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RIGHTS OF PRISONERS IN MOLDOVA IN THE LIGHT OF INTERNATIONAL STANDARDS

Master's thesis

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INTRODUCTION

"From very early times, long before the formation of organized governments, the community has assumed the right to protect itself against the persons accused or convicted of breaking the law within its borders, by the corporate action of law, as it does in war against exterior foes." [1] For doing so, states had recourse to different forms of punishment (i.e. the expulsion of the person from the locality, hitting with stones[2] etc.). The statement of Hugo Grotius in his remarkable work on The Law of War and Peace- *Poena est malum passionis quad infligitur propter malum actionis*, which says that punishment signifies the pain of suffering, inflicted for evil actions[3], clearly represents the perception of the punishment in earlier societies as an act which by its nature had to inflict suffering on the perpetrators. Even though the punishment evolved in the form of the imprisonment of the offenders, a major feature that remained untouched was the ill-treatment of prisoners. The crux of the early prisons was characterised not only by the limitation of movement of prisoners, but most of the times, they were formed around the denial of their constitutional, civil, or even basic human rights.

Authors Dirk van Zyl Smit and Sonja Snacken mention the latter half of the 18th century as a crucial period for prisons evolution, "[…] as the purpose of punishment shifted from the arbitrary infliction of pain to more deliberate disciplining of offenders, imprisonment for the first time bec[oming] a key form of punishment"[4].

Through time, the world has shifted from the idea that prisoners are the slaves of the society, with no rights but obligations, to the idea that the influence which society has on the prisoners has to be diminished and their rights to be recognized and protected. Until then, the prisoners who dared to complain of alleged violations within the prisons did so at their peril. Many countries didn't even have a mechanism for prisoners' grievance against the institutions and officials. It was inevitable the moment when the prisoners have raised against the mistreatment or torture they were subjected to and started to fight for being heard, protected and treated like anybody else.

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[1] S. M. Fry. Protecting the human rights of prisoners, The UNESCO Courier (4), 2018, Accessible: https://en.unesco.org/courier/2018-4/protecting-human-rights-prisoners (13.09.2019)

[2] G.M. Calhoun. The Growth of Criminal Law in Ancient Greece, Law Book Exchange LTD Union, New Jersey, 1999, p. 2

[3] Hugo Grotius. On the Law of War and Peace- translated from the original Latin *De Jure Belli ac Pacis* by A.C. Campbell, Batoche Books, Kitchener, 2001, p. 182

[4] D. van Zyl Smit, S. Snacken. Principles of European Prison Law and Policy. Penology and Human Rights. Oxford University Press, New York, 2009, p. 1

It was then crucial for the international community to reflect on the prisoners' rights and adopt several legally binding instruments for making the States to compline with the international standards of prisoners' rights and their obligations in that regard.

Foremost, it is relevant to clarify the meaning of the terms "detainees/ detained persons" and "prisoners/ imprisoned persons", as they can be met in the researched sources or mentioned throughout the present paper. The author finds necessary to refer to the definitions given in the 1988 General Assembly Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, where detained person/ detainee means "any person deprived of personal liberty except as a result of conviction for an offence"[5] and imprisoned person/ prisoner "means any person deprived of personal liberty as a result of conviction for an offence" [6]. On the other hand, in the Standard Minimum Rules for the Treatment of Prisoners[7], the term "prisoner" is used in a generic sense covering both untried and convicted persons. As it can be concluded, *mutatis mutandis*, detaining facilities/ places of detention can be described as places where any person deprived of personal liberty except as a result of a conviction for an offence are detained, whereas prisons/ places of imprisonment have to be understood as places where any person deprived of personal liberty as a result of a conviction for an offence are imprisoned.

The Republic of Moldova has undertaken many international commitments, both within Europe and within the UN, and has created a set of reforms of the judicial system. The new laws were adopted in accordance with international human rights treaties. Specifically, among the many international human rights treaties, the Republic of Moldova has signed and ratified: the 1966 International Covenant on Civil and Political Rights (hereinafter referred to as ICCPR)[8], the 1984 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as UN CAT)[9] and the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as ECPT)[10]. Thus, the Republic of Moldova has placed human rights as a fundamental principle at the centre of

[5] United Nations General Assembly resolution 43/173 on Body Principles for the Protection of All Persons under Any Forms of Detention or Imprisonment. 9.12.1988
[6] *Ibid.*
[7] Standard Minimum Rules for the Treatment of Prisoners. Adopted by the First United Nations Congress on the Prevention of Crime and Treatment of Offenders. Geneva, 1955
[8] International Covenant on Civil and Political Rights. Adopted and opened for signature, ratification and accession by UN General Assembly resolution 2200A(XXI), 16.12.1966, e.i.f 23.03.1976
[9] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Adopted and opened for signature, ratification and accession by UN General Assembly resolution 39/46. 10.12.1984, e.i.f. 26.06.1987
[10] European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Strasbourg 26.11.1987, e.i.f. 01.02.1989

its concerns. Consequently, it has to be viewed that the protection of prisoners' rights is among the priorities and obligations that the Moldovan government has undertaken. However, the facts show that there is still widespread practice of torture, inhuman and degrading treatment perpetuated especially in cases of provisional detention and the application of prison sentences.

