



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE
Thirtieth session

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Initial report of States parties due in 1996

Addendum

REPUBLIC OF MOLDOVA*

[17 September 2001]

* The information submitted by the Republic of Moldova in accordance with the consolidated guidelines for the initial part of the reports of States parties is contained in HRI/CORE/1/Add.114.

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Introduction

1. In accordance with the provisions of article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the present report, containing information reflecting the achievements during 1996-2001, is submitted for examination to the Committee against Torture. The Republic of Moldova ratified the Convention on 31 May 1995, by Parliamentary Resolution No. 473-XIII, which entered into force on 28 December 1995.

I. GENERAL LEGAL PROVISIONS*

2. Article 24, paragraph 1, of the Constitution of the Republic of Moldova stipulates: “The State guarantees to each person the right to life and physical and mental integrity.” Torture of human beings is prohibited in the same article by paragraph 2, which stipulates the following: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

3. The legislation of the Republic of Moldova defines torture as an illegal action, which implies criminal responsibility. Article 101/1 of the Criminal Code stipulates that the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions. This offence is punished with deprivation of freedom for up to seven years.

4. Torture as an offence had been included in the Criminal Code of the Republic of Moldova until 1998 but had a different meaning than the one contained in the Convention: article 102, entitled “Torturing”, stipulated that systematic beating and other acts having the nature of torture, if not resulting in the consequences stipulated in articles 95 and 96 of the Code, were punished with deprivation of liberty for up to three years; the same acts committed against minors were punished with deprivation of liberty for up to five years. At present, this act is defined in article 101 of the Criminal Code as modified by the Law on Modifying and completing some Legislative Acts No. 263-XIV of 24 December 1998, as “beating and other violent acts” and implies causing physical and mental suffering by such acts, if not resulting in the consequences stipulated in articles 95 and 96 of the Code and is punished with deprivation of liberty for up to three years. The same acts committed against minors are punished with deprivation of liberty for up to five years.

5. By Parliamentary Decision No. 1298-XIII of 24 July 1994, the Republic of Moldova adhered to the Convention for the Protection of Human Rights and Fundamental Freedoms. The Parliament of the Republic of Moldova ratified the Convention and some additional protocols. It was a very important factor for protecting and guaranteeing human rights in the country.

* This section should be read in conjunction with the core document submitted by the Republic of Moldova (HRI/CORE/1/Add.14).

6. This event was preceded by a working group formed by Decision of the Government of the Republic of Moldova No. 210 of 5 March 1997 which studied the practices of the European Court of Human Rights and the European Commission on Human Rights and found discrepancies between the legislation of the Republic of Moldova and the provisions of the Convention, which were reflected in the final report on compatibility. For the purpose of implementing article 5 of Decision of the Parliament of the Republic of Moldova No. 1298-XIII of 24 July 1997 concerning ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as additional protocols to the Convention, the Parliament of the Republic of Moldova adopted Decision No. 1447-XIII of 28 January 1998, by which a programme to adjust the legislation of the Republic to the provisions of the Convention was adopted.

7. On the basis of the provisions of article 3 of the Convention, which stipulates that “no one shall be subjected to torture or to inhuman or degrading treatment or punishment”, Moldova ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and Protocols Nos. 1 and 2 to the Convention by Decision No. 1238-XIII of 9 July 1997 of the Parliament of the Republic of Moldova.

8. Considering the importance of respecting human rights and fundamental freedoms, the legislator provided for the supremacy of international human rights law and by article 8 of the Constitution of the Republic of Moldova, the legislature shall be obliged to respect the Charter of the United Nations and the international treaties to which Moldova is a party. Article 4 of the Supreme Law stipulates that constitutional provisions concerning the human rights and freedoms are implemented in accordance with the Universal Declaration of Human Rights and the covenants and other treaties to which the Republic of Moldova is a party.

9. The principal of the priority of international acts was confirmed by the Supreme Court of Justice, which, studying the practice of application of constitutional provisions, adopted on 30 January 1996 the decision “On the practice of application by the courts of provisions of the Constitution of the Republic of Moldova”. Point 3 of this provision obliged the courts to “apply the provisions of the international acts to which Moldova is a party when the internal law infringe the international act”. In accordance with the constitutional provisions, a large number of legislative acts of the Republic of Moldova stipulate the supremacy of international law: Civil Code, Civil Procedure Code, Criminal Code, Criminal Procedure Code, Marriage and Family Code, etc.

10. In accordance with article 114 of the Constitution of the Republic of Moldova, justice is carried out in the name of the law and only by the courts. Article 115 stipulates that justice is implemented through the Supreme Court of Justice, the Appeal Court, tribunals and other courts.

11. The organization of the courts, their structure and judicial procedures are stipulated in the Law on Judicial Organization No. 514-XIII of 27 July 1995. In accordance with article 4 of this law, the courts dispense justice for the purpose of protecting and implementing the human rights and fundamental freedoms of the citizens and their associates, enterprises, institutions and organizations.

12. The judiciary represents the general interests of the society and protects the legal system as well as the rights and freedoms of the citizens, directs and carries out legal proceedings, represents the prosecution under the conditions provided by law. The Law on the Magistracy No. 902-XII of 29 January 1992 provides for the organization, competence and procedures of the judiciary (article 124 of the Supreme Law). In accordance with articles 1 and 4 of the Law, the General Prosecutor and subordinate prosecutors exercise, according to the Constitution, supervision of the performance of the Law by the institutions of public administration and physical and legal persons and their associates. The judiciary defends legality and citizens' rights and freedoms, and contributes to securing justice in accordance with the Law. In its activities the judiciary contributes to ensuring the supremacy of the Law and that it is exactly and uniformly respected for the purpose of legal consistency and protection of citizens' human rights and freedoms. The judiciary exerts its attribute as a self-governing institution in the court system.

13. The judiciary, pursuant to its obligations:

(a) Exerts supervision over:

- (i) Exact and uniform execution of the laws by central and local institutions of public administration, economic actors, whatever the kind of property, other juridical and physical persons and their associates;
- (ii) Exact and uniform execution of the laws by the ministries and departments, local self-government institutions, other State administrative units, economic administrative and control units, enterprises, associations, organizations, institutions and cooperatives, without any difference as to organizational structure, affiliation, property type and form of administration, and by parties, other social political organizations and movements, decision-making bodies and citizens;
- (iii) Observance of the laws by preliminary inquiry and criminal investigation units;
- (iv) Observance of the laws in places of detention and preventive detention, and for the serving of sentences and other measures of coercion pronounced by the court, including mental institutions;
- (v) Legality of the judgements of the courts;

(b) Initiates criminal trials in every case when the component elements of a crime are discovered and in the cases stipulated by law, and investigates crimes;

(c) Prosecutes criminal cases.

14. The Police of the Republic of Moldova is a legal, armed institution of the public authorities, under the competence of the Ministry of Internal Affairs, charged with protecting against crimes and other illegal actions, in strict obedience of the laws, and respect for the life, health and freedoms of citizens and society and the interests of the State.

15. The Law concerning the Police No. 416-XI of 18 December 1990 sets out the activities of the police. In accordance with article 2 of the Law, the main duties of the police are:

- (a) The protection of citizens' lives, health, honour, dignity, rights, freedoms, interests and property from crimes and other illegal actions;
- (b) The prevention and elimination of crime and other offences;
- (c) Ascertaining and discovering offences and prosecution of the perpetrators;
- (d) Maintaining public order and ensuring the public security;
- (e) Helping, in accordance with the Law, citizens, public administrative authorities, enterprises, institutions and organizations to protect their rights and exercise their prerogatives as stipulated in the law;
- (f) Providing State protection to the persons who help in criminal cases, in accordance with the law in force.

16. A person who claims that he was a victim of torture has the right to address his complaint to the court, in accordance with article 20 of the Constitution of the Republic of Moldova which stipulates that any person has the right to an effective remedy from the competent courts for acts that violate his legal rights, freedoms and interests.

The legal environment and its evolution

17. On 11 February 1999, the Parliament of the Republic of Moldova adopted Decision No. 277-XIV "On the concept of the State supporting and promoting the mass information media, 1999-2003", submitted as a bill by the Union of Journalists of Moldova and considered to be a step forward in the State's intention to consolidate the freedom and independence of the mass media in the country. The Parliament, on the one hand, and the Government and civil society, of which the Union of Journalists is part, on the other hand, are engaged in the elaboration and adoption of a set of normative acts to promote a fundamental national policy in this field.

18. Parliament is currently examining a draft new press law. At present, in force is the Law on the Press No. 243-XIII of 26 October 1994. The Law on Access to Information No. 982-XIV of 15 May 2000 was adopted (Official Monitor of the Republic of Moldova, 2000, No. 88-90, art. 664). The Law on the Organization and Function of the Radio-Television of the Republic of Moldova is also being debated in Parliament; the Law on the Public Institution of the Audio-Visual Medium shall be included as a separate section of that law.

II. IMPLEMENTATION OF SPECIFIC ARTICLES OF THE CONVENTION

Article 1

19. As stated above, the supremacy of international treaties, including the Convention against Torture or Other Cruel, Inhuman, or Degrading Treatment or Punishment is guaranteed by the Constitution of the Republic of Moldova (art. 4) and confirmed by decision of the Supreme Court. The principal is reiterated in many other legislative acts.

20. The Law on Parliamentary Jurists No. 1349-XIII of 17 October 1997, in article 10, paragraph 2, includes a provision with a wider application of the priority of international law: "In case of a discrepancy between the covenants and treaties on fundamental human rights to which Moldova is party and domestic laws, the international norms have priority. When the norms of domestic laws are more lenient than the international ones, the norms of the domestic laws have priority".

21. Article 24, paragraph 1, of the Constitution of the Republic of Moldova stipulates: "The State guarantees to everyone the right to life and physical and mental integrity." Paragraph 2 of the same article, which stipulates the following, sets out the interdiction of torture: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

22. The legislation of the Republic of Moldova defines torture as an offence, the commission of which implies criminal responsibility. As noted in paragraph 3 above, article 101/1 of the Criminal Code, adopted in 1998, defines torture in accordance with the Convention. Illegal actions of torture and other cruel, inhuman or degrading treatment are prohibited by a set of special norms which are included in the Criminal Code adopted on 24 March 1961, the Criminal Procedure Code adopted on the same date, and the Code for the Execution of Criminal Sanctions. The observance of these norms is ensured not only by legislative provisions but also by the existence of legal entities of the State, including those established to protect the law (police, courts, judiciary).

23. Legislative measures are taken for the prevention of acts of torture, which imply responsibility of people who violate human rights. These are stipulated by articles 184, 185 and 190-193 of the Criminal Code:

(a) Article 184, Abuse of Power or Authority, defines abuse of power or authority as intentional use by a person in a high position of his powers contrary to his obligations. If the person caused considerable harm to the public interest, he is liable to deprivation of liberty for up to three years or a fine of between 30 and 100 minimum salaries and dismissal with deprivation of the right to hold specific functions or practise certain activities for up to five years. Such abuse committed several times or by a person with a high position or which had serious consequence shall be punished with deprivation of liberty for between three and eight years or deprivation of the right to hold certain positions or practise certain activities for up to five years;

(b) Article 185, Exceeding Authority, provides for the person who by exceeding his legal authority causes harm to the public interest or the rights or interests of physical or legal persons, to deprivation of liberty for up to 3 years and deprivation of the right to hold certain positions or to practise certain activities for up to five years. Exceeding authority combined whether with violent acts or use of firearms shall be punished with deprivation of liberty for between 3 and 10 years, with deprivation of the right to hold certain positions or to practise certain activities for up to 10 years;

(c) Article 190, Intentional criminal prosecution of an innocent person, provides that the intentional prosecution of an innocent person by a person undertaking a criminal investigation, a criminal inquiry, or the prosecutor, shall be punished with deprivation of liberty for up to three years, or with a fine equal to 100 minimum salaries. The same act involving an accusation of a very serious offence against the State, another serious offence, the fabrication of evidence or if committed for material profit or to further other personal interests, or if it had serious consequences, shall be punished with deprivation of liberty for between 3 and 10 years;

(d) Article 191, Illegal sentence, decision or closure, states that the intentional passing of an illegal sentence or decision or the illegal closure of a case by a judge shall be punished with deprivation of liberty for up to three years. The same act involving a very serious offence against the State or another serious act, or if committed for profit or to further other personal interests, or if it had serious consequences, shall be punished with deprivation of liberty for between 3 and 10 years;

(e) Article 192, Illegal arrest, restraint and escort, states that intentional illegal arrest shall be punished with deprivation of liberty for a period of three years, a fine equal to 50 minimum salaries, or dismissal. The same act committed for material gain or other personal interest shall be punished with deprivation of liberty for between one and three years. Intentional illegal restraining and escorting of a person shall be punished with deprivation of liberty for up to one year, or with a fine equal to 30 minimum salaries, or dismissal;

(f) Article 193, coercion to obtain statements. Coercing a suspect to make a statement by threatening or other illegal act during interrogation or coercing an expert to affect his conclusion, or coercing a translator to make a wrong translation shall be punished with deprivation of liberty for up to three years. The same act combined with acts of violence against a person or causing affronts to this person shall be punished with deprivation of liberty of between 3 and 10 years.

24. The number of persons sanctioned on the basis of the Criminal Code of the Republic of Moldova between 1994 and 2000 are shown in the table below:

Table 1**Persons sanctioned under the articles of the Criminal Code, 1994-2000**

Article	1994	1995	1996	1997	1998	1999	2000
101		216	217	519	427	444	-
101/1	-	-	-	-	-	-	-
184	1	3	5	22	15	30	
185	20	14	20	37	18	34	31
192	-	-	-	-	-	-	-
193	-	-	-	-	-	-	-

Note: As article 101/1 was introduced in 1998, there are no statistics; the Ministry of Internal Affairs does not have any data concerning article 192.

25. The Constitution of the Republic of Moldova guarantees to everyone the right to free access to justice, without which there can be no real possibility of preventing human rights violations and calling the guilty persons to account.

26. The criminal legislation of the Republic of Moldova stipulates that punishment has the following goals (art. 20, Criminal Code):

“Punishment is not only a sentence for a committed crime but has as its goal the correction and re-education of the convicts in a spirit of an honest attitude for work, strict observance of the laws, as well as prevention of new offences by the convict and other persons.

“The punishment does not have the goal of causing physical pain or to abase human dignity.”

27. The categories of punishment are enumerated in article 21, paragraph 1, of the Criminal Code as follows:

- Deprivation of liberty;
- Deprivation of the right to hold certain positions or to exercise certain activities;
- Fine;
- Dismissal;
- Public reprimand.

28. Article 20 of the Constitution stipulates the following:

“1. Everyone has the right to obtain satisfaction from a competent judicial court against acts which violate his rights, freedoms and legal interests.

“2. No law may prohibit access to justice.”

29. On the basis of article 25, paragraph 1, of the Constitution, protection of individual freedom and personal security is guaranteed.

30. By article 11, paragraph 3, of the Law on Parliamentary Jurists, the Parliament of the Republic of Moldova ordered the creation of an independent institution, named the Centre for Human Rights, which has been active since April 1998. Three parliamentary jurists work in this centre. They have equal rights and the following attributives on the basis of the law mentioned above:

(a) To ensure the observance of constitutional human rights and freedoms by central and local public authorities, institutions, organizations and enterprises, whether public or private, public associates and persons in high positions, in accordance with article 1;

(b) To contribute to reinstating the citizens' rights, improving the legislation in the field of human rights, and legal training of the population by application of the procedures mentioned in the present law, on the basis of the provisions of article 2;

(c) To examine the complaints of the citizens of the Republic of Moldova, foreign and stateless citizens living permanently or temporarily on its territory (hereinafter referred to as petitioners), whose rights and legal interests have been encroached on the territory of the Republic of Moldova, in accordance with article 13.

31. The efficacy of the measures taken by the parliamentary jurists within the exercise of their functions is guaranteed by article 11, sections 1 and 2, of the Law, which stipulates:

“During the mandate, the parliamentary jurists are independent from the deputies of the Parliament, the President of the Republic of Moldova, central and local public authorities and persons of high rank.

“In their activity, the parliamentary jurists take as their guide the principles of legality, social equity, democracy, humanity and accessibility according the dictates of their conscience”.

Article 31 of the Law stipulates:

“The parliamentary jurists have the right to inform the Constitutional Court with respect to the constitutionality of the laws and decisions of the Parliament, decrees of the President of the Republic of Moldova, and decisions and actions of the Government.”

32. As a result of actions undertaken in 1999 by the Centre for Human Rights in accordance with article 31 of the Law on Parliamentary Jurists, the constitutional rights of 800,000 citizens were reinstated.

33. In order to guarantee efficient supervision by the parliamentary jurists, article 32 of the Law stipulates, “failure to implement the recommendations of the parliamentary jurists, as well as stopping their activities in any form are sanctioned according to the legislation”.

34. According to the Annual Report of the Centre for Human Rights, in 1999 the Centre received 167 petitions from 453 convicts and ex-convicts. The protection of the rights of persons in detention requires ensuring the right to personal security, protection from abusive behaviour, basic living conditions, etc. As a result of democratization and judicial and legal reform, substantial changes have occurred in the penitentiary institutions of the Republic. But in these institutions, especially in the “criminal investigation isolators” there are a lot of unsolved problems. Every year the number of detainees infected with tuberculosis increases; in fact, this is the most important cause of mortality in the penitentiaries. The prisons have practically become a breeding ground for this highly infectious disease.

35. The investigation discovered the following:

- Penitentiary personnel have used excessive force to maintain discipline in the prisons;
- Overpopulation in some sectors of the prisons - quarantine cells, transit cells, investigation isolators, tuberculosis wards of the penitentiary hospitals.

36. The parliamentary jurists, studying this problem, found that in some prisons the number of detainees is greater than allowed by law. There are not enough beds and the convicts have to sleep in shifts. The tuberculosis wards are crowded too. The fact that a lot of buildings are not adapted to the conditions for maintaining the detainees is very alarming. That is why observing the rules of hygiene is practically impossible.

37. The study proved that the detainees and persons under investigation in isolators are seriously limited in their human rights as stipulated in the Constitution, the Code for the Execution of Criminal Sanctions, the Status of Serving Sentences, as well as international acts such as the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Recommendation R/98/7 of the Committee of Ministers of the Council of Europe on the ethical and organizational aspects of medical care in the penitentiary environment, and the European Convention on Human Rights.

