iii. Investigation of allegations

The Public Prosecution Service deserves much credit for proactively addressing ineffective investigations and promoting reform over the course of the last decade or so. In compliance with European Convention on Human Rights standards, prosecutors have registered significant numbers of cases on their own motion, recorded as 'self-referrals', each year. In 2020 there was a 61% reduction in the number of self-referrals compared with the previous year, which will undoubtedly have contributed to a 36% fall in the total of recorded allegations in the same period. In their 2020 Annual Activity Report the GPO does not disaggregate recorded allegation statistics by department (it is not known how many self-referrals are police custody cases) and nor do they analyse falling numbers in the context of efficiency and effectiveness. Public Prosecution Service torture and ill-treatment investigations, examination of closed cases followed by interviews with investigators, perhaps, is another area which would benefit from research on compliance with European Convention on Human Rights standards. The data suggest that the Public Prosecution Service have adopted a cautious approach in the past to self-referrals in order to protect against the risk of non-compliance with European Convention on Human Rights standards, an approach which they now appear to be retreating from. A departure which may improve system efficiency and effectiveness. In support of this hypothesis, there are concerns among stakeholders of poor understanding of when a police officer may lawfully resort to coercive force in order to perform their law enforcement duties. The GPI told us that referrals to the Public Prosecution Service largely involved suspects checking the lawfulness of police force used against them during apprehension, which was confirmed by the Public Prosecution Service with reference to the caveat in Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading

Treatment or Punishment (UNCAT) excluding legitimately exercised police force.⁷⁵ In addition to research, there is the need for a co-ordinated training programme to address this gap in understanding of police powers, which appears to be shared by a wide range of practitioners.

The ‘adequacy’ of an investigation of alleged torture or ill-treatment requires that it must be capable of leading to the identification and punishment of those responsible.⁷⁶ An adequate investigation is dependent on an effectively functioning system, including clarity of the legislative and normative framework and a common understanding of how it should operate by stakeholders that share responsibility for preventing torture and ill-treatment. Rather than an open and transparent system, there is evidence of poor communication and lack of co-operation between stakeholders in the Republic of Moldova. A cause for concern is that the unique competency of the Public Prosecution Service for investigations, intended to ensure clarity and effectiveness, may exclude or excuse other stakeholders of the Republic of Moldova participation in the common objective of preventing torture and ill-treatment. Take, for example, working relations between the Public Prosecution Service, PAO and CfPT. With clearly defined responsibilities for investigation and monitoring detention facilities, these bodies ought to recognise each other as partners engaged in complementary activities for the overarching purpose of preventing torture and ill-treatment. Yet, this is not always the case, and they sometimes seem to be in competition. The Needs Assessment were informed by PAO representatives that there has been reluctance on the part of the Public Prosecution Service to discuss cases with them, including informing them of the outcomes of cases that the PAO had referred for investigation, and the Public Prosecution Service acknowledged that they have ‘cold relations’ with the PAO and CfPT at present.

Regarding relations between the Public Prosecution Service and General Police Inspectorate, risk to the effective functioning of the system takes a different form. The Public Prosecution Service’s exclusive competency for investigations, and the way in which the new Law on the Public Prosecution Service has been implemented, has in our view been interpreted in a way which excuses the GPI from playing a leading role in combating torture and ill-treatment in police custody. It is as if the responsibilities of the GPI are limited to making an entry in a police inspectorate register and referral to the Public Prosecution Service within the stipulated 24 hours. Reluctance of the General Police Inspectorate to engage on the subject of torture and ill-treatment was raised with the Needs Assessment by representatives of the PAO, CfPT, NGOs and lawyers, and was evident in GPI responses to requests for data (which were not forthcoming) and questions by the Needs Assessment. It is noteworthy that during the Fact-Finding Meeting we discussed how internal disciplinary investigations were conducted alongside Public Prosecution Service investigations. The structure of the Staff Inspection Division and procedures were described to us and documents were forwarded at our request to assist our understanding. At the 17 September 2021 Fact-Finding Meeting, the GPI

⁷⁵ ‘It [the term “torture”] does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.’ Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984, entry into force 26 June 1987, in accordance with article 27 (1). <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>.

