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Comments on the Report of the Republic of Moldova concerning the implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[1]

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[1] Consideration of Reports Submitted by State Parties under Article 19 of the Convention. Second periodic report of State parties due on December 27, 2000

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Introduction

The Institute of Penal Reforms (IPR), the former Center for Penitentiary Reform Support (CPRS), non-governmental, and independent and non-political organization draft this report.

These are our comments on the Republic of Moldova second periodical report to the UN Committee Against Torture, regarding its compliance with the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

This report is based on the analysis of national and international normative framework, statistical data, monitoring report made by the Institute for Penal Reform in Investigation Isolator No. 3 from Chisinau municipality, polls, other information provided by governmental and non-governmental organizations.

It is necessary to mention that committing acts of torture, inhuman and degrading treatment is a well-known situation in the Republic of Moldova. At the same time, public authorities refuse to admit directly this fact and the direct and indirect victims of torture frequently refuse to make public the real cases, in order to avoid further persecution.

Preliminary Information

The Republic of Moldova has ratified UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[2] on May 31, 1995, through the Parliamentary Resolution No. 473-XIII passed on December 28, 1995.
The existing Criminal Code of the Republic of Moldova was passed through the Law of Moldavian SSR on March 24, 1961, substantial amendments being adopted up till now. The new Criminal Code of the Republic of Moldova[3] has been adopted on April 18, 2002 (no. 985-XV). Initially, in compliance with the Law no. 1160-XV of June 21, 2002 on the application of the Criminal Code of the Republic of Moldova, the new Code was supposed to be enforced as of October 1, 2002. Further, the enforcement was postponed for January 1, 2003. The new Criminal Code stipulates a set of new mechanisms and institutions, which enable the creation of new mechanisms or modification of the old ones. No adaptation was managed to be performed. Thus, through the Law no. 1563-XV of 19.12.02 passed on 27.12.02. the Parliament decided that the new Criminal Code should be enforced together with the Criminal Procedure Code. The new Criminal Procedure Code[4] was adopted in March 2003 by the Parliament of the Republic of Moldova in the second and final reading. The new Criminal Procedure Code has not been promulgated by the President of the Republic of Moldova yet. Both Codes shall be enforced as of June 12, 2003.

It is necessary to mention that the legislative body took into account the human principal and the application of a softer criminal law. In this context, the Law on Enforcement of the Criminal Code of the Republic of Moldova of June 21, 2002 stipulates the following: ceasing the examination of criminal cases that are considered non-criminal according to the new criminal code, reviewing the sentences of conviction previously given, in order to improve the situation of the person that committed the crime, ceasing the execution of definite sentences given on the basis of the facts, which are non-criminal according to the new criminal code.

Now the Execution Code is prepared for the second reading in the Parliament and it includes the way of execution of civil and criminal court decisions, including detention.

This report alternative to the Government report shall include only the most relevant stipulations from the bills or laws related to torture, inhuman and degrading treatment that are to be passed.

[2] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted by UN General Assembly resolution 39/46 on December 10, 1984.

[3] Hereinafter: for the Criminal Code of the Republic of Moldova adopted by the Law of Moldavian SSR on March 24, 1961, “existing Criminal Code” or ”old Criminal Code” phrase shall be used, for the Criminal Code of the Republic of Moldova adopted on April 18, 2002 “the New Criminal Code” phrase shall be used.

[4] Hereinafter, for the Criminal Procedure Code adopted on March 24, 1961 “the existing Criminal Procedure Code” or “the old Criminal Procedure Code” phrase shall be used and for the Criminal Procedure Code adopted in March 2003 “the new Criminal Procedure Code” phrase shall be used.

Comment by articles of the Government Report

1. Item 4 of the Government report states the legal provision in the legislation of the Republic of Moldova about forbidding torture, inhuman or degrading treatments or punishments. It is to be mentioned there is no special article regarding torture, inhuman or degrading treatments or punishments in the new Criminal Code, as it is in the Criminal Code in force (art. 103). Stipulations regarding torture, inhuman or degrading treatments are only partially inserted in the New Criminal Code: art. 137 (*inhuman treatments*), which refer to crimes against peace and humanity safety, war crimes; art.169 (*Illegal internment into a psychic institution*), art. 306 (D*eliberate prosecution of an innocent person*); art. 307 (*Passing a sentence, decision, conclusion or decree against the law)*; art. 309 (*Constraint to testify*) and art. 328 (*Power excess or exceeding work attributions*).