38. For almost every isolator there are between 2 and 40 people whose files have not been examined in almost six months. A notification with a request to redress the situation was sent to the Ministry of Justice.

39. In 1999 there were received:

- 48 petitions concerning violation of personal security, signed by 94 persons;
- 63 petitions concerning violation of personal dignity, signed by 352 persons;
- 315 petitions concerning violation of free access to justice, signed by 1,201 persons.

40. Until October 1999, the judges were responsible for supervising the penitentiary institutions. As a result of the reorganization of the judiciary the General Prosecutor issued the Order on the obligations of the territorial prosecutor No. 976-p of 8 October 1999 making those prosecutors responsible in the field of supervising the serving of sentences, which consists of active intervention into all processes which take place in these institutions, ensuring that administrative decrees are in accordance with present legislation, suspending illegal decrees and requesting their repeal.

41. In the period 1994-2000, the judiciary received 20,126 petitions describing illegal activity on the part of the police; 10,019 of the petitions were against the investigators of the Ministry of Internal Affairs, including for maltreatment of citizens; 2,365 of the petitions were recognized as having merit. There is no particular statistical evidence in the General Magistracy of the petitions referring to abuse of power and maltreatment from the police; that is why it is very difficult to give the correct number of such petitions.

42. In the context of the measures undertaken for uprooting torture or illegal detention of people in temporary detention isolators, a decision of the General Magistracy Collegium stipulates that all the territorial and specialized prosecutors are obliged to check these institutions daily and, if they discover a case of illegal detention, to release the people urgently and to apply the most severe punishment against the culprits. It should be mentioned that in 1999 the judiciary made 582 complaints against the violation of citizens' human rights and freedoms by the police. On the basis of these complaints, 891 policemen were sanctioned. In 1999, 80 policemen were on trial. Thus, from 1994 to 2000, 591 policemen were called to account for criminal behaviour on the basis of article 185, paragraph 2, of the Criminal Code.

43. As a result of the adherence of the Republic of Moldova to the European Convention for the Prevention of Torture, the European Committee for Prevention of Torture (hereinafter referred to as CPT) made a study of the situation of torture cases in the territory of the Republic and made some recommendations. The Ministry of Internal Affairs, for the purpose of observing the CTP recommendations and preventing human rights violations, issued two orders in December 1998 and March 1999 respectively. These orders required all its subdivisions to include as a component of professional training the international conventions on human rights to which Moldova is a party and for the knowledge to be evaluated by an exam. But because of the lack of teaching aids, it is very difficult to undertake adequate education for the prevention of torture or other inhuman or degrading treatment by the police, and at present, it is practically impossible to translate the necessary teaching materials into Romanian.

44. A measure recommended by CTP is the elaboration of a code of ethics for the police.
45. On the basis of the Governmental Decision of 4 January 1996, “The disciplinary status of the internal units” was adopted and the following disciplinary sanctions were established:
- Observation;
 - Reprimand;
 - Severe reprimand;
 - Warning;
 - Expulsion from the police.
46. By adopting, on 14 April 1999, a “Temporary instruction on medical and sanitary assistance to the detainees in penitentiaries”, the Ministry of Internal Affairs and the Ministry of Health agreed on improving the sanitary situation in prisons and ensuring their supervision. A special commission is formed every year, which is subordinate to the Ministry of Internal Affairs and which has the obligation to supervise the conditions of detention. This commission is authorized to make ad hoc visits and all deficiencies discovered must be reported to the competent units in order to solve them. In the future, independent experts (lawyers, doctors, etc.) shall be included in this commission.
47. One element which facilitates the commission of torture is the ignorance of the population. That is why article 6, paragraph 2, of the Criminal Procedure Code stipulates the obligation to communicate to any detained or arrested person all his legal rights before any procedural step with his participation can be taken. Also, within three hours, the reasons for detention or arrest must be communicated to him in a language that he understands. A ground for disputing the legality of detention or arrest shall be the failure to communicate his rights. In accordance with article 140 of the Criminal Procedure Code, the reasons for detention are communicated to the person in the presence of a lawyer, chosen or named by the office. And after the first interrogation the person has the right to private visits from his lawyer, without any limitations, in accordance with article 19, paragraph 4, of the Law on Remand Custody.
48. Regretfully, nowadays, there are cases of serious infringements, which encroach in a flagrant way the constitutional human rights. These infringements are as follows:
- The person is detained for more than 24 hours;
 - Failure to produce a written arrest report or writing a false one, without indicating the reasons of arresting, the date and hour of detention, etc.

49. Thus, at the meeting of the General Collegium of Prosecutors on 27 September 1996, one of the main points was the intensification of the supervision by the prosecutor in this field. According to the decision of the Collegium, the territorial and specialized prosecutors are obliged to check daily the legality of detention of citizens in the temporary detention isolator in the police station. Guidelines concerning the checking of the conditions of detention of persons suspected of having committed a crime were prepared and sent to the prosecutors; the Ministry of Internal Affairs was informed about the legal provisions on detention that infringe the law and how to remedy this.

50. On 27 December 1998, the prosecutors adopted the decision of the General Collegium of Prosecutors stipulating the performance of rigorous checking of the legality of detention of suspects. Also, the attention of the Ministry of Internal Affairs was drawn to the need to adopt measures to stop the commission of the offences and the elimination of the circumstances which facilitate these offences. A special register for recording of arrests was created. A paragraph on supervision of anticorruption activity and the control of organized crime was created in accordance with Order No. 914 of the General Prosecutor of 8 October 1999.

51. Imprisonment conditions do not correspond to European norms. All the cells need repair, or even reconstruction. The prosecutor who had carried out the check reflected all the drawbacks in the report to the Ministry of Internal Affairs. Some of the measures had been taken, in spite of the essential problem - finance. For example, at present, the temporary imprisonment isolator in the police station in Criuleni was transferred to another building, which mostly corresponds to the norms. Rigorous evidence is taken concerning the separation of juveniles from adults and the necessary measures are taken in case of contravention of this norm.

52. As stated above, the legal supervision of the penitentiaries was undertaken by the judiciary until the judicial reform of October 1999. Within the framework of the General Magistracy, a branch for the supervision of the execution of criminal and administrative punishments and the measures of restriction of personal freedoms was created, the tasks of this branch being the organization and execution of the legislation that refers to the serving of sentences. In accordance with the Regulation of that branch of 15 November 1999, the branch also supervises legal detention in mental institutions.

53. In accordance with article 34, sections 17-18, of the Law on Remand Custody of 27 June 1997, the persons against whom physical strength, special methods or firearms were applied must undergo an obligatory medical examination and the prosecutor is immediately informed in writing. The right to a free medical consultation is stipulated in article 25 of the Law, which also describes the method of organizing and rendering medical assistance, including mental examination.

54. As a response to the findings of the CTP report, the General Magistracy confirmed the fact that some remand detainees in the investigation isolator are transferred to the police station only when it is necessary for the investigation, especially those actions of the investigation which cannot be done in the isolator (for example, on-the-spot investigation, crime reconstruction, house search, etc.). Present legislation does not stipulate authorization for the transfer of

detainees to the police station, because during criminal prosecution only the person in charge of the inquiry can make all the decisions concerning the investigation (except in cases when the Law stipulates that the prosecutor's permission is required) and has complete responsibility for their legal and timely performance.

55. The interrogation of highly vulnerable people (such as minors, mentally disturbed individuals) is done according to article 132 of the Criminal Procedure Code, which stipulates that during the interrogation of a suspect under 16 years, a teacher should be present. The teacher may attend the interrogation of a person older than 16 years, if it was proved that this person is mentally disturbed.

56. Persons detained in the places for remand custody benefit from free medical assistance. The administration of such places is obliged to respect the sanitary and hygienic norms and to ensure the health of the detainees. The question of the medical assistance for individuals arrested by the police shall be resolved in a positive way, even from the beginning of the arrest.

57. Overpopulation is a very urgent problem in the penitentiaries. The Government created new penitentiaries in Leova and Taraclia to improve the situation, and also for the purpose of decreasing violence between the detainees. Also, Parliament has, in view the elaboration of a law on amnesty, analogous to the one from 1999, which permitted the release of 1,169 detainees and shortening the terms of 671 convicts.

58. Provision of humanitarian aid by non-governmental organizations mostly solves the financial problems.

59. Rigorous selection of personnel is ensured to prevent any act which may encroach the rights of the detainees.

60. It is planned to establish a Centre for Professional Training of Penitentiary Personnel which would provide a training programme of three months for supervisory personnel and one month for other categories of penitentiary personnel, as well as continuous training for all persons involved in this work.

61. Renovation of the penitentiary buildings started in 1999 to improve the conditions of the detainees, including the sanitary conditions. This measure consists of reducing the blinds from 40 cm to 18 cm to improve the illumination in the cells. The detainees have a sufficient quantity of products for keeping the cells clean. A new Code for the Execution of Criminal Sanctions is in view which would humanize the system of serving sentences, especially life sentences.

62. The situation of providing anti-tuberculosis medicines has slightly improved. The number of tuberculosis cases in prison No. 3 in Chisinau was reduced from 51 in 1998 to 32 in 1999. The opening of a specialized tuberculosis hospital in prison No. 17 in Rezina is foreseen.

63. The number of detainees should not exceed 500 people, and each building with more than 100 places should have a hospital. Another measure of improvement shall be the rewarding of exemplary behaviour by permitting the receiving of parcels and supplementary visits.

64. The Law on Mental Assistance No. 1402-XIII of 16 December 1997 applies to mental institutions. All coercive measures applied to patients should be recorded in a special register. There is rigorous control of the use of coercive measures by the administration of mental hospitals. The Ministry of Health started seminars to train the personnel who take care of mental patients as well as the security personnel in mental hospitals for the purpose of preventing inhuman or cruel treatment of the patients. The law may sanction these actions. The personnel know that only the doctor who takes care of the patients has the right to apply coercive measures, and the security personnel must act under the rigorous authorization and control of the medical personnel.

65. In accordance with data received from the penitentiary institutions of the Ministry of Justice, there were no cases of torture or cruel treatment of detainees by the personnel of the penitentiary system between 1994 and 2001, except for one case: on 24 November 1999, an officer of penitentiary No. 9, junior lieutenant V. Costashko, using excessive force maltreated the convict Ion Stafy, inflicting bodily injuries. For flagrant violation of the obligations of articles 99-100 of the Code for the Execution of Criminal Sanctions, junior lieutenant Costashko was dismissed from the penitentiary system in accordance with order No. 4 of the Minister of Justice of 10 January 2000.

66. The leadership of the Department of Prisons carries out systematic work aimed at eliminating cases of inhuman treatment of detainees. Courses for learning the Code for the Execution of Criminal Sanctions are organized for the whole staff. Chapter 12 of the Code, "Use of physical strength, special measures and firearms against convicts", is especially highlighted.

67. But because of insufficient financing of the penitentiary system, there is no possibility of supplying to the detainees all the necessary things stipulated by the law. The general problem consists of an insufficiency of food, bedclothes, medicines and public utilities. The Department of Prisons has undertaken considerable debts.

68. In accordance with the present legislation, the detainees have the right to make proposals, demands or complaints in writing or orally, which are sent with the help of the penitentiary administration. During 2000, 464 petitions from detainees were sent to the Department of Prisons, mostly outlining the unfavourable conditions of imprisonment. An on-the-spot examination of the premises by members of the Department showed that the penitentiary personnel did not use excessive force or other inhuman treatment against the detainees. In all the cases of use of physical strength or special measures against the detainees by penitentiary personnel, the legality of the measure was in accordance with the provisions of articles 99-100 of the Code for the Execution of Criminal Sanctions.

69. It must be mentioned that the majority of the detainees who had made the complaints to the Department about illegal actions by the penitentiary personnel had been identified as being the bigger violators of the rules of the detention system. They had not corrected their ways, which proves that by their actions, they tried to undermine the authority of the penitentiary administration in easing the detention system.

70. Non-governmental organizations active on the territory of the Republic of Moldova help to protect human rights by investigating cases of torture committed by the law enforcement personnel, receiving complaints and petitions from the victims of these acts, helping to address petitions to the competent authorities, as well as publishing cases of violations of human rights. For example, the Helsinki Committee for Human Rights in the Republic of Moldova, Amnesty International, Credo, Incredere, etc. are the competent bodies in solving these problems.

71. Some cases of torturing and inhuman treatment were observed by the Helsinki Committee for Human Rights in the Republic of Moldova, which annually examines the complaints of persons whose rights have been infringed. In any event, when checking proves the veracity of these cases the Committee informs the competent units to reinstate the rights of the victim on the basis of the Law on Petitions No. 190-XII of 19 July 1994. The case of Chelsa may serve as an example of the use of torture. Chelsa took part in the Transnistrian War, being a combatant in the Armed Forces of the Republic of Moldova. In 1992, after the ending of the Transnistrian conflict, he took refuge on the right side of the Nistru river. In 1998, two men from the security office on the left side of the Nistru river went to the police section of the Ciocana district and arrested him on the charge of keeping a gun at his house in Transnistria, though he had been living in Chisinau since 1992. After illegal detention he was extradited to the territory of Transnistria, which infringes article 3, paragraph 2, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, because it was known that on Nistrean territory there are serious violations of human rights and capital punishment has not been abolished. This person was tried on the basis of the self-proclaimed Transnistrian republic legislation and was beaten by Transnistrian policemen. Because of these acts of torture, Chelsa needed medical treatment for which he was sent to the Republic of Moldova. He was to be detained in the Pruncul hospital for three years. He was released after a period of two and a half years because of a health problem, but the real cause was seen to be the publication of his case by the Helsinki Committee. The case was given for examination to judicial court.

72. Another example of illegal actions is the case of the citizen Padurets - a student at the State University in Tiraspol, evacuated to Chisinau - who was arrested by police and brought to the police station of the Centre district charged with committing an offence. He was beaten, tortured and later released. A case was brought by the General Magistracy, but it was filed and disposed of without informing the suspect. The Helsinki Committee made a complaint to the General Magistracy and the file was reopened, but the expedition of the file to the court is delayed.

73. The case of citizen Grosu is another example of the illegal use of force by the police. He lives in Briceni city, where he was arrested by the police under the pretext of being drunk (although the witnesses contest this) and taken to the police station, where he was beaten and kept for three days, although the Criminal Procedure Code of the Republic of Moldova stipulates in article 104 that detention cannot be longer than 24 hours, and his right to a lawyer was also violated. After a certain period, the relatives of citizen Grosu found out that he had been extradited to Ukraine.

74. Regretfully, the authorities responsible for ensuring respect for the law do not give the necessary attention to solving cases of torture or bringing the perpetrators to justice.

Article 2

Legislative measures to prevent torture

75. Prevention of acts of torture on the territory of the Republic of Moldova is ensured by application of the provisions of the Constitution, Criminal Code, Criminal Procedure Code, and the Code for the Execution of Criminal Sanctions, the Law of the Republic of Moldova on the Police No. 416-XII of 18 December 1990, the Law on the Penitentiary System No. 1036-XIII of 17 December 1996, the Law on the Legal Status of Foreign and Stateless Persons in the Republic of Moldova No. 275-XIII of 10 November 1994, the Law on Petitions No. 190-XII of 19 July 1994, the Law on Remand Custody No. 1226-XIII of 27 June 1997 and others. The national legislation of the Republic of Moldova ensures the inviolability of persons remanded in detention as well as those convicted to deprivation of liberty by guaranteeing their rights at all stages of the criminal process as well as in the penal institutions.

76. The Constitution of the Republic of Moldova, in article 25, sections 2, 3, 4 and 6, stipulates:

“Searching, detaining and arresting of a person are permitted only in the cases and according to the procedure stipulated by the law.

“Detention shall not be longer than 24 hours.

“The arrest is made on the grounds of a warrant for a period of not longer than 30 days. The prisoner can make a complaint to the judge if he has doubts as to the legality of the warrant. The judge is obliged to give his verdict in a reasoned decision. The term of arrest shall be prolonged no longer than 6 months and in exceptional cases, with the permission of the Parliament, it shall be prolonged up to 12 months.

“The release of a detained or arrested person is obligatory if the reasons for the detention or arrest are no longer valid.”

77. The Criminal Procedure Code (hereinafter referred to as the CPC) is the essential normative act for ensuring the rights of persons subject to criminal prosecution on the territory of the Republic of Moldova. One of the most important is the right to freedom and personal security, stipulated in article 6: “Freedom and personal security are inviolable”. No one shall be deprived of liberty except under the following conditions and in accordance with the CPC:

- (a) If the person is legally detained on the basis of a sentence of a competent court;
- (b) If the person was legally arrested for non-execution of a decision passed, in accordance with the law, by a court;
- (c) If the person was legally detained or arrested in order to be brought before a competent court if there are serious reasons to suspect him of an offence, or when there are grounds to believe that it is necessary to keep this person from committing an offence or escaping after its commission.

78. All the legal rights are communicated to any detained or arrested person before taking any procedural step involving him. The failure to communicate his rights shall be a basis for contesting the legality of the detention or arrest.
79. Any person deprived of his liberty by arrest or detention has the right to make an appeal to a competent court. The court shall decide the legality of the arrest or detention in a very short time and shall order the person released if the arrest or detention was illegal.
80. No one shall be subjected to torture or to inhuman or degrading treatment during the criminal procedure.
81. Everyone who was a victim of an arrest or detention contrary to the provisions of the law has the right to compensation.
82. In case of a violation of the rights of suspect or accused persons, they have the right to complain against the actions and decisions of the person who is in charge of the investigation or inquiry, the prosecutor and the court, as well as to ask for defence counsel (in accordance with articles 41/1 and 42 of the CPC). Participation of the counsel for the defence in all stages of the criminal procedure has great importance in ensuring decrease of abuse of detainees, prisoners and convicts. Article 43 of the CPC stipulates that:

“A defender chosen or named by the office is admitted to attend a trial from the moment of accusation and in the case of detaining or arresting the suspect or accused person, from the moment of communication of the official detention report or presentation of the arrest warrant. If the defender chosen by the suspect or accused person cannot be present, the person who undertakes the criminal investigation or inquiry and the prosecutor shall propose to the suspect or accused person that he invite another defender or shall ensure a defender from legal aid from the office.”

The defender's presence is obligatory during the first interrogation of the detained or arrested person. This obligation is stipulated in article 62 of the CPC.