⁷⁶ CoM Guidance, see footnote 71, above, page 12

representative made no references to disciplinary proceedings, past or present, which may have helped explain the complex procedures to us and where clarity is lacking. This was even though in 2020 two officers were issued with warnings and there was no evidence of misconduct against six officers (see above, Table 4ii). Internal GPI investigations of breaches of the disciplinary code associated with allegations of torture and ill-treatment is another area of practice which would benefit from research.

It would appear that the above-mentioned consequences of recent reform of the legislative and normative framework are unintended and are much due to each core stakeholder having to marshal limited financial and human resources in a manner that prioritises their primary obligations. We do not propose that these problems should be addressed by further reform at this moment: time is required to allow the new legislation to become embedded in the criminal justice system. We hold that far closer co-operation between core stakeholders is required, which could be facilitated by their participation in a multi-agency working group (MAWG, see further below).

Impartiality and independence are essential to effective investigation of torture and ill-treatment and compliance with European Convention on Human Rights standards requires that there 'is not only a lack of hierarchical or institutional connection but also a practical independence.'⁷⁷ In regard to complaints in police custody, the existence of an external oversight mechanism (hereinafter - EOM) is recognised Council of Europe best practice.⁷⁸ An EOM that is separate from police or prosecution services does not operate in the Republic of Moldova and the rationale, on size of country and limited resources grounds, in support of the Section for the Fight against Torture serving this type of function from within the Public Prosecution Service is a persuasive idea. Nevertheless, in our deliberations the Needs Assessment has paid special attention to whether current difficulties may be best addressed by the introduction of an independent body separate to the Public Prosecution Service. We are of the view that this is not the case at this moment in time. We do not recommend embarking on another intensive programme of legislative reform, which in the short-term risks disrupting recent advances. Further, there is the prospect that if left unattended the poor communication and co-operation that have accompanied recent changes may debilitate a fledgling EOM in the future. This situation may change,⁷⁹ and we advise that the authorities are open to the feasibility of creating an EOM when commissioning research on combating torture and ill-treatment (see above, Section 2ii).

In the alternative to creating an EOM, vigilance is required in ensuring that the Section for the Fight against Torture and Public Prosecution Service investigations of torture and ill-treatment in police custody are European Convention on Human Rights compliant. Limited human and financial resources available to POCOCSC and territorial prosecutors' officers torture and ill-treatment investigators risk impartiality and independence. While appreciating the budgetary constraints to which the Republic of Moldova is subject, it is a requirement of effectiveness (in Article 3 of the European Convention on Human Rights

⁷⁷ See, for instance, *Boicenco v Moldova* (Application no. 41088/05), Judgment of 11 July 2006, paragraph 121; also, CoM Guidance, see footnote 71, above, page 12.

⁷⁸ CPT, 2018, Complaints mechanisms, Extract from the 27th General Report of the CPT, CPT/Inf(2018)4-part. <https://rm.coe.int/16807bc668>.

⁷⁹ Current arrangements may be tested in the European Court of Human Rights, and the part played by the Public Prosecution Service will come under scrutiny in the Article 3 of the European Convention on Human Rights application *Cliepa and Iapara v Moldova* (Application no. 39468/17). See also, Third party intervention by the Council of Europe Commissioner for Human Rights, <https://rm.coe.int/third-party-intervention-by-the-council-of-europe-commissioner-for-hum/1680a2e452>.

terms) that the investigative structures in place are adequately resourced to discharge their tasks. This is especially an issue if assistance is requested from prosecutors, police officers or experts (medical, psychological, forensic, and so on) that are not institutionally and hierarchically separate to the officers under investigation. Impartiality and independence may also be endangered if specialist torture and ill-treatment investigators are temporarily transferred to other investigations or serve in a peripatetic investigator role depending on their caseload. Close examination of Public Prosecution Service investigations was beyond the reach of this Needs Assessment and, as above, it is suggested that understanding would greatly benefit from research, both quantitative and qualitative, on the effectiveness of Public Prosecution Service investigations under the new arrangements.

