



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

CPT/Inf (2009) 37

Report to the Moldovan Government

**on the visit to Moldova
carried out by the European Committee
for the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment (CPT)**

from 27 to 31 July 2009

The Moldovan Government has authorised the publication of this report.

Strasbourg, 14 December 2009

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Copy of the letter transmitting the CPT's report

Mr. Gheorghe NICOLAESCU
Consultant
Directorate of Treaties and European Integration
Directorate General of International Relations and
European Integration
Ministry of Justice
Str. 31 august 1989, 82
MD – 2012 CHIȘINĂU

Strasbourg, 24 November 2009

Dear Sir,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I enclose herewith the report to the Moldovan Government drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) after its visit to Moldova from 27 to 31 July 2009. The report was adopted by the CPT at its 70th meeting, held from 2 to 5 November 2009.

The recommendations, comments and requests for information made by the CPT are set out in bold type in paragraphs 7, 8, 10, 11, 16 to 21, 24, 25, 32 to 39, 45, 46, 50 and 67 of the report. The CPT requests the Moldovan authorities to provide **within three months** a response containing an account of action taken by them to implement the Committee's recommendations and setting out their reactions and replies to its comments and requests for information.

The CPT would ask, in the event of the response being forwarded in Moldovan, that it be accompanied by an English or French translation. It would be most helpful if the Moldovan authorities could provide a copy of the response in a computer-readable form.

I am at your entire disposal if you have any questions concerning either the CPT's visit report or the future procedure.

Yours sincerely,

Mauro PALMA
President of the European Committee for
the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment

I. INTRODUCTION

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT visited Moldova from 27 to 31 July 2009. The visit was one which appeared to the Committee “to be required in the circumstances” (cf. Article 7, paragraph 1, of the Convention), and was the eleventh visit to Moldova to be carried out by the CPT.¹

2. The visit was carried out by the following members of the CPT:

- Silvia CASALE (Head of delegation)
- Marija DEFINIS GOJANOVIĆ

who were supported by Johan FRIESTEDT of the CPT’s Secretariat.

They were assisted by:

- Eric SVANIDZE, former Head of the International Department of the Prosecutor General’s Office of Georgia (expert)
- Sergiu BUFTEAC (interpreter)
- Alexandru MELENCIUC (interpreter)
- Valeriu ROTARU (interpreter).

3. The main purpose of the visit was to assess the manner in which investigations were being carried out into cases possibly involving ill-treatment by the police in the context of post-election events in April 2009 in Chişinău. The visit also provided an opportunity to review the treatment of persons detained by the police.

In the course of April 2009, the CPT received reports from various sources according to which, following the parliamentary elections of 5 April 2009, hundreds of persons had been apprehended by the police after violent incidents occurred during public protests in front of the Presidency, Parliament and Government buildings in Chişinău. Those reports referred to severe physical ill-treatment at the time of apprehension, during transportation and/or during subsequent police custody. The Committee also received information indicating that some persons had died as a result of police action on 7-8 April 2009.

¹ The CPT’s most recent previous visit to Moldova, which was of a periodic nature, took place in September 2007. The Moldovan authorities authorised the publication of the report on the 2007 visit, together with their response, in December 2008 (see documents CPT/Inf (2008) 39 and CPT/Inf (2008) 40). On this occasion, the Moldovan authorities also authorised the publication of two earlier CPT reports, concerning ad hoc visits carried out in November 2005 and March 2006, as well as their respective responses (see documents CPT/Inf (2008) 35, CPT/Inf (2008) 36, CPT/Inf (2008) 37 and CPT/Inf (2008) 38).

By letter of 15 April 2009, the CPT invoked Rule 28 (1) of its Rules of Procedure² and requested the Moldovan authorities to provide a full list of persons apprehended in connection with the above events, with an indication of the establishments in which they were being held, and information on the state of health of each of the persons concerned, including any injuries which they might have sustained. The Committee also requested information on any persons who had died in the course of the events and on any inquiries initiated into these deaths. On 24 April 2009, the Moldovan authorities provided a list of 316 persons who had been deprived of their liberty in relation to the April events. They informed the CPT that all such persons who had been placed under administrative arrest were released from police establishments on 17 April 2009 upon court decision and that another 98 persons who had been remanded in custody were subsequently released from Penitentiary establishment No. 13. Only eleven persons remained in custody. The Committee also received a description of the injuries observed by prison health-care staff on 28 remand prisoners upon their admission on 11 and 12 April 2009. Further, the Moldovan authorities provided the Committee with the initial results of the inquiries into three cases of death.

It should be mentioned in this context that, during the 2009 visit, the delegation came across a number of cases of persons who had been, or had allegedly been, deprived of their liberty by the police during the same period and in relation to the post-election events but who had not been included in the above list.³

4. Shortly after the events, the Council of Europe Commissioner for Human Rights, Thomas HAMMARBERG, carried out a special visit to Moldova, from 25 to 28 April 2009.⁴ When drawing up this report, the CPT has taken account of the Commissioner's findings, as well as the Moldovan authorities' response to it.⁵

5. The CPT's delegation visited the Temporary detention facility of the General Police Directorate, as well as Centru and Ciocana district police stations in Chişinău. It also had a series of interviews, including at Penitentiary establishment No. 13, with alleged victims and potential witnesses of police ill-treatment in the context of the April events, and examined in detail a number of relevant investigation files. Further, it spoke to several members of the police forces involved in the events, including the "Fulger" Special-Purpose Police Force.

6. In the course of the visit, the delegation held consultations with Vitalie PÎRLOG, Minister of Justice, Ghenadie COSOVAN and Valentin ZUBIC, Deputy Ministers of Internal Affairs, and Vasile PASCARI, First Deputy Prosecutor General. It also had discussions with Anatolie MUNTEANU, Parliamentary Advocate, and other members of the Consultative Council for the Prevention of Torture.⁶ Further, the delegation met representatives of international and non-governmental organisations, members of the Moldovan Bar Association and defence lawyers.

A list of the national authorities and organisations consulted during the visit is set out in Appendix II.

² Rule 28 (1) reads as follows: "Before deciding on a particular visit, the Committee or, if appropriate, the Bureau may request information or explanations as regards the general situation in the State concerned, as regards a given place, or as regards an isolated case concerning which it has received reports."

³ These persons alleged ill-treatment by the police and some of the allegations were being investigated by the prosecuting authorities at the time of the visit (see the relevant sections of this report).

⁴ He was accompanied by a forensic medical expert.

⁵ See document CommDH (2009) 27.

⁶ See paragraph 42.

7. The co-operation extended to the delegation by the national authorities and staff at the establishments visited was generally excellent. The delegation enjoyed prompt access to the places of detention visited, was able to have private interviews with persons deprived of their liberty, and had access to all the documentation necessary for the carrying out of its task (including investigation files, relevant medical reports and custody registers).

Difficulties were encountered in relation to access to the territory of Moldova for one member of the delegation. Entry to Moldova for this CPT member was subject to a visa requirement, but the Moldovan authorities were not in a position to provide such a visa either at the port of entry or in the member's home country. Fortunately, an ad hoc arrangement was found shortly before the visit, making it possible to overcome this problem. However, **the CPT trusts that effective measures will be taken to ensure that no such difficulties are encountered in the future. Article 8, paragraph 2 (a), of the Convention places a clear obligation on Parties to provide members of a CPT visiting delegation with access to their territory without restriction.**

8. It should be underlined once again that the principle of co-operation between States Parties to the Convention and the Committee is not limited to steps taken to facilitate the task of a visiting delegation. It also requires that decisive action be taken to improve the situation in the light of the CPT's recommendations. In the report on the 2007 periodic visit, the Committee noted that some of its long-standing recommendations had yet to be implemented, in particular in relation to the treatment of persons detained by the police. The delegation's findings from the 2009 visit indicate that little progress has been made in this area and the post-election events in April were a serious reminder that urgent action is required. In the Committee's view, if effective measures are not taken without further delay to remedy this long-standing problem, those police officers minded to ill-treat persons in their custody may well believe that they can do so with impunity. **The CPT calls upon the Moldovan authorities to take determined action to implement fully the recommendations made in this and previous visit reports in order to combat ill-treatment by the police and ensure accountability.**

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Police establishments

1. Preliminary remarks

9. The legal provisions governing the detention of criminal suspects by the police have remained, on the whole, unchanged since the 2007 visit.⁷

10. During the 2009 visit, the delegation observed that the practice of holding remand prisoners in police temporary detention facilities (*izolatoare de detenția preventivă*, abbreviated “IDP”) continued unabated. In the report on the 2007 visit, the CPT called upon the Moldovan authorities to give the highest priority to the implementation of the decision to transfer the responsibility for persons remanded in custody to the Ministry of Justice. In response, the Ministry of Internal Affairs indicated that it was in favour of a temporary transfer of responsibility for IDPs to the Ministry of Justice, pending the building of pre-trial establishments under the latter Ministry’s authority. However, at the end of the 2009 visit, the Minister of Justice indicated that the responsibility for the IDPs could not be taken over by his Ministry because conditions of detention in these facilities were substandard.