83. The essential rights of the defender, from the moment of his admission to the trial, are stipulated in article 46, sections 1, 2 and 10, of the CPC and are the following:
- To take note of the official report of the detention of the suspect, to assist at the hearing of the suspect or accused person in the process of examining the approach concerning the application of preventive measures in the form of arrest by a court, to take part in the examination of the approach concerning the extension of the duration of the arrest by the judge;
 - To attend the suspect's interrogation, at the bringing of charges against his client, at the accused person's interrogation, at hearings related to the inquest requiring the participation of the suspect or accused person, as well as other events at the request of the client;

- To make complaints against the actions and decisions of the person who is in charge of the criminal investigation or inquiry, the prosecutor and the court.

84. Detention of the person suspected of committing an offence is on the basis of article 104 of the CPC, which stipulates the following:

“The criminal investigation unit and the inquiry officer have the right to detain the person suspected of committing an offence for which a punishment of deprivation of liberty shall be invoked, only in one of the following cases:

- If this person was caught red-handed or immediately after the offence was committed;
- If an eyewitnesses, including the injured party, shall identify that person as the one who committed the offence;
- If evidence related to the offence shall be discovered on the suspect’s body, his clothes, in his possession, or at his home.

If other circumstances point to the suspected person as being the one who committed the offence, this person should only be detained if he tried to escape or does not have a permanent address or he cannot be identified. The detention period shall not be longer than 24 hours. The criminal investigation unit or inquiry officer are obliged to write an official report about each case of detaining a person suspected of committing an offence in which they must indicate the reasons, day and time, year and month, the place of detention and the explanations for the detention. The official report is signed by the person who wrote it and the person who detains the suspect. Within six hours after writing the report, the person who wrote it presents to the prosecutor an explanatory note concerning the detention. If no action has been taken in court within 24 hours after the writing of the report, the prosecutor issues an order releasing the detained person. The reasons for detention shall be communicated only in the presence of a defender, chosen by the suspect or named by the office.”

85. CPC also stipulates in article 193 the procedure for making complaints against the acts of the criminal investigation unit. The person who undertakes the criminal investigation or inquiry is obliged to send these complaints with their explications to the prosecutor within 24 hours. And article 194 stipulates the prosecutor’s obligation to examine the complaint within three days of receiving it and to communicate his decision to the sender. In case of rejection, the prosecutor is obliged to outline the reasons why he rejected the complaint.

86. Article 389, paragraph 1, of the CPC stipulates that the complaints of the prisoners to the prosecutor are not subjected to checking and are sent to the indicated address within 24 hours from their handing over, which excludes the possibility of diminishing the prisoners’ right to defend their rights. The same article stipulates that complaints against the prosecutor’s actions are sent to the hierarchically superior prosecutor.

87. On the basis of article 4, paragraph 5, of the Law on the Police No. 416-XII of 18 December 1990 of the Republic of Moldova, “No limitations of citizens’ rights and freedoms shall be admitted except on the ground of an in the way determined by the law.”

88. The limits of the powers of the police units are stipulated on the basis of the same law. The conditions of and limits on the use of force, special means and firearms are stipulated by article 14, which mentions briefly the obligation of the police to try to mitigate the damage to the citizens’ health, honour, dignity and property, and also to provide medical treatment to victims (see para. 143 below). Article 15 allows the use of physical force to overcome resistance against legal regulations only when non-violent methods do not allow for the performance of the given obligations.

89. For the purpose of preventing mental torture, article 4, paragraph 8, prohibits the police from revealing information concerning the personal life of a citizen and harm his honour and dignity or damage his legal interests, if this is not necessary to the case.

90. Law No. 902-XII of the Republic of Moldova of 29 January 1992 on the Judiciary is the fundamental normative act for carrying out the prosecutors’ activities which have the following attributes, in accordance with article 1 of the Law:

“The General Prosecutor and his subordinates exercise, according to the Constitution, supervision as to the exact and uniform execution of the laws by the public administration units, legal and physical people and their associates. The judiciary defends legality, citizens’ rights and freedoms and contributes to the administration of justice in accordance with the law.

“Within its activities, the judiciary contributes to guaranteeing the supremacy of the law and that it is exactly and uniformly observed for the purpose of legal consolidation and protection of citizens’ human rights and freedoms.

“The judiciary exercises its functions as an independent unit in the system of judicial units.”

91. The CPC stipulates in article 35, paragraphs 2-3, the prosecutor’s obligation to appeal against illegal or ungrounded judicial decisions. The General Prosecutor and his deputies are also obliged to attack illegal or ungrounded judicial decisions.

92. The judiciary is an independent unit and has supervisory obligations, in accordance with article 4, paragraph 1, over:

- The exact and uniform execution of the laws by central and local public administration units, economic agents, whether public or private, other legal or physical people and their associates;

- The exact and uniform execution of the laws by the ministries and departments, the local self-administration units, other administrative economic and control units, enterprises, associations, institutions, organizations and cooperatives, without any difference as to their level, affiliation, type of management or whether they are public or private as well as parties and other organizations and social-political movements, decision-making bodies and citizens;
- The observance of the law by preliminary inquiry and criminal investigation units;
- The observance of the law in places of detention, during the serving of sentences and other coercive measures as determined by a court, including in mental institutions;
- The observance of the legality of the decisions of courts.

93. On the basis of article 6, the prosecutor's requirements, submitted in the way determined by the national legislation, are obligatory as regards all units, economic agents and other legal persons, decision-making bodies and citizens. Paragraph 2 of the same article stipulates that the decision-making bodies that did not examine the prosecutor's complaint or that did not react to the complaint have administrative responsibility in accordance with the law. The administrative responsibility invoked in this article occurs within legal court decisions at the prosecutor's request.

94. Article 23 of the Law on the Judiciary stipulates:

“Supervision by the Prosecutor over observance of the laws by prior investigation units and criminal investigation is exerted by means of:

- Charging the culprit as stipulated by the law and in strict observance of the legality of the procedure;
- Detaining suspects in the ways and for the terms determined by the law;
- Taking measures for the compensation of material prejudice caused to citizens, economic agents, public organizations and other legal persons as a result of some criminal actions;
- Establishing the causes and conditions which favour the commission of offences and taking measures for their elimination.”

95. The exercise of the prosecutor's supervisory activity is ensured by the Code for the Execution of Criminal Sanctions, article 21 of which stipulates:

“Supervision by the prosecutor over the observance of the laws with respect to the serving of sentences and the conditional for not executing the sentence is exerted by the General Prosecutor and his subordinate prosecutors in accordance with the present Code. The institutions and units where the sentence pronounced by the court is served are obliged to execute the prosecutor's orders concerning the rules for executing the sentence and the conditions for not executing the sentence.”

96. The bases for the activity of protecting detainees' rights in the penitentiaries are the Code for the Execution of Criminal Sanctions, the Status of the serving of sentence, the Law on the Prison System No. 1036-XIII of 17 December 1996 etc. The principles of the activities of the penitentiary system are legality, humanism, democracy and observance of human rights. The Law on the Penitentiary System stipulates in article 11, paragraph 10, that the administration of the penitentiary institutions must authorize the use of force, special means, and firearms in the cases and ways determined by articles 100 and 101 of the Code for the Execution of the Criminal Sanctions. But, on the basis of article 99, paragraph 6, of the Code exceeding the authority of the penitentiary employees in the use of force, special means and firearms is prohibited and the commission of these actions shall be punished by law.

97. Article 100, paragraphs 4 and 5, of the Code provides:

“In all the cases when serious or lesser corporal injury is caused to the convicts, a report on the use of force or special means is written. In all the cases when the use of force or special means cannot be avoided, the penitentiary employees are obliged to cause as little damage as possible to the health and the possessions of the convict, and also to ensure the most urgent medical assistance.”

98. Application of the humanist principle in the serving of sentences is an essential condition for avoiding torture or other inhuman, cruel or degrading treatment or punishment. This principle is showed in article 10 of the Code for the Execution of Criminal Sanctions, which stipulates that:

“The way of and conditions for the serving of sentences and conditions for not serving them are determined on the basis of the principle of observing the convicted person's rights, his legal interests, and his human dignity.

“In the serving of sentences and the application of other criminal law measures, causing physical suffering to a convict or harm to his human dignity is inadmissible. Torture, coercive medical measures or any other acts liable to damage the convict's health shall be prohibited.”

99. Resulting from the context of paragraph 3 article 13, of the same Code, foreign and stateless persons have the same rights in serving sentences as convicts who are citizens of the Republic of Moldova. The Constitution of the Republic of Moldova (art. 19) and other laws and international treaties ensure the protection of the life and health, dignity and other rights of

foreign and stateless persons in the same measure as for citizens of the Republic of Moldova. The access to justice of foreign and stateless persons is ensured in the same measure as for the citizens of the Republic of Moldova by article 17 of the Law on the Legal Status of Foreign and Stateless Persons in the Republic of Moldova No. 275-XIII of 10 November 1994, which stipulates:

“The inviolability of the person and the home of foreign and stateless persons is ensured by the present law. They have the right to effective satisfaction by competent courts or other public authorities against acts which violate their rights, freedoms and legal interests.

“Foreign and stateless persons have the same rights in judicial processes as the citizens of the Republic of Moldova.”

100. Great importance is assigned to observing convicts’ rights under the Convention against Torture. The fundamental rights of the convict are contained in article 14 of the Code for the Execution of Criminal Sanctions and are as follows:

(a) The right to receive information about the manner and conditions of the sentence pronounced by the court, and his rights and obligations in that regard. The institution or unit where punishment will be carried out shall give this information;

(b) The right to address proposals, requests and complaints to the administration of the institution or unit or which exercises control of the condition for the non-application of the punishment, to the hierarchically superior institutions or other State units and public organizations;

(c) The right to explain himself to and correspond with others and to address proposals, requests and complaints in his native language and, if necessary, to have the help of an interpreter.

101. The citizens’ right to address complaints and requests to any unit which violated their rights was implemented along with the adoption of the Law on Petitions No. 190-XII of 19 July 1994. Article 7, paragraph 2, of the Law stipulates that “petitions, where an act, decision, action or offence of an administrative unit or official person is attacked, which encroach the rights and legal interests of the petitioners, shall be addressed to the hierarchically superior unit of the court”. The period determined for the examination of these petitions is one month and for those which do not need a supplementary examination, the period is 15 days from the date of registering, in accordance with article 8 of the Law.

102. The essential rights of petitioners are stipulated in article 11 of the Law and are the following:

(a) To give personal arguments to the institution or official person who examine the petition;

(b) To have the assistance of a lawyer;

- (c) To present these materials to the unit or official person who makes the supplementary examination or to ask the official person or unit to give him the materials;
- (d) To take note of the materials used in the examination;
- (e) To receive a written or oral answer about the results of the examination;
- (f) To claim compensation of the damage in the way determined by the law.

103. In accordance with article 12 of the same Law, the obligations of the unit or official person to whom the petitions are addressed are:

- (a) To examine the petitions within a certain time;
- (b) To overrule or modify the decisions which infringe the legislation and to take urgent measures for abolishing illegal actions;
- (c) To ensure compensation for infringed rights, establishing the legal responsibility for the prejudice caused and ensuring the execution of decisions adopted as a result of the examination of the petition;
- (d) To inform the petitioner about the results of the petition examination and the context of the decision.

104. Article 13 of the Law ensures the citizens' protection from injury to their dignity and stipulates the following:

“In the process of the petition examination, it is not allowed to reveal information about the private life of the petitioner or other information against his will, if these infringe his rights and interests, as well as information which is a State secret.”

105. If the petitioners consider that their rights have been infringed and do not agree with the decisions of the unit or official person who examined the petition, they have the right to appeal to the court within one month from the date of the decision or from the determined day, if they did not receive a reply by that date.

106. Article 1 of the Decree of the President of the Republic of Moldova on ensuring the citizen's right to petition No. 46-II of 17 February 1997 states, “The Government, the leaders of the ministries, departments and other central public authorities, the administration of the enterprises, institutions and organizations will ensure the execution of the Law on Petitions and will take all the necessary measures to protect the citizen's legal rights and interests by resolving, in time, objectively and fairly, the problems exposed in petitions.” The right to petition is also protected by the “Decision for ensuring the right to petition in the Parliament” No. 71-XIV of 2 July 1998.

Judicial measures

107. On the territory of the Republic of Moldova, justice is administered on the basis of the Constitution, national legislation and international treaties to which Moldova is party and on the basis of the courts. Thus, article 16, paragraphs 1 and 2, of the Criminal Procedure Code stipulates that the courts are obliged to verify the observance of the requirements of the Code by criminal investigation units, preliminary inquiry bodies and the prosecutors. The hierarchically superior court verifies the observance of the requirements of the Code by the lower courts.

108. If in the process of obtaining evidence, violence and torture, as well as other illegal actions, are used, they cannot serve as a basis in court or in other judicial decisions or procedural acts (art. 55 of the CPC).

109. In the experience of the activity of the units responsible for protecting the legal norms, the largest number of cases of torture are registered when the person is in pre-trial custody. That is why it is very important to ensure the most efficient protection of his rights at that time. The Law for Modifying and completing some Legislative Acts No. 1579-XIII of 27 February 1998 stipulates in article 73, paragraph 5, that all preventive measures, except custody, shall be applied by the person who undertakes the criminal investigation or criminal inquiry, the prosecutor, or the court. Only the court may order pre-trial custody as a preventive measure. Until this modification, the prosecutor was the competent authority for issuing the arrest warrant. According to article 78/1, paragraphs 3, 8, 10, of the CPC:

“When deciding whether to issue an arrest warrant, the judge is obliged to consider confidentially all the materials which provide the bases for pre-trial custody and to verify whether the law has been observed concerning the starting of the criminal procedure, the suspect’s detention, whether he has reached the age of criminal responsibility, whether the evidence was obtained legally, if the person’s isolation is absolutely necessary and whether the legislation has a special procedure for arresting the person concerned”.

“The reasons and grounds for arrest are communicated to the person in a language that he understands and the procedure for contesting the arrest warrant is also explained.”

“Within three days, the arrested person, his counsel or his legal representative may appeal against the arrest warrant and the person in charge of the criminal investigation or criminal inquiry or the prosecutor who requested the arrest shall send a justification to the hierarchically superior court. A tribunal of three judges shall examine the materials within five days of their receipt.”

110. Thus, the person who undertakes the criminal investigation or inquiry or the prosecutor who determines that the preventive measures of custody should be applied against a suspect requests the judicial court to issue an arrest warrant. The request shall include the reasons and grounds for the requested measure. The materials forming the basis for the grounds shall be annexed to the request. In the case when the suspected person is detained, the request shall be transmitted to the court within 24 hours of the arrest report, in accordance with the provisions of article 78/1 paragraph 1, of the Criminal Procedure Code.

Administrative measures

111. Administrative measures shall be ensured by the punishment of personnel of the bodies responsible for observing the legal norms that infringe human rights by committing acts which violate the national and international legislation on torture. The Code on Administrative Contraventions, approved on 29 March 1985, in article 47/1 entitled “Causing bodily injury”, stipulates:

“Deliberate causing of slight bodily injuries, maltreating, beating and other violent actions which imply physical suffering shall be punished with a fine of between 10 and 15 minimum salaries or administrative arrest for between 10 and 15 days.

“Deliberate causing of slight bodily injuries which imply minor health damage or insignificant loss while maintaining the capacity to work shall be punished with a fine of between 15 and 25 minimum salaries or administrative arrest for up to 30 days.”

112. As for injury to a person’s dignity, article 47/3 of the Code stipulates:

“Insult, i.e. deliberate injury to a person’s honour and dignity by an action, orally or in written form, shall be punished with a fine of between 7 and 15 minimum salaries or administrative arrest for up to 15 days.

“Insult in a publication or in a reproduced work and insult by a person subjected to an administrative sanction for the same offence shall be punished with a fine of between 10 and 25 minimum salaries and administrative arrest for up to 30 days.”

113. At present, the international norms concerning the prohibition of torture are implemented in legislation that is in the process of revision, including the Criminal Code and the Criminal Procedure Code, and in acts of a medical character. These normative acts shall stress respect for detainees’ rights by the creation of living conditions and the provision of decent medical treatment.

114. The problem of violation of human rights is acute on the left bank of the Nistru river. For this reason, the Parliament of the Republic of Moldova considered it necessary, at the moment of ratification of the European Convention on Human Rights, to make a declaration by which the Republic of Moldova denied any responsibility for acts committed on the territory of the self-proclaimed Nistean republic, with the intention to maintain this situation until the conflict is finally solved. This action was taken in accordance with point 11 of Notification 188 (195) of the Parliamentary Assembly of European Council.

115. In concluding this section, we can enumerate the essential measures which were taken for the purpose of preventing of human rights violations and especially preventing acts of torture:

- Capital punishment was abolished on 8 December 1995 and the necessary modifications to the Criminal Code, Criminal Procedure Code and Code for the Execution of Criminal Sanctions were made;

- On the basis of the commitment to the Council of Europe, the Prison Administration with all staff was transferred from the Ministry of Internal Affairs to the Ministry of Justice on 1 December 1995;
- The Law on Modifying and Completing some Normative Acts was adopted on 27 February 1998, by which the national legislation on freedom and personal security was adjusted to European norms, especially the Criminal Procedure Code, according to which all legal rights shall be communicated to all arrested or detained persons before taking any of the procedural steps concerning them, and pre-trial custody is carried out only on the basis of an arrest warrant issued by the judge or a decision of the court. Previously, the prosecutor had issued arrest warrants.

116. Although it is necessary to implement the legal norms of the Republic of Moldova in accordance with article 6 of the European Convention on Human Rights, it is particularly urgent to implement the provisions of the Law on Compensation for Damages caused by illegal Acts of Criminal Procedure and preliminary inquiry bodies, the judiciary and the courts No. 1545-XIII of 25 February 1998.

117. In the penitentiary system the following problems shall be solved:

- Overpopulation in the prisons;
- Insufficient food;
- Transmission of contagious diseases, including tuberculosis.

118. In the field of adapting the internal normative acts, the programme for adapting the legislation of the Republic of Moldova to the provisions of the European Convention was adopted by Decision of the Parliament of the Republic of Moldova No. 1447-XIII of 28 January 1998.

Article 3

119. The Constitution of the Republic of Moldova stipulates the following in article 17, paragraphs 3 and 4:

“The Citizens of the Republic of Moldova shall not be expelled or extradited from the country. Foreign and stateless persons shall be extradited only on the ground of an international convention or mutual conditions on the basis of a judicial decision.”