The goal of this research is to analyse violations of prisoners' rights in Moldova. This entails the establishment of the legal impediments that are contributing to the violations of prisoners' rights. Similarly, the author examines what are the actions of the Moldovan Government towards the eradication of the prisoners' rights violations. Ultimately, this paper seeks to propose solutions that can be applied, for example, in the penal and prison policy reforms.

Consequently, the research problem elaborated in this paper constitutes the shortcomings of the legislation of the Republic of Moldova with regard to prisoners' rights, which lead to their violations.

The paper is constructed around the hypothesis that the Moldovan legislation and court practice are not in compliance with the international standards for the treatment of prisoners. Conditions in most prisons and detention centres still remain harsh and amount to inhuman and degrading treatment owing to, *inter alia,* poor sanitation, lack of privacy, barred or insufficient access to outside walks, and a lack of facilities adapted to persons with disabilities[11]. The constant subjection of persons to this kind of conditions is a grave infringement of human dignity. More than that, this specific treatment towards persons deprived of their liberty in certain cases is serious enough as to amount to torture, inhuman or degrading treatment. Therefore, at the first stages of this dissertation the author believes that whilst the international instruments provide for minimal conditions of living for prisoners, the Moldovan law only partially incorporates these international standards, being, in the end, ambiguous and inefficient.

To achieve these goals within this master's thesis, the author will limit the analysis to three main challenges of prisoners' rights, namely: (1) the conditions of detention, (2) overcrowding and (3) healthcare. It has to be mentioned, that the research will cover only the data coming from the territory which is under the jurisdiction of the Republic of Moldova. Thus, Transnistria[12] will not be

[11] Country Reports on Human Rights Practices for 2018. - United States Department of State. Bureau of Democracy. Human Rights and Labor, 2018, p. 5

[12] Transnistria is a separatist enclave in Moldova. It was not recognized by any state. However, the Government of the Republic of Moldova has no jurisdiction over that area.

researched due to lack of resources and added complexity of state responsibility in this case. As an ultimate objective of this paper, the author wants to highlight the necessity of finding solutions to the researched issues (i.e. penal and prison policies reforms).

It is widely viewed that that prison overcrowding has nothing but a negative effect, both on the mental and physical health of the prisoners. The issue in question comes along with concerns for precarious material conditions of imprisonment and inability of the competent authorities to provide adequate health-care for the prisoners. Therefore, the author argues that the selected issues for research within this paper do not represent random problems which appear in a separate and unforeseen way. Rather than that, they have to be perceived as inter-related and mutually-generating issues.

For the purpose of the paper, the following questions will have to be answered:

(1) What are the international standards regarding the detaining and imprisonment conditions in prisons and detaining facilities?
(2) Is Moldovan legislation in compliance with international standards?
(3) Is the state's practice in compliance with international standards?

Whilst it is true that the subject of prisoners' rights is broadly treated by international scholars, the author finds with regret that the Moldovan highly appreciated scholars are reluctant to research on this topic. The author assumes that this is caused by the indirect strong governmental pressure which is exercised upon academia. As the government of the Republic of Moldova fails to prevent and eradicate prisoners' rights violations and it tends to leave this matter under a veil of obscurity, the scholars who can actually bring awareness of these issues are choosing safer domains for research. For instance, rather than focusing on legal aspects of imprisonment and on prisoners' rights the research is focused on the psychological effects of imprisonment, the description of the daily life of prisoners, their perception of family life and family visits to the prisons. A considerable amount of material is written on re-socialization of prisoners after release. Several guides are elaborated to help the families of the prisoners to deal with the new status of their family member during and after the atonement of the sentence. To highlight, the following works can be mentioned: "Updating the self in young ex-prisoners"[13] by Victoria Plămădeală; "The status of the prisoner in the light of the

[13] V. Plămădeală. Actualizarea sinelui la tinerii ex-deținuți (Updating the self in young ex-prisoners). Psihologie. Pedagogie specială. Asistenţă socială. Nr. 3. 2017. p. 27-33

principle of universality"[14] by Alexandru Arseni and Olesea Panchiv; "Report on assessing the needs in the field of social reintegration of persons released from detention"[15] by Valentina Prițcan [et.al]. It is worth mentioning that the issue of prisoners' rights violations was not researched by foreign academia.

Since the approach of the issues related to prisoners in the Moldovan prisons and penitentiaries which are researched in the current paper is mainly legal, elaborated from a human rights perspective, focused on prisoners' rights and violations of those rights, the paper represents a novel academic work in the field.