The CPT shares the view that IDPs do not offer suitable conditions for holding persons remanded in custody. The Committee would nevertheless like to stress that, in the interests of the prevention of ill-treatment, the sooner a criminal suspect passes into the hands of a custodial authority which is functionally and institutionally separate from the police, the better. The delegation’s findings from the 2009 visit support that; most cases of alleged police ill-treatment in the context of the April events had emerged only after the persons concerned had been transferred to an establishment under the Ministry of Justice or released. **The CPT recommends that, pending the building of new pre-trial establishments, the Moldovan authorities take steps to transfer the responsibility for IDPs to the Ministry of Justice.** Further, **the Committee would like to receive up-to-date information on progress made to build new pre-trial establishments under the Ministry of Justice.**

11. The legal framework for deprivation of liberty of administrative detainees is provided by a new Contravention Code, which entered into force after the April events, on 31 May 2009, and replaced the 1985 Code of Administrative Offences. According to the new legal provisions, the persons concerned may be sentenced to up to 15 days of deprivation of liberty, a period which may be extended to 30 days if they have committed more than one offence.⁸

⁷ See paragraph 8 of document CPT/Inf (2008) 39. In particular, pursuant to Section 11 (4) of the Code of Criminal Procedure, the police may, on their own authority, detain persons suspected of a criminal offence for a maximum of 72 hours. Before the expiry of this period, the detained person must be either remanded in custody by a judge or released.

⁸ See Section 38 (4) of the Contravention Code.

In the past, the CPT repeatedly recommended that detention for administrative offences no longer be exploited by operational police officers in order to detain and question persons suspected of criminal offences, without their being offered the safeguards inherent in the criminal procedure. The delegation's findings from the 2009 visit suggest that such abusive practices were widespread in the context of the April events. The CPT is therefore pleased to note that the new Contravention Code restricts the powers of the police to hold persons, on their own authority, for more than three hours.⁹ However, the delegation heard some recent allegations from detained persons that proceedings under the Contravention Code (for insulting law enforcement officials, for instance) had been initiated against them after they had refused to confess to a criminal offence, despite their correct behaviour vis-à-vis the police, and that their objections had little weight before prosecutors and judges. The lack of access to a lawyer in practice, at this stage of the procedure, had exacerbated this situation. **The CPT recommends that prosecutors and judges be encouraged to be particularly vigilant as to the possible exploitation by the police of the provisions of the Contravention Code to circumvent the length of police custody in respect of criminal suspects. Reference is also made to paragraph 34 as regards access to a lawyer.**

According to the Enforcement Code, persons under administrative arrest by virtue of the Contravention Code should be detained, as a minimum, in conditions provided for sentenced prisoners placed under an "initial" regime in penitentiary establishments.¹⁰ That said, it appeared during the 2009 visit that a number of persons under arrest continued to serve their administrative sentences in police establishments, which certainly do not offer such conditions. **The CPT recommends that the Moldovan authorities take all the necessary measures to ensure that persons under administrative arrest serve their sentences in penitentiary establishments.**

2. Torture and other forms of ill-treatment

12. In the course of the 2009 visit, the CPT's delegation heard a remarkably large number of credible and consistent allegations of police ill-treatment in the context of the post-election events in April 2009. Many persons interviewed referred to the remarks made by police staff, which suggested that the alleged ill-treatment was inflicted in retaliation for acts of violence against the police during the day of 7 April.

13. A considerable number of persons interviewed complained about *excessive use of force and ill-treatment during the police intervention during the night of 7 to 8 April 2009 in Chişinău*. The "Fulger" Special-Purpose Police Force (hereafter BPDS "Fulger"¹¹) figured prominently in this context. The BPDS "Fulger" was deployed at around noon on 7 April 2009 to back up other police forces (including the "Scut" crowd control force of the General Police Directorate in Chişinău) to protect the Presidency and Parliament buildings. In the afternoon of that day, the BPDS "Fulger" and other police forces apparently experienced serious difficulties in controlling the crowd and apprehending a group of violent protestors, and in this context used three stun grenades.¹² It appeared from private interviews and the medical records seen by the delegation at the Chişinău Emergency Hospital that several persons standing among the crowd sustained multiple injuries due to the use of such devices (e.g. "closed cranio-cerebral trauma", "acute barotrauma", "burns").

⁹ For instance, certain offences are no longer punishable by placement under arrest (e.g. petty hooliganism). Further, in certain other cases, the decision to detain a person for more than three hours (e.g. for offering resistance to or insulting law enforcement officials) should now be taken by a prosecutor.

¹⁰ See Section 338 of the Enforcement Code.

¹¹ *Brigada de poliție cu destinație specială "Fulger"*.

¹² I.e. "Zarya-2" flash and noise diversionary devices.

Later, during the night, the BPDS “Fulger” took action after individuals started damaging kiosks and cars. Members of the special police force, who allegedly wore balaclavas in addition to helmets with plastic screens, started a large-scale apprehension of persons in and near the Square of the Great National Assembly in front of the Government building, with the subsequent support of police staff of the General Police Directorate in Chişinău. According to the Deputy Commander of the BPDS “Fulger” met by the delegation, all the persons concerned were ordered to lie down, but they did not comply and the police apprehended them for offering resistance (some 50 apprehension reports were drawn up).

Virtually all the persons interviewed by the delegation who had been apprehended during the night of 7 to 8 April claimed that they had not offered any resistance to the police and had laid down when instructed to do so, after which they were allegedly kicked and struck with truncheons and the butts of firearms by masked police officers. Some persons met by the delegation indicated that they saw a young man (identified as A¹³) being severely kicked and receiving repeated blows with the butts of firearms by two police officers (one of them was said to have previously shot in the air). A reportedly tried to protect himself with his arms and was seen lying on his back before he stopped moving, after which the police officer who had reportedly shot in the air was said to comment “This is all”. Other persons interviewed indicated that the beatings had stopped after a police officer warned his colleagues that one person had died.

Further, many persons met by the delegation alleged ill-treatment by masked police staff during transportation (punches, kicks) and/or upon arrival at a police establishment (blows with truncheons, the butts of firearms or other hard objects to various parts of the body while the persons concerned were facing a wall).

The information gathered by the delegation during the 2009 visit suggests that a number of persons sustained severe injuries as a result of the alleged ill-treatment.¹⁴

14. The delegation also heard numerous accounts, from women, men and juveniles alike, of *physical ill-treatment whilst in police custody in the course of 8 April and/or during the following days*. Most persons interviewed who had not been released shortly after apprehension complained of repeated or prolonged beatings during the initial questioning by operational police officers or between interrogation sessions (e.g. kicks and blows with a truncheon or with a plastic bottle filled with water). The delegation also heard widespread allegations of threats of physical ill-treatment (including rape) and killing during the initial police questioning. The persons interviewed referred not only to the retaliatory nature of the alleged ill-treatment, but also claimed that it was aimed at extracting statements from them.

Many persons interviewed also alleged that they had been hit with truncheons and kicked when going through a “corridor” of police officers before entering a police establishment or transfer.

Further, the delegation received a few allegations of ill-treatment by custodial staff (e.g. kicks) upon admission to the IDP of the General Police Directorate in Chişinău.