2. Item 11 of the Government report explains the 4 level organizations of the court institutions. Through Law No. 1471-XV of 21.11.02, in force since 12.12.02, art.115 of the Constitution of the Republic of Moldova has been changed, providing court organization in 3 levels. The legislation of the Republic of Moldova used to have 2 types of appeal: appeal and recourse. Thus, the suits, examined in the first instance by local courts (the 1st level) are not appealed in the High Court.

3. Items 17 and 18 of the Government report states the concern for the unbiased covering of torture cases by mass media. It is to be mentioned that mass-media has a limited access to the detention centers within the Ministry of Internal Affairs, detention centers within the Information and Security Service of the Republic of Moldova and within the Military Commandment Garrison. Moreover, mass media are still dependent on financing sources.

4. It is to be mentioned that only a part of the national legislation is in accordance with the international stipulations (items 19-22 of the Government report). Other legal acts still have a punishing character, prioritizing state interest, existing since the Soviet period. The practice of legal acts application reveals flagrant violations of the national and international legislation.

5. It is to be remarked that the articles of the Criminal Code, mentioned in item 23 of the Government report, have a limited application in the judicial practice, especially because of having as a fact the practice of torture, inhuman or degrading treatment. Most prisoners serve their sentence for crimes against property. Crimes liable to be judged according to art. 184,185,190,191,192,193 from the Criminal Code happen frequently in the society, but the judicial examination of these and especially criminal punishment is applied very seldom.

6. The free access to justice, mentioned in items 25 of the Government report is just a tendency, because there are still major problems: judges' unbiased decisions (dependent especially on influence of the judicial authority by legislative and executive authorities), delaying the case examination, judicial sentence execution.

7. There is no doubt about monitoring and settling certain issues by the parliamentary lawyer. Here is good to mention that the prisoners are limited in writing complaints[5]. Moreover, the recommendations of the parliamentary lawyer are taken into consideration only in some particular cases, not taking into account the general context. A lot of other prisoners have the role of petitioners.

8. The essence of the Prosecutor's Office activity is fighting against criminality. The status of the Prosecutor's Office of the Republic of Moldova is stated by the Law on Prosecutor's Office[6]. This Law integrated most stipulations regarding the Soviet Prosecutor's Office status and it has initially stipulated that the Prosecutor's Office supervises the accurate and unitary observance of laws. This stipulation was excluded by Law No. 551-XIII of 21.07.95, but the total supervision was kept. So the Prosecutor's Office is an institution over all state authorities (through the exercised supervision). The Prosecutor's Office activity is under departmental control, exercised by the General Prosecutor or by the Prosecutors, subordinated to him/her, under judicial control by the use of appeal and under parliamentary control. The departmental control is more of "internal use". In order not to show the non- professionalism of some employees of the Prosecutor's Office, it is preferred the errors and infringements committed by these employees not to be made public. According to the Law on Prosecutor's Office, the officials of the Prosecutor's Office report to the Parliament about the situation of lawfulness, but it is an indirect form of control, within which the Prosecutor's Office management is trying to show good indices of criminality detection.

9. In order to improve the professional education of the police employees, mentioned in item 44 of the Government report, training materials, offered by non-governmental national and international organizations can be used. Another problem is that a major part of the police employees do not have higher or secondary education in the field, fact that did not allow them to be acquainted with the main provisions on respecting and guarantying human rights.

10. CTP's recommendation regarding the Code of Ethics adoption, mentioned in item 44 of the Government report, is welcome. The real fact is that neither the judicial body, nor the Prosecutor's Office officially adopted a Code of Ethics. Any Code of Ethics supposes a control body, which would follow how the stipulations of such a code are respected (the problem of the punitive way of thinking among the employees of legal authorities).