In the foreground of the research, the author will refer to the concluding observations of international bodies under main legal instruments for the rights of persons deprived of their liberty, *inter alia,* ICCPR, UN CAT, ECPT etc. The mentioned instruments are the main sources of reference, among other legal instruments.

A major reference will be made to the European Court of Human Rights' (hereinafter ECtHR) rulings in several, even key cases, (i.e. Modârcă v. Moldova[16], Ciorap v. Moldova [17], Affaire Shishanov C. République De Moldova [18], Draniceru v. the Republic of Moldova [19] etc.), where the court has found the Moldovan authorities guilty of subjecting the prisoners to inhuman or degrading treatment under Article 3 of the European Convention on Human Rights (hereinafter ECHR)[20]. At the same time, the author has to highlight the shadow reports of the civil society concerning the prisoner's rights violations. That being said, those reports will represent a due source of statistical information and practical cases.

Namely, because of the often negative rulings and reports of the international bodies on the Republic of Moldova, the topic is of great interest and, in fact, necessary to research not only for Moldovan researchers and practitioners but for the whole Moldovan society. Besides the actual damage which is inflicted to the applicants, every time the country is found guilty of violating the prisoners' rights, the government has to pay to these people compensations, which is an immense

[14] A. Arseni, O. Panchiv. Statutul deținutului prin prisma principiului universalității (The status of the prisoner in the light of the principle of universality). Chisinau, 2018, p. 434-441
[15] V. Prițcan [et. al]. Evaluarea necesităților în domeniul reintegrării sociale a persoanelor liberate din detenție : Raport (Report on assessing the needs in the field of social reintegration of persons released from detention). Chisinau, 2006
[16] ECtHR 14437/05, *Modarca v. Moldova*
[17] ECtHR, 12066/02, *Ciorap v. Moldova*
[18] ECtHR 11353/06, *Affaire Shishanov C. République De Moldova*
[19] ECtHR 31975/15, *Draniceru v. the Republic of Moldova*
[20] European Convention on Human Rights, Rome, 04.11.1950, e.i.f. 03.09.1953, Article 3

issue for a country with a poverty-stricken economy. More than that, it can also represent interest to other countries which face similar shortcomings regarding their penal and prison policies and are in a process of their reformation.

The method used by the author in the present paper is mostly analytical. This method allows the author to reflect on the issues of concern as being a permanent feature of the Moldovan prisons, despite the monition for the Moldovan authorities over the years. An assessment of the Moldovan legislation with regard to minimum standards on the rights of the persons deprived of their liberty will be done to establish whether it is in compliance with the international standards. For that purpose, the author will complement the analytical method with the comparative method. On the same line, the national legislation has to be assessed to determine in which way it inhibits the endowment of prisoners with their rights. A due part of the thesis will constitute the analysis of reports and concluding observations of the monitoring bodies.

The paper consists of four chapters. The first chapter lays as the foundation of the thesis, drawing attention to the international (universal and regional) standards of the rights of prisoners. The chapter explains the notion of prisoners, detainees and persons deprived of their liberty and bring a thorough understanding of what is generally understood by prisoners' rights. At the same time, the chapter is divided into 3 subchapters designed to elaborate on the following standards: prohibition of torture and ill-treatment, prison conditions and healthcare. The author refers to the already mentioned legal instruments, which are not only setting the basic principles for application of prisoners' rights, but also confer obligations on the state parties for that scope.

The second chapter concerns the legal and institutional framework of the Republic of Moldova. It analyses what are the national specifics of the prisoners' rights standards. The chapter also elaborates on the provision of imprisonment sentence and the pre-trial detention.

The third chapter envisions the analyses of the concluding observations of the monitoring bodies under the instruments mentioned above. As stated previously, the author will focus on 3 main issues, elaborated within 3 subchapters, which the author finds of great importance and main concern: conditions of detention, overcrowding, right of prisoners to healthcare. Moreover, the author describes the preventive and compensatory remedy for inadequate detention conditions, which was recently adopted by the Moldovan Government with the intention to reduce the great number of claims before the ECtHR.

The fourth chapter comes as a solution to the legal and practical issues assessed by the author throughout the research. As the purpose of the research is not solely the analysis of the prisoners' rights violations in the Republic of Moldova, but also ways of their eradication and prevention for future, the author proposes the revision of the penal policy of the Republic of Moldova (i.e. alternative punishments instead of imprisonment), which are designed to reduce the considerable number of prisoners in the Moldovan prisons.

