

REPUBLIC OF MOLDOVA**ISSUES RELATED TO PREVENTING AND COMBATING ILL-TREATMENT IN THE PENITENTIARY SYSTEM****SUGGESTED LIST OF ISSUES PRIOR TO REPORTING**

Joint Submission to the UN HUMAN RIGHTS COMMITTEE

138th session (26 June - 28 July 2023)

Authors of the joint submission:

Promo-LEX¹

The “Promo-LEX” Association is a civil society organization with special consultative status with the UN (ECOSOC) based in Chisinau, whose purpose is to advance democracy in the Republic of Moldova through promoting and defending human rights and monitoring democratic processes. Promo-LEX was founded in 2002 and is based in Chisinau. Promo-LEX works through the Human Rights Program and the Monitoring Democratic Processes Program.

¹ <https://promolex.md/?lang=ro>

1. INTRODUCTION

2. The Human Rights Committee (hereinafter, "the Committee") will adopt its List of issues prior to reporting (hereinafter, "LoiPR") concerning the Republic of Moldova on its 138th session, to be held from 26 June to 28 July 2023, in the framework of the examination of the State party's periodic report.
3. The Promo-LEX Association submits this alternative report (from now on, "Promo-LEX"). It aims to provide a review of the main obstacles in implementing the Republic of Moldova's obligations under the International Covenant on Civil and Political Rights (from now on, "the Covenant"), in particular, concerning the areas of preventing and combating ill-treatment in the prison system. The alternative report analyses the Republic of Moldova's compliance with its obligations concerning this issue.
4. Reference is made in particular to Moldova's obligations according to Articles 6, 7, and 10 of the Covenant. Finally, concrete questions and recommendations for the LoiPR are suggested for each subject covered.
5. The UN Human Rights Committee (the CCPR) is the independent expert body which monitors state compliance with the obligations under the International Covenant on Civil and Political Rights, the prohibition of torture (Article 7) and the right to humane treatment (Article 10).
6. The prevention and combating ill-treatment in the Moldovan penitentiaries were constantly in the sight of national, regional, and international human rights mechanisms. Recommendations ensuring safeguards against ill-treatment and reducing violence between inmates were addressed previously to the Moldovan Government during the second and third UPR cycles (2016 and 2021, respectively),² by *the UN Committee against Torture* and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).
7. *Recommendations made by the States during the Third UPR cycle (2021):*³
 - Ensure that all complaints of acts of torture and ill-treatment are promptly, impartially and effectively investigated following international human rights standards, including the Istanbul Protocol (127.80 Germany, 127.84, Egypt 127.85 Australia, 127.86 Czechia);
 - Continue to implement measures to prevent torture and address the impunity of such acts (127.82 Japan);
 - Implement the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (127.83 Germany);
 - Provide torture-prevention training to law-enforcement personnel and set up procedures to properly investigate allegations of ill-treatment (127.86 Czechia)
 - Adopt legislation to ensure remedies, access to justice and rehabilitation for victims of torture and ill-treatment (127.87 Germany);
 - Improve conditions in prisons and take effective measures against overcrowding in line with international standards, including the Nelson Mandela Rules (127.91 Germany, 127.92 Fiji, 127.93 Austria, 127.96 Ireland, 127.97 Czechia);
8. *The UN Committee against Torture (CAT)*⁴, concluded that the State party should:
 - (a) Issue a public statement at the highest level unambiguously reaffirming its zero-tolerance policy regarding impunity for acts of torture and ill-treatment and stating that investigations will be carried out and prosecutions promptly initiated against perpetrators of torture and those complicit in such acts;
 - (b) Ensure that all reports of torture and ill-treatment involving public officials and non-official accomplices are investigated promptly, effectively and impartially by an independent mechanism with no institutional or hierarchical connection to the investigators or the alleged perpetrators;
 - (c) Ensure that persons under investigation for having committed acts of torture or ill-treatment are immediately suspended from their duties and remain so throughout the investigation;
 - (d) Establish protocols and train police staff, prosecutors, judges, prison staff and all staff involved in providing health services on methods of interaction with persons with mental and psychosocial

² Universal Periodic Review - Republic of Moldova <https://www.ohchr.org/en/hr-bodies/upr/md-index>

³ Universal Periodic Review - Republic of Moldova <https://www.ohchr.org/en/hr-bodies/upr/md-index>

⁴ Concluding observations on the third periodic report of the Republic of Moldova, para. 14

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2FMDA%2FCO%2F3&Lang=en

disabilities and incorporate the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) into all training programmes for law enforcement officials. In cases where signs of torture or ill-treatment are recorded during a medical examination, whether by State-employed or independent doctors, ensure that prompt and independent investigations are initiated;

[...]