11. Each preliminary detention isolator should have a registry to record basic information like name, day and time of internment into the center, the name of the employee who met the person. Presently not all detention centers have such registries.

12. Referring to items 54 and 56 of the Government report, it is to be mentioned that people receive medical care in preliminary detention isolators and in penitentiary institutions for deprivation of freedom sentence serving (within the Penitentiary Institutions Department of the Ministry of Justice) as an effect of using guns or other special means.
We would make a remark that doctors are not civil employees; they are military doctors, employed by the institution, which explains the partiality of the medical examination. The

[5] According to the Monitoring Report, performed by the Institute for Penal Reforms in Investigation pretrial unit No. 3 from Chisinau municipality, 33,1 percent of respondents of the anonym inquiry specified the infringement of the right to submit complaints, requests and letters to public authorities.
[6] Law on Prosecutor's Office No. 902-XII of 29.01.92

number of employed doctors is small, not satisfying all the needs of medical care. In general, the medical care of the prisoners in the penitentiary system is provided by the medical institution within each prison. If a special care is needed, it is provided in the Republican Hospital of general medical care from Pruncul, having a capacity of 160 beds or the Republican Tuberculosis Hospital from Tighina, having a capacity of 600 beds. According to data from Penitentiary Institutions Department, the real financial resources spent on medical care in comparison to the plan constituted 5.7 per cent, which speaks about the level of the medical care.[7].

The living conditions are often unbearable; you can hardly talk about respecting basic hygiene norms [8]:

- Overpopulation of preventive detention centers,
- Poor provision of bedclothes, soap; spreading of louses,
- The WCs are in the same room, where the prisoners stay, so that the latter have to go to the toilet in presence of the other prisoners.

Most often the prisoners suffer from the following diseases:

1. Infectious and parasitic diseases (including tuberculosis) - 28,8 per cent;
2. Respiratory illnesses - 16,2 per cent;
3. Mental illnesses - 14,6 per cent;
4. Digestive apparatus diseases - 10,8 percent.

Presently 765 tuberculosis diseased and 211 HIV-positive people are registered in the penitentiary institutions. There are no records of AIDS diseased.

13. The issue of overpopulation is a major one in preliminary detention isolators and in investigation pretrial units.

Statistical data are offered by the Penitentiary Institutions Department.
Situation on January 01, 2003

Penitentiary institution	***Maximum number planned***	***Real amount of prisoners***	***Percentage***
Prison No. l Bălţi	650	**708**	108,9%
Prison No. 2 Bender	510	318	62,35%
Prison No.3 Chişinău	1480	**1768**	119,46%

[7] The expenditures of the Penitentiary Institutions Department are financed from the state budget in year 2003 44.8 per cent of the required amount. Generally the budget financing varies between 35-45 per cent of the evaluated annual needs. Penitentiary institutions have the possibility to employ the prisoners. A part of expenditures for food and improvement of detention conditions are covered from the incomes, resulting from prisoners' employment. Nevertheless, the extra-budgetary resources are not enough to ensure acceptable detention conditions.

[8] This situation is described in the Report of most evaluation missions and documentation visits, for example the Evaluation Mission Report of the Penitentiary System, made by the Center for International Juridical Cooperation (CIJC) and Soros Foundation Moldova on October 1-6, 2000; the Report of Mr. Alvaro Gil-Robles; Commissioner of Human Rights of October 16-20, 2000; Evaluation Report on Penitentiary System, Yves Tigoulet and Jules Ziemons, documentation visit of July 15-22, 2001; the Report of the Government of the Republic of Moldova after the visit of the Committee for Torture and Inhuman and Degrading Punishments Prevention (CPT) of June 10-22, 2001; the Annual Reports of the Center for Human Rights from the Republic of Moldova; the monitoring reports of the non-governmental organizations from the Republic of Moldova.