120. The Republic of Moldova ratified the following bilateral agreements for the purpose of judicial assistance (including the extradition of convicts and those in remand custody):

(a) Agreement between the Republic of Moldova and Romania on judicial assistance in civil and criminal problems (including extradition of convicts) signed on 6 July 1996, entered into force on 22 March 1998;

- (b) Agreement between the Republic of Moldova and Ukraine concerning judicial assistance and juridical reports in civil, family and criminal matters (including extradition of convicts and remand prisoners) ratified on 21 February 1995;
- (c) Convention between the countries of the Commonwealth of Independent States concerning judicial assistance and juridical reports in civil, family and criminal matters (including extradition of convicts), signed on 22 January 1993, ratified on 26 March 1996;
- (d) Agreement on judicial assistance between the Republic of Moldova and Lithuania (including extradition of convicts and remand prisoners) of 9 February 1993;
- (e) Agreement on judicial assistance between the Republic of Moldova and Latvia of 14 April 1993, signed in Riga;
- (f) Convention between CIS countries concerning the extradition and transit of arrested people, ratified at Ashkhabad on 17 February 1994.

121. The relations in matters of extradition between CIS countries are developing on the basis of the Convention concerning Judicial Assistance and Juridical Reports in Civil, Family and Criminal Matters between CIS countries, in force for Moldova from 16 March 1995. Article 56 of this Convention stipulates the following:

- (a) The Contracting Parties shall be obliged to surrender to each other, on demand, in accordance with the provisions of the same Convention, persons who are on their territory, for the purpose of criminal prosecution or the serving of a sentence;
- (b) Extradition for the purpose of criminal prosecution shall be permitted for actions which are sanctioned in accordance with the legislation of the requested and requesting Contracting Parties by punishment of deprivation of liberty for a period of at least one year or by a harsher punishment;
- (c) Extradition for the purpose of serving a sentence shall be permitted for actions which are sanctioned according to the legislation of the requested and requesting Contracting Parties and for the commission of which the person whose extradition is requested was convicted to deprivation of liberty for a period of at least six months or to a harsher punishment.

122. An extradition shall be refused on the basis of article 57 of the Convention mentioned above, which stipulates that:

- (a) The extradition shall not be permitted if:
 - (i) The person whose extradition is requested is a citizen of the requested Contracting Party;

- (ii) At the time the request is received a criminal prosecution, in accordance with the legislation of the requested Contracting Party has not started or the serving of a sentence has not begun owing to the expiration of the statutory period or for another legal ground;
- (iii) If a sentence has already been passed against the person concerned for the same offence or a decision to stop the same proceeding has entered into force;
- (iv) Criminal prosecution of an offence in accordance with the law of the requested and requesting Contracting Parties has started only on behalf of the injured party;

(b) Extradition may be refused if the offence for which the extradition is requested, is committed on the territory of the requested Contracting Party;

(c) In the event of a refusal, the requesting Contracting Party shall be informed of the reasons for the refusal.

123. The national law includes norms in matters of expulsion and extradition according to the Law concerning the Legal Status of Foreign and Stateless Persons in the Republic of Moldova No. 275-XIII, of 10 November 1994 as well as the Criminal Procedure Code. Article 23 of the Law stipulates that foreign and stateless persons may be expelled from the Republic of Moldova if:

- (a) Their entry and stay in the Republic are in violation of present legislation;
- (b) Their stay in the Republic prejudices the national security, order, health or public morality.

124. Foreign and stateless persons may be extradited only on the basis of an international convention or mutual conditions under the terms of a court decision.

125. Article 24 stipulates:

“The opening of an expulsion procedure shall be done by people in high positions in the internal affairs units, personal initiative, or on the basis of a request by an organization, institution or enterprise which sponsors the stay of a foreign or stateless person in the Republic of Moldova, with a further report to the Ministry of Internal Affairs.”

The internal affairs units, on the basis of a court decision, in accordance with article 25, carry out the expulsion of foreign and stateless persons. Foreign and stateless citizens are expelled to the country which authorized their identity documents.

126. Article 29 stipulates:

“Foreign and stateless persons shall not be expelled to a country where there is evidence that they will be persecuted on religious, racial, or national grounds or because of their political points of view, or where they will be subjected to torture, inhuman or degrading treatment, or capital punishment.”

127. On the basis of the provisions of article 18/1, paragraph 2, of the Criminal Procedure Code, the courts and preliminary inquiry units of the Republic of Moldova receive requests (including extradition) from the institutions of foreign States through the Ministry of Justice or the General Magistracy.

Table 2

List of foreign persons expelled from the Republic of Moldova, 1993-2000 (in accordance with article 192 of the Code on Administrative Contraventions and article 210 of the Criminal Procedure Code)

Name	Country of citizenship	Year of birth	Year of expulsion
Sangare Lasin	Mali	1958	1993
Ghedif Aile Tsegaie	Ethiopia	1966	1993
Murreriua Pedro Miguel Paulino	Mozambique	1967	1993
Cun Pat	Cambodia	1965	1993
Mussa Shaibu Abdulahi	Nigeria	1963	1993
Nelson Miguel Lopez Perez	Nicaragua	1968	1994
Albanu Da Silva Raimundu Aitonid	Angola	1973	1994
Alatise Olaseinde Sandi	Nigeria	1964	1994
Konare Karim	Mali	1967	1994
Chevedo Ghil Eduardo	Colombia	1969	1994
Makenga Sebasteanu	Angola	1971	1994
Dechtear Isac Haimovici	Israel	1952	1994
Camuendu Miguel Zahariash Gonsales	Angola	1966	1994
Oghomwen Evelyn Uwaifo	Nigeria	1963	1996
Dandashi Abdulkader	Syria	1971	1995

128. Article 210 of the Criminal Code of the Republic of Moldova, adopted on 24 March 1961, stipulates that: violation of the rules for entering, living in or registering at the border shall be punished by deprivation of liberty for a period of one year, or a fine equal to 30 minimum salaries.

129. Article 192 of the Code on Administrative Contraventions, adopted on 29 March 1985, stipulates that: violation by foreign citizens of the rules for staying in the Republic of Moldova as well as for transit through the territory of the Republic of Moldova, i.e. residence without the documents which accord the right to be in the Republic of Moldova, or residence with invalid documents, or failure to respect the procedure for registering their place of residence, or who overstay the legal term, or who do not respect the rules on transiting through the territory of the Republic of Moldova, shall result in a warning or a fine of up to five minimum salaries. Violation of the procedure for registering foreign citizens and stateless persons, if committed by a person of authority in an enterprise, institution or organization that accepts foreign citizens and stateless persons, shall result in a warning or a fine of up to 10 minimum salaries. Persons who invite foreign citizens and stateless people and give them a place to live must take measures to ensure their timely and proper registration. Failure to do so shall result in a warning or a fine of up to two minimum salaries. Persons who give a place to live, means of transport or other services to a foreign citizen or stateless person contrary to the rules governing the stay of such persons in the Republic of Moldova shall receive a warning or a fine of up to two minimum salaries.

Article 4

130. As described elsewhere in this report, after the ratification of the Convention, the necessary changes were made to the national laws, and other changes are currently being discussed by Parliament. Article 24 of the Constitution stipulates that the State guarantees to everyone the right to life and to physical and mental integrity. Any person accused of an offence is presumed innocent until proven guilty in a public judicial process wherein all rights of the defence shall be guaranteed. No one can be subjected to torture, or criminal, inhuman or degrading treatment or punishment. The primary duty of the State is to respect and protect the person (art. 16 (2)). The citizens of the Republic of Moldova benefit from State protection whether in the country or abroad (art. 18 (2)).

131. The definition of torture is explained in section I of this report. In addition to the sanctions described under article 1, Moldovan legislation also provides for the following:

(a) Severe bodily injury endangering life (i.e. loss of eyesight, hearing, ability to speak or use of another organ or causing a mental illness or other injury to health accompanied by the loss of at least one third of work capacity shall be punished with deprivation of liberty for 3-10 years (Criminal Code, art. 95).

(b) Severe bodily injury leading to the death of the victim, caused by torture or systematic injury, even slight, or inflicted with the purpose of making the victim perform his public or job obligations shall be punished with deprivation of liberty of 5-15 years (ibid.).

The actions stipulated in article 95 if committed by a dangerous criminal shall be punished with deprivation of liberty of 8-25 years.

132. In the event that the results of intentional bodily injury are not life-threatening and are not stipulated in article 95 but lead to permanent health damage or considerable loss of work capacity, the perpetrator shall be punished with deprivation of liberty of up to three years or community work for up to two years. If the action has the character of torture as well as if it was inflicted for the purpose of forcing the victim to perform his public obligations or was committed by a dangerous criminal, punishment shall be deprivation of liberty for up to five years.

133. According to article 94 of the Criminal Code, a person who incites or assists someone who is financially or in any way dependent on him to commit suicide, whether by cruel behaviour, or by systematic degradation of the personal dignity of the victim, shall be punished with deprivation of liberty for 1-5 years. The same act, if committed by systematic persecution, defamation or degradation, or if the victim was not materially or in any other way dependent on the perpetrator, shall be punished with deprivation of liberty for 1-3 years.

134. Article 98 provides for punishment by deprivation of liberty for one year, or by community work for the same term, for serious or less serious bodily injury, caused in exceeding the limits of self-defence.

135. Illegal deprivation of liberty shall be punished with deprivation of liberty for up to one year, and the same act, if committed in a manner dangerous to the life or health of the injured party or in conditions which imply physical suffering, is punished with 1-5 years' deprivation of liberty (ibid., art. 116). The same article stipulates that taking or restraining a person as a hostage, accompanied by death threats, bodily injury or continuous restraining of the person for the purpose of forcing him to commit or refrain from committing any action, shall be punished with deprivation of liberty for up to 15 years. If the same actions had serious consequences, they shall be punished with deprivation of liberty for 10-25 years. In accordance with the Note to the named article, application of its provisions shall not be spread over the cases of the offence committed on the territory of the Republic of Moldova if the hostage-taker is on the territory of the Republic of Moldova and he as well as the hostage are citizens of the Republic of Moldova.

136. The eighth chapter of the Criminal Code stipulates the offences committed by persons in positions of authority. Article 183 defines the person with high position as the person who is accorded, permanently or temporarily, by law, appointment or election, a duty, certain rights and obligations in an enterprise, institution, organization, or any kind of property. These duties or obligations are given for the purpose of exercising public authority, executive or administrative, or organizational/economic functions. A person with high position is considered to be a person, the manner of nomination or selection of whom is determined by the Constitution of the Republic of Moldova and the basic laws, as well as persons to whom the person with high position delegates authority. The penalties for abuse of authority under articles 184, 185 and 190-193 of the Criminal Code are outlined in paragraph 23 above.

137. In accordance with article 206 of the Criminal Code, in the Republic of Moldova death threats with bodily injury or destruction of property, or committing illegal actions against an official person or his relatives, for the purpose of counteracting a professional or public act or securing its change in favour of the one making the threats, as well as the same threats or actions committed against a citizen or his close relatives for the purpose of forcing him to prevent or stop an action or antisocial act are considered to be criminal acts which shall be punished with varying terms of deprivation of liberty or fines. Paragraphs 1 and 2 of article 206 stipulate criminal punishment for attempts on the life of a policeman, or deliberate damage to or destruction of his property.

138. A person who threatens with death, serious bodily injury or destruction of property by arson, is cause to believe that these threats will be carried out, shall be punished with deprivation of liberty for up to one year or a fine of 40 minimum salaries (art. 219).

139. The Criminal Code of the Republic of Moldova (art. 21) stipulates briefly the main punishment for persons who commit offences, as follows:

- Deprivation of liberty;
- Deprivation of the right to hold certain positions or practise a certain activity;
- Fine;
- Dismissal;
- Public reprimand.

The general principles for the application of criminal punishment are stipulated in article 36, pointing out that at the time of setting punishment, the court must take into account the law, the character and degree of danger to society of the offence, the culprit, as well as any circumstances, which might reduce or aggravate the responsibility.

140. The circumstances which reduce the punishment are considered to be the following (art. 37):

- Prevention by the culprit of harmful consequences of the offence or voluntary redressing or mitigating of damage caused;
- Commission of the offence as a result of severe pressure of events, personal or familial;
- Commission of the offence under the influence of threat or coercion, or because of a material, professional or other kind of dependence;
- Commission of the offence under the influence of great torment, resulting from the illegal actions of the injured party;

- Commission of the offence in defending against a dangerous attack, even if the bounds of self-defence were overstepped;
- Commission of the offence by a minor or a pregnant woman;
- Sincere repentance or self-denunciation;
- Actively contributing to the discovery of the offence.

The court may take into consideration other circumstances as being extenuating when it sets the punishment.

141. Aggravating circumstances (art. 38) are considered to be when the offence is committed:

- By a person who had already committed another offence;
- By an organized group;
- For material gain or other mean intent;
- On the basis of national or racial hatred;
- Causing serious consequences;
- Against a child, old person or a person unable to defend himself;
- Against a person protecting public order;
- By minors instigated to commit the offence or to become involved in its commission;
- In a very cruel manner or by degrading the injured party;
- During a social calamity;
- By means which present a general danger;
- By exploiting a material, professional or other kind of dependency;
- By a drunk person;
- By a person who is on bail or within a period of one year from the expiration of bail.

142. The Criminal Code (art. 15) specifies the responsibility for preparing to commit an offence (buying or adjusting the means or instruments or intentionally creating other conditions for its commission) and for an attempted offence. When determining punishment, the court must take into consideration the character and degree of danger to society of the actions committed by the culprit, the degree of accomplishment of the intended offence and the reasons why it was not completed.

143. The provisions of the Criminal Procedure Code (CPC) relevant to the protection of the rights of persons during criminal prosecution are explained in paragraphs 77ff above. During the criminal procedure no one shall be subjected to torture or to inhuman or degrading treatment. The same Code (art. 14) prohibits the person in charge of a criminal investigation or inquiry or the prosecutor from using threats or force to obtain any kind of statement from a suspect, defendant or convict. The prosecutor has the duty to eliminate any kind of infringement during the criminal investigation and preliminary inquiry (art. 15). The courts are obliged to verify the observance of the requests stipulated in the Criminal Procedure Code (art. 16) by criminal investigation and preliminary inquiry units as well as prosecutors.

144. Title IV - "Application of force, special means and firearms" of the Law on the Police, stipulates the cases and manner in which force, special means and firearms may be used by the police.

- They shall be used only after a warning. The time given for an answer must be sufficient. Exceptions are the cases when a delay in the application of physical force, special means or firearms could generate danger for citizens' and policemen's lives and health or could lead to other serious consequences
- Firearms are not to be used against women and children, the elderly, as well as people with evident physical disabilities. Exceptions are admitted when such people commit an armed act, put up resistance using guns or commit a group attack which threatens the citizens' life and health, if the actions of this kind cannot be repulsed in other ways or by other means (art. 14). This article requires the police to inflict the least possible damage to health, honour, dignity and property and to ensure medical assistance to the victims. Cases of wounding or death shall be communicated directly to the chief and he shall inform the prosecutor. Exceeding the powers specified in article 14 shall be punished.

145. Articles 15-17 of the Law on the Police set out in detail the cases and ways in which force, special means and firearms may be used by policemen.

146. In accordance with article 11 of the Law on Remand Custody, people detained in places of remand custody have the obligations and enjoy the rights and freedoms as contained in the legislation for all citizens of the Republic of Moldova, with the restrictions stipulated by the law which result from the detention regime.

147. Detention of persons on remand is carried out on the basis of the Constitution and in observance of the requirements of the Universal Declaration of Human Rights and other norms and international standards on the treatment of detainees and shall not cause physical or mental

suffering or offend human dignity. Prisoners shall not be subjected to scientific or medical experiments, even with their agreement. The Law (art. 17) obliges the person in authority to take urgent measures to transfer the prisoner to a safe place if there is any danger for his life and health.

148. Article 31, entitled “Sanctions applied to prisoners” specifies the sanctions which shall be applied to them when the rules of detention are infringed. Paragraph 16 prohibits the use of measures which cause physical or mental suffering or which offends human dignity.

149. For the purpose of avoiding cases of torture and degrading treatment of prisoners, article 34 sets out in detail the cases and way in which force, special means and firearms may be used. Paragraphs 17 and 18 require a medical examination of persons against whom force, special means and firearms have been applied.

150. The Code for the Execution of Criminal Sanctions stipulates the general principles for the serving of sentences, corrective measures, verifying the conditions for the non-application of the punishment against the convict, the functioning of the institutions and units which order the punishment, etc. Article 2 (2) stipulates that the legislation for carrying out criminal sanctions is applied in accordance with the Constitution and international legal norms in the field. Causing suffering to a convict or offending his dignity is inadmissible. Torture, coercive medical or any other kind of measure which can harm the convict’s health are prohibited (art. 10 (2)). The observance of the laws on the serving of sentences and the application of punishment is monitored by the prosecutor and is subject to departmental and public control (art. 8 (2)).

151. The conditions and limits of application force, special measures and firearms are set out in articles 99-101. Exceeding these limits incurs legal responsibility.

152. The Statute on the Serving of Sentences by Convicts (the Decision of the Government of the Republic of Moldova No. 923 of 20 December 1994) is elaborated in accordance with the constitutional provisions, the Code for the Execution of Criminal Sanctions, other laws of the Republic of Moldova in this field, the Standard Minimum for the Treatment of Prisoners adopted at the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Geneva in 1955 and approved by the Economic and Social Council in 1957 and 1977.

153. The judiciary supervises law enforcement in the places of detention, imprisonment, and other measures of restriction of liberty ordered by the court, as well as in mental institutions.

154. Article 38 of the Law on the Judiciary gives to the prosecutor the responsibility for overseeing respect for the law in places of confinement: prisons, preventive detention centres, and labour correctional institutions, other institutions where sentences are served as ordered by the court, as well as mental institutions. The prosecutor has also the obligation to supervise the conditions of persons in those institutions, as well as the rights of these persons. For the purpose of carrying out this task, the prosecutor has the right to visit respective institutions at any time, to examine all prisoners, to request explanations from the administration of these institutions, and to study the documents on the basis of which the people were detained, arrested, sentenced or confined (art. 39). The decisions and dispositions issued by the prosecutor shall be executed unconditionally.

155. In accordance with article 13 of the Law on the Organization of the Courts, exercising pressure against the prosecutor for the purpose of stopping or influencing a trial or the issuance of a judicial decision shall entail administrative or criminal responsibility in accordance with the law.