Key Words: *Detainees, detention centres, human rights, prisoners, Republic of Moldova*

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1. UNIVERSAL AND REGIONAL STANDARDS ON PRISONERS' RIGHTS

It is substantial to elaborate on the importance of the rights of prisoners. Since they represent law violators, or they are waiting for a trial, in the eyes of the society they are perceived as the weak cell, persons who as a punishment for the crimes committed, deserve to be deprived of their liberty and other rights. There can be a misunderstanding, for example, that support for decent and humane conditions for prisoners in some way implies a lack of sympathy for victims of crime.[21] The question is what rights can be they deprived of or limited in, and if so, to what extent? The prisoner is virtually cut off from outside life, and thus vulnerable to treatment which violates his or her rights, left to a considerable extent to the mercy of the police and prison officials.[22] Nevertheless, Article 1 of the General Assembly Basic Principles for the Treatment of Prisoners prescribes that "[a]ll prisoners shall be treated with the respect due to their inherent dignity and value as human beings"[23]. Article 5 of the same resolution emphasizes that all prisoners, in the same degree and in a likely manner as any other person, have to enjoy the realization and protection of the rights prescribed in the Universal Declaration of Human Rights (hereinafter referred to as UDHR) and other United Nations covenants. Those rights can be limited only in circumstances that are proven to fulfil the necessity of imprisonment.[24]

1.1 Standards on prohibition of torture, inhuman and degrading treatment

The very first standard that is found on the basis of all prisoners' rights is the prohibition of torture, inhuman and degrading treatment. This standard can be denominated in various ways, depending on the legal and academic sources some may refer to. Very often the notion of prohibition of torture, inhuman and degrading treatment can be supplemented by the word punishment, in the end, this way representing a broader concept and making the formulation more specific. In contrast, some tend to use the succinct "torture and ill-treatment" notion. Others refer only to the broad term of ill-

[21] A. Coyle. Non-Governmental Organizations.- D.van Zyl Smit and F. Dünkel (eds.), Imprisonment Today and Tomorrow, 2nd Ed. Kluwer Law International, The Hague/ London/ Boston, 2001, p. 741
[22] Chapter 8: International Legal Standards for the Protection of Persons Deprived of their Liberty. - Human Rights in the Administration of Justice: A manual on Human Rights for Judges, prosecutors and Lawyers. – OHCHR, International Bar Association. United Nations, New York and Geneva. 2003, p. 317
[23] United Nations General Assembly resolution 45/111 on Basic Principles for the Treatment of Prisoners, 14.12.1990, Article 1
[24] *Ibid.* Article 5

treatment which is meant to cover all the torture and other methods of abuse prohibited by international law.[25]

The customary definition of torture as set out in Article 1 of the UN CAT, entails torture as:

> *"any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."*[26]

To clarify, it should be mentioned that the difference between torture, inhuman and degrading treatment or punishment or ill-treatment lays in the gravity of the acts to which the person is subjected to. To qualify an act as one of those terms, the circumstances of each individual case have to be ascertained. It might be that the behaviour of the offender is severe enough to represent an obvious act of torture. In other cases, the specific factors have to be taken into consideration, such as the vulnerability of the victim (age, gender, status etc.), the methods of inflicting the suffering, the environment etc. Altogether those factors might not reach the needed threshold for the violation to amount to torture, and it should be rather qualified as a cruel, inhuman or degrading treatment or punishment.[27]

More than that, the right to not be subjected to torture, inhuman and degrading treatment represents a non-derogable and absolute right, which cannot be limited even in exceptional situations.

It is admitted by the Human Rights Committee and the Committee Against Torture that the conditions of imprisonment can amount to inhuman or degrading treatment or punishment, and in acute circumstances, to torture. Nevertheless, the prison system, along with the penal and prison

[25] What is the definition of torture and ill-treatment?. International Committee of the Red Cross. 15.02.2005, Available at: https://www.icrc.org/en/doc/resources/documents/faq/69mjxc.htm
[26] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment … *op. cit.*, Article 1
[27] Interpretation of Torture in the Light of the Practice and Jurisprudence of International Bodies. OHCHR. p. 2, Available at: https://www.ohchr.org/Documents/Issues/Torture/UNVFVT/Interpretation_torture_2011_EN.pdf

policies, may generate circumstances "conducive to torture or ill-treatment, or, on the contrary, an environment in which such acts are not tolerated."[28]

The collocation that "[n]o person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment"[29] is indeed raised to the rank of principle, as it can be found, in a way or another, in all major human rights instruments. For instance, the UDHR[30] envisages this principle in Article 5. ICCPR contains the principle in Article 7. Even though concise in the way it was formulated, this article entails far more prescriptions. For instance, General Comment No. 20 of ICCPR[31] states that in order to guarantee effective protection of prisoners, States have to ensure that prisoners are held in institutions which are officially registered and recognized as places meant for carrying out the imprisonment punishment. At the same time, registries have to be created which comprise the name of each prisoner and his personal information. Those registries have to be made accessible for everyone who might be concerned, including the family members of the prisoner, as well as his friends. Equally important, States have to guarantee that the prisons are dispossessed from any means, machinery, which are adapted to inflict torture, inhuman or degrading treatment.[32]