Prison No.5 Cahul	410	**522**	127,3%
Prison No. 17 Rezina	450	370	82,2%
Total per prisons	**3500**	**3686**	**105,3%**

The overpopulation rate is calculated by taking into account the living space standard, stipulated by the legislation of the Republic of Moldova, which is of 2 m^2 for one prisoner and it infringes the stipulations of the international acts.
The rate of imprisonment is reduced by probation release before the term, replacing of the imprisonment term with a fine, the favoring calculation of the imprisonment term in case the prisoner is employed, as well as through amnesty. Using the amnesty eo ipso the necessary preparations to avoid recidivism. Often amnesties and recidivism rate proves not only the poor preparation of liberation on the basis of amnesty, but also insufficient supervision of former prisoners by police after they leave the detention places (inexistence of probation services).

14. Presently the training of the penitentiary institutions employees is performed by the Training Center from Goeni (for the people, newly employed in the penitentiary system). Training curricula are old, and the teaching staff does not have the needed training materials. The military subordination does not allow creation of an adequate atmosphere for training, using interactive methods.
Some of the penitentiary system employees were trained at the Academy of Police of the Republic of Moldova. Others benefited from trainings, organized by non-governmental organizations. The lack of an organized system for improvement of professional level impedes the training of a greater number of employees from penitentiary system.

15. 65 of the Government report states the existence of only one case of torture in the institutions, subordinated to the Ministry of Justice. This represents one more evidence of the efforts of state authorities to hide the cases of torture. The prisoners are often provoked to break internal rules and regime, and the penitentiary employees punish them for that. Moreover, the regime violation (illegal actions) by prisoners causes legal actions of the employees of the penitentiary system, resulting from the specific of these institutions.

16. The criminal law legislation stipulates a range of alternative possibilities in case of preliminary detention**.** Nevertheless, the preliminary detention is often applied, although it should be applied only in extraordinary cases. The new Criminal Procedure Code increases the number of preliminary measures, alternative to detention compared with the old Code. Besides the obligation not to leave the locality, stipulated by the old Code, the new Code also specifies the obligation not to leave the country. The procedure is similar in both cases. Personal protection and protection of organization are also stipulated by the new Code. A new issue concerning protection is the stipulation, according to which an individual that accepts to be the guarantee deposits an amount of 50-300 conventional monetary units[9] to the prosecutor's office or court. The organization shall deposit an amount of 300-500 units.

[9] The term of the conventional monetary unit was taken as a monetary equivalent resulting from inflation. This term is used by the new Criminal Code. Now, a conventional unit represents 20 lei (about 1.25 EUR)

This amount of money is not a bale and thus, we consider that the preliminary measure is less affective. In general, personal protection or the protection of an organization cannot be evaluated monetarily. Thus, this preliminary measure loses its essence, which would normally be to involve trustful persons in assuring adequate behavior of the accused.

Another preliminary measure that is not stipulated by the old Criminal Procedure Code and has a narrower field of application is temporary confiscation of the driving license. This measure shall be applied only in case of violations related to transportation either as a basic or as an additional measure.

Sending a military under supervision as a preliminary measure shall be applied towards the special subject also according to the old Code.

The person shall be submitted to custody of parents, tutors, fiduciary or other trustful persons, as well as to the management of the special education institution, in which the minor studies. Another stipulation not included in the old Code is responsibility of guarantors (from 10 to 25 conventional monetary units).

Another preliminary measure not stipulated by the old Code is home arrest that consists in isolating the person in his/her own house. The arrest shall not be applied to all the accused or suspected persons, but only to those blamed in committing serious or less serious delinquencies. For some categories of people, home arrest shall be also applied for very serious crimes (to persons over 60 years, 1st degree handicapped, pregnant women, women taking care of children younger than 8 years old).

Home arrest shall not be limited only to the interdiction to leave the house, but additional restrictions can be applied: interdiction of phone-calls, mail delivery and receipt, use of communication means, interdiction of talking to certain persons.

The new code also stipulates two ways of temporary liberation (under legal supervision and on bail).

If talking about temporary liberation under judicial supervision as a way of liberation, this shall be applied only for delinquencies from imprudence or deliberate delinquencies, for which the law stipulates a punishment of less than 7 years of imprisonment. Temporary liberation can be accompanied by certain obligations (not to leave the locality), to inform if changing home address, not to visit settled places etc.