¹³ See paragraph 50 as regards the investigation into this case.

¹⁴ See, for instance, paragraphs 53 and 55.

15. Most of the above allegations were supported by forensic or other medical evidence. In some cases, the competent prosecuting authorities considered that the ill-treatment alleged was such that it could amount to torture under Section 309¹ of the Criminal Code (see paragraph 49). The CPT shares this view. Moreover, the above findings lead the Committee to the conclusion that, rather than isolated incidents, there were patterns of alleged ill-treatment.

16. Official interlocutors met by the delegation during the 2009 visit pointed out that the situation experienced on 7-8 April was unprecedented and that 296 police officers, including 47 members of the BPDS “Fulger”, had been injured. The CPT fully acknowledges the extremely challenging nature of the situation faced; it must nevertheless stress that a State’s response to violence can under no circumstances be allowed to degenerate into acts of torture or other forms of ill-treatment. **The Committee reiterates its recommendation that all police officers receive, at regular intervals, a firm message of “zero tolerance” of ill-treatment, including through the adoption of a statement from the highest level. It should be made clear once again that the perpetrators of ill-treatment and those condoning or encouraging such acts will be subject to severe sanctions.**

The Committee also recommends that the methods used by members of the BPDS “Fulger” and other police forces involved in the apprehension of persons in the context of crowd-control situations be subject to closer and more effective independent supervision.

17. The CPT acknowledges that the wearing of balaclavas may be justified in the context of high-risk police interventions (such as anti-riot operations outside a custodial setting). However, subsequent identification of the individual officials concerned should in all cases be made possible (for instance, through the wearing of a clearly visible sign and identification number on the uniform). **The CPT recommends that the Moldovan authorities take the necessary measures in the light of the above remarks. If need be, the relevant legal provisions should be amended.**

18. At the end of the 2009 visit, the delegation requested the Moldovan authorities to provide the CPT with detailed information on the planning of future crowd-control operations, the specific training for such operations and the criteria for the use of physical force and/or “special means” in crowd-control situations and during the apprehension of persons under such circumstances. In their response of 26 October 2009, the Moldovan authorities only referred to the police duty to ensure public security in the course of demonstrations. The CPT must stress that, in addition to the general legal provisions on the use of force, “special means” and weapons, there should be clearly defined criteria on the use of each type of weapon and “special means” in the above-mentioned situations.

The Committee must reiterate the delegation’s request. In particular, the CPT would like to obtain information on specific criteria on the use of each type of equipment available (including stun grenades), taking due account of the types of injuries such equipment may cause. It would also like to receive information on measures envisaged or taken to upgrade the skills of police staff in handling problematic situations encountered during crowd-control operations and in using no more force than necessary.

19. Police ill-treatment in Moldova is not confined to the post-election events of April 2009. It should be noted that the delegation received some accounts of ill-treatment of persons who were not detained in connection with the April events (i.e. punches, blows with plastic bottles filled with water and, in one case, suspension by the arms). Most of these allegations related to the time of initial questioning by operational police officers and concerned the weeks preceding the visit.

The delegation's findings from the 2009 visit indicate that the problem of ill-treatment persists in everyday police practice, in particular during initial questioning. If all relevant structures in the criminal justice system do not redouble their efforts to address this problem, such conduct will remain a feature of operating police practice. In the report on the 2007 visit, the Committee recommended that consideration be given to bringing together the efforts of all relevant structures in a concerted strategy, such as a National Action Plan against torture. **The CPT reiterates this recommendation.**

20. It is also noteworthy that the special interview rooms within the cell block areas at the IDP in Chişinău remained largely underused. From the documentation consulted during the 2009 visit, it clearly appeared that detained persons continued to be routinely questioned outside such rooms on or off the premises of the IDP. This generates a high-risk situation. **The CPT calls upon the Moldovan authorities to take steps to ensure that police interviews with persons held in IDPs only takes place in the rooms designated for this purpose.**¹⁵

21. The CPT's delegation came across a few instances where judges had ordered an examination of complaints of ill-treatment made by detained persons in the context of the April events. However, the delegation also heard many allegations that judges had ignored the visible injuries displayed by the persons brought before them and/or their complaints about recent ill-treatment by police officers. **The CPT recommends that the Moldovan authorities make further efforts, including, if necessary, through legal amendments, to ensure that, whenever a detained person brought before a judge alleges ill-treatment by police officers, these allegations be recorded in writing, a forensic medical examination be immediately ordered, and the necessary steps be taken to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible injuries. Moreover, even in the absence of an express allegation of ill-treatment, judges should adopt a proactive attitude; for instance, a forensic medical examination should be requested whenever there are other grounds to believe that a person could have been the victim of ill-treatment.**

22. In its previous visit report, the CPT stressed that effective screening for injuries by health-care staff can make a significant contribution to the prevention of ill-treatment of persons detained by the police, and it made a series of recommendations designed to improve the *procedures followed by feldshers working in IDPs*. During the 2009 visit, the delegation observed the same shortcomings as those identified in the past. There were undue delays in the examination of newly admitted detainees (i.e. of up to several days). The screening for injuries was generally superficial and was routinely carried out in the presence of custodial or operational staff, and a copy of the report drawn up following an examination was accessible to police staff. Not surprisingly, the injuries sustained by detained persons in the context of the April 2009 events had frequently been detected and/or recorded only after release or transfer to a penitentiary establishment.

¹⁵ See Section II.A.3, as regards procedural safeguards that should apply in the context of such police interviews.

In contrast, the *screening for injuries on arrival at Penitentiary establishment No. 13* in Chişinău was generally of a better standard: newly arrived remand prisoners were examined by prison health-care staff shortly after admission and reports describing injuries observed during medical screening were forwarded to the prosecuting authorities. However, the recording of injuries was not fully satisfactory: in a number of instances, the description of lesions was succinct and the records rarely contained the prisoners' accounts as to the origin of their injuries.

23. In the course of the 2009 visit, the delegation was informed that 97 persons had been admitted to the *Chişinău Emergency Hospital* in relation to the April events, of whom 24 had been hospitalised. They had been medically examined, and according to the hospital management, the patients had been told about their right to be examined by a recognised forensic medical doctor. However, the hospital records did not always contain the statements of the patients as regards the cause of the injuries and when there were such statements, they were often not detailed (e.g. "assaulted by the police").

The delegation was informed that there was a police officer on duty at the hospital. He was notified by medical staff of any cases where the patients had been victims of violence and his role consisted in interviewing the patients concerned and in reporting such cases to the police. As regards injuries allegedly inflicted by police staff, the CPT considers that such an arrangement is not only inappropriate, but it also places the patients concerned at risk of intimidation and reprisals by the police. It is hardly surprising that, as it appears from the delegation's findings, certain patients preferred at this stage not to reveal their real identity or to withhold the information that their injuries had been inflicted by the police.

24. In the light of the above, **the CPT calls upon the Moldovan authorities to ensure that:**

- **all persons admitted to an IDP are seen by a feldsher within 24 hours of arrival; the examination should involve a systematic screening of the detained person's body for injuries;**
- **all examinations by health-care staff working or intervening in an IDP or penitentiary establishment are conducted out of the hearing and – unless the health-care professional concerned expressly requests otherwise in a given case – out of the sight of non-medical staff;**
- **the confidentiality of medical documentation is strictly observed in IDPs. Naturally, health-care staff working or intervening in the IDPs may inform custodial staff on a need-to-know basis about the state of health of a detained person, including medication being taken and particular health risks;**
- **the medical records of the IDPs, penitentiary establishments and hospitals contain a full account of statements made by the newly admitted persons which are relevant to the medical examination (including any allegations of ill-treatment by public officials) and a full account of objective medical findings based on a thorough examination. Whenever injuries are recorded which are consistent with allegations of ill-treatment made by a person, the record should be systematically brought to the attention of the relevant prosecutor and an examination should be promptly performed by a recognised forensic doctor. Further, the results of every examination should be made available to the person concerned and his lawyer. Under no circumstances should such cases be brought to the attention of police staff.**

In order to guarantee the independence of health-care staff working in IDPs, the Committee considers it important that such staff be aligned as closely as possible with the mainstream of health-care provision in the community at large. **The CPT would like to know what measures have been envisaged to ensure the independence of health-care staff working in IDPs.**

25. The CPT notes with interest that some persons interviewed had been *examined by a forensic doctor* on their own initiative after release.