(f) Ensure, in law and practice, that every person has access to an independent and effective complaints mechanism regarding torture and ill-treatment by law enforcement officials that will investigate and respond promptly and make this complaints mechanism publicly known;

(g) Ensure that officials are subjected to disciplinary measures for failure to investigate complaints of torture or ill-treatment adequately or for refusing to cooperate in investigating any such complaints;

[...]

9. *The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)*⁵*Recommendations and findings:*

- The CPT calls upon the Moldovan authorities to ensure that all medical examinations of prisoners (whether upon arrival or at a later stage) are conducted out of the hearing and – unless the doctor or nurse concerned requests otherwise in a particular case – out of the sight of prison officers.
- Several recommendations are made regarding the medical confidentiality and thoroughness of medical examinations, as well as the recording of injuries.
- As for the reporting of injuries, the delegation noted that in all prisons visited, all cases of inmates bearing injuries were registered in the trauma register by healthcare staff and were reported to prison management through a designated form (which also included a body chart). Reportedly, the prison management would then inform the prosecution office.
- The CPT reiterates its recommendation that the Moldovan authorities address prison staffing levels as a matter of priority.
- The CPT recommends that the Moldovan authorities substantially increase the number of prison officers employed to guarantee staff safety and inmates' physical and mental integrity.

B. THE EMERGING ISSUES

RELEVANT ICCPR ARTICLES: Article 6 (the right to life), Article 7 (prohibition of torture), Article 10 (the rights of persons deprived of their liberty)

10. The main issues regarding prevention and combating ill-treatment in penitentiary institutions are the following:

I. Failure to ensure proper record-keeping during the identification and registration of ill-treatment and violence in prisons

- Failure to ensure the confidentiality of data
- Subculture violently discourages offenders – whistleblowers
- Conditions of detention disadvantageous for protected detainees – Art. 206 Execution Code

II. Inadequate reporting of potential ill-treatment and violence in prisons

- Lack of mechanisms and technical procedures for immediate and direct reporting to the prosecutor's office
- Failure to fulfil reporting obligation on time established by Rules
- Internal protectionism and inadequate influences of the responsible employees

III. Lack of impartiality of investigation body - the sporadic character of investigation of ill-treatment and violence in prisons

- Non-examination of the potential information regarding ill-treatment and violence in prisons
- Lack of impartiality of the investigation body – “specialized” prosecutors

⁵ Report to the Government of the Republic of Moldova on the visit to the Republic of Moldova from 28 January to 7 February 2020

ABBREVIATIONS

CAT	United Nations Committee Against Torture
CC	Criminal Code
CCP	Code of Criminal Procedure
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
EC	Executive Code
GD	Government Decision
Law no. 133/2011	Law no. 133 of 8 July 2011 on Personal Data Protection
MJ	Ministry of Justice
M&E	Monitoring and evaluation
OPG77/2013	Order of the General Prosecutor's Office no. 77 of 31.12.2013
OUP	Criminal Prosecution Body
ROPG77/2013	Regulation on the procedure for the identification, registration and reporting of alleged cases of torture, inhuman or degrading treatment

I. EMERGING ISSUE: Failure to ensure proper record-keeping during the identification and registration of ill-treatment and violence in prisons

- Failure to ensure the confidentiality of data;
- Subculture violently discourages offenders – whistleblowers;
- Conditions of detention disadvantageous for protected detainees – Art. 206 Execution Code

a) Failure to ensure the confidentiality of personal and medical data in prisons.

11. Ensuring the confidentiality of personal data, specifically medical data, represents a fundamental challenge in penitentiary institutions in the Republic of Moldova. International standards provide safeguards to prevent ill-treatment – one of the most important is access to independent medical examinations and confidentiality.
12. In line with the standards, the national Regulation establishes that the medical examination should be carried out in condition of confidentiality and intimacy. Furthermore, it raises the obligation to respect the confidentiality of professional information and ethical norms to the level of principle, without prejudice to the activity of reporting acts of torture, inhuman or degrading treatment. According to Law no. 133/201129, medical or health data fall into the special categories of personal data. Therefore, the requirements to ensure the security of personal data are established by Government Decision No. 1123/201030. According to the Annex no. 1, the safety of special categories of personal data involves level 2 requirements (N-2) – which, for example, applies multifactorial (complex) authentication, which includes passwords and special physical means of access with memory or microprocessor cards or passwords and biometric means of authentication.
13. Bodily injuries are health information that falls under the incidence of special personal data (medical data). De facto, **the institutions do not ensure the protection of documents containing special data**. Non-medical employees of the prison system have relatively free access to medical documentation. As well as, for the proper record of potential ill-treatment cases, the non-medical employee has to resort to the same

register, which allows the observation of the mentions of the medical workers made earlier – circumstances that alter both the principle of confidentiality and the medical safeguards against torture. Subsequently, medical records (made by medical workers) containing such information shall be exempted from the access of non-medical workers, except within the limits of general statistical data or if such a need can be justified within the boundaries of the proportionality principle.