This alternative was also stipulated by the old Code. The main issue is that the judges applied this alternative very seldom (if not at all), the reason being the fear of being accused of corruption and of being held responsible.

Temporary liberation on bail, another way of temporary liberation, shall be applied if the damage caused by the delinquency was eliminated, in case of delinquencies, for which the law stipulates up to 15 years of imprisonment. The amount of the bail, set by the judge, can be between 300 and 50000 conventional monetary units. Application of bail has two major problems. . First, it depends on admitting of causing damage and readiness to compensate for it. That is, the person is in the situation to confess his action, guilt and to compensate for the damage. If the person does not admit its guilt and, thus, does not compensate for the damage, he/she shall stay further under arrest. We think that by this fact the principle of the presumption of innocence is violated, resulting from the fact that till the sentence is passed, by applying bail, the court considers the person guilty of committing the crime. Secondly, the amount settled between 300 and 50000[10] units sometimes makes the application of bail difficult, due to a difficult financial situation and low income of the population.

[10] The average wage for the country is of 12.6 units

17. The persons under temporary arrest have a set of rights and obligations that are to be told them by authorities. According to the monitoring report made in the Preliminary Detention Isolator No. 3 from Chisinau, 28.5 per cent of respondents do not know their rights, 43.0 per cent know them partially and only 28.5 per cent know them completely. This fact considerably impedes the authorities to contest illegal actions. Some arrests prove to have no legal ground[11]. In compliance with the monitoring report, made on Preliminary Detention Isolator No. 3 from Chisinau, only one of three arrested people (29.4 per cent) contested the application of preliminary arrest, the others did not contest the temporary arrest by different reasons: 28.4 per cent because they were unfamiliar with the way of contestation**,** 28.4 per cent considered that the situation would not change in case of contestation, 12.5 per cent considered the arrest legal and adequate, and 1.3 per cent did not contest because they were physically or psychically abused.

18. The right to compensation specified in item 81, 82 of Government report is also stipulated by the Constitution of the Republic of Moldova and the Law on ways of compensation for damage, caused by illegal acts of the criminal investigation units and of preliminary inquiry units No. 1545-XIII of 25.02.98.
Practical application of these provisions is faulty. The amounts set for compensation for the damage caused by being under temporary arrest (losing the job, relationships with relatives, moral damage, lost income) is assessed to miserable amounts of 1500-2000 lei (about 95-130 EUR).

19. The right to defense is guaranteed in compliance with national legislation. But the legal assistance given by office lawyer is not efficient, most of them not being interested to provide office legal assistance, because the payment is low and not made in time.

20. Some provisions that can be considered as inhuman or degrading treatment can be identified even in national legislation. Thus, the Law on preliminary arrest No. 1226-XIII of 27.06.97, art. 32 and 33 stipulates forced alimentation of the prisoner if he/she refuses to eat: the persons that are in danger as a result of refusing to eat, psychically handicapped persons and foreign citizens and people with no citizenship!

21. In what the term of detention under arrest, mentioned in item 185 of Government report, is concerned, sometimes it is prolonged on no legal ground. According to art 116 of Criminal Procedure Code in force, the preliminary inquiry must be finished within two months, with the possibility for the sector prosecutor, the prosecutors similar to this or the deputy prosecutors to prolong the term by up to 6 months, for district prosecutor or deputy prosecutors up to 9 months; for the general Prosecutor – even more time. The results of the research made in Pre-trial Unit No. 3 from Chisinau show that within the first two months only 34.4 per cent of files were examined in the inquiry. 12.2 per cent of files were examined in 3-6 months, 16.3 per cent in 6-9 months, 7.6 per cent in 9-12 months and 11.5 per cent in more than 12 months. The prolongation of the period of detention under arrest shall be made on prosecutor's request, by the judge who issued the arrest warrant or other judge of court acting in the area supervised by the preliminary inquiry authority. This prolongation can be made many times. In the case of 23 percent of

[11] In 2002 6391 petitions for issuing preliminary arrest warrants were submitted and examined in the courts of the Republic of Moldova, among which 5367 or 84 per cent were accepted and the arrest warrant issued, 1015 or 15.9 per cent were rejected, and 9 were dismissed**.** During year 2002, 559 of court decisions concerning the issue of arrest warrants were litigated. 105 decisions regarding the issue of arrest warrant or 18.8 per cent were canceled and the persons were released.

the people detained in Pre-trial Unit No.3 from Chisinau the term of arrest was not prolonged (because they have been in the isolator for a short period of time), to 20.6 per cent the term was prolonged once, for 23.8 per cent of respondents – twice, for 16.4 per cent – thrice, for 16.2 per cent – four times and more.