However, the physical examination of the persons concerned had not always been thorough (for instance, in one case, possible head trauma had not been investigated). Further, the description of the injuries, the accounts of the persons concerned and the conclusions as to the degree of consistency between the medical findings and the allegations was often not sufficiently detailed in the forensic medical reports seen by the delegation. **The CPT recommends that the Moldovan authorities take steps to improve the quality of forensic medical examinations and reports, taking due account of international guidelines on the examination and documentation of physical evidence of torture and other forms of ill-treatment.**¹⁶

3. Procedural safeguards against ill-treatment of persons detained by the police

26. The provisions of the Code of Criminal Procedure (CCP) pertaining to the three fundamental safeguards advocated by the CPT, namely the rights of detained persons to inform a relative or another third party of their choice of their situation and to have access to a lawyer and a doctor, have remained basically unchanged since the 2007 visit.

It transpires from the information gathered by the delegation during the 2009 visit that most of the recommendations made by the CPT, aimed at strengthening the above safeguards and their operation in practice, are still to be implemented.

27. Persons who had recently been detained by the police indicated that they had been informed of their *right of notification of custody* and most of them were put in a position to promptly notify their family of their situation and place of detention.

That said, many persons who had been detained by the police in the context of the April 2009 events claimed that the fact of their detention and/or their place of detention had remained unknown to their family members for up to several days. Senior officials of the Ministry of Internal Affairs met by the delegation acknowledged that, due to the transfers of many detained persons to IDPs outside the capital, undue delays had occurred in the notification of custody. However, it transpires from interviews that such delays had also occurred in respect of persons detained within Chişinău.

In this connection, it is of concern that Section 173, paragraph 4, of the CCP has still not been amended with a view to reducing the period during which notification of custody may be withheld and defining more precisely the concept of “exceptional circumstances”.

¹⁶ See, in particular, the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (commonly referred to as the “Istanbul Protocol”) submitted to the United Nations High Commissioner for Human Rights in 1999.

28. Little progress was observed during the 2009 visit as regards the operation in practice of the right of *access to a lawyer*. Most persons met by the delegation who were, or had recently been, detained by the police alleged that they had been questioned by operational officers during an initial period of deprivation of liberty without a lawyer being present, and that they had had no access to a lawyer until they signed a statement or until the first court hearing. The Moldovan Bar Association informed the delegation that a number of lawyers had been refused access to their clients during the post-election events in April, which had prompted the Bar to make a public statement.¹⁷

A new system of free legal assistance for indigent criminal suspects came into operation in mid-2008, following the entry into force of the Law on Legal Aid of 26 July 2007. However, a considerable number of detained persons interviewed by the delegation complained about the quality of *ex officio* lawyers. The inaction of certain *ex officio* lawyers during the April 2009 events when their clients displayed visible injuries or alleged ill-treatment provoked scepticism about their independence from the police and the prosecuting authorities.

29. The right of persons in police custody to have *access to a doctor* (including to one of their own choice), is still not expressly guaranteed by law. In the report on the 2007 visit, the CPT considered that the form of words in Section 64, paragraph 2, sub-paragraph 15 of the CCP (i.e. the right “to submit requests, including for independent medical assistance”) fell short of meeting the Committee's long-standing recommendation in this respect. Many persons who were in police custody in the context of the April 2009 events complained that, despite repeated requests for independent medical assistance, they had been refused such assistance. In some cases, police staff allegedly denied access to a doctor in order to obtain a confession or other statement from the injured detained persons concerned. Further, it appeared in a few cases of persons who had presented visible injuries that medical care had not been provided to them on the grounds that they had not specifically requested it. Such situations not only deprive detained persons of a safeguard which can play a significant role in the prevention of ill-treatment, but it may also have serious repercussions on the health of persons in police custody. Clearly, access to an independent doctor should not be left to the discretion of police officers.

30. As was the case in the past, *information on rights* was provided to detained persons only at the moment when the protocol of detention was drawn up, which sometimes took place several hours after the actual apprehension.

31. As regards *record-keeping*, it transpired from the examination of individual files by the delegation that the legal three-hour time-limit for the drawing-up of a protocol of detention was not strictly observed: considerable delays had occurred between the actual deprivation of liberty and the drawing-up of a protocol of detention (up to 17 hours) during the April events. Further, in several cases, persons interviewed challenged the accuracy of the time of apprehension recorded in the protocols of detention and/or recorded release.

¹⁷ See Statement of the Moldovan Bar Association of 17 April 2009.

Custody registers displayed the same deficiencies as in the past (e.g. missing, inaccurate or conflicting information, failure to record the detention of certain persons). By way of example, the delegation observed differences of up to some 22 hours between the times of transfer and the times of admission recorded at Centru district police station and the IDP of the General Police Directorate, although these two police establishments are physically close to each other. The CPT must underline once again that no legal safeguard against ill-treatment is more fundamental than the requirement that the fact of a person's deprivation of liberty be properly recorded.

32. In the light of the above findings, **the CPT calls upon the Moldovan authorities to take all the necessary measures, including at legislative level, to implement without further delay its recommendations made in paragraphs 26 to 33 of the report on the 2007 visit; the comments made in paragraphs 26 and 30 should also be taken into account.**¹⁸

In addition, **the Committee recommends that prosecutors and senior police officials increase their vigilance as regards the observance of the legal provisions concerning detention and the accuracy of protocols of detention and custody registers.**

33. In the course of the 2009 visit, the delegation also paid close attention to additional safeguards applying to juveniles detained by the police. Juveniles interviewed alleged that they had been questioned by operational officers or investigators and made to sign documents (confessions or other statements) without the presence of a lawyer and/or another trusted adult. **The CPT recommends that steps be taken to ensure that juveniles do not make any statement or sign any document relating to the offence of which they are suspected without the benefit of a lawyer and ideally another trusted adult being present to assist them.**

34. With respect to administrative detainees, the new Contravention Code provides for the right of detained persons to inform two persons of their choice of their situation. Access to a lawyer should be granted within three hours of detention.¹⁹ The Code contains no provision as regards the right of access to a doctor (including one of the detainee's choice). **The CPT recommends that the Moldovan authorities take measures, including through legal amendments, to ensure that persons held under the Contravention Code enjoy the rights of notification of custody and of access to a lawyer and a doctor as from the very outset of police custody.**²⁰

35. The CPT must stress that, even if the above safeguards were implemented properly in ordinary circumstances, special arrangements should be made to ensure their operation in practice when planning police interventions that may lead to large-scale apprehensions of persons. **The Committee trusts that the Moldovan authorities will make such arrangements whenever required in the future.**

¹⁸ For ease of reference, the CPT's recommendations and comments are reproduced in Appendix I.

¹⁹ See Sections 378 and 384, paragraph 2, sub-paragraphs d, f and g, of the Contravention Code.

²⁰ See also paragraph 11.

4. Conditions of detention

36. The CPT notes with satisfaction that the cells of the IDP of the General Police Directorate in Chişinău had been fitted with beds and that some repair works had been carried out a few months before the visit. However, the conditions prevailing in this facility were still not suitable for the prolonged periods for which remand prisoners and administrative detainees were being held in it: high official occupancy levels in the cells (e.g. 4 places in a 10 m² cell), poor in-cell lighting, access to outdoor exercise limited to some 15 minutes. **The CPT recommends that these shortcomings be remedied** (see also the recommendations made in paragraphs 10 and 11).