14. **In prisons, detainees were frequently involved in the activity of the medical unit.** Detainees have relatively free access to medical data, in some cases even being asked by the medical staff about the existence/non-existence of registers (related to the records of bodily injuries, the register based on the *Regulation on the procedure for the identification, registration, and reporting of alleged cases of torture, inhuman or degrading treatment* - observances during the Promo-LEX m&e visits cared out in 2022). At the subculture level, most often, detainees - assistants, represent a lower caste of prisoners, designated by the so-called “gruzhenye,” “smotryashchiy,” “the eye,” (“superior” casts) or other conspiratorial terms. This situation conditions susceptible vulnerabilities for certain detainees and gives the subculture additional leverage of control and influence. In some cases/prisons, the possibility of interacting with detainees without a third-party observer from the subculture is excluded.

b) Subculture – violent deterrence of detainees - whistleblowers

15. From the analysis of the findings of international bodies regarding the situation of prisons in the Republic of Moldova, corroborated with the data accumulated following the monitoring visits conducted by Promo-LEX in 2022, we notice that the model of prison management is maintained by using the elements of the criminal subculture. Thus, the established social order consists of the institutional culture of penitentiary institutions and its coexistence with the criminal subculture in the prison system. Furthermore, the monitoring results explicitly indicate that in most penitentiary institutions (except in Rusca penitentiary – for women), subculture and the distribution of prisoners by castes according to influence groups are observed. Thus, the established social order consists of the institutional culture of penitentiary institutions and its coexistence with the criminal subculture in the prison system.
16. The prison administration is aware of informal influence in institutions, and the current prison situation is tolerated. However, the data analysis revealed that these castes do not exist in the institution without tacit consent or, moreover, with the support of the prison management. The reports of the national human rights institutions (Ombudsperson) and international (CPT) confirm the continuous failure of the Moldovan authorities to provide a safe, secure environment for detainees and to maintain the influence of the elements of the criminal subculture. Failure is directly related to several factors, as follows:
- insufficient number of supervisors/staff concerning the number of detainees;
 - loyalty and dependence of employees on informal leaders in the subculture of prisons to maintain control over the prison population;
 - the existence of the "barrack" system (large capacity cells) and the large number of people held in the penitentiary concerning the number of available places;
 - at the same time, there is no adequate assessment of the risks and needs of the detainees at the entrance to the penitentiary and no classification of them to identify in which prison, "barracks", or cell they would be placed. The increased vulnerability of some detainees (such as sex offenders, people with mental health problems, or drug users) makes clear the need to identify potential risks and vulnerabilities to prevent the abuse and exploitation of these detainees by other detainees
 - imperfect legislation that favours some convicts at the expense of others, granting the possibility of transferring goods and financial resources directly or indirectly.
17. Zero tolerance for torture and violent offences can break the cycle of violence and enhance the person's dignity. This objective was set out to be achieved by the authorities in the PNADO 2018–2022. According to the indicators set out in the PNADO 2018–2022, all the institutions responsible for the implementation of the planned actions had until 2019 to prepare a study with the formulation of specific recommendations on improving the mechanisms for investigating complaints about torture and inhuman or degrading treatment following international standards and recommendations. Despite the periodic amendment of the regulatory framework, its practical application is not progressing, the study has not been drafted, and the problem of reporting, complaint, and investigating the ill-treatment of persons detained or in detention remains

unresolved. In accordance with Article 262 of the Code of Criminal Procedure, any statement, complaint, or other information giving grounds to assume that the person has been subjected to torture, inhuman or degrading treatment shall be submitted or transmitted immediately to the prosecutor for examination according to Article 274 CPP. In reality, things are different, as demonstrated by the analyses and figures of the parties responsible for the process.

18. According to the reasoning established by Art. 232 (3) of the Execution Code, if there are traces of violence, cruel, inhuman, or degrading treatment or other ill-treatment or the convicted person is accusing the violence, the doctor who performs the medical examination has an obligation to record in the medical file those found and the statements of the convicted person in connection with them or any other aggression and to immediately notify the head of the penitentiary institution, who notifies the prosecutor and the Ombudsman or, in the cases regarding the juvenile convicts, the Ombudsman for the rights of the child within 24 hours. At the same time, according to section 12 of ROPG77/2013, medical workers are required to transmit no later than 24 hours to the prosecutor, regardless of whether or not they have notified the head of the penitentiary institution, complaints, statements, or other information about the cases provided for in section 7:

- any information relating to ill-treatment accepted by public persons or acting in an official capacity;
- when the person claims to have been subjected to torture, inhuman or degrading treatment;
- when he has a visible bodily injury or when there are other circumstances giving reason to suspect that the person has been subjected to such acts;
- when the person died;
- when he received other bodily injuries being in the custody of the law enforcement bodies or events accompanied by the intervention of the employees of the law enforcement bodies