According to the information provided by the Supreme Court of Justice, in 2001, 2321 petitions for prolonging the term of arrest were submitted in courts. Of which 2070 (or 89.3 per cent) were accepted, the period of arrest being prolonged and 221 (or 9.5 per cent) were rejected and 30 cases were dismissed. In 2002, 2359 petitions for prolonging the term of detention under arrest were submitted, among which 1941 (or 82.3) were accepted, 246 (or 10.4) were rejected and 172 dismissed.

22. Referring to item 217 of Government report, it is necessary to mention that the reliminary detention isolators under the Ministry of Internal Affairs are in a deplorable situation in what the treatment of people and detention conditions are concerned. These institutions are under permanent supervision of the Committee for Torture Prevention. When being brought, the people do not undergo medical examination, making difficult the presentation of evidence in case of torture, other inhuman and degrading treatments. The tendency to show good indices of criminality detection, sometimes force the inquiry bodies to apply physical or psychical constraint in order to force the suspect to make false depositions. Art. 41/1 of the existing Criminal Procedure Code stipulates the right of the suspect not to make depositions against him/herself, referring to truthful facts. False declarations are forbidden. The buildings are poorly ventilated, sometimes being even situated in the basement of police stations; insufficiently illuminated, the natural light is limited (narrow windows placed at the ground level), and the artificial light is partial; the access to clean water is limited, the hygiene is inadequate.

    If the investigation pre-trial units subordinated to the Department of Penitentiary Institutions subordinated to the Ministry of Justice are over-populated, the people remain in the preliminary detention isolators of MIA for a long period.

23. The situation on January 1, 2003 in the penitentiary institutions of the Republic of Moldova, according to the information provided by the Department of Penitentiary Institutions of the Ministry of Justice of the Republic of Moldova are presented as follows:

Name of penitentiary institutions	**Maximum number planned**	**Prisoners**	**Percentage**
CC - 1 Taraclia	150	121	80,7
CC-3 Leova	580	356	61,4
CC- 4 Cricova	1375	1252	98,1
CC- 6 Soroca	1300	1114	85,7
CC- 7 Rusca	310	236	76,1
CC- 8 Bender	510	452	88,6

CC- 9 Pruncul	830	745	89,8
Republican Hospital of General Medical Care “Pruncul”	200	308	154
CC-10 Goeni	510	434	85,1
CC- 14 Basarabeasca	170	146	85,9
Prison - 15 Cricova	560	445	79,5
CC-18 Branesti	1130	1076	95,2
CC-19 Goeni	250	179	71,6
CC Lipcani	210	156	74,3
Settlement unit of No.1 Bălţi prison	100	101	101
Settlement unit of No.5 Cahul prison	100	74	74
. **Settlement unit of No.17 Rezina prison**	40	22	55
Total on correction colonies	***8325***	***7217***	***86,7***
Social adoption sector under CC -3 Leova	30	-	-
Social rehabilitation sector of No. 17 Rezina Prison	50	21	42
Total on social reabilitation institutions	80	21	25,25

The period of detention proves to be long.

Up to 1 year	37 (0,49%)
Between 1 — 3 years	523 (6,95%)
Between 3 - 5 years	1327 (17,63%)
Between 5-10 years	3653 (48,54%)
Between 10 — 15 years	1440 (19,14%)
Between 15—25 years	490 (6,51%)
For life	55 (0,73%)
Total	**7525 (100%)**

24. At the moment, there is no probation service in the Republic of Moldova. This would allow: in the phase of pre-penitentiary gathering of evidence to prepare reports regarding

the personality of the accused, in order to avoid unfounded preliminary arrest and to contribute to a easier individualization of the punishment, including the deprivation of liberty; in the penitentiary phase – it would allow to direct and plan the sentence serving for a further socialization of the person; in after-penitentiary phase – to contribute to social rehabilitation after being released from detention.