37. Although there were no juveniles being held at the time of the visit, police staff working at the IDP of the General Police Directorate informed the delegation that juveniles may be detained together with a carefully chosen adult (e.g. a first offender or former police officer). In the CPT's view, given the particular vulnerability of juveniles during police custody, the risks inherent in juveniles sharing accommodation with adult detained persons are such that this should not occur. **The CPT recommends that police staff receive clear instructions on this matter.**

Further, women were on occasion detained at the IDP. However, there were still no female officers among the IDP custodial staff. There were three staff vacancies at the time of the visit and the delegation was informed that the management was considering hiring female custodial officers. **The CPT would like to be informed of steps taken in this respect.**

38. The delegation was told by police staff that the cells at Centru and Ciocana police stations in Chişinău were designed to hold persons for periods of detention not exceeding three hours. However, it clearly appears from the delegation's findings that the police continued to hold persons overnight in such cells (up to 48 hours) without providing them with mattresses, blankets or food. At Ciocana, the only change made to the cells since the 2004 visit was the installation of artificial lighting; the very size of the cells (some 2 m²) rendered them unsuitable for stays of longer than a few hours.²¹

The CPT calls upon the Moldovan authorities to take effective steps to ensure that detained persons are not kept overnight at local police stations and are offered food at normal mealtimes. Further, the cells at Ciocana district police station should never be used for periods of detention exceeding three hours.

39. During the 2009 visit, the Moldovan authorities acknowledged that the police were not in a position to offer appropriate conditions of detention during the April 2009 events due to severe overcrowding. For instance, it transpired from the custody registers consulted by the delegation that 74 detained persons had spent the night of 8 to 9 April 2009 at Centru district police station and 137 persons had been held at the IDP of the General Police Directorate (for a capacity of 78 places) from 9 to 10 April 2009. It clearly appeared that some days had passed before action was taken to remedy this situation in Chişinău. **The CPT trusts that contingency plans will be formulated when planning future police operations that may lead to large-scale apprehensions of persons, in order to avoid overcrowding in police establishments.**

²¹ See paragraph 43 of document CPT/Inf (2006) 7.

5. Mechanisms for the independent monitoring of police establishments

40. Control of police establishments by public prosecutors has been reinforced over the years since the first CPT visit to Moldova in 1998. Shortly after the post-election events in April 2009, prosecutors paid visits to police detention facilities. The delegation was informed that they had received and processed a number of complaints of ill-treatment in the context of such inspections.

However, most persons met by the delegation who had been detained at the time claimed that, before such visits, they had been warned by police staff not to make any complaints to the visiting prosecutors. Further, prosecutors were apparently accompanied by police staff and did not seek to have private interviews with detained persons.

41. In the report on the 2007 visit, the CPT stressed that, in addition to the existing inspections by prosecutors, other mechanisms for the independent monitoring of police establishments are capable of making an important contribution to the prevention of ill-treatment; it invited the Moldovan authorities to further develop the system of monitoring visits to police establishments by independent outside bodies (e.g. NGOs).

42. The delegation which carried out the 2009 visit noted progress in this respect. In particular, steps had been taken towards developing a national preventive mechanism in order to fulfil Moldova's obligations under the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Following the adoption of legislative amendments and regulations,²² a Consultative Council for the Prevention of Torture, attached to the Office of the Parliamentary Advocates (Human Rights Centre), held its first working session in April 2008. This Council should be composed of eleven members, including the Parliamentary Advocate responsible for the mechanism and NGO representatives. The declared objective was to carry out at least two visits per week.

43. At the time of the 2009 visit, the Consultative Council comprised only five members, including three NGO representatives. Six seats within the Council were vacant and there was no member with recognised medical training. Further, the delegation learned that the setting-up of the Council had not been accompanied by an appropriate increase in budgetary resources, which may seriously hamper its work.

In the aftermath of the April events, a number of persons met by the delegation had been interviewed in private by members of the Council while in detention. Some also referred to the visit of the Parliamentary Advocate; however, it was alleged that he had always been accompanied by custodial staff. Further, between 9 and 23 April 2009, on eight occasions, members of the Council had reportedly not been able to carry out their tasks; denial of access (on 9 and 11 April), delays in access (of up to two hours) and refusal to allow them to consult custody registers were among the major problems encountered. Police officers met by the delegation excused the problems of access by a lack of information, in particular as regards the composition of the Council.

²² See in particular Chapter II of the Law of 17 October 1997 on the Parliamentary Advocates, as amended in July 2007, and the Human Rights Centre Regulation on the organisation and functioning of a Consultative Council for the Prevention of Torture of 31 January 2008.

44. In short, the post-election period in April 2009 had been a litmus test of the ability of independent visiting bodies to carry out their functions effectively. However, the delegation's findings suggest that there had been serious shortcomings in their operation.

45. **The Committee recommends that measures be taken without delay to ensure that the Consultative Council for the Prevention of Torture exercises its powers to the full and without restrictions, taking due account of the recommendations, observations and guidelines that have been drawn up by the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) with a view to strengthening the capacity and the mandate of the national preventive mechanisms.**

Further, detailed information on the mandate and powers of all the members of the Council should be disseminated to the competent authorities and staff concerned. If necessary, the relevant authorities should also supply the monitors with credentials which spell out all their powers.

46. More generally, **the Committee recommends that the attention of visiting bodies be drawn to the need for exercising extra vigilance and adopting a more proactive approach in order to make sure that no case of ill-treatment goes unnoticed.**

The CPT also recommends that police staff working in IDPs receive the clear message that any kind of threats or intimidating action against detained persons aimed at preventing them from making complaints to visiting bodies will be severely punished.

B. Investigations into cases possibly involving ill-treatment by the police

1. Preliminary remarks

47. The CPT has emphasised in the past the importance of the effective investigation of any information indicative of ill-treatment and, where appropriate, the imposition of a suitable penalty. In the report on the 2007 visit, the Committee recommended that instructions be issued, making it clear to prosecutors that, even in the absence of a formal complaint, they are under a legal obligation to undertake an investigation whenever they come across credible information that ill-treatment of persons deprived of their liberty might have occurred.

Following the 2007 visit, guidelines were drawn up for prosecutors on the carrying out of investigations into cases of ill-treatment.²³ Such investigations were assigned, as a rule, to military prosecutors, who are considered to be the most independent of the police.²⁴

48. Adequately investigating allegations of ill-treatment will often be a far from straightforward matter. The criteria which an investigation into cases of alleged ill-treatment must meet in order to be qualified as “effective” have been established through an abundant case-law of the European Court of Human Rights, and these criteria were highlighted in the CPT’s 14th General Report. In particular, such investigations should be thorough: they must be capable of leading to a determination of whether force or other methods used were or were not justified under the circumstances, and to the identification and, if appropriate, the punishment of those responsible. This means that the competent authorities must make serious attempts to find out what happened and should not rely on hasty or ill-founded conclusions as the basis for their decisions. All reasonable steps should be taken to secure evidence concerning the incident, including, *inter alia*, to identify and interview the alleged victims, suspects and eyewitnesses (e.g. police officers on duty, other detainees, etc.), to seize instruments which may have been used in ill-treatment, and to gather forensic evidence. Investigations should also be conducted in a prompt and expeditious manner, and the persons responsible for carrying out the investigation should be independent of those implicated in the events. Further, there should be an element of public scrutiny in the investigation on its results, including the involvement of the alleged victims in the procedures and the provision of information to the public on the status of ongoing investigations.

Failing to meet these requirements will mean losing any chance of giving a practical meaning to the general and unconditional prohibition of torture and inhuman or degrading treatment or punishment. By contrast, genuine endeavours by the competent authorities to meet these requirements and uphold the rule of law will have an important dissuasive effect on those minded to ill-treat persons deprived of their liberty.

²³ Guidelines No. 11-2.2d/07-9924 of 16 November 2007.

²⁴ Order of the Prosecutor General No. 261/11 of 19 November 2007.

49. At the time of the 2009 visit, 99 cases possibly involving police ill-treatment in the context of the April events were being investigated. Several of the preliminary inquiries had been opened in the absence of a formal complaint. In most instances, military prosecutors were in charge of the preliminary inquiries (and criminal investigations subsequently instituted). Twelve criminal investigations into cases of alleged ill-treatment had been initiated: four cases under Section 309¹ of the Criminal Code (torture), six cases under Section 328 (exceeding authority or official powers), one case under Section 152 (2) (deliberate infliction of body injuries of medium severity) and one case under Section 151 (4) (deliberate infliction of body injuries of great severity leading to the death of the victim). By the time of the visit in July 2009, no criminal charges had yet been brought against police staff.