19. Art. 232 of the CE does not prohibit the transmission by medical workers, but also by other employees, of the information specified in section 7 of ROPG77/2013 to the head of the institution and directly to the prosecutor. Thus, the provisions of section 7 and section 12 of ROPG77/2013 materialize and do not exclude the obligation to report the alleged acts of ill-treatment on two lines: the head of the penitentiary institution, as well as directly to the prosecutor. In this way, the victim of the alleged ill-treatment has a guarantee that the information will leave the penitentiary and will reach the body responsible for investigating the alleged ill-treatment.

c) Disadvantageous detention conditions for protected detainees – Art. 206 of the Execution Code

20. Prisoners who refuse obedience to the internal "rules" established by the criminal subculture are assigned by the informal leaders the status of "neputjovj" ("uncouth") or "Technik" ("skier" – who seeking safety and security under art. 206 EC). Because of these statutes (as well as other categories), detainees are limited in their common activities and are exposed to various forms of abuse and violence from other detainees. A high level of criminal subculture in prisons of the Republic of Moldova increases the number of persons who request the application of security measures. According to the data of ANP, the number of convicts in respect of whom personal security measures have been applied, according to Art. 206 CE, in 2021, is 719 detainees, compared to 619 detainees registered in the previous year, 13.90% more. Thus, in prisons, there are two categories of detainees: 1) those in the general mass who agree to obey the rules of the subculture and benefit from the services and facilities accessible in the penitentiary; 2) and those isolated to ensure personal security but subjected to discriminatory treatment as regards detention conditions and access to facilities.

21. Criminal subculture is a source of physical, psychological, and economic violence. Arriving in prisons, detainees have no option but to adapt to the assigned caste role to gain security during their stay in the institution. Analysis of the records of bodily injuries (trauma and self-harm) demonstrates the extremely high level of violence among detainees. Physical violence is mainly applied as a "punishment" and aims to subject one prisoner to another. The information provided by some detainees interviewed during the monitoring visits shows that often the administration and/or other employees either tacitly accept this violence, intervene just after the violence has taken place, fail to resolve conflicts between detainees or show a dependence on informal leaders in the subculture to maintain control over the general mass of the population in prisons.

22. The data collected during the Promo-LEX assessment demonstrates that the violent environment among prisoners, created by the rules and influences of the subculture, leaves a significant mark on the physical and mental health of the prisoners. The existing stressful environment often causes anxiety and tension in prisoners, and they are constantly under pressure and psychological influence. A large part of the prisoners interviewed stated that they have a constant fear that they may be subjected to violence, do not have the security of tomorrow, and do not trust the prison employees because of their loyalty and their relations with the informal leaders in the prison subculture, which may affect their security during the period of detention.
23. Thus, the use of self-harm and suicide is becoming increasingly widespread among detainees. Several factors condition the recourse to such actions, one being the emotional disorder for various reasons, others being the lack of reaction from the administration to the needs of detainees, including the impossibility of resisting the pressure of the rules established by the criminal subculture and interpersonal conflicts with the personnel or with other detainees. Self-harm in prisons is often a way of communicating anger and dissatisfaction or a tool to draw attention to problems that have not been resolved for some time. According to the interviewed detainees, psychological assistance is not offered or is formal. This phenomenon can also be confirmed indirectly by statistical data provided by ANP.
24. In 2021, per the system, 800 self-mutilations were recorded. Compared to the similar period of last year, we notice an increase of 18%. There is also a 42% increase in the number of suicide attempts, both in penitentiary institutions and in criminal prosecution isolators. Thus, in 2021, there were six suicide cases and 31 suicide attempts.
25. Lack of an effective mechanism to protect detainees who report ill-treatment. According to Article 206 of the CE, the State is obliged to ensure the personal security of convicts, and when a danger to the personal security of the convict arises, it is entitled to address to any of the persons in charge of the penitentiary a request for personal security. In this case, the person in charge is obliged to immediately take measures to ensure the personal security of the convict and, where appropriate, measures of protection from the State. Accordingly, the penitentiary administration takes the necessary steps to eliminate the danger to the personal security of the convict. However, the protection mechanism offered by this rule needs to be more effective and achieve its intended purpose. On the contrary, instead of removing the danger, the prisoner is "removed" from the general table and placed in the rooms of the disciplinary isolator. Thus, to ensure the personal security of the detainee, the prison administration disposes of measures of isolation from other detainees, using for this purpose the cells of disciplinary isolators.
26. Following the monitoring of prisons, we found on the spot this fact: that the prisoners placed in the disciplinary isolator for security purposes are kept in inhumane conditions, and the cells are in deplorable condition: mould, moisture, unsanitary conditions, in some cells were missing the windows with an exit (i.e., without access to natural light), the impossibility of accessing the services and facilities of prisons (work, training, etc.), the difficulty of calling for medical assistance services, the lack of a button to call the supervisors in case of need. Calling the supervisors is to hit the metal doors with various blunt (metal) tools. This creates unbearable sounds, which makes it impossible to sleep at night. Some detainees have complained about this and that they use headphones to fall asleep. Those cells do not meet all the requirements for the detention of persons, and in some cases, they are not equipped with the necessary inventory and furniture. The housing standard established for a convict is not observed according to the standards and the Code of Execution. OAP and the CpPT also confirm this following a visit to Branesti Penitentiary, which found a discriminatory treatment of those under protection under Art. 206 of CE. The persons who have requested isolation for their security are not "punished/sanctioned," so they should enjoy all the facilities/rights as the total mass of the detainees. Moreover, isolation should not affect these rights.
27. According to PNADO 2018–2022, the responsible authorities were to strengthen the system's capacity to protect persons who denounce torture acts. However, this action has not been carried out. In addition to the data accumulated on the spot following the visits carried out, the fact that there is no clear and effective system of protection for the persons who denounce the acts of torture is also confirmed by the Ombudsman in his report for 2019, and by the MJ in his activity report from 2018. Despite efforts to improve detention conditions in prisons in the Republic of Moldova, overpopulation remains an unsolved problem, exacerbating the phenomenon of violence in prisons.
28. The existence of the "barrack" system (large capacity cells) does not meet international standards. Maintaining and increasing the level of violence reconfirms CPT's findings that the influences of the criminal subculture are particularly strong in "barracks" cells, especially in cells with a large number of detainees.