An intended objective of this Needs Assessment was to propose a set of baselines to evaluate the effectiveness of investigations of torture and ill-treatment in police custody in the Republic of Moldova. Given the lack of statistical data, which are essential to baseline design, this has not proved possible. Analysis of a wide range of statistical data - including numbers of allegations; categories of injury/harm, perpetrator, location and whom reported by; investigations and length of time taken to investigate; criminal proceedings initiated and grounds for discontinuation; court proceedings, convictions, acquittals and categories of punishment on conviction; details of internal disciplinary proceedings, findings and punishments - contribute to understanding of what works and does not work, and what may be done to more effectively combat torture and ill-treatment. Furthermore, in the interest of openness and transparency publication of statistical data are important to building trust and confidence in procedures for combating torture and ill-treatment, and in the police more generally. We, therefore, particularly encourage the GPI to systematically collect and publish police complaints data. More generally, we suggest that the collection of statistical data on torture and ill-treatment allegations, investigations and outcomes are a priority of the Section for the Fight against Torture and precursor to the development of an evaluation programme.

Finally, a MAWG has been suggested above for the purpose of tackling poor communication and co-operation between core stakeholders that is crucial to the effective operation of the recently overhauled system to combat torture and ill-treatment. Although measures developed expressly to prevent torture and ill-treatment, monitoring places of detention for example, are outside the scope of this Needs Assessment, as noted above in 5iii it is essential that bodies with investigation and preventive responsibilities work collaboratively in the interest of improving the entire system, including prevention and investigation procedures. A MAWG has also been suggested because it is a 'softer' option to further reform and creation of an EOM. In our view, an informally organised working group, based on participants signing memoranda of understanding, is more likely to lead to greater collaboration than a more formal body instituted by interdepartmental order or protocol. Considering the current responsibilities of the Section for the Fight against Torture to advise, monitor and coordinate torture and ill-treatment matters within the Public Prosecution Service, it could perform similar functions supporting a MAWG.

6. Findings

The findings of the Needs Assessment are based on analysis of recent developments of the legislative and normative framework (see above, Section 2), its implementation and operationalisation (see above, Section 3), the available statistical data (see above, Section 4) and discussions with core stakeholders at the 17 September 2021 Fact-Finding Meeting as presented in Section 5, above.

- There was consensus among core stakeholders at the 17 September 2021 Fact-Finding Meeting (see above, Section 1iii) that the legislative and normative framework for the recording, reporting and investigation of torture and ill-treatment is adequate. The Needs Assessment agrees with this view and accordingly finds that legislative and regulatory reform is not a priority at present.
- Except for the GPI, stakeholders agree that there are problems with implementation and operationalisation of the law and accompanying regulations. The Needs Assessment holds that there is a pressing need for core stakeholders to reach a full and common understanding of reasons for non-compliance with national law.
- An obstacle to achieving a full and common understanding of problems with current arrangements is the poor communication and limited cooperation that exists between core stakeholders.
- The Needs Assessment holds that the task of reviewing compliance and remedying non-compliance with the legislative and normative framework should be undertaken by a MAWG comprising core stakeholders and co-ordinated by the Section for the Fight against Torture. A MAWG is distinguished from an Inter-Departmental Working Group because of the participation of government and non-government bodies. Core stakeholders include the Public Prosecution Service, General Police Inspectorate, National Administration of Penitentiaries, People's Advocate Office, Council for the Prevention of Torture, judges, civil society organisations, lawyers, and researchers with a proven record in the field. It is held that an inclusive approach of this description would allow for the development of a common understanding of current arrangements for combating torture and ill-treatment in police custody; the responsibilities of all stakeholders and their different standpoints; problems encountered; and opportunities to problem-solve collaboratively.
- In the interest of improving the effectiveness of the system for combating torture and ill-treatment in police custody, the Needs Assessment holds that the following tasks should be completed as part of the MAWG review:
 - Collection, analysis and publication of detailed and disaggregated statistical data by the Public Prosecution Service and General Police Inspectorate of allegations, investigations, initiated proceedings (criminal, administrative and disciplinary) and outcomes of torture and ill-treatment. The Needs Assessment holds that the MAWG