The delegation examined in detail the overall investigative approach and a number of cases possibly involving ill-treatment in the context of the post-election events, with a view to assessing the effectiveness of the action taken by the competent authorities.

2. Some illustrative cases

a. examples of ongoing criminal investigations

50. Reference has already been made to the *case of A* in paragraph 13. *A* was declared dead at 1.15 a.m. on 8 April 2009, after his body was brought by a police officer to the vicinity of the Emergency Hospital. Medical staff notified the death to the prosecuting authorities and the body was taken to the Centre of Forensic Medicine. A criminal investigation was initiated under Section 151 (4) of the Criminal Code.

A first post-mortem examination of the body started the following day. The autopsy report was completed on 14 May 2009. The body was subsequently exhumed for the purpose of a second post-mortem examination on 16 June 2009. The second autopsy was performed, at the request of the prosecuting authorities, by a British forensic medical expert. During the post-mortem examinations, injuries were observed on the head, neck, chest, abdomen, lower back and arms, and found likely to have been caused by blunt object(s)/application of force shortly before death. In particular, the second report indicates that the “*overall pattern of injuries is typical of an assault in which the victim is lying upon the ground and blows are delivered by kicking or by a weapon which may be swung, such as a stick or similar instrument*”. Three mechanisms that could explain the death of *A* were identified: (i) diffuse brain trauma (diffuse axonal injury and/or diffuse vascular injury), (ii) reflex vagal inhibition of the heart as a result of neck trauma or (iii) *commotio cordis* as a result of trauma to the left chest. The two autopsy reports diverged as to which mechanism should be given preference, but both concluded that death had occurred as a result of blows. The delegation was informed that a consolidated forensic medical report was being drawn up on the basis of the results of both post-mortem examinations. **The CPT would like to receive a copy of this report.**

51. At the time of the 2009 visit, the prosecuting authorities were trying to gather evidence in order to identify the potential perpetrator(s). However, only two police officers had been interviewed as witnesses: a senior police officer who had seen *A* lying still on the ground surrounded by police staff and the police officer who had been ordered to take *A* to hospital. The accounts of certain other persons who had apparently witnessed what had happened appeared to have been disregarded for several weeks before the prosecuting authorities decided to take their allegations into consideration and interview them on the matter. No attempt had apparently been made to seize weapons/“special means” which may have been used.

The overall investigation would have gained more public confidence if the prosecuting authorities had allowed greater public scrutiny. Lawyers defending the interests of A's next-of-kin not only complained that they could not have access to key elements of the investigation, in particular forensic medical evidence, but also considered they had been given misleading information, in particular as regards the cause of death.

52. In the *case of B*, the person concerned was apparently ill-treated during the night of 7 to 8 April 2009 at the time of apprehension by two senior Internal Affairs officials, whom she subsequently clearly identified. It is alleged that her arms were twisted behind her back, and that she was dragged by her hair along the pavement, kicked on the right thigh, punched on the back of the neck and her head was struck against a hard object. On 8 April, she was examined by a forensic medical doctor who observed injuries to the head, forearms, wrists and back. She was admitted to the Emergency Hospital on the next day and a closed cranio-cerebral trauma, elements of brain concussion and fracture of the radius were observed.

On examining this case, the delegation observed that the prosecuting authorities had acted *ex officio* on the basis of a press article and other information brought to their attention. A military prosecutor promptly went to the Emergency Hospital to interview the victim. The prosecutor also requested a new forensic medical report, which concluded that the injuries were consistent with the allegations.

However, at the time of the visit, the prosecuting authorities had still not interviewed the two suspects and had made no attempts to identify potential witnesses. Instead, they had requested an internal inquiry by the Ministry of Internal Affairs, naming the alleged victim and the two suspects. The response consisted of two undated statements from the suspects who denied any wrongdoing.

It is only after the alleged victim complained to the court about the lack of action in her case that the prosecuting authorities initiated, on 29 June 2009, a criminal investigation under Section 152 (2) (e) of the Criminal Code (deliberate infliction of injuries of medium severity by at least two persons). However, the decision of the prosecuting authorities focused on the fact of ill-treatment without referring to the two suspects, and the file was forwarded to a municipal prosecutor.

53. The delegation also examined the *case of C*, who was apprehended during the night of 7 to 8 April 2009 and brought to the Square of the Great National Assembly in Chişinău where he was allegedly kicked and hit with the butt of firearms by masked police officers. Further, he alleged that, on arrival at the General Police Directorate, while standing against the wall in an internal yard, he was kicked and struck with firearms on the head, back and legs. The ill-treatment was said to have resumed after he refused to sign documents in a room located in the Directorate's building, until he lost consciousness. He was later transferred to Centru district police station where allegedly he was kicked and received truncheon blows during the night of 8 to 9 April.

After release, *C* was seen by a forensic doctor who recorded multiple injuries, including a closed cranio-cerebral trauma, contusion of the tissue of the head, closed fracture of the proximal phalange of the second finger of the right hand, multiple bruises (measuring 3 x 2 – 20 x 10 cm) on the periorbital left side, the nose and back, and excoriations of irregular size (2 x 1.5 – 4.3 x 3.3 cm) on the central frontal area and lower part of the left eye. The forensic report concluded that the injuries had been sustained as a result of blunt force trauma and were consistent with his allegations.

C lodged a complaint with the prosecuting authorities on 11 April 2009. On 17 April 2009, he was notified that a criminal investigation had been initiated under Section 309¹ of the Criminal Code.

The prosecuting authorities obtained from the Ministry of Internal Affairs lists of members of the BPDS “Fulger” and other police staff on duty at the General Police Directorate and Centru district police station during the period from 7 to 9 April 2009, as well as statements of police officers of the General Police Directorate. Although it appeared from the material gathered that the victim had been apprehended by members of the BPDS “Fulger”, the delegation noted that the relevant apprehension report had not been examined by the prosecutor and the members concerned of the BPDS “Fulger” had not been interviewed. Further, no serious attempts were made to seek out potential witnesses among the many persons who had been detained at the same time as *C*.

54. Another illustrative case is *that of D* who was apprehended on the morning of 8 April 2009. *D* claimed that he lost consciousness during apprehension when an electric stun device was applied to him and that, when he regained consciousness, he was being punched and kicked by several police officers. The alleged beating continued during his transportation to the General Police Directorate in Chişinău. Upon arrival, he was taken to the offices of the operational staff where he was apparently punched, kicked and struck with various objects. On 10 April, the judge to whom he had complained ordered an examination of his allegations. He was then returned to custody and allegedly punched and kicked again on 11 April.

A forensic medical report of 4 May 2009 indicates that *D* displayed a closed cranio-cerebral trauma, manifested by brain concussion, excoriations on the head, oedema and excoriations on the face and nose, ecchymoses on the back, buttocks, arms and legs.

On 20 May 2009, the prosecuting authorities initiated a criminal investigation under Section 309¹ (3) (a) and (c) of the Criminal Code (torture of a vulnerable person by at least two individuals).

It appeared on examination of the case file that operational police staff involved in the apprehension had given statements according to which *D* had resisted arrest and the head injuries were self-inflicted during apprehension. However, not all the police officers involved or present during the alleged ill-treatment in the offices of the General Police Directorate who had been named by *D* were interviewed.

b. examples of pending preliminary inquiries

55. At the time of the visit, no decision had been taken on the initiation of a criminal investigation in the *case of E*. *E* was apprehended during the night of 7 to 8 April 2009. He alleged that he was punched, kicked and received truncheon blows upon arrival at Centru district police station and during subsequent questioning in the office of an operational officer, where he was hit on the chest, thrown to the floor and struck several times on the back. On examination by a forensic medical doctor, he displayed, *inter alia*, two ecchymoses (measuring 7 x 2.8 cm and 8 x 3.8 cm) on the right side of his chest and four other ecchymoses (ranging from 2 x 1.5 cm to 4.5 x 2.5 cm) in the lumbar area.

E indicated that he would recognise the police officers who had allegedly ill-treated him. However, it emerged from the file consulted that no criminal investigation had been initiated as no serious attempts had been made by the prosecuting authorities to identify these officers and potential witnesses.