Furthermore, the United Nations Human Rights Committee has established that the obligation to treat all the prisoners with due respect to their inherent dignity and taking into consideration the humanity principle has to be applied in relation to every single prisoner, eliminating any grounds for discrimination. At the same time, the fulfilment of the obligation in issue cannot be compromised by the lack of the financial and other material resources in one state, and its incapacity to acquire those. For the assessment of whether a State is successfully fulfilling this obligation, the Committee shall take into consideration the consistent United Nations standards for the treatment of prisoners.[33]

The UN CAT, as a special instrument for reference, also contains provisions regarding the training and information of the officials, besides the general prohibition of torture, inhuman and degrading treatment or punishment. Article 10 of the convention prescribes that "[e]ach State shall ensure that education and information regarding the prohibition against torture are fully included in the training of law

[28] Torture in International Law, a guide to jurisprudence. – Association for the Prevention of Torture (APT), Center for Justice and International Law (CEJIL). 2008, P. 38
[29] UN Body Principles for the Protection of All Persons under Any Forms of Detention or Imprisonment, principle 6
[30] Universal Declaration of Human Rights. United Nations General Assembly Resolution 217 A, Paris, 10.12.1948
[31] ICCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment). Human Rights Committee, 10.03.1992, par. 11
[32] *Ibid.*
[33] Chapter 8: International Legal Standards for the Protection of Persons Deprived of their Liberty … *op. cit.*, p. 338

enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment"[34]. On the same line, Article 11 lays down that "[e]ach State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture."[35]

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (hereinafter referred to as OPCAT)[36] comes as a complementation to the convention and as the main objective, it establishes an obligation over the State Parties to authorize a National Preventive Mechanism. Amongst its functions, the OPCAT established the Subcommittee on Prevention of Torture. The Subcommittee in question has unrestricted access to all places where persons may be deprived of their liberty, for example, pre-trial detention centres, immigration detention centres, youth justice centres, mental health and social care institutions.[37]

One of the basic regional legal instruments for prevention of torture, inhuman and degrading treatment is the previously mentioned ECHR, which sets the corresponding provision in Article 3. Under Article 3, the prohibition of ill-treatment particularly concerns persons who have been arrested and detained. The conditions of detention must be compatible with human dignity: the manner and method of the execution of a prison sentence must not subject the prisoner to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention.[38]

In addition, the ECPT has arguably proved to be one of the most innovative and vigorous international human rights mechanisms yet created.[39] Despite the passing of the prohibition of torture and inhuman or degrading treatment or punishment into customary international law, the practice of torture continued in many parts of the world and there were no inspectoral mechanisms to press home on states their obligation to prevent it.[40] Therefore, the main focus of the Convention,

[34] UN CAT, Article 10
[35] *Ibid.*, Article 11
[36] Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Adopted by the UN General Assembly resolution A/RES/57/199 on 18.12.2002, e.i.f. 22.06.2006
[37] The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. A Guide to Reporting the Committee against Torture.- REDRESS. Ending Torture, Seeking Justice for Survivors, 2018, p. 19
[38] J.-F. Renucci. Introduction to the European Convention on Human Rights. The rights guaranteed and the protection mechanism. Council of Europe Publishing, Strasbourg, 2005, p. 16
[39] R.Morgan. The European Committee for the Prevention of torture and Inhuman or Degrading Treatment or Punishment.- D.van Zyl Smit and F. Dünkel (eds.), Imprisonment Today and Tomorrow, 2nd Ed., Kluwer Law International, The Hague/ London/ Boston, 2001, p. 717
[40] *Ibid.*, p. 718

besides the prohibition of torture and inhuman or degrading treatment or punishment, was to establish a Committee, namely the European Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as CPT)[41]. In the course of the visits to places where persons are deprived of their liberty by a public authority, the Committee examines the treatment of these persons with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment.[42] The Committee does not see its task to be one of publicly criticizing member states, but rather to assist them through recommendations to strengthen what the Committee describes as the "cordon sanitaire" that separates acceptable from unacceptable treatment or behaviour.[43]

1.2 Standards on prison conditions

The first standard-setting specifically relating to criminal justice occurred with the promulgation in 1955 of the Standard Minimum Rules for the Treatment of Prisoners. The Standard Minimum Rules contain extensive and detailed protections for the physical condition of all persons under pre-trial detention or post-conviction imprisonment.[44]

Rules 9-14 regulate, in particular, sleeping, working and sanitary conditions. Therefore, Article 9(1) stipulates that "[w]here sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room." [45]

The CPT has stressed that a standard of 3 m^2 per prisoner does not offer a satisfactory amount of living space and has recommended adopting a standard of at least 4 m^2 per prisoner. It advised also that cells with less than 6 m^2 should be taken out of service as prisoner accommodation. The Special Rapporteur has underlined that four square meters are in particularly not acceptable if (remand) prisoners are confined for most of the time within the cell and remain in remand prisons for