would be best placed to advise on the range of data required, and some guidance is given above in Sections 5ii and 5iii;

- Research on key components of the system for combating torture and ill-treatment in police custody, including:
 - a. The content and effectiveness of GPI registers as a means of recording allegations of torture and ill-treatment (see above, Section 5ii);
 - b. Research on Public Prosecution Service torture and ill-treatment procedures (see above, Section 5iii); and,
 - c. Research on internal GPI disciplinary investigations associated with allegations of torture and ill-treatment (see above, Section 5iii).
- Best research is undertaken independently and impartially by experienced researchers that do not have institutional connections with the body that has commissioned the research or the persons whom they are researching. In the opinion of the Needs Assessment, rigorous research, deploying a range of quantitative and qualitative methods is required. This includes descriptive statistical analysis at the outset and more complex inferential analysis once a sufficient volume of data has been accumulated; examination of all relevant documents including closed case files; and interviews with practitioners involved at every operational level. It is held that research of this order would go beyond the superficial examination that has been conducted as part of this Needs Assessment (we did not have access to detailed statistics, case files or front-line practitioners) to vastly improve knowledge and understanding of what works and does not work in the Republic of Moldova system for combating torture and ill-treatment.
- It is held that the following tasks should be undertaken to ensure compliance with the legislative and normative framework:
 - Delivery of training to GPI and NAP officials on the duty to identify, record and report allegations of torture and ill-treatment (see above, Sections 2v and 5ii); and,
 - Delivery of training to criminal justice practitioners on legitimate police exercise of force (see above, Section 5iii).
- Finally, the oversight of the system to investigate torture and ill-treatment in police custody needs improvement. It is held that in completing the data collection, research and training tasks detailed above, a MAWG would have a better understanding of how oversight arrangements may be improved, and whether regulatory or legislative reform may be necessary. Research on the feasibility of an EOM, serving as an alternative to the current arrangement whereby the Section for the Fight against Torture co-ordinates and monitors procedures, would contribute immensely to knowledge and understanding (see above Sections 2iii and 5iii).

7. Recommendations

Following on from the findings set out in Section 6, above, the Needs Assessment recommends the following:

7i. *Developing a holistic approach to combating torture and ill-treatment*

Although this Needs Assessment is limited to the investigation of allegations of torture and deliberate ill-treatment in police custody, the findings and recommendations presented in this Report may be transferred to the investigation of allegations against police when performing public order and other duties; public officials working in all other government departments; and, as noted above, the operation of preventive mechanisms. It is important that a holistic approach to combating torture and ill-treatment - including prevention, investigation and punishment - is developed in a manner that fully recognises the shared responsibilities and contributions of all stakeholders to the effective operation of the legislative and normative framework.

7ii. *Appointment of a Multi-Agency Working Group*

The authorities of the Republic of Moldova should appoint a MAWG, co-ordinated by the Section for the Fight against Torture, tasked with reviewing compliance with the normative framework for the investigation of torture and ill-treatment in police custody and identifying issues which are an impediment to successful implementation of that framework. The MAWG to agree how to apply the findings and recommendations presented in this Report to improvement of the generic legal and institutional framework for preventing, investigating, and punishing torture and ill-treatment in the Republic of Moldova.