156. The Code on Administrative Contraventions (art. 47, para. 1) stipulates that a fine of 10-15 minimum salaries or administrative arrest for a period of 15 days should be applied against people who premeditatedly cause slight bodily injuries, maltreat, beat or apply other violent actions which imply physical suffering. If those actions result in short-term health damage or insignificant but stable loss of capacity for work, fines of 15-25 minimum salaries or administrative arrest for a period of 30 days are applied. Intentional spreading of lies, which defame another person shall bring about a fine of 10-25 minimum salaries or administrative arrest for a period of 30 days (art. 47, para 3). Article 174 of the Code provides for sanctions for refusing to obey a legal request by a policeman. This shall be punished with a fine of 10 minimum salaries or administrative arrest for up to 15 days. The same actions committed several times during a year after the application of administrative sanctions, shall be punished with a fine equal to 20 minimum salaries or administrative arrest for up to 30 days.

157. According to the Law on the Carrying out of Investigations, one of the basic principles of this activity in the Republic of Moldova is respect for human rights and freedoms (art. 3). The person who considers that the actions of the investigation unit have led to a violation of his rights and freedoms may appeal against these actions to the hierarchically superior unit, judge or court. In turn, these must institute the necessary measures for the purpose of restoring these rights and freedoms and award compensation for damage caused (art. 5).

158. The Constitution of the Republic of Moldova (art. 53) stipulates that any person, one of whose rights have been violated by a public authority, an administrative act or the failure to respond to a request within the legal time limit, has the right to have his rights reinstated, the act revoked, and compensation for damages. The State has a patrimonial responsibility, in accordance with the law, for the prejudices caused by the errors committed in the criminal procedure by the inquiry units and the courts.

159. In accordance with the law on compensation (art. 1), the damage is liable for compensation when it was caused as a result of:

- (a) Illegal search, arrest, sequestration, dismissal or other procedural actions which diminish human rights in an investigation or trial;
- (b) Illegal administrative arrest or subjection to community work, seizure of property, fine;
- (c) Illegal measures of investigation;

(d) Illegal seizure of accounting documents, other documents, money, stamps, as well as freezing bank accounts.

Prejudice is completely remedied independently of the guilt of persons in authority in criminal investigation or preliminary inquiry units, prosecutors and the courts.

160. The Parliament of the Republic of Moldova adopted on 8 December 1995 the Law on Modifying and Completing the Criminal Code, Criminal Procedure Code and the Code for the Execution of Criminal Sanctions. The death penalty was changed to life imprisonment. Moreover, by the provisions of article IV, convicted persons sentenced to the exceptional measure of the death penalty before the law entered into force, who were not pardoned or amnestied had their sentence commuted to life imprisonment.

161. According to data of the General Magistracy, in the last years (1998-2000), there were no complaints of torture, degrading treatment or punishment by personnel of the judicial units. There were, however, petitions concerning illegal inquiry and criminal investigation procedures: 39 petitions in 1998 (only 4 had grounds); 63 in 1999 (5 admitted). Starting in 2000, these kinds of data were excluded from the statistical report of the judicial units.

162. The judiciary permanently checks up on the observance of the legislation in the penitentiaries. During this period there was no physically or mentally degrading or inhuman treatment of the convicts. In the same period, the units and subdivisions of the Ministry of Internal Affairs had recorded complaints from citizens concerning illegal actions of the police. These are shown in table 3.

Table 3

Reason for complaint	1998	1999	2000 (11 months)
Total number of complaints	28 653	29 253	26 047
No action taken in response to notices that a crime had been committed	395	176	306
Were proved	114	31	97
Concerning violation of legislation	980	389	599
Were proved	236	70	110
Concerning incorrect actions of personnel of the Ministry of Internal Affairs	1 407	1 008	1 006
Were proved	695	279	263

163. The Direction for Internal Security of the Ministry opened criminal files against the policemen concerned under the Criminal Code of the Republic of Moldova.

Table 4. Policemen prosecuted for crimes, by article of the Criminal Code

Article	1998	Classified and disposed of	On trial	1999	Classified and disposed of	On trial	2000	Classified and disposed of	On trial
Article 94 (Establishing suicide)	0			0			1		
Article 95 (Serious intentional bodily harm)	3		1	1	1		2		
Article 96 (Slight intentional bodily harm)	3	1	2	4	1	1	5	2	2
Article 98 (Serious or less serious bodily harm in excess of self-defence)	0			0			1		
Article 101 (Torture)	0			0			1		1
Article 116 (Illegal deprivation of liberty)	0			1		1	0		
Article 184 (Abuse of power or authority)	24	4	11	25	6	13	15	4	5
Article 185 (Abuse of power or professional privileges)	103	43	36	112	47	52	103	37	32
Article 190 (Intentionally prosecuting an innocent person)	0			0			0		
Article 190, sign 1 (Interference in a criminal investigation or trial)	0			0			0		
Article 192 (Illegal arrest, detention or restraint)	1	1		4	1	3	0		
Article 193 (Coercion to make depositions)	0			1	1		0		
Article 194 (Coercion of a witness or injured party)	0			0			0		
Article 219 (Threatening murder, serious bodily harm or destruction of property)	0			2		2	1		1

164. Three members of internal affairs units were convicted and one was acquitted on the basis of article 184 of the Criminal Code in 1998; in 1999 one was convicted and one was acquitted; five were convicted and one was acquitted on the basis of article 185 of the Criminal Code, and in 1999 nine were convicted and three were acquitted.

165. Disciplinary sanctions were applied to many policemen in accordance with the disciplinary statute of the internal affairs units, adopted by Decision of the Government of the Republic of Moldova No. 2 of 4 January 1996. These sanctions are: admonition, reprimand, severe reprimand, warning, demotion, reduction to a lower rank, dismissal.

166. According to the investigation done by the Centre for Human Rights in Moldova (parliamentary jurists institution), the law units have opened only a few criminal files on the basis of article 102, paragraph 1 (Torture). In 2000, 87 citizens complained in writing and 222 in person to the parliamentary jurists of illegal acts by the police. At the instigation of the parliamentary jurists, criminal files were opened against 79 policemen on the basis of article 185 of the Criminal Code.

167. Fifteen per cent of the petitions received from convicts concerned the use of physical and mental coercion, but during 1998-2000 only one case of inhuman and degrading treatment against convicts was registered. On 24 November, junior lieutenant C., using excessive force, maltreated convict S. and inflicted bodily injuries. The investigation determined that article 99 of the Criminal Code had been violated. Junior lieutenant C. was dismissed from the penitentiary system in accordance with the order of the Minister of Justice.

168. The problem of ensuring the detention conditions of the convicts is still open. It consists of insufficient funds, healthy food, and medical equipment and medicines. The penitentiary system's minimal need is about 50 million lei per year, but in 2000 the budget was only 11 million lei, i.e. 24 per cent of the necessary minimum. As a result of this the penitentiaries cannot buy sufficient food, medicine, personal hygiene products, etc.

169. The number of convicts with infectious diseases increases every year: there are 970 people with active tuberculosis, 129 with HIV, etc. Because of the insufficiency of medicine these diseases are not treated and continue to infect other convicts and in case of freedom, the society, too.

170. The settled space norm for a convict is 2 m², but the penitentiaries are overpopulated.

171. The authorities are trying to solve the problems. The Government has prepared some bills for the purpose of opening new penitentiaries. Parliament examined and adopted bills for the new Codes - Criminal, Criminal Procedure and Criminal-Exceptional. These bills stipulate the provisions for improving the national detention standards, thereby excluding acts of inhuman or degrading treatment of convicts.

172. At present some temporary detention isolators do not correspond to European and international norms. But certain measures are being taken to improve the situation. Some of them were repaired, others are being rebuilt. Cells of the Department for the Control of Organized Crime and Corruption have been adjusted to the necessary minimum. However, there are a lot of things to be done to ensure the observance of the Convention's provisions that concern convicts. The authorities want to improve the situation but the problem is that it is impossible to allocate financial resources because of the long-term economic crisis.

Article 5

173. The present internal law stipulates that all persons who commit offences on the territory of the Republic of Moldova shall be called to account in accordance with the Criminal Code of the Republic of Moldova (Criminal Code, art. 4).

174. Persons in high positions in the judicial or police institutions or the State security of foreign States are prohibited from detaining or arresting people or taking other procedural actions on the territory of the Republic of Moldova (Criminal Procedure Code, art. 18, para. 1).

175. If a foreign citizen has committed an offence on the territory of the Republic of Moldova and after his State has been so informed, the material gathered by the criminal investigation and preliminary inquiry units about this person are handed over to the General Magistracy, which adopts a decision concerning his punishment in the appropriate institution of his State (Criminal Procedure Code, art. 18, para. 2).

176. The procedure for establishing the relationship between the courts and the criminal inquiry and investigation units of the Republic of Moldova and the same institutions of other States, as well as the procedure for responding to requests from these institutions are stipulated in the Criminal Procedure Code of the Republic of Moldova and international treaties, conventions and agreements to which Moldova is a party. The procedure for States with which no agreement has been signed is established with the help of the Ministry of External Affairs of the Republic of Moldova.

177. According to the Criminal Procedure Code (art. 18, para. 3) the General Magistracy shall address to the same institution of a foreign State a request for the extradition of a citizen of the Republic of Moldova or another person who has committed an offence on the territory of the Republic of Moldova, if no criminal trial was instituted or sentence passed. In the extradition demand, the surname, name and patronymic of the accused are indicated, his year of birth, citizenship, circumstances of the offence, the text of the article of the Criminal Code which characterizes this offence. If requested, his description and a photo and the copy of the sentence translated into the foreign language and legalized in a specified manner are also sent.

178. A person cannot be extradited from the Republic of Moldova when:

(a) The person is a citizen of the Republic of Moldova and there is no treaty on legal assistance between the Republic of Moldova and the requested country;

(b) The offence was committed on the territory of the Republic of Moldova;

(c) The sentence in respect of the offence had been already passed and in force or the trial otherwise concluded;

(d) The statute of limitation for the offence has expired;

(e) The offence for which the extradition is requested is not an offence under the internal law of the Republic of Moldova (Criminal Procedure Code, art. 18, para. 5).

179. Foreign and stateless persons may be extradited only on the basis of an international convention or in mutual conditions on the basis of a court decision.

180. In Moldova there were no extradition requests received or sent for offences relating to torture.

Article 6

181. In accordance with the Criminal Procedure Code (art. 104), the criminal investigation unit and officer have the right to detain a person suspected of committing an offence punishable by deprivation of liberty under certain conditions (see paragraph 84 above).

182. In detaining a minor, the parents or guardian as well as the minor's school must be informed.

183. In the Republic of Moldova, the police control detention of a person suspected of committing an offence in accordance with the Law on the Police. The manner and means of pre-trial detention are stipulated in the Law on Remand Custody. The grounds for remand custody are set out in the Criminal Procedure Code.

184. Wherever the offence was committed, the procedure is the same and obligatory for all courts, judges and criminal inquiry and investigation units of the Republic of Moldova.

185. Arrest is on the basis of a warrant for a period of no longer than 30 days. The reasons for the arrest are immediately communicated to the person in the presence of a lawyer. Releasing the arrested person is obligatory once reasons have disappeared. The prisoner may protest the grounds for the arrest warrant in court, which is obliged to answer with a reasoned decision. The term of arrest may be extended for up to 6 months and, in exceptional cases with parliamentary approval, to 12 months (Constitution, art. 25 (4)).

186. The Prosecutor and criminal inquiry or investigation unit are obliged to institute, within the limits of their competence, criminal trials every time the component elements of an offence are discovered and to take all the measures stipulated by the law for punishing the culprits (CPC, art. 3). The procedure in criminal cases concerning foreign and stateless persons on the territory of the Republic of Moldova is in accordance with the Criminal Procedure Code. Persons who have diplomatic immunity shall be subjected to criminal procedures only if they so request or wish. The authorization for these actions is requested by the Ministry of Internal Affairs (CPC, art. 17).

187. In accordance with the present internal law, any detained person has the right to communicate with relatives or his legal representatives. The judge, after issuing the arrest warrant, must inform a member of the family or another person named by the suspect (CPC, art. 78, para. 4). The competent authorities of the Republic of Moldova are obliged to inform the States concerned about any investigation involving their citizens and to inform the embassy and consulate of the States concerned of their arrest (CPC, art. 78, para. 5).

Article 7

188. In accordance with article 4 of the Criminal Procedure Code of the Republic of Moldova, all persons who have committed offences on the territory of the Republic of Moldova shall be prosecuted on the basis of the provisions of the Criminal Code of the Republic of Moldova. The Constitution of the Republic of Moldova stipulates the equality of all people before the law without regard to race, nationality, ethnic origin, language, sex, opinion, political ideas, property or social origin (art. 16). Everyone is entitled to a fair hearing by the competent courts concerning acts that violate his legal rights, freedoms and interests. There is no law which shall obstruct the access to justice (art. 20). The primordial State duty is to respect and protect the person. Foreign and stateless persons have the same rights as citizens of the Republic of Moldova with the exceptions stipulated by the law (art. 19 (1)). Everyone charged with a criminal offence shall be presumed innocent until proven guilty in accordance with the law, during a fair trial where all guarantees necessary for the defence were ensured (art. 21). No one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment (art. 24 (2)).

189. The principles of equality and responsibility are ensured by the Criminal Procedure Code, the Law on the Judiciary, the Law on Remand Custody, the Law on Judicial Organization and other normative acts.

Articles 8 and 9

190. Information pertaining to these articles is found elsewhere in this report.

Article 10

191. Lately more and more measures have been taken for training policemen and personnel of the penitentiaries and commissioned and non-commissioned officers for the purpose of preventing cases of violation of human rights, as well as for the purpose of familiarizing them with the national and international instruments in this field. In December 1998 and March 1999, the Ministry of Internal Affairs issued two instructions according to which all personnel of all ministry subdivisions were obliged to study as part of their professional training the provisions of the international conventions to which Moldova is a party and to be tested on them.

192. Good training in this field is done in the Police Academy "Shtefan chel Mare" of the Republic of Moldova. Many improve their knowledge abroad.

193. The methodological training centre was created for the purpose of initial and continuing training of the staff of the penitentiary system of the Department of Prisons of the Ministry of Justice. Three months of initial training of superintendents, one month's training for other categories of employee as well as continuing training of all employees of the penitentiary system is a part of this centre. A special place in the curriculum is reserved for training in the human rights field, including in European and international conventions concerning torture and cruel, inhuman or degrading treatment or punishment.

194. The Centre for Human Rights in Moldova has actively participated in this process. In September 1999, the Centre launched a training programme for different categories of citizens entitled "Fundamental human rights and freedoms" with financial support from the Government of the Netherlands.

195. Eighty-one seminars with the participation of 2,273 persons have already taken place. These people had actively contributed to informing and training the community in the human rights field. The training sessions were to last for two days each, with seven kinds of groups of participants: local public administration representatives; non-governmental representatives; police personnel; prison personnel; lawyers; didactic personnel; mass media representatives.

196. The training programme included different organizational forms and presentation methodologies, including lectures, seminars and round tables, conferences, workshops and competitions, and was implemented with the active participation of foreign and domestic counsellors, leaders of NGOs. Heads of ministries and departments, local public authorities, representatives of higher educational institutions and mass media representatives took part in the organizational process for these activities.

197. Simultaneously, flyers, informative guides, booklets and other specialized literature concerning human rights and freedoms were produced. The flyer "Policeman as a defender of human rights" (4,000 copies) was published for policemen to inform them about the main requests for protection addressed to the police, to change for the good their attitude about other persons, and to help them understand that their role is first of all to avert violations of people's interests, they being first of all an example for respecting human dignity.

198. Cards bearing "The rights of the convict" and "The rights of convicted women" (5,400 copies) have had great success among the concerned populations. Being compact, with the text printed on plastic, these cards can be carried in the pocket and referred to at any time.

199. The Centre published 22 titles on human rights and freedoms in 2000, 93,600 copies in Romanian, Russian, Bulgarian, Ukrainian, Turkish and English. The great majority were distributed free during the training programme.

200. As part of the training programme, 12 seminaries on "Human rights and the police" took place. These were for personnel of the Ministry of Internal Affairs system, county and sectoral police stations and representatives of teaching staff of the educational institutions of the Ministry. Over 300 persons participated. The training sessions had the purpose of imparting information in the human rights field, developing abilities and changing the policemen's attitude as regards fundamental human rights and freedoms. In the workshops, the participants were

informed about changes in internal laws which prescribe the activities of the respective units, provisions of international acts to which Moldova is party, and modern investigation technologies. They had lectures on psychological-sociological, ethical and aesthetic themes. The problems in the observance of laws, humanism, equity, transparency, human dignity and the prohibition of torture or other cruel, inhuman or degrading treatment and punishment had special attention. In this context, use of physical force and special means were analysed.

201. Fourteen training seminars in the human rights field were organized for the personnel of the penitentiary system, with the participation of 405 persons, i.e. 13 per cent of the whole force. The observance of internal law and international provisions on human rights protection were outlined, as well as the mission and obligations of the personnel of the respective institutions in a democratic society, including facts which negatively influence the prison system of the republic.

202. Penitentiaries and police personnel had at their disposal various laws and normative acts in the field, the Universal Declaration of Human Rights, the European Convention on Human Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, other specialized literature, and audio and video materials.

203. Training seminars were planned so that the participants could transmit the knowledge obtained to the whole staff.

204. The Centre for Human Rights, together with other interested institutions and organizations, shall continue the training activity of policemen and prison officials, counting on the fact that in this way violations of human rights will diminish in the Republic of Moldova. Fifteen training seminars of prison staff and 14 for policemen were organized in 2001.

205. The Ministry of Security adopted the concept of military-patriotic education and included in the curriculum the subject "International Humanitarian Law", which consists of lectures on prohibiting torture or other cruel, inhuman or degrading treatment or punishment between soldiers. Simultaneously, to ensure democratic principles, general humanitarian norms, and the prohibition of torture in the military, the Ministry of Security organized training seminars in the human rights field for its personnel. The parliamentary jurists have actively participated in the organization of these seminars.

206. The activities of the whole staff of the armed forces are based on the laws of the Republic of Moldova on the military, on the disciplinary rules (adopted by the Decision of the Parliament of the Republic of Moldova of 13 March 1996) and on other normative acts. The prohibition of torture is part of these norms and is in force for the staff of the Ministry of Security and the whole staff of the armed forces.

207. Discovering and investigating beatings, harassment and torture is the competence of the magistracy, criminal inquiry units and the courts. The forensic expert has the obligation only to ascertain the presence, character and age of corporal injury and health damage in general caused by such actions on the basis of medical data.