The data collected show that the situation is somewhat complicated in the "barracks" cells, in semi-closed institutions, where more than 500 prisoners communicate. It is particularly difficult to manage an institution with a complete imbalance between the number of prisoners and staff, which is typical for almost all penitentiary institutions in the Republic of Moldova. In such conditions, the influences of the criminal subculture in prisons are even stronger, which is why the administration and the staff are tempted to lead the institution using the elements of the criminal subculture, which affects the confidence to report the ill-treatment acts by other detainees victims of the subculture.

II. EMERGING ISSUE: Inadequate reporting of potential ill-treatment and violence in prisons

- Lack of mechanisms and technical procedures for immediate and direct reporting to the prosecutor's office;
- Failure to fulfil reporting obligation on time established by Rules;
- Internal protectionism and inadequate influences of the responsible employees

29. Prison employees are obligated to report to the prosecutor all cases of ill-treatment that have become known to them in connection with fulfilling their duties or outside them. As mentioned above, the cases described involve complaints, denunciations, visible bodily injuries, the application of physical force or special means, deaths, and other circumstances that give reason to assume. Therefore, reporting, identification, and recording of the described cases shall be reported to the prosecutor unconditionally because the superior was informed about this case. This is to be done immediately but no later than 24 hours.

30. Based on the circular indication in prisons in 2014, registers were established. By order, the persons responsible for keeping records and reporting to the Directorate of internal security of the Department of Penitentiary Institutions all the cases declared or registered of torture were designated. Because of the fluctuation of the personnel, the respective practice has fallen. The statistics show that less than 1% of the cases described by the Regulation on Preventing and combating ill-treatment (ROPG77/2013) are registered according to the established procedure. De facto, of the total number of 1280 injuries recorded in the seven prisons, just 429 were reported to the territorial prosecutor's office, representing about 33.51%.

31. Beyond the aspects of negligence manifested towards the obligation to enforce ROPG77/2013, we mention several factors that determine the inefficiency of penitentiary institutions to exercise their task, as follows:

- Lack of mechanisms and technical procedures for immediate and direct reporting to the prosecutor's office;
- Lack of awareness of the obligation to report in due time the situations established by ROPG77/2013;
- overloading the employees;
- internal protectionism, expressed by concealing/filtering the information to be reported;
- inappropriate intimidation/influence of responsible employees

a) Lack of mechanisms and technical procedures for immediate and direct reporting to the prosecutor's office

32. Internal regulations do not essentially differentiate the reporting procedure according to the reporting subject. Medical workers within penitentiary institutions are required to forward complaints, statements, or other information about alleged acts of ill-treatment immediately, but no later than 24 hours, to the prosecutor, regardless of whether or not they have notified the head of the detention institution. Respectively, it is up to the institutional discretion to determine the obligation of the medical worker to report internally.

33. Concerning the non-medical employee of the penitentiary system, he/she has a double obligation to report. Respectively, points 10 and 8 of ROPG77/2013 state the obligation to report these facts in writing to his superiors, being provided with anonymity. In turn, the superior must register them immediately, but no later

than 24 hours, to transmit them to the territorial or specialized prosecutor's office in whose jurisdiction the institution operates. At the same time, at the level of principle, the obligation for any worker of the law enforcement bodies, subsequently employed by the penitentiary system, to report to the prosecutor the cases described unconditionally by the fact that its superior was informed.