[41] ECPT, Article 1
[42] Human Rights and Prisons. Manual on Human Rights Training for Prisons Officials (11). United Nations, New York and Geneva, 2005, p. 24
[43] R.Morgan … *Op. cit.*, p. 719
[44] Human Rights and Pre-Trial Detention. A Handbook of International Standards relating to Pre-trial Detention (3). Centre for Human Rights, Crime Prevention and Criminal Justice Branch, United Nations, New York and Geneva, 1944, p. 2
[45] Standard Minimum Rules for the Treatment of Prisoners, Rule 9(2)

extended periods of time. 7 m^2 per prisoner might serve as an approximate and desirable guideline for a detention cell.[46]

It was proved that overcrowding affects both the mental and the physical state of the imprisoned persons. [47] There are two criteria that can be distinguished for the assessment of overcrowding effects: the objective and the subjective criteria. While referring to the objective criterion one should bear in mind the spatial and social density of the locations where persons are detained, the personal space and the privacy aspect which allows the person to spend time on his/her own. On the other hand, the subjective criterion relates to the tightening of concentration abilities on personal life and activities due to the interference into them by the inmates, as well as the feeling of helplessness. As a consequence, holding a prisoner in an overcrowded space affects the person in a much more negative way than to detain him/her individually.[48]

All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.[49] In all living and working places within places of detention, the windows shall be large enough to enable the prisoners to read or work by natural light, and shall ... allow the entrance of fresh air whether or not there is artificial ventilation. Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight. [50] The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.[51] Even though concrete measurements of these standards, the rules stress that each State Party has the duty to adjust the living conditions to the required standards, based on several factors (i.e. climate, season, geographical region etc., as it is specified in Rule 13).

At the same time, the Standard Minimum Rules for the Treatment of Prisoners incorporate provisions as to regard to personal hygiene, clothing, bedding and food. Prisoners shall be required to keep their persons clean, and to this end, they shall be provided with water and with such toilet

[46] H.-J. Albrecht. Prison Overcrowding- Finding effective solutions. Strategies and Best Practices Against overcrowding in Correctional Facilities. Center for Strategic Research of the Expediency Council, 2010, p. 4
[47] D. van Zyl Smit, S. Snacken. *Op. cit.*, p. 131
[48] *Ibid.*
[49] Standard Minimum Rules for the Treatment of Prisoners, Rule 10
[50] *Ibid.*, Rule 11
[51] *Ibid.*, Rule 12

articles as are necessary for health and cleanliness.[52] Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating.[53] If prisoners are allowed to wear their own clothing, arrangements shall be made on their admission to the institution to ensure that it shall be clean and fit for use.[54] Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.[55] Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.[56]

On the European level, the principle of prohibition of torture, inhuman or degrading treatment is enshrined in Article 3 of the ECHR, which states that "[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment."[57]

The ECtHR found in the case of Peers v. Greece[58] that the applicant's rights were violated under Article 3 of ECHR. In the present case, the applicant was placed in a cell which he had to share with an inmate, even though the cell was designed for only one person, meaning that the applicant was locked to his bed due to the lack of space. The Court stated that the room was extremely hot due to a poor ventilation, even in the periods of the year when temperatures have the tendency to rise considerably. Moreover, the applicant had to use a toilet which was not separated by the rest of the room in any manner and the applicant was not the only one inhabiting the cell.[59] In the Court's view, the unwillingness of the prison authorities to improve the living conditions of the applicant represent disrespect towards the applicant and the conditions complained humiliated the applicant and diminished his human dignity.[60]

[52] *Ibid.,* Rule 15
[53] *Ibid.,* Rule 17
[54] *Ibid.,* Rule 18
[55] *Ibid.,* Rule 19
[56] *Ibid.,* Rule 20
[57] ECHR, Article 3
[58] ECtHR 28524/95, *Peers v. Greece*
[59] *Ibid.,* par. 72
[60] *Ibid.,* par. 75

In the case of Kalashnikov v Russia[61], the applicant referred to overcrowding and insanitary conditions in his cell. The Court stated that overcrowding was a common issue in the pre-trial detaining facilities, due to, *inter alia,* the economic reasons. In the present case, the applicant was detained in a 17 m^2 room, and according to him, the room was inhabited by 24 persons in total, even though it was meant only for 8 people. Consequently, there was only 0.9-1.9 m^2 of space for each person, in contrast to the CPT's standard of 7 m^2. The Court also stated that the cell was poorely ventilated, despite the fact that it was inhabited by smokers.[62] As a result, the Court found that the conditions of detention of the applicant, namely the overcrowded cell, insanitary environment, along with the duration of the period when the applicant was detained in such conditions, amounted to degrading treatment.[63]