208. Beatings, harassment and torture are specific types of action against the organism. Beatings are characterized by the application of repeated and multiple blows. If a beating results in injury to the body or general health, the seriousness is determined according to medico-legal criteria. In cases when after a beating, injuries were not discovered, the forensic expert notes in the medico-legal report the accusations of the examined person and in his conclusion indicates that the injuries were not apparent. Harassment is actions which provoke suffering such as withholding food, heat, water, or by placing or abandoning the victim in dangerous conditions. Torture is repeated or lasting actions, which produce persistent pain (pinching, lashing, cutting, burning, etc.).

209. Students from the Law and Medical Faculties have the course “Legal Medicine”. As part of this course, the students study the ways of discovering torture as well as the legal procedure which must be followed in accordance with the Criminal Procedure Code, the Criminal Code, and the Law on Legal Expertise of 23 June 2000, published in the Official Monitor No. 144-145 of 16 November 2000.

210. In accordance with article 15 of the Law on Judicial Expertise, judicial expertise is done by the order of a criminal investigation unit, person conducting a criminal inquiry, prosecutor or court. For the examination of persons subjected to expertise, the application of investigation methods, such as painful sensations which may have a serious effect on health, as well as those prohibited in medical practice, are not allowed (art. 31). In order to develop judicial expertise, improve the candidate-selection system, encourage professional improvement, improve the quality and efficiency of work, and correlate salaries with the work performed, the juridical experts are tested once every five years (art. 36).

211. Judicial expertises at the request of foreign States is in accordance with the procedure and the international treaties to which Moldova is party.

Article 11

212. In all the cases of receiving a complaint from an arrested person, the prosecutor is obliged to examine it and to give his/her decision to the complainant (CPC, art. 194).

213. In accordance with the Law on Preventive Custody (art. 34), the persons against whom physical force, special means or firearms were applied are subjected to an obligatory medical examination and the prosecutor is immediately informed.

214. Some detainees in preventive custody in the inquiry insulators are transferred to the police stations, as a rule, only when necessary for the investigation, i.e. actions which cannot be done in the insulators such as on-the-spot investigations and crime reconstitutions. During the preliminary inquiry, all the decisions concerning the inquiry's orientation and the investigation of criminal actions are taken independently by the person conducting the inquiry (with an exception of the cases when the law stipulates the prosecutor's approval); he/she has complete responsibility for the legality and timeliness of the investigation.

215. In accordance with article 6, paragraph 3, of the CPC of the Republic of Moldova, the legal rights and obligations are communicated to every person arrested or detained before any procedural act can be undertaken. Within three hours, the reasons for the detention or arrest shall be communicated in a language understandable by the person. According to article 104 of the CPC, the reasons are communicated in the presence of a defender, chosen or named.

216. The right to medical assistance is guaranteed by the Law on Preventive Custody (art. 25) which describes the manner of providing medical assistance. Present legislation does not stipulate rights other than those stipulated by article 78 of the CPC, which stipulates that within 24 hours after signing the arrest warrant, the judge shall communicate the fact of the arrest to a member of the suspect's family or to a third person.

217. The right to a chosen or named defender is guaranteed from the moment of arrest (CPC, art. 104) and after the first inquiry, the suspect and the defender have the right to private discussions without any limitation of their number and length (Law on Preventive Custody). As mentioned above, persons in police custody shall receive free medical assistance. The administration of the place of police custody shall undertake to carry out the person's sanitary and hygienic requests and to ensure his/her health

218. The legislation of the Republic gives the right to detained persons to be informed of their legal rights as well as the reasons for their arrest. In accordance with the provisions of article 105 of the CPC, suspects who are arrested or detained must be interrogated immediately, or in any case within 24 hours. During the interrogation an official report is done wherein the place and date of interrogation shall be indicated, data about the person carrying out the interrogation and the duration of the interrogation.

219. Article 134 of CPC stipulates that the suspect may write his/her declaration personally.

220. Article 132 CPP stipulates that during interrogation of a suspect under 16, a teacher must be present. The teacher shall participate in the interrogation of an older person who is mentally ill.

221. At the General Magistracy Collegium of 27 September 1996, one of the main points was intensification of supervision by the prosecutor with a view to preventing torture. According to the decision of the Collegium, the territorial and specialized prosecutors shall be obliged to check daily the legality of a citizen's detention in temporary detention isolators of police stations. Methodological guides on checking the legality of detention were prepared and sent to the prosecutors; the MIA was informed about the purpose of ending violations of the legal provisions on detention and the conditions which facilitate them.

222. As for the registering of detainees by the police, these persons shall be entered in a special register where their name and surname are indicated and the hour and reason for arrest. Detention conditions in the police stations and temporary isolators do not correspond to the international norms to which Moldova is party. All the cells need repair, some of them even rebuilding. During checks by the prosecutor, these defects were reflected in the demands sent to the MIA. But in the majority of cases the defects cannot be repaired because of the lack of funds.

223. The magistracy supervises observance of the principle of the separation of minors from adults and in case of violations urgent methods shall be applied.
224. In 1999 prosecutors made 582 complaints of human rights violations. On the basis of these complaints and prosecutors' orders 891 policemen were subjected to disciplinary sanctions and 80 policemen were criminally prosecuted.
225. Until October 1999 prison supervision was the responsibility of the magistracy. As a result of the reorganization of the magistracy, the General Prosecutor transferred to the territorial prosecutors responsibility for supervising the conditions of the serving of sentences.
226. The magistracy permanently supervises the observance of present laws in penitentiaries. Cases of degrading or inhuman behaviour by the convicts were not discovered.
227. As of 1 January 2001, 10,037 persons were detained in penitentiaries, including: 6,567 (65.3 per cent) persons convicted of deprivation of liberty (43 to life imprisonment) and 3,470 (34.6 per cent) arrested persons. The convicted population had been increasing because sentences were increasing. In 1995 the average sentence was 5.6 years while at the end of the year 2000 it was 7.2 years. A halt to the continuous increase of the prison population was due only to the amnesties of the last years.
228. The situation of the penitentiary system concerning the conditions of detention is deplorable. In accordance with the norms of the Code on the Execution of Criminal Sanctions, the prisons can accommodate only 7,510 persons (2 m² per person), but the total prison population is 10,037 persons. Under the Financial Plan of 2000, 2.87 lei were provided for the daily food of the prisoners, but the Decision of the Government No. 246 of 13 May 1993 put the figure at 5.5 lei. This sum is absolutely insufficient to feed a grown person at the level of standard norms. There are also difficulties in providing underwear and footwear. It is very difficult to solve the problem of morbidity of detainees.
229. Because of the economic crisis and unemployment, it is very difficult for convicts to find a decent job.
230. Under the Financial Plan for the penitentiary system for 2000, 44,390.3 thousand lei were allocated to the penitentiaries, which is insufficient for solving all the problems. The administration of the Department of Prisons appealed several times to the State administration for funds and support in solving the most important problems. A series of bills of the Government and Parliament were elaborated and adopted:
- (a) The Law "Modifying and Completing the Code for the Execution of Criminal Sanctions" No. 1134-XIV of 13 July 2000, which stipulates the shortening of the sentences of convicts who work; this will encourage the convicts' socialization, their finding jobs, paying off the debts incurred for caused damage, financial support of their families, etc.;
 - (b) The Parliamentary Decision "On registration of the automobiles received from the Department of Prisons as humanitarian aid" No. 1446-XIV of 11 January 2001;

(c) The Government Decision “On financial allocation to the Department of Prisons” (for finishing the building of the hospital in Rezina) No. 1201 of 24 November 2000;

(d) The Government Decision “On the remuneration of penitentiary personnel” No. 722-22 of 21 July 2000;

(e) The Government Decision “On reorganization of penitentiaries No. 3 and No. 18 of Braneshty village, Orhey county”;

(f) The Government Decision “On wheat, food and fuel allocations to the Department of Prisons” No. 506-XIV of 30 May 2000, as well as other decisions designed to improve the situation in the penitentiaries.

231. All these contributed to partially solving the system’s problems. At the same time, bills which had vital importance for the stable activity of the penitentiary system were rejected - one of them being the draft of the Government Decision “On developing the productive base of the penitentiary system”. Its adoption would have contributed considerably to the financial improvement of the penitentiary system.

232. In order to address the sanitary-epidemiological situation in the General Hospital, the reconstruction of the sewerage and water system was started in 2000.

233. Considerable attention is given to the development of providing basic and job assistance to the convicts. From its own industrial and agricultural products, the penitentiary system had obtained a profit of about 8 million lei.

234. Because of insufficient budget financing, the administration of the Department of Prisons has made efforts to obtain humanitarian help. As a result, in 2000 the penitentiary system received humanitarian aid in the form of food, equipment, medical tools and penitentiary security installations in the sum of 1,762,000 lei, as well as 350,000 lei given by the Republic. In 2001 the penitentiary system received 20 special units for transportation from Swiss humanitarian aid under the sponsorship of the “Christian missions for prisons”. For fighting tuberculosis, under the sponsorship of the international organization Caritas, the international programme DOTS has been implemented starting from January 2001 in the General Hospital. For improving the alimentation and sanitary-hygienic situation in the penitentiary system, the help of the international organization Pharmacists without Borders was requested. It offered sanitary and hygienic products. The Soros Foundation provided help for repairs in the General Hospital.

235. The following measures shall be taken to improve the conditions of detention in the penitentiaries:

(a) Adoption of the Decision of the Government “On the programme for developing the productive basis of the Department of Prisons” rejected because of insufficient funds; its realization would have brought real income to the penitentiary system;

(b) Adoption of the government bill “On transferring the military camp from the budget of the Ministry of Internal Affairs to the budget of the Department of Prisons”, in the Government for examination and adoption. Adoption of this bill would contribute to the creation of a material base for security, supervision and escort taken from the MIA;

(c) Elaboration and adoption of some government decisions on opening new penitentiaries;

(d) The government bill “On penitentiary personnel training in the Police Academy ‘Shtefan cel Mare’”;

(e) Financing of capital and minor repairs of penitentiaries as well as security and supervision installations;

(f) Financing for the adaptation of the boiler rooms to gas, this being more economical and ecological.

236. The Department of Prisons contributed actively to improving the legislative unit of the system for executing criminal sanctions, participating in the elaboration of the bill to bring the Code on the Execution of Criminal Sanctions into line with European standards. This stipulates:

(a) Modification of the penitentiary system structure. Three types of prison are introduced: open, half-closed, closed, each of them having its own detention regime with its specific restrictions and rewards;

(b) Decreasing time limit of detention in the penitentiaries, whose capacity is only 500;

(c) Penitentiaries with a capacity of 100 shall have their own hospitals;

(d) Shortening of sentences of convicts who work and have exemplary behaviour;

(e) Cancelling the weight restriction on parcels;

(f) Allowing inmates to phone;

(g) Eliminating the restriction on the number of parcels that minors may receive;

(h) Rewards for minors for good behaviour, conscientious work, etc.; the right to leave the penitentiary accompanied by parents or other appropriate relatives; the right to attend some theatrical/cultural performances and sport events;

(i) Improving the conditions of detention.

237. Modifications also had to be introduced in the criminal penal system which will reduce the practice of sentences of deprivation of liberty for insignificant offences, as well as other innovations which will contribute to the humanization of the penal system and align it with the international standards.

238. The system for executing criminal sanctions registered 748 petitions in 2000 (an increase of 28.5 per cent (582 petitions) over the same period in 1999). The petitions came from the Parliament (20), Presidency (15), the Government (4), the judiciary (23), the courts (2), the OSCE (7), the Centre for Human Rights (17), the mass media (5) and ministries and departments (10). Other petitions were received directly from convicts and their relatives. The competent units examined 39 petitions.

239. The number of petitions received from detainees increased by 58.3 per cent. In 1999 detainees sent 276 petitions, increasing to 437 in 2000. The majority of the detainees' petitions concerned the unsatisfactory detention conditions, the lack of medicines, undernourishing and other problems. This is explained by the insufficient financing of the penitentiary system. The majority of complaints came from the penitentiaries No. 6 (84); No. 9 (83); No. 5 (45); No. 4 (44); No. 8 (26). The citizens' petitions addressed to the Department included the following problems:

Convicts transferring from one penitentiary to another (362); Illegal actions of the administration (106); Amnesty applications (55); Compensation and insurance (47); Conditions of detention (41); Medical assistance (40); Staff matters (32); Other matters (65).

240. Half of the petitions concerned requests to transfer convicts from one penitentiary to another, in order to be closer to their family and to work, as well as tensions with other convicts.

241. The number of petitions concerning illegal actions of the penitentiary staff is continuously increasing. Some of the allegations were proved in the process of professional investigation.

242. The administration of the Department of Prisons applies the necessary measures for solving the problems named by the petitioners. At the same time, it is very difficult to solve the problems which involve financial expenses because of the extremely limited Financial Plan of the Department.

243. For the whole penitentiary system and in accordance with the available staff, 3,671.5 units are required while 3,021.5 have been completed. The respective figures for 1999 are 3,593 and 2,947. A total of 650 positions are vacant: 134 for commissioned officers, 342 for non-commissioned officers and 174 for civilians.

244. Referring to the analysis of the disciplinary practice as of the date of writing, compared to 1999, there has been a decreasing tendency in the number of sanctions applied: 300 so far in 2000, 88 of which were applied against middle- and higher-level administration staff and 212 ordinary staff. Professional negligence was the reason for sanctions in many cases (84). Five criminal cases were filed.

Article 12

245. In accordance with article 106 of the Criminal Procedure Code, the prosecutors and relevant units of the internal affairs units and the national security units are permitted to undertake investigations. The person charged with an inquiry is obliged to start immediately.

246. Article 38, paragraph 1, of the Criminal Procedure Code stipulates that during a preliminary inquiry, all decisions concerning the inquiry's orientation and investigations are taken in an independent way, with exception of the cases when the law stipulates that the prosecutor's permission is required; the person conducting the criminal inquiry has the entire responsibility for its legal and timely execution. The competence of each responsible authority in a criminal inquiry is described in article 107 of the Criminal Procedure Code.

247. Criminal investigation units have an important role during a criminal inquiry. In accordance with article 99 of the Criminal Procedure Code, those units are the following:

- (a) The Police;
- (b) The unit commanders, military forces and chiefs of the military institutions in cases concerning offences committed by military personnel;
- (c) National security units, in the cases stipulated by law;
- (d) The heads of correctional institutions, in the cases referring to offences committed in those institutions;
- (e) The units for State supervision of measures against arson;
- (f) Frontier guard units in cases of violation of the State borders;
- (g) Customs units in cases of smuggling.

248. Article 40 of the Criminal Procedure Code stipulates the attributes of the criminal investigation units and stipulates that the activities of criminal investigation units differ depending on whether a preliminary inquiry is obligatory. Thus, in the cases for which a preliminary inquiry is obligatory, in accordance with article 101, paragraphs 1 and 2, of the CPC, the investigation unit starts proceedings which cannot be postponed and announces immediately to the prosecutor that an offence has been discovered and an investigation started. The quick and complete discovery of offences, identification of culprits and administration of justice are part of the criminal procedure stipulated in article 2 of the Code. Article 14 of the Code stipulates that the person who undertakes a criminal investigation or inquiry, or the prosecutor, has the obligation to take all the measures stipulated by law for the complete and objective investigation of the circumstances which prove the guilt or otherwise of the suspect, as well as attenuating or aggravating circumstances. The courts examine all the aspects of the facts presented by the parties at the trial. The person conducting the inquiry or the prosecutor does not have the right to exclude evidence favouring the suspect.

249. To ensure the impartiality of the judge while considering a criminal case, in accordance with article 22 of the Criminal Procedure Code, the reasons for challenging a judge are the following:

- (a) If he/she personally, his/her spouse, ascendants or descendants, brothers and sisters and their children, relatives or adoptive relatives are directly or indirectly involved in the trial;
- (b) If he/she is the injured party or its representative, a civil party, civilly responsible party, spouse or relative of one of these persons, spouse or relative of the accused;
- (c) If he/she was involved in the preliminary procedures, issued the arrest warrant or prolonged the arrest, or examined the appeals concerning the legality or refusal of preventive measures;
- (d) If he/she participated in the trial as a witness, expert, specialist, translator, secretary, investigator, prosecutor, defender, legal representative of the accused, representative of the injured party, civil party or civilly responsible party;
- (e) If he/she made an investigation or administrative verification of the circumstances or participated in the adoption of the decision concerning the circumstances in any public or State unit;
- (f) If he/she judged the case in the first instance or earlier appeal; this provision does not extend to the Plenum of the Supreme Court;
- (g) If the parties on trial show other circumstances which cast doubt on the judge's impartiality.

250. The impartiality of the prosecutor is ensured by the stipulations of article 36 of the Criminal Procedure Code. Paragraph 2 of the same article stipulates the possibility of challenging the prosecutor. Under article 41, anyone conducting a criminal inquiry may likewise be challenged.

251. To ensure the performing of an immediate and impartial inquiry, the Ministry of Internal Affairs ensures more measures for receiving at once any protest or complaint from citizens. But the Ministry of Internal Affairs does not have the authorization to start a criminal investigation and if torture is discovered, after a professional inquiry the evidence is sent to be examined to the General Magistracy, which has the obligation to order a criminal investigation. Any information on violations of human rights received by the Ministry of Internal Affairs is registered in the secretariat. Anyone found guilty is subjected to disciplinary sanctions such as: reprimand, demotion, official warning, or dismissal.

252. For example, Iurie Bobrov sent a petition to the Ministry of Internal Affairs stating that he had been subjected to physical maltreatment by two policemen at the Anenii-Noi police station. The Ministry immediately started a professional investigation and found that the grounds were real according to article 185 of the Criminal Code. The file with the evidence was sent to the Magistracy, but this case has not yet been solved. Regretfully, many such cases are not solved.

253. Because of concomitant petitions addressed to the institutions responsible for taking steps in torture cases, there are no statistical data showing the real situation concerning the number of complaints and the steps taken to resolve them.

254. The Law concerning the Magistracy No. 902-XII of 29 January 1992 stipulates in article 4 that one of the Magistracy's duties is to institute a criminal trial in all the cases when the component elements of a crime are discovered and in the manner determined by law. In accordance with article 22, of the Law on the Magistracy, the prosecutor, depending on the character of the violation, issues an order for a legal, disciplinary or administrative procedure.

255. Complaints from an arrested person are examined by the prosecutor who communicates his/her decision to the complainant (CPC, art. 194).