25. **The peculiarities of detention of women and children.**

It is alarming that in the preliminary detention isolators and in pre-trial units the minors are often detained together with adults, including with those accused of serious crimes. The penitentiary institutions try to place separately the minors and adults, but financial resources do not always make it possible. Women are detained separately from men.

On January 2003 321 women and 122 minors served their punishment in the penitentiary institutions of the Republic of Moldova.

Age	Women	Minors
Up to 15 years		1
16 years		4
17 years		24
18 years		50
19 – 21 years	7	43
22 - 30 years	129	-
31 – 40 years	83	-
41 - 50 years	74	-
51 - 55 years	18	-
55 - 60 years	6	-
Over 60 years	4	-

Peculiarities of convicted women and minors depending on committed crimes	Women	Minors
Calculated homicide art. 88, 89, 92	77	14
Serious intentioned physical abuse (art. 95)	20	1
Rape (art. 102,103)	3	8
Stealing of goods (art.119)	99	64
Robbery (art. 120)	19	13
Pillage (art. 121)	18	14

Large scale stealing of property (art.123[1])	26	1
Hooliganism (art. 218)	-	1
Violations related to drugs (art. 225)	43	2
Other violations	16	4
Total	321	122

Classification of women and minors according to the number of convictions	Women	Minors
First	151	115
Second	82	6
Third	42	1
Fourth and over	46	-
Total	321	122

In general, minors are given penitentiary punishment only in exceptional cases, when social danger of the violation and the personality of the accused require the isolation of the minor from society and his education in a correction colony. The conviction of minors increased from 1894 in 2001 to 2160 in 2002 (by 14 per cent). The number of convictions for serious crimes also increased (487 minors have been convicted for this kind of crimes). Statistical data regarding the structure of punishment measures for 2001 and 2002 are shown below.

	2001		2002	
Convicted people	People	%	People	%
	1894		2160	
Penitentiary punishment	227	12	294	13,6
Fine	270	14,2	380	17,6
On probation	1018	53,8	1261	58,4
With postponed execution of sentence	52	2,7	5	0,2
Other punishment	327	17,3	220	10,2
Application of art. 42	228	12,0	24	1,1

Compared to adult prisoners, the minors enjoy a better treatment while serving the penitentiary punishment. These are detained in the Correction Colony in Lipcani village were the basic rules of living are respected. Women are detained in the penitentiary for women in Rusca village.

26. The access to justice is limited, when the examination of the cases in order of appeal and recourse is delayed. It can happen for many reasons. According to the results of the

monitoring report made in the investigation pre-trial unit No. 3 of Chisinau. 53.2 per cent contested the appeal sentence. The appeal review was performed within 30 days in 23 per cent of cases, between 30 and 60 days in 30 per cent of the cases, 60-90 days in 35.5. per cent and over 3 months for 32 per cent of the cases. 46.8 per cent of the investigated persons contested the sentence. The contestation is to be reviewed in a reasonable period. Within 30 days 17.8 per cent of the cases have been examined, within 30-60 days – 17.8 per cent, and 64.3 per cent of the cases have been examined within more than two months.

Thus, for subjective and objective reasons, the persons are under arrest for very long periods. The situation in the investigation pre-trial unit no. 3 of Chisinau is the following:

12 per cent of the respondents spend in the institution up to 30 days;
21.4 per cent of the respondents spend 30 and 90 days;
15.4 per cent of the respondents spend 3 and 6 months;
17.6 per cent of the respondents spend 6 and 12 months.

Every third defendant spends more than 1 year in the investigation pre-trial unit and 20 per cent of the respondents spend in the pre-trial unit more than 2 years.

27. In 2002, the court reviewed the petitions for treatment of alcoholism and drug addiction of 154 persons. A great part of these petitions have been contested. As a result, 49.3 per cent of examination of the contestation the petitions have been annulled. It is clear that the petitions for treatment were mostly abusive.