In the case of Vasilescu v. Belgium[64], the applicant complained about the physical conditions of detention. The Court found a violation of Article 3 of ECHR because the applicant was detained in an overcrowded cell, without running water, without access to toilets. Accordingly, the applicant had to sleep on a mattress on the floor for several weeks, which did not comply with the CPT basic rule: "one prisoner, one bed."[65]

1.3 Standards on healthcare within prisons

Health care in prison is guided by the same ethical principles as in the community. The basic principles are set by the World Medical Association Declaration of Geneva (1948, the latest version in 2006), the International Code of Medical Ethics (1949, latest revision in 2006), United Nations General Assembly resolution 37/194 (of 18 December 1982).[66]

The World Medical Association Declaration of Geneva[67] contains a pledge, by which the members of the medical profession are promising to not permit considerations of age, disease or disability, creed, ethnic origin, gender, nationality, political affiliation, race, sexual orientation, social standing

[61] ECtHR 47095/99, *Kalashnikov v. Russia*
[62] *Ibid.,* par. 97
[63] *Ibid.,* par. 102
[64] ECtHR 64682/12, *Vasilescu v. Belgium*
[65] *Ibid.*
[66] A. Lehtmets, J. Pont. Prison health care and medical ethics. A manual for health-care workers and other prison staff with responsibility for prisoners' well-being. Council of Europe, Strasbourg, November 2014, p. 9
[67] World Medical Association Declaration of Geneva, adopted by the 2nd General Assembly of the World Medical Association, Geneva, Switzerland, September 1948

or any other factor to intervene between their duty and their patients. In addition, the doctors are promising to practice the profession with conscience and dignity and in accordance with good medical practice, as well as to not use the medical knowledge to violate human rights and civil liberties, even under threat.[68]

The International Code of Medical Ethics[69] contains similar provisions, obliging the physicians to be dedicated to providing competent medical service in full professional and moral independence, with compassion and respect for human dignity. According to the code, among some of the duties that the physicians have towards the patients, the following can be mentioned:

- always bear in mind the obligation to respect human life;
- act in the patient's best interest when providing medical care;
- owe his/her patients complete loyalty and all the scientific resources available to him/her;
- respect a patient's right to confidentiality etc.

By the resolution 37/1984 of 18 December 1982, the UN General Assembly adopted a specific document containing Principles of Medical Ethics in the Protection of Prisoners and Detainees against Torture, and Other Cruel, Inhuman or degrading Treatment or Punishment. As it is set by the principles, the "[h]ealth personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with the protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained"[70]. The principles set out the contraventions of the medical ethics (*inter alia* to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment[71]; to apply the knowledge and skills in order to assist in the interrogation of prisoners and detainees in a manner that may adversely affect the physical or mental health or condition of such prisoners or detainees and which is not in accordance with the relevant international instruments[72]). As the last

[68] *Ibid.*
[69] World Medical Association International Code of Medical Ethics, Adopted by the 3rd General Assembly of the World Medical Association, London, England, October 1949
[70] United Nations General Assembly resolution 37/194 on Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 18.12.1982, Principle 1
[71] *Ibid.* Principle 2
[72] *Ibid.* Principle 4

principle, the General Assembly stressed that "[t]here may be no derogation from the foregoing principles on any ground whatsoever, including public emergency."[73]

Whilst the above-mentioned instruments contained general ethical provisions, the Standard Minimum Rules for the Treatment of Prisoners prescribe precisely what are the duties of the medical staff during the arrival of the prisoner at the imprisonment facility, during the serving of the sentence by the prisoner, duties of inspecting the material conditions of the cells, hygiene and food quality etc.

For instance, it is set that there shall be "at least one qualified medical officer who should have some knowledge of psychiatry" at every place of detention and the medical services "should be organized in close relationship to the general health administration of the community or nation"[74]; "sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals", and where hospital facilities exist in the institution concerned, they shall have the equipment and supplies "proper for the medical care and treatment of sick prisoners and ... a staff of suitable trained officers"[75]; every prisoner shall also have at his or her disposal "the services of a qualified dental officer."[76]

Next, "the medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures"[77]; the medical officer shall also "have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed"[78]; the medical officer shall further "regularly inspect and advise the director" upon such issues as the quality of the food, the hygiene and cleanliness of the institution and prisoners, the sanitation, clothing and bedding etc.

Rule 26 of the Standard Minimum Rules for the Treatment of Prisoners requires that the medical officer shall regularly inspect and advise the director upon (a) The quantity, quality, preparation and

[73] *Ibid.* Principle 6
[74] Standard Minimum Rules for the Treatment of Prisoners, Rule 22(1)
[75] *Ibid.,* Rule 22(2)
[76] *Ibid.,* Rule 22(3)
[77] *Ibid.,* Rule 24
[78] *Ibid.,* Rule 25(1)

service of food; (b) The hygiene and cleanliness of the institution and the prisoners; (c) The sanitation, heating, lighting and ventilation of the institution; (d) The suitability and cleanliness of the prisoners' clothing and bedding; (e) The observance of the rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities.[79]

If to refer to regional provisions, Recommendation No. R (1998) 7 of the Committee of Ministers of the Council of Europe of 8 April 1998 on the ethical and organisational aspects of health care in prison is a thorough instrument containing prescriptions regarding the main characteristics of the right to health care in prison, the specific role of the prison doctor and other health care staff in the context of the prison environment, organization of health care in prison with specific reference to the management of certain common problems.