56. Reference can also be made to the *case of F*. The delegation was informed that the inquiry was about to be terminated without initiating a criminal investigation. According to his statement, *F* was apprehended by two plain-clothes police officers during the night of 7 to 8 April 2009. He was made to lie down to the ground and allegedly received several truncheon blows to the back and legs. He was then taken to Centru district police station where he was allegedly punched and received truncheon blows on his head and back. After his transfer to the IDP a few days later, he lodged a complaint and a prosecutor interviewed him on 13 April. Upon examination by a forensic doctor the following day, he displayed an excoriation on the face, ecchymoses on his back and left buttock and an excoriation on the left knee. The forensic medical report seen by the delegation concluded that the injuries had been produced as a result of trauma by a hard, blunt, object, possibly in the circumstances and time described by *F*. Police officers who apprehended him indicated that *F* had resisted apprehension and that force had had to be used. As *F* had also signed a document confirming that he had been injured on apprehension, the prosecutor intended to close this case notwithstanding the forensic medical findings, without addressing the issue of proportionality of the force used during apprehension and without serious attempts to identify and interview the potential witnesses of the alleged ill-treatment.

c. examples of closed cases

57. In the *case of G*, the preliminary inquiry had been terminated without initiating a criminal investigation. *G* was apprehended on 9 April 2009 and allegedly beaten by several police officers in one of the offices of the operational staff at Ciocana district police station. He complained to a prosecutor while being detained at Penitentiary establishment No. 13. On examination by a forensic medical doctor on 14 April 2009, he displayed bruises, measuring 2 x 1.5 cm and 3.3 x 2.5 cm, on the left shoulder. Police officers who apprehended him stated that he had attempted to escape and had hit a door. On that ground, the prosecuting authorities terminated the preliminary inquiry, without seeking the opinion of a forensic doctor as to the consistency between the objective medical findings and the statements of the police staff.

58. The delegation also examined the *case of H*, who was apprehended on 8 April 2009 and was allegedly beaten by several police officers at Centru district police station. His allegations of ill-treatment were brought to the attention of the prosecuting authorities by his lawyer on 14 April 2009. Upon examination by a forensic doctor that day, he displayed a haematoma measuring 6.5 x 3.8 cm on the right shoulder. When contacted by phone by a prosecutor, *H* denied that he had authorised his lawyer to lodge a complaint of ill-treatment. The prosecuting authorities terminated the preliminary inquiry on that ground, without taking an official statement from *H* and inquiring into the origin of his injuries (see also paragraph 60).

59. During its meeting with the First Deputy Prosecutor General, the delegation was informed that *the preliminary inquiries into 37 cases of alleged ill-treatment by the police* had been terminated on the ground that the persons concerned had not been found to bear physical marks.

In this context, the CPT must stress that certain alleged forms of ill-treatment would not leave obvious marks. Further, even blows to the body may leave only slight physical marks, difficult to observe and quick to fade. Consequently, when allegations of such forms of ill-treatment come to the notice of the prosecuting authorities, they should be especially careful not to attach undue importance to the absence of physical marks.

3. Protection of victims and witnesses

60. The CPT must emphasise that failing to provide effective protection to victims and witnesses of police ill-treatment can seriously hamper any efforts to identify the persons responsible for the alleged ill-treatment and bring them to justice. The delegation was informed that the prosecuting authorities had closed 13 preliminary inquiries which had been initiated on the basis of information brought to their attention by lawyers because during their interviews with a prosecutor the alleged victims had denied having been ill-treated by the police. The delegation was surprised to learn that the prosecuting authorities had taken their decisions without considering whether the persons concerned might have been intimidated or feared retaliatory action.

Further, many persons with whom the delegation spoke were reluctant to make themselves known to the prosecuting authorities because of fears of intimidation and reprisals from the police. In addition, it appeared upon examining investigation files that certain victims and witnesses who could be at risk of intimidation had been refused protection on the grounds that there had been no concrete threat. Moreover, the delegation learned that protection was guaranteed by the Ministry of Internal Affairs; in the opinion of the CPT, this is not a suitable arrangement in the circumstances.

4. Assessment

61. The CPT recognises that the high number of cases possibly involving police ill-treatment in relation to the April events constituted a significant challenge for the prosecuting authorities in carrying out their task. However, this should have prompted them to adopt a more proactive and holistic approach, with a particular emphasis on establishing a timeline of the incidents, including all the police officers involved, and all the alleged victims, potential witnesses and outside professionals (e.g. medical staff). Indeed, many complaints and other information indicative of ill-treatment consistently referred to the same incidents, at the same locations, with the same patterns of alleged ill-treatment and, possibly, the same police officers involved. It is clearly a flawed approach to carry out individual investigations into such cases while treating them as unrelated episodes and without proper co-ordination.

62. It emerged during the visit that many of the potential victims and witnesses had still not been identified and interviewed by the competent prosecuting authorities. It is certainly right to identify promptly all the police officers who were injured during the events and secure medical evidence, but the same approach should also be followed as regards the potential victims of police ill-treatment. Failing that, crucial forensic and other evidence may well be lost.

63. In almost all the cases examined at the time of the visit, the action taken had still not led to the identification of the perpetrators of alleged ill-treatment and/or any officials who may have condoned or encouraged it. Prosecutors met by the delegation explained this situation by the impossibility in most cases to identify suspects because police officers were wearing balaclavas, or the fact that the position of the victims did not allow them to see the police officers allegedly inflicting blows. However, it clearly appeared during the 2009 visit that no steps had been taken by the prosecuting authorities in a number of cases where victims indicated that they would recognise the police officers involved in the alleged ill-treatment. By way of illustration, reference can be made to the case of a prosecutor who allegedly refused to hold an identification parade proposed by the victim and ironically suggested that the person in question go on his own to the entrance of the district police station where the alleged ill-treatment had taken place, and identify the perpetrators.

Further, key information that could have led to the identification of potential suspects and witnesses among members of the BPDS “Fulger” (such as apprehension reports) had not yet been examined in the context of investigations into alleged ill-treatment; by contrast, such information was being reviewed by prosecutors investigating mass disorder and usurpation of power on 7 April 2009. It is also noteworthy that the responsibility of senior Internal Affairs officials and police officers was not being addressed by the prosecutors dealing with cases of alleged ill-treatment; in the CPT’s view, the fact that such an important issue was being dealt with by prosecutors investigating mass disorder and usurpation of power could seriously undermine the impartiality of any investigative action taken in this respect.

In addition, no steps had been taken by the prosecuting authorities to secure as evidence weapons and “special means” which may have been used during the police intervention of 7-8 April 2009.

64. It also appeared upon examining investigation files that the approach followed by the prosecuting authorities was inconsistent in the manner in which evidence had been assessed. On the one hand, prosecutors often placed a heavy reliance on the material provided by the Ministry of Internal Affairs. As described in the above instances, this negates the purpose of assigning the task to a military prosecutor in order to keep a distance from the Ministry of Internal Affairs. On the other hand, decisions on the discontinuation of the preliminary inquiries had often been taken on the basis of hasty or ill-founded conclusions, without taking steps, for instance, to interview the alleged victim, suspect(s) and/or potential witnesses. It also appeared that some cases were left pending despite the existence of strong forensic medical evidence and opportunities to identify suspects.

65. The involvement of the victims of ill-treatment and/or their representatives at various stages of the investigations and the provision of information to the public also appeared problematic in a number of cases.

66. When investigating cases possibly involving ill-treatment, the prosecuting authorities do not have an obligation of result; however, they are under an obligation to take appropriate investigative action. Efforts had generally been made by the prosecuting authorities to react to allegations of police ill-treatment in relation to the April 2009 events, even in the absence of a formal complaint, when this had been brought to their attention. However, the above findings suggest that in many cases the competent prosecutors had not taken all reasonable steps in good time to secure evidence and had failed to make genuine efforts to identify those responsible.

It should also be stressed that many alleged victims interviewed by the delegation, including those who had not yet lodged official complaints, as well as their lawyers, expressed a general lack of confidence in the capability and determination of the prosecuting authorities, including military prosecutors, to carry out effective investigations into cases of police ill-treatment. In the CPT's view, if a police complaints mechanism is to enjoy public confidence, it should not only be independent but should be seen to be independent of the police.