CONCLUSIONS AND RECOMMENDATIONS

The national legislation creates the adequate framework for preventing torture, inhuman and degrading treatment. Although the legislation has a range of deficiencies, torture, inhuman and degrading treatment are caused especially by exceeding of work attributions by employees of legal authorities and faulty application legislation. The financial situation of the state is the main reason of inadequate detention conditions.

It is recommended:

- Ø To change the provisions of the normative acts that do not meet the stipulations of the international normative acts related to torture, inhuman and degrading treatment;
- Ø To review the state punishment policy regarding lenient violations and to implement alternatives to detention;
- Ø To analyze and review the way of social rehabilitation, because only a part of it exists at the moment;
- Ø To bring to the attention of legal bodies during the process of training and level improvement of professional education about the provisions of normative acts and the rules of fighting torture, inhuman and degrading treatment;
- Ø To bring notice about the observance of procedure norms in case of criminal prosecution, preliminary inquiry, court review, service of penitentiary sentence;
- Ø To increase control, especially punishment of people who admitted or committed deliberate actions of torture, inhuman and degrading treatment;
- Ø To provide material/financial support to the system of criminal justice in order to improve detention conditions;
- Ø To involve non-governmental organizations in the supervision process of the system of criminal justice, especially in the cases of inhuman and degrading treatment, as well as to use available resources of non-governmental organizations in order to increase the level of professional training of legal bodies.

The situation in the ***preliminary detention isolators*** – both the conditions of detention and the attitude of legal bodies - is deplorable.

It is recommended:

- Ø To call the attention of criminal investigation bodies regarding flagrant offences in preliminary detention isolators;

- Ø To fulfill the provisions of the legislation in force on the registration, medical care, medical examination, other stipulations of the existing legislation regarding the people from isolators of preliminary detention;

- Ø To make a thorough selection and training of new employees in order to respect normative acts and human rights;

- Ø To improve material conditions of detention within the limits allowed by the available financial resources;

- Ø To call the attention of monitoring, supervision and control bodies on flagrant offences committed in the preliminary detention isolators.

The situation in the ***pretrial units*** regarding the conditions of detention continues to be deplorable, although it is better compared to the preliminary detention isolators. The transfer of the pretrial units under the supervision of the Ministry of Justice improved the situation.

It is recommended:

- Ø To call the attention on respecting the stipulations of the legislation on the distribution of prisoners according to categories, in order to detain separately women and minors, as well as to exclude criminal influence over people who are in pretrial institutions for the first time;

- Ø To exclude or diminish interdictions regarding packages, parcels and banderoles, in order to improve feeding and hygiene conditions;

- Ø To ensure an optimal regime of detention, resulting from the fact that the people under preliminary arrest are not convicted and their guiltiness or innocence is to be proved; respectively, adequate treatment of these is required.

The ***penitentiary institutions*** are in a better situation than the pretrial units. In a great part, the conditions of detention are deplorable. Nevertheless, the necessary measures for their improvement are taken.

It is recommended:

- Ø To stimulate the educational attitude compared to the punishment attitude of the penitentiary system employees;

- Ø To exclude or diminish the interdictions regarding packages, parcels and banderoles in order to improve feeding and hygiene conditions;

- Ø To allow penitentiary institutions to dispose of own material basis and to use the labor of prisoners, in order to improve detention conditions and to improve personal resources of prisoners;

- Ø To elaborate training programs in case of release from detention institutions in order to reduce the recidivism rate.

A part of the actions of torture, inhuman and degrading treatment are directly conditioned by ***deficient functioning of the legal system***;

It is recommended:

- Ø To review the way of giving an office lawyer in order to stimulate the interest of the latter towards a high-level legal assistance;

- Ø To review Prosecutor's Office status in order to undertake the responsibilities regarding preliminary inquiry;

- Ø To ensure a real mechanism to guaranty the independence and unbiased decision of the judge: professional, organizational, material warranties.

- Ø Make public the issue of non-respecting the reasonable terms of cases examination.