34. **The technical procedure of direct and unconditional reporting to the prosecutor's office is practically missing.** In both cases, medical and non-medical workers only report internally to their superiors. The statistics presented above show the sporadic nature of interinstitutional reporting. Moreover, the internal reporting of medical workers to the institution's management does not ensure the confidentiality of medical data, which, according to Law No. 133/2011, falls into the category of special data. Other persons other than the medical worker who directly comes into contact with the prisoner-patient are not entitled to take possession of the medical data except within the limits of the statistical data. Therefore, the internal reporting mechanism in open form needs to be reviewed – the medical data is transmitted directly from the medical worker to the prosecutor.

b) Failure to fulfil reporting obligation on time established by Rules

35. The ignorance and unawareness of the obligation to report the cases described by ROPG77/2013, even at the level of officers, emerged. An essential sub-cause is the lack of specific modules in initial and continuous training. Insufficient training among prison officers (hereinafter non-commissioned officers) is exceptionally high, being employed even with a minimum level of education – secondary education, first cycle: secondary education or equivalent. Their initial training often takes place long after the start of the activity as a supervisor, sometimes after two years of activity. The continuous training system also does not eliminate the lack of reporting skills established by ROPG77/2013.
36. To reduce the lack of security staff in prisons, in 2020, the MJ came up with the initiative to amend the MJ Order no. 499/2018 regarding the approval of the Nomenclature on the level of education and the minimum cycle of studies necessary for the occupation of the functions of the Corps of Penitentiary Agents, by which it was proposed that upon employment for the position of security staff, the level of education should be decreased by one step. By enforcing this order, the situation worsened considerably. The effect pursued by MJ by lowering the level of education when hiring supervisors up to the secondary level was to attract a higher number of candidates for these positions.
37. However, the aim pursued has not been achieved. There is still an acute shortage of supervisors (noncommissioned officers), but in addition to the insufficient number of supervisors, another problem has been added regarding the professional and personal quality of the security staff. They told us this at the 46 interviews carried out in prisons, both detainees and employees in higher positions. Moreover, in most cases, prison agents (noncommissioned officers) are loyal to the subculture, influenced, maintain non-statutory relations with prisoners, or may even be subjected to violence from prisoners. According to the acting director of the National Administration of Penitentiaries, over 50 cases of violence against prison guards have been registered in the last three years. These circumstances described above have further exacerbated the problem of staff and detainees' lack of trust in prison agents.
38. **Insufficient skilled personnel is among the main sub-cause of the problem of overloading employees.** At night, there are 3-5 supervisors for about 600 inmates. Security/safety incidents attract the intervention of at least four employees in that sector, which involves documenting and managing the factual situation. The latter includes writing reports/explanations to superiors, filling in several registers of records – for example, the register of "bodily injuries," the register of "use of physical force and special means or firearm," the register based on ROPG77/2013, the incident register, the register of exceptional situations, the register of exchange delivery/receipt, etc. Clearly, this essentially reduces the efficiency of the exercise of basic tasks – ensuring safety and security, not to mention the reduced ability to apply the principles of "dynamic security."
39. **The representatives of all prisons unanimously claimed the inadequate professional training and personal qualities of the new employees, especially of the non-commissioned officers.** The issue in question jeopardizes employees' work and imposes additional burdens on experienced employees, adversely affecting the institutional image. New employees (non-commissioned officers) often do not know any elementary aspects, noting that "sometimes they do not know the difference between the Criminal Code and the Contravention Code." Such a situation calls into question the process of attestation/admission to

office; in other words, it creates a reasonable suspicion regarding the formal character. Graduates can be re-evaluated for additional proofing and documentation, and the deliberate failure to resume the examination control can be considered a significant indicator of the lack of an equidistant process. Beyond professional training, the qualities were also claimed by the participants in the workshops. The latter objected to the employment of persons who graduated nine grades as non-commissioned officers, citing a lack of experience and basic skills. Psychoemotional testing is carried out, especially by the medical-military committee. The successful passing of the "filter" of the commission by inadequate persons creates the suspicion of integrity problems, expressed either by corruption or by accepting nepotism or dictated by the urgent need to complete the states "at all costs."