256. Chapter 2 of the Law mentioned above ensures supervision of the legality of the preliminary inquiry and criminal investigation. Article 26 of the Law on the Magistracy stipulates:

“1. The Magistracy's investigators shall perform the inquiry of the cases which, in accordance with the Law, are in their competence, as well as other criminal causes remitted to them by the prosecutor.

“2. The General Prosecutor and lower-level prosecutors have the right to use the evidence concerning any offence in the procedure and to perform a complete inquiry.”

257. The procedure of inquiring into a torture case is the same as the one followed after discovering any other criminal offence. After informing the citizen, a criminal procedure leading to trial is begun.

Article 13

258. Under the Law on petitions, No. 190-XII of 19 July 1994, citizens may submit petitions to State units, enterprises, institutions and organizations (hereinafter referred to as “the units”) for the purpose of ensuring their legal rights and interest. Foreign and stateless citizens whose legal rights and interests have been injured on the territory of the Republic of Moldova, are also covered by the Law. This law does not determine the way petitions are examined; this is stipulated by the legislation on criminal and civil procedures, on administrative offences, as well as the labour legislation. The way of examining the petitions concerning violation of constitutional human rights and freedoms is determined by the Law on Parliamentary Jurists adopted by Parliament on 17 October 1997.

259. According to this law, the activity of the parliamentary jurist is designed to ensure the respect for the observance of constitutional human rights and freedoms by central and local public authorities, institutions, organizations, enterprises, associations and officials of all ranks. Parliamentary jurists contribute to citizens' restitution, improving the law in the field of human rights protection, legal training of the population by application of the procedures mentioned in the Law.

260. Parliamentary jurists examine the complaints of the citizens of the Republic of Moldova and foreign and stateless persons on the territory of the Republic of Moldova whose legal rights and interests have been violated in the Republic of Moldova. They also examine complaints concerning the decisions and actions (or no action) of central and local public authorities, organizations, enterprises, associations and officials of all ranks who, according to the petitioner's opinion, violated his constitutional rights and freedoms.

261. A complaint addressed to the parliamentary jurist is made within a year from the day of presumed offence or from the day when the petitioner found out about presumed offence. A complaint by a detained person shall not be checked by the penitentiary administration and shall be sent to the addressee within 24 hours. A petition, according to the Law on Petitions means any demand, claim, proposal or protest addressed to a competent unit.

262. The petition is submitted in writing in the official language or in any other language in accordance with the Law on Languages Spoken on the territory of the Republic of Moldova. Petitions that contain any problems other than those mentioned above shall be addressed to the official units or persons with direct competence for solving them. Petitions which attack an act, a decision, an action or an offence by an administrative unit or official person who injures the legal rights and interests of the petitioner shall be addressed to the hierarchically superior unit of the entity concerned.

263. Petitions are examined by the respective units within a month and those which do not need supplementary examination are dealt with within 15 days from the registration date. In special cases, the chief of the unit can prolong the examination for up to a month, a fact that is communicated to the petitioner. If the petition is in the competence of another unit, it is sent to this unit within five days of the registration date, which is communicated to the petitioner.

264. The petitioner has the right:

- (a) To give arguments personally to the official unit or person who examines the petition;
- (b) To have a lawyer;
- (c) To present supplementary materials to the official unit or person, or to request the official unit or person to ask for these materials;
- (d) To take note of examination materials;

- (e) To receive a written or oral answer about the examination results;
 - (f) To claim compensation in the manner determined by law.
265. The official unit or person to whom petitions are addressed is obliged:
- (a) To examine the petition;
 - (b) To revoke or modify the decisions which allegedly infringe the legislation or to take urgent steps for illegal actions to be suppressed;
 - (c) To ensure the reinstatement of violated rights, regaining in law conditions, of caused damages and exercising of the adopted decisions as a result of petitions' examination;
 - (d) To inform the petitioner about the results of the examination and the decision taken.
266. In the process of examining the petition, divulging information concerning the private life or other information about the petitioner is not admitted without his permission if these injure his legal rights and interests, as well as information which is a State secret.
267. The decision on the petition is communicated to the petitioner in written form or, with his authorization, orally. The decision should be based on the examined materials and contain references to the law. In cases where the complaints are recognized as well founded, the official unit or person who took the decision is obliged to take steps concerning the necessary material compensation and to determine the legal responsibility for the violation.
268. Petitioners who consider that their rights are encroached and do not agree with the decisions of the petition examiner have the right to address the court within a month from the day of the decision's communication or, if they did not receive any answer within the required period, from the day when they should have received the answer. The petitioner hands in to the court, together with the request, the answer of the official unit or person who refused the petition. In case he did not receive an answer, he shall inform the court which shall ask for the answer. The request handed in to a court is examined according to civil procedure norms.
269. In accordance with the Criminal Procedure Code, a suspect has the right: to have a defender, to know of what he is suspected, to give explanations, to offer proofs, to make demands, to take note of official reports of the inquiry performed with his participation, to challenge, to complain against the actions and decisions of the person in charge of the investigation, to give explanations during the examination by the court of application of the request for preventive custody, to ask, for himself as well as for his legal representatives and for his relatives State protection measures if there is any danger for their lives, health or goods (art. 41/1).

270. Article 18 of the Law on preventive custody No. 1226 stipulates:

- (a) Prisoners may correspond with relatives and other persons on the basis of a written authorization by the competent person or unit. Letters written or received by the prisoners are sent to the addressee or given to prisoners by the administration of the place of detention within three days;
- (b) Complaints, demands and prisoners' letters shall be checked by the administration of the place of detention. Complaints, demands and letters addressed to the prosecutor shall not be checked and must be sent within 24 hours;
- (c) Complaints against the person in charge of the investigation shall be sent by the administration of the place of detention within three days;
- (d) Other complaints, demands and letters which concern criminal procedure and the administration of the place of detention shall be sent to the person in charge within three days. The respective person or unit examines them and within three days sends them to the addressee.
- (e) Complaints, demands and letters which contain data, the divulging of which may prevent the truth from being revealed in a criminal trial shall not be sent to the addressee but shall be sent for examination by the person responsible for the case; this fact is communicated to the prisoner and the prosecutor supervising the investigation;
- (f) Complaints, demands and letters referring to matters which have no connection with the case, shall be examined by the administration of the place of detention or are sent to the addressee in the manner determined by the law;
- (g) The administration gives the answers to complaints, demands and letters to the prisoners within three days; the prisoners must sign for their receipt;
- (h) Prisoners shall be prohibited from sending anonymous letters or complaints;
- (i) Prisoners pay for mail to relatives and other persons.

271. The total number of complaints registered against policemen cannot be presented because these are registered in different units (the Ministry of Internal Affairs, magistracy units, the courts, the Centre for Human Rights, the State Chancellery, etc.). Criminal sanctions which may be applied to policemen for inhuman or degrading treatment of arrested persons are stipulated by article 185 of the Criminal Code.

272. Excessive force or exceeding authority, i.e. committing acts by a person in high position which exceeds the limits of the rights and attributes accorded by law, if these caused considerable damage to the public interest or the rights and interests of physical or legal persons protected by law shall be punished by deprivation of liberty for three years, or a fine of 30-100 minimum salaries, or dismissal with deprivation of the right to hold certain positions or practise certain activities up to five years. Such acts followed either by violent actions, or the use of firearms, or by acts of torture which offend the personal dignity of the injured party shall be

punished by deprivation of liberty for 3-10 years, with deprivation of the right to hold certain positions or practise certain activities for up to five years. Such acts committed repeatedly by a person in high position or committed in the interests of a criminal organization or which have serious consequences shall be punished with deprivation of liberty for 5-12 years, with deprivation of the right to hold certain positions or practise certain activities for up to five years.

273. No statistics on the petitions concerning cases of excessive force by policemen are registered in the General Magistracy, and that is why the number of such petitions cannot be determined. Between 1994 and 2001, 591 policemen were called to criminal account, a great number of them on the basis of article 185, paragraph 2, of the Criminal Code.

274. Disciplinary action which may be applied to policemen are stipulated in the Disciplinary Status of the internal affairs units, adopted by Decision No. 2 of the Government of 4 January 1996. They are reprimand, warning, strong warning, demotion, dismissal.

275. A policeman who does not agree to the applied sanction, has the right to appeal to his chiefs who send the appeal to the superior court or other unit within three days. The appeal shall be acted upon within 30 days. If the policeman does not agree with the solution given by the superior entity, he has the right to address an appeal to the court in accordance with article 20 of the Constitution.

276. Article 73 al of the Code for the Execution of Criminal Sanctions stipulates that:

(a) Convicts have the right to receive and send an unlimited number of letters and telegrams;

(b) The correspondence of convicts, with the exception of those who serve their sentence in penal colonies, are censored. A request addressed to the parliamentary jurist by a person in detention shall not be checked by the penitentiary administration and shall be sent to the addressee within 24 hours;

(c) Correspondence in detention places between convicts who are not relatives is admitted only with the authorization of penitentiary administration;

(d) Proposals, requests and claims addressed to superior hierarchical units are sent to the addressee within three days;

(e) Convicts have the right to receive postal orders and to send them to their relatives and, with the authorization of penitentiary administration, to other persons.

277. In accordance with the Criminal Procedure Code, an accused or convicted person as well as his legal representatives and relatives have the right to ask for measures of State protection in the cases and conditions stipulated by law (art. 42). Any person who is a victim of an arresting or detention in violation of the Code has the right to compensation (art. 6).

278. Article 51/2 of the Code stipulates the obligation of the person/unit in charge of the investigation, the prosecutor and the court to take steps to ensure the security of the participants in the trial and other persons. Thus, if there are sufficient grounds to believe that the victim, witness or other participants, as well as their family members or close relatives are threatened with death, violence, property damage or other illegal acts, the competent entity shall be obliged to take the steps stipulated by law for the protection of these persons.

279. In accordance with the Law concerning State Protection of Injured Parties, Witnesses and Other Persons involved in Criminal Trial No. 1458-XIII of 28 January 1998, State protection of the persons who participated in discovering, preventing, stopping, searching and finding crimes is ensured. The following persons benefit from such protection:

- (a) Persons who denounced crimes to the authorities or participated in discovering, preventing, stopping and searching for crimes;
- (b) Witnesses;
- (c) Injured parties and their legal representatives;
- (d) Accused persons and their legal representatives and convicted persons;
- (e) Close relatives of (a)-(d) above and, in exceptional cases, other persons too.

280. Measures of State protection of protected persons are decided by the respective judge, prosecutor or criminal investigation unit or, after a final sentence, by the place where the protected person serves his sentence. Carrying out the measures of State protection is the duty of the internal affairs units, national security units or other State units which can be given responsibility in accordance with the law. Measures of State protection concerning soldiers and their close relatives are taken by the headquarters of the respective military unit. The General Prosecutor and his subordinate prosecutors exercise supervision of the observance of the law in the process of performing measures of State protection. Chapter II of the named Law stipulates the reasons, grounds and manner of application of State protection.

281. Measures of State protection shall be cancelled by the order (conclusion) of the person responsible for ordering it when the grounds for the protection disappear or the protected person has violated the conditions of these measures.

282. Depending on concrete circumstances, the following measures of State protection may be applied to ensure the security of protected persons:

- (a) Protection of the person, the home and property;
- (b) Temporary removal to a safe place;
- (c) Hiding data about the protected person;

- (d) Changing the job or place of study;
- (e) Changing the place of residence to a house or apartment obligatorily granted by the State;
- (f) Changing the identity card by changing the name, surname and patronymic, or appearance;
- (g) Examination of the cause in closed judicial session.

283. For the purpose of ensuring the measures of safe protection, operative measures of investigation can also be performed in the manner set by the Law. Such measures may only be applied with the approval of the protected person and without encroaching on his rights, freedoms and personal dignity.

284. Recording of the above measures is kept separately in a special subdivision of the Ministry of Internal Affairs, in accordance with the Law.

285. In the event of the death of a protected person connected with helping in a criminal trial, a unique indemnity equal to six median monthly salaries is accorded to his family and dependents. The payment shall be retroactive to the month before his death and a pension for his dependents is awarded. In the event of mutilation connected with help in a criminal trial, the protected person is paid a unique indemnity equal to three median monthly salaries retroactive to the month before the mutilation and an invalidity pension is awarded if required. Persons found guilty of killing or injuring or causing material damage to protected persons as a result of which insurance is paid by the State must reimburse the insurance units.

Article 14

286. In accordance with article 24 of the Constitution of the Republic of Moldova, the State shall guarantee the right to life and physical and mental integrity of everyone. In accordance with paragraph 2 of the article, no one shall be subjected to torture or to inhuman or degrading treatment or punishment.

287. On the other hand, article 53 of the Basic Law stipulates that persons whose rights are violated by a public authority or act has the right to obtain the right to cancellation of the act and to compensation.

288. According to article 6 of the Criminal Procedure Code, no one can be subjected to torture, or inhuman, cruel or degrading treatment or punishment during a criminal investigation. Everyone who is the victim of arrest or detention contrary to the provisions of this article has the right to compensation.

289. As explained above, provisions of the Criminal Procedure Code stipulates the procedures for securing redress for harm caused. According to the law, illegal actions and moral and financial prejudice shall be redressed if the following actions have been committed

- (a) Illegal detention application of repressive arrest, illegal criminal prosecution, illegal conviction;
- (b) Illegally investigating or judging a criminal case; illegal search or arrest; illegal seizure of goods; illegal dismissal; as well as other procedural actions which limit the rights of a physical or legal person;
- (c) Illegal subjection to administrative arrest or community work or application of fines;
- (d) Illegal manner of investigation;
- (e) Illegal seizure of documents, money or stamps, as well as freezing of bank accounts.

290. Caused prejudice shall be redressed integrally and without regard to whether the guilty party is a high-level official (art. 1). Caused prejudice by unlawful actions stipulated in article 1 shall not be redressed if the person concerned, by an act of libel, prevented the truth from being known. Moral prejudice caused to a physical person by unlawful actions mentioned in article 1, paragraph 1, shall be redressed in the manner settled by civil law. In accordance with article 7/1 of the Civil Code, the physical or legal person who made the libellous statement shall redress the moral prejudice caused.

291. Compensation shall be separately settled for each case. It must be between 75 and 200 minimum salaries if a legal person issued the libel and between 10 and 100 minimal salaries if a physical person is responsible. Immediate public excuse or denial is a ground for diminishing the compensation or its exoneration.

292. Chapter II of Law No. 1545-XIII of 25 February 1998 stipulates the right to redress and determines the amount of compensation. The right to redress in the manner set by law appears if:

- (a) A verdict of innocent is given by the court;
- (b) The criminal case is filed and disposed of because of lack of motive or proofs;
- (c) The court issues an order cancelling administrative arrest or community work;
- (d) The European Court of Human Rights or the Committee of Ministers of the Council of Europe has adopted a decision on redress or an amiable agreement between the injured person and the representative of the Government of the Republic of Moldova;
- (e) The investigation was performed illegally.

293. In accordance with article 1, paragraph 1, a physical or legal person is compensated for the following:

- (a) Salary and other incomes resulting from work which is his main source of livelihood and which were lost as a result of unlawful actions;
- (b) Pension or indemnity, the payment of which was stopped as a result of illegal arrest detention;
- (c) Goods (including money deposits and interest, State credit obligations and profit from this) confiscated or transferred to the State budget by the court or seized;
- (d) Fines received as a result of legally serving a sentence and legal expenses borne by a physical person as a result of unlawful actions;
- (e) Sums paid for legal assistance;
- (f) Expenses for his treatment of conditions resulting from unlawful actions (maltreatment);
- (g) Equivalent sums for moral prejudice caused to the person;
- (h) Expenses borne as a result of coming to the inquiry unit, magistracy or court (art. 5).

294. The amount of recovered sums stipulated by article 5 (a) shall be calculated on the basis of the median monthly salary of the physical person from the moment of the prejudice, with the application of an inflation coefficient. The size of the prejudice caused to a physical person who had served his sentence by working for the community or for other places set is equal to the sums of the salary due for the tasks performed.

295. For determining the amount, the median monthly income is calculated as follows:

- (a) For persons employed under a contract, the calculation is made as for the median monthly salary calculation in accordance with the law;
- (b) For persons employed without a contract, the calculation is made by dividing by 12 the total income of previous year;
- (c) For persons who did not work because of well-grounded reasons, the calculation is made on the basis of the national median salary in the respective year (art. 6).

296. The procedure for handing, examining and satisfying the request for compensation is stipulated by chapter III of the named Law.

297. Simultaneously with classifying and disposing of the file, at the step of the criminal investigation or preliminary inquiry, or on the basis of the copy of the verdict of innocence or the judgement of the court, a physical person (in the event of his death, his heirs) or legal person is sent a notification in which his right to and the manner of compensation is set.

298. If information concerning the conviction or prosecution or detention of this person was made public in the mass media, at the request of the criminal investigation unit, etc., the respective editorial staff, within a month of receiving the data, will inform the public about the decision exonerating the person concerned.

299. A physical or legal person shall present a request for compensation for material prejudice to the competent criminal investigation unit, etc., which shall ask for all the necessary documents from the respective organizations and shall adopt the decision on compensation; the decision shall consist of:

- (a) The name of the unit which adopted the decision and the date of adoption;
- (b) The date of conviction of the physical person, the date of his prosecution, date of the measure of preventive custody;
- (c) The date of and grounds for the final sentence, cancelling the measure of preventive custody, classifying and disposing of the criminal file because of a lack of motive, proof which would attest to the guilt of that physical person;
- (d) The contest of the physical or legal person's claim (income replacement, fines, expenses made as a result of coming to the inquiry units, legal expenses and sums paid for legal assistance, etc.);
- (e) Detailed calculation of the income lost by the physical person with reference to the documents on the basis of which the calculation was made;
- (f) The amount of fines, legal expenses and other sums paid by the physical or legal person as a result of unlawful actions;
- (g) Sums paid by the physical or legal person for judicial assistance;
- (h) The total sum which shall be paid to a physical or legal person to redress the prejudice, the procedure and the terms of payment;
- (i) The manner and terms of attacking the decision (judgement).

300. Within three days from the date of the decision (judgement) on redressing the prejudice, a copy of this, authorized with a stamp, shall be sent to the physical person (in the event of his death, his heirs) or legal person who shall hand it into a financial unit to receive a cheque. The financial unit sends the cheque within five days. The financial unit shall keep a copy of decision (judgement) concerning the compensation. The date and sum of the compensation should be indicated on this copy.