In their letter of 26 October 2009, the Moldovan authorities informed the Committee that, following the visit, the prosecuting authorities "moved to other investigation tactics", placing a particular emphasis on the accountability of senior police officers for their actions or lack of action. The authorities reported that 18 more criminal investigations had been initiated following the visit (out of a total of 103 cases brought to the attention of the prosecuting authorities). Two cases had been sent to court. A total of ten police officers were declared to be suspects and measures were being taken to suspend them from duty. This is clearly a step in the right direction, on the assumption that earlier decisions on the termination of preliminary inquiries will also be reviewed.

67. In the light of the above, **the CPT calls upon the Moldovan authorities to continue to take steps to:**

- **ensure that the highest priority be given to investigations into cases possibly involving ill-treatment in relation to the April 2009 events and that the criteria of an “effective” investigation as established by the European Court of Human Rights be fully met. In order to achieve this, the competent authorities should adopt a more proactive, co-ordinated and holistic approach;**
- **ensure, even at this late stage, the effective protection of alleged victims and witnesses of police ill-treatment whenever it is required by the circumstances, taking due account of the recommendations of the Committee of Ministers of the Council of Europe Rec (2005) 9 on the protection of witnesses and collaborators of justice and Rec (2006) 8 on assistance to crime victims. It is also essential that the competent authorities take due account of potential intimidation, reprisals and repeat victimisation by the police when examining requests for protection;**
- **increase the involvement of victims of ill-treatment and their representatives in the investigation process, and improve the provision of information to the public on the progress and outcome of investigations into complaints of ill-treatment.**

In the medium term, **the CPT recommends that the Moldovan authorities set up an agency specialised in the investigation of cases possibly involving ill-treatment by law enforcement officials which is fully independent of both law enforcement and prosecuting authorities.**

APPENDIX I

RECOMMENDATIONS AND COMMENTS MADE IN PARAGRAPHS 26 TO 33 OF THE CPT'S REPORT ON THE 2007 VISIT

Safeguards against the ill-treatment of persons detained by the police

recommendations

- further steps to be taken to ensure that detained persons effectively benefit from the right of notification of custody from the very outset of their deprivation of liberty. The exercise of the right of notification of custody should be recorded in writing (paragraph 26);
- legislative steps to be taken to define more clearly the possibility of delaying the exercise of notification of custody, to make it subject to appropriate safeguards (e.g. any delay to be recorded in writing together with the reasons therefor, and to require the approval of a public prosecutor or a senior officer unconnected with the case at hand), and to reduce to a maximum of 48 hours the period during which notification of custody may be withheld (paragraph 27);
- the relevant provisions of the Code of Criminal Procedure (CCP) to be revised with a view to ensuring that persons in police custody benefit from an effective right of access to a lawyer as from the moment they are obliged to remain with the law enforcement agency (paragraph 29);
- the Moldovan authorities to ensure the strict application of the provisions of Section 64 of the CCP as regards the rights to talk to a lawyer in private and to have a lawyer present during interrogations (paragraph 29);
- the relevant legal provisions pertaining to medical assistance to be revised and specific instructions to be issued with a view to ensuring that a person taken into police custody has, as from the outset of his deprivation of liberty, the right to be examined by a doctor (it being understood that an examination by a doctor of the detained person's own choice may be carried out at his own expense). The instructions on this subject should stipulate, inter alia, that:
 - a request by a detained person to see a doctor should always be granted without delay; police officers should not seek to vet such requests;
 - the results of every examination, as well as any relevant statements by the detained person and the doctor's conclusions, should be formally recorded by the doctor and made available to the detainee and his lawyer;
 - the exercise of the right of access to a doctor should be recorded in the custody records (paragraph 31);

- steps to be taken to ensure that all persons detained by the police are systematically informed of their rights as from the very outset of their deprivation of liberty (and not only when the protocol of detention is drawn up). This should be ensured by the provision of clear verbal information at the very outset, to be supplemented at the earliest opportunity (that is, immediately upon their arrival at police premises) by provision of a written form setting out their rights. Particular care should be taken to ensure that detained persons are actually able to understand their rights; it is incumbent on police officers to ascertain that this is the case. The form should also be made available in an appropriate range of languages (paragraph 32);
- measures to be taken to ensure that custody registers are properly maintained, accurately record the times of deprivation of liberty, release or transfer, and reflect all other aspects of custody (precise location as to where a detained person is being held; visits by a lawyer, relative, doctor or consular officer; taking out for questioning, etc.). In this context, it is important to introduce nationwide standards of record keeping (paragraph 33).

comments

- the Moldovan authorities are invited to provide detained persons with feedback on whether it had been possible to notify a close relative or other person of the fact of their detention (paragraph 26);
- the Moldovan authorities are invited to develop as soon as possible a fully fledged and properly funded system of legal aid for persons in police custody who are not in a position to pay for a lawyer, which is applicable from the very outset of police custody. Particular attention should be paid to the independence of *ex officio* lawyers from the police and the prosecuting authorities (paragraph 30).

APPENDIX II

**LIST OF THE NATIONAL AUTHORITIES AND ORGANISATIONS
WITH WHICH THE CPT'S DELEGATION HELD CONSULTATIONS**

Ministry of Internal Affairs

Mr. Ghenadie COSOVAN	Deputy Minister
Mr. Valentin ZUBIC	Deputy Minister
Mr. Victor SOȚCHI	Head of the Directorate of International Relations and European Integration
Mr. Petru CORDUNEANU	Head of the Police and Public Order Directorate
Mr. Ion BERBINSCHI	Head of the Internal Control Directorate
Mr. Oleg BALAN	Deputy Commander of the "Fulger" Special-Purpose Police Force (BPDS "Fulger")
Mr. Vladimir BOTNARI	Head of the Chișinău General Police Directorate
Mr. Valeriu GALIȚ	Deputy Head of the Chișinău General Police Directorate

Ministry of Justice

Mr. Vitalie PÎRLOG	Minister
Mr. Vadim COJOCARU	Acting Head of the Department of Penitentiary Institutions
Mr. Gheorghe NICOLAESCU	Consultant, CPT's liaison officer

Prosecutor General's Office

Mr. Vasile PASCARI	First Deputy Prosecutor General
Mr. Eduard HARUNJEN	Head of Division, Directorate of the Supervision of Criminal Prosecutions
Mr. Nicolae DIMITRIEV	Chișinău Military Prosecutor
Mr. Ruslan LUPAȘCU	Prosecutor, Chișinău military prosecution service
Mr. Ion BAZATIN	Prosecutor, Chișinău military prosecution service
Mr. Ivan GROSU	Prosecutor, Chișinău military prosecution service
Mr. Alexandru CHIRIȚA	Prosecutor, Chișinău military prosecution service
Mr. Mihail IVANOV	Prosecutor, Chișinău military prosecution service
Mr. Viorel POCAZNOI	Prosecutor, Chișinău prosecution service
Mr. Alexandru BALAN	Prosecutor, Chișinău prosecution service
Mr. Sergiu CANȚER	Prosecutor, Chișinău Buiucani district prosecution service

Ministry of Health

Mr. Mircea BUGA	Deputy Minister
Mr. Andrei PĂDURE	Director of the Centre of Forensic Medicine

Ministry of Defence

Mr. Igor MALAI	Deputy Minister
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Centre for Combating Economic Crime and Corruption

Mr. Andrei IVANCOV	Deputy Director
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Consultative Council for the Prevention of Torture

Mr. Anatolie MUNTEANU	Parliamentary Advocate, Director of the Human Rights Centre and President of the Consultative Council
Mr. Vanu JEREGHI	Vice-President of the Consultative Council
Mr. Serghei OSTAF	Member of the Consultative Council

International Organisations

Office of the United Nations Resident Co-ordinator in Moldova
OSCE Mission to Moldova

Non-Governmental Organisations

Amnesty International Moldova
Medical Rehabilitation Centre for Torture Victims “Memoria”
Moldovan Bar Association
Moldovan Institute for Human Rights