c) Internal protectionism and inappropriate influences on responsible employees

40. Expressed by concealing and/or filtering the information to be reported, it includes some essential sub-cause interconnected and determined by "corporate loyalty." Vertical hierarchy and the accentuated level of interdependence in the employees' activity condition the employees' reluctance to denounce/report their colleagues. Concerning labour relations, in the legal sense, adequate and sufficient mechanisms to protect whistleblowers are lacking. At the level of instruments that would exclude employees' exposure to the leakage of sensitive information, functional barriers can be removed – by developing technical procedures for independent reporting.
41. A similar situation is found for medical workers, who are, in fact, prison system employees, contrary to international standards against ill-treatment. The CPT highlighted the vital contribution that the health services in prisons could and should make in combating ill-treatment against prisoners by systematically registering injuries and reporting this information to the competent authorities. Documentation, accurate and timely reporting of such medical evidence will make it much more effective to investigate possible abuses and bring perpetrators to justice, which will serve as a powerful deterrent against future violations. Thus, the medical staff has an important role in combat but also in preventing acts of ill-treatment in the penitentiary, ensuring that when prisoners present certain bodily injuries in the State's custody, they will be appropriately registered and reported to the relevant authorities. National, regional, and international human rights mechanisms have constantly targeted health services in the Republic of Moldova prisons. The CpPT ascertained the lack of decisional independence following the monitoring visits to Penitentiary No. 16 Pruncul in 2019 and 2022. Following the evaluation of the effective assurance of the guarantees for the prevention of torture and inhuman and degrading treatment in Penitentiary No. 16 Pruncul, CpPT found severe systemic problems affecting the independence of the medical staff. One of these problems, which has also been confirmed by detainees following the monitoring of prisons, is the acute shortage of medical staff (doctors, nurses), corroborated with the shortage of prison agents (supervisors), which leads to situations of involvement of detainees employed in the service department in ensuring access to the doctor (verbal collection of requests), the leakage of medical information (data with special status) by involving detainees in medical activities, such as the processing of medical instruments and cleaning in medical offices.
42. Taking into account the complexity of the problems regarding the medical service in the penitentiary system is currently found impossible to ensure the principle of independence in accessing medical services by inmates. During the monitoring period, the structure of the medical service in the penitentiary system did not change. The penitentiary medical system continues to be parallel and delimited by the public medical system. According to the national legislation, the responsibility for the health of detainees in the prison administration system is borne by the ANP subordinated to MJ. Medical staff in penitentiary institutions are subordinated to the director of the penitentiary, subject to double loyalty in making medical decisions.
43. The ECHR also ascertained the lack of independence of the medical staff in prisons in its recent judgment: *Cosovan vs Moldova*. The ECHR states that "according to the Government, medical services are provided to detainees on a contractual basis (which results from the fact that the compulsory health insurance system does not cover detainees). But, again, this entails additional costs for the penitentiary (ECHR referring to the proof of payment by the ANP for healthcare in a public hospital). Thus, the prison administration had reasons to limit access to medical treatment offered to detainees outside the prison, and this situation could create a conflict of interest for prison doctors, which should not exist". In this regard, the ECHR also noted that the CPT urged the Government of the Republic of Moldova to transfer the responsibility for the medical service

in the penitentiary system to the Ministry of Health, and the CpPT expressly noted the lack of independence of prison doctors from the prison administration as a problem.

III. EMERGING ISSUE: Lack of impartiality of investigation body - the sporadic character of investigation of ill-treatment and violence in prisons

- Non-examination of the potential information regarding ill-treatment and violence in prisons;
- Lack of impartiality of the investigation body – “specialized” prosecutors

a) Non-examination of the potential information regarding ill-treatment and violence in prisons

44. The competence to examine cases containing allegations of ill-treatment rests exclusively with the Prosecutor's Office. The prosecutor who receives the information registers it in a separate register, specifying all the data indicated in point 14 of Rules based on Order 77/2013. The specialized prosecutor will immediately examine the information according to the Code of Criminal Procedure. In the case of the information received (complaints, denunciations, visible bodily injuries, the application of physical force or special means against detainees), the prosecutors are to seize themselves and initiate control by adopting a procedural solution in all cases.
45. According to territorially disaggregated statistical data (in limits of 7 prisons m&e by Promo-LEX in 2022), out of 438 information received by territorial prosecutors (in 2021), only 3.2% (14 cases) were examined in the procedure established by the Code of Criminal Procedure (CPP). When the information comes in, the Chief Prosecutor decides on the distribution and designation of the prosecutor to rule on it, the information not being recorded in the "Register 1". Therefore, the appointed coordinator triggers the mechanisms laid down by the CCP. The examination is limited to an ex officio verification, and only some information is provided by making phone calls to the prison administration, avoiding direct communication with detainees.
46. Beyond the legal provisions mentioned above, the obligation to examine the criminal procedure is also specified in the Methodological Recommendations for effectively investigating torture offences and inhuman or degrading treatment. Furthermore, the recommendations indicate that since 2012 the issue of the so-called "verification based on Art. 274 of the Code of Criminal Procedure" or "prior examination of the notification about the offence" because of the provisions of Art. 279(1) of the same Code allows procedural actions after the referral's registration regarding the offence.
47. Only the criminal prosecution actions for which the authorization of the investigating judge is required, as well as the procedural coercion measures, are liable to be carried out only after the criminal prosecution has started. If the act of referral does not show reasonable suspicion that a crime has been committed, the prosecutor will proceed to carry out other procedural-criminal actions to establish the existence or, as the case may be, the absence of reasonable suspicion and will order one of the solutions in Art. 274 of the CCP (starts or refuses to start the criminal investigation)".
48. Therefore, the information received from prisons, within the limits of the situations/cases established by ROPG77/2013, is to be examined in the criminal procedure, which was to be reflected in the official statistics of the prosecutors' offices on "the state of affairs in the chapter examining the complaints regarding the cases of torture, inhuman and degrading treatments". Therefore, the information reported to the prosecutor's office is not examined in the legal order and is dropped from the official statistical data.