301. The manner of executing the decision (judgement) on redressing prejudice is stipulated in chapter IV of Law No. 1545-XIII of 25 February 1998.

302. Compensation is paid from the State budget and if the prejudice was caused by a criminal unit dependent on a local budget, compensation shall be paid from the local budget.

303. If the request for compensation is not satisfied or if the physical or legal person does not agree with the adopted decision (judgement), it may be attacked in court. In these cases, the demand of instituting action shall be instituted into a judicial court at no cost to the complainant.

304. A physical person dismissed or suspended from his job as a result of an illegal conviction or prosecution is taken back in his former position and in the event this is impossible, the person shall be offered an equivalent job by his former employer within a month. The time spent under illegal arrest shall be considered when calculating seniority and pension entitlements.

305. Authorities of local public administration shall return his previous residence to the person who lost his residence as a result of an illegal conviction and in the event that this is not possible, shall offer an equivalent residence in the same locality.

306. If, as a result of illegal conviction, a physical person had lost his military rank or other ranks, orders and medals which he had had, then, in accordance with the prescription of the court which discharged him, the ranks, orders and medals shall be restored.

307. Reinstating wrongly convicted members of the armed forces and other military units to their position, rights, pension rights, residence, and redressing other prejudices caused by unlawful actions by a criminal investigation unit, etc., shall be done in accordance with the law.

308. State and local public administration authorities, after redressing the prejudice caused by unlawful actions of criminal investigation units, etc., are obliged to compensate damage:

(a) Integrally when the guilt of persons in high positions is proved by definitive sentence;

(b) Partially on the basis and conditions settled by the law.

309. Starting on 7 November 1917, in the then Moldavian Socialist Soviet Self-Governing Republic and starting on 28 June 1940 in the Moldavian Socialist Soviet Self-Governing Republic State units committed a succession of mass political repressions in the period of the totalitarian regime. The Parliament, convicting in a persuasive manner the political repressions committed by the State administrative units, legally and extralegally, during the totalitarian regime and the severe violations of the law by these units, and for the purpose of rehabilitating the victims, adopted the Law on the Rehabilitation of the Victims of Political Repression No. 1225-XII of 8 December 1992.

310. In accordance with the Law, political repression shall be considered as the putting an end to somebody's life, coercive measures undertaken by the State against the citizens on political, national, religious or social grounds, detention, deportation, exile, sending for hard labour,

expulsion from the country and deprivation of citizenship, expropriation, forced committal to a mental institution, other limitations of human rights and freedoms of persons declared dangerous from the social point of view to the State or the political regime, carried out on the basis of the decisions of State administrative, judicial and extrajudicial units (art. 1).

311. Victims of political repressions are:

(a) The persons who suffered as a result of political repressions mentioned in article 1;

(b) The persons against whom decisions of political repression had been adopted but who had succeed in avoiding the direct repressions, including by taking refuge abroad;

(c) The members of the families subjected to repressions, including children who were born in detention or exile, persons who were constrained or obliged to follow their parents, relatives or tutors in exile or detention or who were left without their attention, as well as children of the persons executed as a result of political repression (art. 2).

312. Article 3 of concerned Law stipulates the rehabilitation principles as follows. All the persons who, between 7 November 1917 and 23 June 1990 had been subjected to political repression on the territory of actual Republic of Moldova, as well as citizens of the Republic of Moldova subjected to political repression on the territory of another State, are declared innocent and shall be rehabilitated before the society and restored to their rights, wherever they live at present. These persons are:

(a) The persons who were subjected to repression on the basis of the decisions of judicial or extrajudicial units for “counter-revolutionary activity”, “treason”, “spreading calumnies which discredit the State and soviet system”, and other “State crimes”, for “infringing the rights and rules concerning the separation of Church and State and the school from the State”, “attempts against a person’s and citizen’s rights under the guise of fulfilling a religious ritual”;

(b) The persons who were convicted because they did not pay taxes or did not respect the plan of giving bread to the State on the basis of articles 58-1 and 58-2 of the Criminal Code of the Ukrainian SSR (1927);

(c) The persons who were interned in mental institutions for forced treatment on political, national, religious or social grounds on the basis of the decisions of State judicial and extrajudicial units;

(d) Persons deported or expelled from the Moldavian Self-Governing SSR and Moldavian SSR on the basis of a decision of an administrative unit on the pretext of the fight against kulaks, adversaries of collectivization or so-called bandits and their families, as well as accusations of collaboration with the “occupation bourgeois-landowners’ regime”;

(e) Persons who were subjected to hard labour in conditions of deprivation, of liberty including in labour colonies of the NKVD and in disciplinary battalions;

(f) Persons who were interned in Soviet concentration camps, sentenced to deprivation of liberty, exiled or sent to hard labour for participation in the Second World War by mobilization;

(g) Persons who were convicted or executed for avoiding Soviet military service because of political or religious reasons;

(h) Persons who were dismissed or expelled from educational institutions for political, national, religious or social reasons;

(i) Persons who were convicted of participation in public demonstrations to obtain the suzerainty and independence of the Republic of Moldova, because of which criminal files had been opened.

313. The persons who were legally convicted of committing crimes of genocide, against peace or against humanity, or for committing common law offences, as well as persons found guilty for criminal file falsification during this period, or who participated directly in political repression, cannot be rehabilitated, even if they were subjected previously to repression, too (art. 4).

314. The procedure for rehabilitation is stipulated in chapter II of the named Law.

315. The request for rehabilitation shall be sent by the person subjected to repression or by another physical or juridical persons to:

(a) The Ministry of Internal Affairs, concerning the persons mentioned (d) and (e) above;

(b) The General Magistracy, concerning the persons mentioned in (a), (b), (c), (f), (g) and (i); between 1 January 1994 and 1 January 2001, the General Magistracy rehabilitated 6,162 persons;

(c) The sectoral (municipal) judicial court, concerning (h).

316. In 1994, 207 files had been examined and 337 persons were rehabilitated; in 1995 - 177 files and 227 persons were rehabilitated; in 1996 - 179 files and 217 persons were rehabilitated; in 1997 - 165 files and 219 persons were rehabilitated; in 1998 - 210 files and 260 persons were rehabilitated; in 1999 - 179 files and 265 persons were rehabilitated; in 2000 - 386 files and 528 persons were rehabilitated.

317. The requests for rehabilitation shall be examined within three months from their sending (art. 5).

318. The Ministry of Internal Affairs examines the rehabilitation case, determines the fact of deportation, expulsion, sending to hard labour or other forms of limitation of rights and freedoms on the decisions of administrative units, formulates a conclusion concerning the rehabilitation and issues the respective certificate. The decision of the Ministry to refuse the rehabilitation can be attacked in court (art. 5/1).

319. The General Magistracy examines the files on the basis of which the decisions of judicial and extrajudicial courts concerning the persons concerned, in the manner determined by the General Prosecutor, had been taken. On the basis of its examination, the General Prosecutor makes a conclusion concerning the rehabilitation and releases the respective certificate. In the event, that the materials concerning political repression were not kept in the archives, a legal procedure exists to examine the grounds for political repression. The State units responsible for taking decisions on rehabilitation are obliged to examine all the files, including the ones for which no request for rehabilitation has been made (art. 7). Decisions on rehabilitation adopted by the competent State units before the entry into force of the Law remain valid. Previously rehabilitated persons benefit from all the rights stipulated by the Law (art. 8).

320. In event of the death of rehabilitated persons, their relatives may be acquainted with the materials on the basis of which those persons had been subjected to repression. Rehabilitated persons and their heirs have the right to obtain the manuscripts, photos and personal documents, which were saved.

321. At the request of interested persons or public organizations, the competent State units are obliged to communicate the time and cause of death and the place of burial of rehabilitated persons (art. 9). Restitution of social, political, civil and cultural rights of rehabilitated persons is stipulated in chapter III of the Law. At the same time, the decisions to withdraw State decorations, scientific titles, military ranks, special and honorific titles, pensions and other rights are annulled (art. 10).

322. The right of rehabilitated persons and their families to live in the localities where they had lived before the repression is admitted (art. 11). They have the right to the return of confiscated, nationalized or otherwise seized property. In the event the property cannot be returned, its value is determined taking into consideration present prices, and compensation is paid. Matters pertaining to the return of or compensation for seized property are dealt with by the Government.

323. In its Decision No. 338 of 26 May 1995, the Government stated that illegally seized property shall be restored to rehabilitated citizens or their heirs. The Decision was declared unconstitutional on 20 July 1999 by the Constitutional Court which decided that the way to restore or compensate for the property of victims of political repression was part of the general legal regime governing property which, in accordance with the provisions of article 72, paragraph (3) (i) of the Constitution, may only be established by Parliament. Therefore, a special law should establish the manner of restoring illegally seized property; neither the Government, nor any jurisdictional unit can replace the legislator in solving this problem, as it would be a violation of the separation of powers. The payment ceilings of 200 lei and 90 lei set by the Government for goods illegally confiscated or nationalized which cannot be restored was also declared unconstitutional, as article 53 (1) stipulates that a person injured in one of his rights by a public authority, administrative act, has the right to obtain recognition of this right and compensation for the damage. The sums stipulated by the Government were ridiculously low and in no way corresponded to the sense of the Constitution.

324. Decision No. 338 also stipulated the following:

(a) Compensation for the value of goods which cannot be restored shall be paid both from the local budget and by the enterprises, institutions and organizations to which the property of the persons concerned had been transferred;

(b) A single compensation payment in the amount of 30 minimum salaries for each executed or deceased person, should be paid from the local budget in monthly instalments for six months from the date of the adoption of the respective decision. The local councils and town halls shall pay it from the budget of those counties and municipalities on the territory of which executed or deceased persons had permanently lived. If this payment cannot be made in this way, it should exceptionally be paid to the persons concerned by the respective units in their permanent place of residence or by the specially appointed local public administrative units;

(c) The local councils and town halls in the counties and municipalities on the territory of which the rehabilitated persons had lived shall examine the requests concerning restoring goods, ascertaining their value and the compensation to be paid. For this purpose they shall create commissions consisting of the vice-president of the county council (as president of the commission), representatives of the financial department, local police stations and Information and Security Service, as well as other necessary specialists;

(d) Requests for restoration/compensation shall be presented within three years from the date of the announcement of the citizen's rehabilitation. Requests should be examined within six months from the day of their sending to the council/town hall, and requests for single-payment compensation should be examined within one month;

(e) The commission shall identify the property to be restored to the rehabilitated person and shall determine its value on the basis of documents that prove the confiscation, nationalization or seizure in any other way. If such documents do not exist or are incomplete, the commission shall consult other legal documents. Heirs must present certificates of inheritance or other documents which prove the legality of their ownership;

(f) The country council/town hall shall adopt a decision concerning the recovery of the material prejudice on the basis of an act written by the commission ordering the restoration of the property or the paying of compensation;

(g) Decisions of the local public administrative units concerning restoration and compensation may be attacked in the manner stipulated in the Law on Petitions;

(h) Legal disputes concerning ownership of the property in question are settled in the manner prescribed by law.

325. The Ministry of Finance restores to local budgets, on the basis of calculations presented by the county councils and municipal town halls, the funds spent for single-payment compensation.

326. According to data of the Ministry of Justice, the requests of the rehabilitated persons are generally oriented towards recovering seized real property. Some requests were satisfied, the buildings being restored, but others cannot be satisfied because at present other people live in these buildings and the determination of their value is in the competence of local public administrative units. At present (October 2000), there are 73 suits on trial for damages amounting to 641,994 lei.

327. In accordance with Law No. 1225-XII of 8 December 1992, the citizens of the Republic of Moldova subjected to repression on the territory of another State whose goods were confiscated, nationalized or taken in any other way on the territory of another republic may seek restoration or compensation on the basis of a treaty between the Republic of Moldova and the State in question.

328. The acts of sale and purchase, or any other document legitimizing the confiscation, nationalization or seizure from a rehabilitated person of his/her real property, concluded after the rehabilitation shall be declared legally null and void, at the request of the rehabilitated person or his/her heirs.

329. Persons who will be evicted from the restored houses should be ensured a residence by the local public administrative authorities in accordance with the law (art. 12).

330. Rehabilitated citizens will receive material compensation at privatization, in accordance with the law and other normative acts concerning privatizations (art. 13).

331. Spouses of executed persons who do not have any other family, parents or children, and who are citizens of Moldova receive, on request, compensation of 30 minimum salaries for each executed or deceased person, paid monthly in instalments and in the manner stipulated by the Government art. 14).

332. At privatization, labour seniority for rehabilitated citizens of Moldova shall include two periods of repression, but not more than 15 years altogether.

333. Rehabilitated persons who had received the total compensation on the basis of the Decree of the President of the Supreme Soviet of the USSR of 18 May 1981, do not benefit from the provisions of the first paragraph of the Law (art. 16).

334. Persons illegally dismissed or expelled from educational institutions on political, national, religious or social grounds have the right to recover labour seniority for all of the missed period (art. 17).

335. Chapter IV of the Law stipulates the facilities for rehabilitated persons as follows:

(a) Citizens of the Republic of Moldova who were victims of political repression have the right to a place to live in the locality where they lived previously;

(b) Victims of political repression whose houses were restored or who built new houses in their place of residence have the right to an interest-free loan and priority access to building materials to restore their old houses or build new ones. The local public administrative units shall determine the amount of the loan and also the degree of deterioration of the house (art. 18);

(c) Lawsuits concerning the rehabilitation of victims of political repression shall be examined in all courts without paying the postage-due stamp (art. 19);

(d) Rehabilitated citizens have the right to a pension in accordance with the Law on State Social Insurance Pension No. 156-XIV (art. 20).

336. Through the Law on Modification and Completing of Some Legislative Acts No. 934-XIV of 14 April 2000, the facilities for paying the public utilities stipulated in article 21 of the Law on the Rehabilitation of Victims of Political Repression No. 1225-XII of 8 December 1992 were replaced by the compensation for I and II degree invalids, and for III degree invalids whose invalidity had been determined to be permanent. This includes victims of political repression. Compensation is for the payment of public utilities (gas, water, sanitation etc.).

337. In accordance with the same Law, lists of persons rehabilitated on the basis of the Law, indicating biographical data, the accusations leading to their repression and the ground for their rehabilitation are published periodically in the mass media of the Republic by the State units which had adopted the decision on rehabilitation (art. 22).

338. Persons who collaborated with the various State units responsible for the political repression and who had violated the law at the time of the repression, as well as collaborators of the Soviet administrative and party units who intentionally participated in political repression by material falsification of the files, have criminal responsibility, determined by the decision of the courts.

Article 15

339. Data included as evidence in criminal trials are: witness statements, injured party statements, suspect statements, expert conclusions, grounds of the offence, official reports on the legal inquiry and other documents. Evidence obtained in violation of the provisions of the Criminal Procedure Code cannot be used as grounds of the verdict or other legal decisions and procedural documents. At the same time, article 132 of the Code stipulates the procedure for interrogating the suspect. Interrogation during the night is not allowed unless the case is a very important one.

340. At the beginning of the interrogation the suspect is asked to confess to the charges, then asked to give a personal written statement concerning the charges. If the suspect refuses or cannot write, the inquiry writes an official report on the basis of the suspect's statements. Listening to the culprit cannot begin with reading or reminding him of a statement that he made previously. The culprit cannot present or read a statement written previously but can use notes.

341. Suspects in the same case, are interrogated separately and are not allowed to communicate between themselves.

342. During the interrogation of minors, a teacher must be present. The teacher may participate in the interrogation of a minor under 16 if it is established that the latter is mentally defective. A teacher who takes part in an interrogation may, with the permission of the interrogator, ask questions. After the inquiry, the teacher who took part has the right to study the official report and make written observations thereon. Before the beginning of the interrogation of the minor, the interrogator is obliged to explain to the teacher his rights. This should be mentioned in the official report of the interrogation.

343. According to the Criminal Code, coercion by threatening or other illegal actions to make statements during cross-examination, or the coercion of an expert to make a conclusion, or coercion of a translator to make a wrong translation in criminal investigation or criminal inquiry shall be punished with deprivation of liberty for up to three years. The same actions accompanied by violence shall be punished with deprivation of liberty for 3-10 years (art. 193). Coercion of a witness, injured party, expert or translator accompanied by death threats, violence, destruction of goods, corruption or other illegal actions for the purpose of thwarting justice shall be punished with deprivation of liberty for six months to two years, or a fine of up to 50 minimum salaries.

Article 16

344. Article 24 of the Constitution of the Republic of Moldova stipulates that the State guarantees to everyone the right to life and physical and mental integrity, and that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

345. Capital punishment was abolished on 8 December 1995. Article 22 was deleted from the Criminal Code.

346. Article 7 of the Civil Code stipulates that any physical or legal person has the right to sue anyone who spreads information that injures his honour and dignity. In case such information was spread by means of the mass media, the court obliges the editorial office to publish, within 15 days from the date of the entry into force of the judgement, a denial, in the same column, page or programme as the false information. When such information is exposed in a written document issued by an institution, the court shall oblige the institution to rescind the document.

347. In accordance with the data of the Ministry of Justice, 46 files were examined in 1994, 101 files were examined in 1995, 135 files were examined in 1996, 12 files were examined in 1997, 128 files were examined in 1998, 412 files were examined in 1999, 130 files were examined in 2000.

348. For the purpose of prohibiting in future inappropriate behaviour by the police, as well as to strengthen discipline, on the initiative of the Ministry of Internal Affairs, the Government, by Decision No. 841 of 16 August 2000, adopted the Disciplinary Statute of the Internal Affairs Units.

349. In addition, in the plans for organizing the fundamental measures of the Ministry and the Police General Inspectorate for the year 2001, provision was made for surprise monitoring visits to the territorial subdivisions for the purpose of discovering cases of illegal detention and maltreatment of citizens. Violations are subject to disciplinary and criminal measures in accordance with the present legislation.

350. The situation of discipline in the internal affairs units was discussed during the session of the Ministry Collegium on 4 April 2000, which charged the General Direction of Personnel, Education and Social Protection with the modification of the programme of professional training in accordance with the requirements of the Ministry's leadership.

351. The precarious economical-financial situation in the country influences negatively the conditions of detention of the persons in the investigation isolators too. As far as financial possibilities are concerned, the Ministry undertakes actions to improve the conditions of the persons detained in the specialized institutions.

352. Because of the fact that the Republic of Moldova ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Government will take all possible measures to ensure respect for citizens' rights and freedoms.

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