Key issues that the MAWG should focus on include:

- identifying blockages to effective co-operation between different institutions involved in the fight against torture and ill-treatment and proposing concrete measures to remedy such blockages, including amendments to the current normative framework, the issuance of definitive interpretations of, or commentaries upon, relevant parts of the normative framework and practical measures to improve inter-institutional co-operation;
- identifying training needs for different stakeholders (police, public prosecution service, judges, lawyers, medical practitioners, experts, etc.) to further reduce the instance of torture and ill-treatment, including procedural issues related to ensuring the enjoyment of the three fundamental safeguards against ill-treatment, recording and reporting of allegations of ill-treatment, case-management procedures for recorded complaints and training for police officers on the legitimate use of coercive force.

Members of the MAWG should include core stakeholders: Public Prosecution Service; General Police Inspectorate; National Administration of Penitentiaries; People's Advocate Office; Council for the Prevention of Torture; judges; civil society organisations; lawyers and researchers with a proven record in the field.

7iii. Collection of statistical data

The Republic of Moldova authorities should appoint a bespoke working group to review the manner in which statistics concerning complaints of torture and ill-treatment are gathered. The aim of this working group should be to identify ways in which the available data could be made more useful in terms of understanding and addressing the phenomenon of torture and ill-treatment.

Pending the outcome of the working group referred to above, the Public Prosecution Service and General Police Inspectorate should collect, analyse and publish detailed and disaggregated statistical data on recorded allegations of torture and ill-treatment, and subsequent investigations, initiated proceedings (criminal, administrative and disciplinary) and outcomes.

7iv. Research

Independent and rigorous research, drawing on statistical data, examination of documents, including closed case files, and interviews with practitioners and complainants, should be commissioned on:

- a. General Police Inspectorate registers and methods of recording allegations of torture and ill-treatment and reporting to the Public Prosecution Service;
- b. difficulties encountered by individual complainants in having their complaints addressed and the reasons for the withdrawal of complaints;
- c. the average length of time taken to lead to a conclusion of an allegation of torture or ill-treatment;
- d. investigative procedures adopted by the Public Prosecution Service and, as applicable, other relevant actors, in relation to complaints;
- e. the methods of application of force leading to complaints (for example, blows, use of equipment issued to police, threats, etc.), to identify potential training needs for police officers;
- f. General Police Inspectorate disciplinary investigations relating to allegations of torture and ill-treatment;
- g. the experience of other European democracies who have established EOMs;
- h. how government departments, civil society organisations, courts, and lawyers with responsibilities for preventing, investigating and punishing torture and ill-treatment operate both independently and collaboratively.

7v. Training

Training should be developed alongside the above recommendations for a programme of statistical data collection and research so that up to date knowledge and understanding may be applied. Training should be developed for specialist and generalist officials, within agencies and across agencies. A co-ordinated training programme of this nature will allow a) specialist practitioners to further develop their expertise, and b) all

practitioners gain a full understanding of how the different parts of the system for combating torture and ill-treatment operate.

8. Conclusion

As analysed above, the situation regarding ill-treatment and torture in the Republic of Moldova appears to have improved in recent years. This appears to be due to a number of factors, including increased compliance by police officers with their obligations (as noted by the CPT) and diligent exercise by the Public Prosecution Service of its functions. However, the system for the receipt and investigation of complaints is overly formalistic, fragmented, under-resourced and appears to operate to deter many complainants.

The recommendations set out in the previous section would, we believe, consolidate much of the progress made to date and allow for further improvements. An issue of particular importance is the collection of data. This does not occur in a systematic manner and prevents the relevant authorities from understanding the true nature and extent of the problem of torture and ill-treatment. Comprehensive data would allow for a better response, for example, targeted interventions in areas where the data highlights a particular problem. This would enable the better use of the available resources.

While there is merit in the establishment of a specialised independent body to deal with complaints of ill-treatment and torture by police, we consider that the focus in the coming period should be on streamlining the existing structures. Collaboration amongst the different institutions and better data collection would make a significant contribution to this.