b) Lack of impartiality of the investigation body – “specialized” prosecutors

49. States shall ensure that complaints and reports of torture or ill-treatment are promptly and effectively investigated. Even without an express complaint, an investigation shall be undertaken if there are other indications that torture or ill-treatment might have occurred. The investigators, who shall be independent of the suspected perpetrators and the agency they serve, shall be competent and impartial. They shall have

- access to or be empowered to commission investigations by impartial medical or other experts. The methods for such investigations shall meet the highest professional standards, and the findings shall be made public.
50. In the Republic of Moldova, the prosecutors are designated as investigation bodies for cases of torture and ill-treatment. Based on the order of the General Prosecutor's Office, to ensure independence and impartiality of the investigations, the chief prosecutors of the territorial prosecutors' offices were to designate prosecutors specialized exclusively in ill-treatment – in fact, the exclusive nature has been omitted. Territorial prosecutors face the numerical insufficiency of prosecutors and consultants, leading to the workload. On the other hand, in some regions where there is no significant deprivation of liberty institutions, the number of potential cases of ill-treatment is insignificant. Therefore, the chief prosecutors limited themselves to the complementary character of the specialization, a practice taken over by all the territorial offices, without considering the particularities of the deprivation of liberty infrastructure in the territorial area.
51. As mentioned, just 3.2% (14 cases) were examined by the prosecutors in the procedure established by the Code of Criminal Procedure (CCP) out of 438 pieces of information received from 7 prisons in 2021. Prisons, in turn, provided information only in 33.51% of all records (out of 1200 body injuries recorded in 7 penitentiaries in 2021). Consequently, reanimation of the mechanism of reporting and examination of potential ill-treatment cases is possible if specialized prosecutors in the territorial area of prisons are exempted from other tasks than those related to ill-treatment – or, it will be unlikely to strengthen the acceptability of prosecutors to react effectively to the situations provided by ROPG77/2013. At present, out of specialized tasks, each prosecutor carries out diverse tasks, as an example: 1) managing criminal prosecution – 92 cases, 2) participation in court hearings – 115 hearings, 3) examination of the proposal to initiate criminal prosecution based on police officers proposal – 80 cases, etc. When assessing the quantitative indicator, the number of actual working days, about 220-230 days, is to be considered. The workload, beyond specialization, is considerable and needs to be rationalized.
52. Loyalty to the system is more perceived than one found literally in evaluating the mechanism under ROPG77/2013. At the same time, the inmates manifested doubts of impartiality within the focus groups. Mainly, they focused on the fact that some specialized prosecutors in the past worked in the prison system. This doubt is also fuelled by the inaction of the prosecution, interpreted as loyalty to the system – not being considered the de facto load of prosecutors.

SUGGESTED QUESTIONS FOR THE GOVERNMENT OF THE REPUBLIC OF MOLDOVA:

1. What are the measures taken for the protection of the medical data of prisoners and to prevent interference by non-medical penitentiary staff?
2. What measures were taken to exclude the detainees from ensuring the activity of the medical facilities in the prison?
3. When will the independence of medical staff be ensured by transferring them from the Ministry of Justice to the Ministry of Health?
4. What measures were taken to ensure adequate protection of the most vulnerable detainees – marginalized by criminal subculture as "inferior casts"?
5. What measures are taken to rebuild and ensure adequate conditions and accessible infrastructure for detainees based on Article 206 of the Execution Code?
6. What steps ensure that ill-treatment cases and all body injuries – including those visible to non-medical employees – are recorded, reported, and examined/appropriately investigated?
7. What measures are taken to ensure proper investigation against acts of violence and to discourage perpetrators when the victim (inmate) refuses to make statements, and the information received from prisons does not fall under article 166/1 Criminal Code (prohibition of torture and ill-treatment)?
8. What measures were taken to appropriately increase the number of prison staff, as well as actions taken to build their capacities in fields of identification, registration, and reporting of alleged cases of torture, inhuman or degrading treatment?
9. Please indicate measures taken to establish the technical solutions for direct and immediate reporting to the Prosecutor's Office of the ill-treatment cases and body injuries caused in penitentiaries.

10. Please indicate which steps have been taken to ensure impartiality and exclusive specialization of prosecutors in combating ill-treatment.
11. What measures are taken to ensure that all information received from the penitentiaries under ROPG77/2013 is examined concordance with the Code of Criminal Procedures?
12. What measures were taken to ensure regular assessment of the abilities of specialized prosecutors related to combating ill-treatment, as well as the procedure for examining the received information from prisons?

Respectfully submitted,

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