It is worth mentioning that both the CPT and the ECtHR have explicitly linked health care to the protection offered by Article 3 ECHR against torture and inhuman or degrading treatment or punishment. Even where there has been more or less adequate medical treatment, but the health of prisoner has suffered because of the poor conditions of imprisonment over an extended period, this has been held by the Court to be a factor contributing to an overall finding of degrading treatment.[80]

In the case of Mouisel v France[81], the Court has found that the applicant's rights were violated under Article 3 of ECHR, because of the aggravation of his health in the period of the custodial sentence. The authorities failed to take any actions for the improvement of the applicant's help, despite his increasingly health issues which were no compatible with the continuance of the detention. Even though the Court stated that there is no general obligation on the competent authorities to release the seriously ill prisoners, the authorities have the positive obligation to protect the integrity of the persons who have been deprived of their liberty. That would imply the necessary medical assistance which has to be provided to the persons in question.[82]

[79] *Ibid.,* Rule 26
[80] D. van Zyl Smit, S. Snacken. *Op. cit.,* p. 149
[81] ECtHR 67263/01, *Mouisel v. France*
[82] ECtHR. Press release issued by the Registrar on the Chamber Judgment in the Case of Mouisel v. France. 14.11.2002, section 3

In the case of Serifis v. Greece[83] the Court found a violation of Article 3 of the ECHR on account of the absence of appropriate medical assistance for the applicant during part of the period spent in detention. In the present case, it was stated that the prison authorities had procrastinating in providing the applicant with due medical assistance, despite the fact that the applicant suffered of paralysis, multiple sclerosis, progressive inflammatory disease which affected the brain and the spinal cord, resulting in a variety of problems affecting neurological, motor, balance and sight functions.[84] Those conditions required multi-disciplinary care, such as therapeutic and symptomatic treatment and physiotherapy. The applicant applied for the conditional release. His application was rejected, being motivated by the seriousness of the offence he has committed and the possibility of his absconding. The competent authorities also believed that his health issues were possible to be treated within the prison hospital. As a result, the Court found that in the period of detention, the authorities were subjecting the applicant to hardship of an intensity exceeding the unavoidable level of suffering inherent in detention.[85]

In the case of Romanov v. Russia[86] the applicant complained about the conditions of his detention in the psychiatric section of the prison. The applicant was detained in that facility for one year, three months and thirteen days in total, whilst the personal space in the cells he was detained measured 1-1.6 m^2.[87] From this perspective, the circumstances of the case were compared to the ones in the case of Kalashnikov. The applicant submitted evidences beyond the reasonable doubt that he was allowed to take shower once a week and he became infected with scabies.[88] Even though the Court did not find that there was an intention from the authorities of the prison to debase and humiliate the applicant, the conditions that he had to endure undermined applicant's human dignity and triggered in him the feeling of humiliation and debasement.[89]

As a conclusion to the present chapter, the author highlights that international human rights instruments, indeed, represent the basic legal sources that are prescribing the standards for the prisoners' rights. Whilst those standards refer to various aspects of the prisoners' rights (standards

[83] ECtHR 27695/03, *Serifis v. Greece*
[84] ECtHR. Press release issued by the Registrar on Chamber Judgment in the case of Serifis v. Greece. 02.11.2006, section 1
[85] *Ibid*, section 3
[86] ECtHR 63993/00, *Romanov v. Russia*
[87] *Ibid.*, pars. 73-75
[88] *Ibid.*, par. 79
[89] *Ibid.*, par. 81

on accommodation, hygiene, adequate medical health etc.), it has to substantiated that the international bodies mostly set relative values for those standards. Therefore, the state parties to the human rights instruments concerning prisoners' rights have a margin of discretion in the process of establishing the national provisions, taking into consideration the specific cultural, economic and social characters of each country.

Nevertheless, the author went through the case law of the ECtHR, stressing various forms of violations of prisoners' rights. It could be observed that poor material conditions of imprisonment can lead to health issues. On the other hand, poor material conditions can be caused by overcrowding of the imprisonment facilities. At the same time, it is generally viewed that overcrowding has a negative influence on the mental health of the prisoners. With the reference to the mentioned case law, the author proved affirmatively the hypothesis that the issues related to torture, inhuman or degrading treatment, poor living conditions and healthcare are inter-related and mutually-generating.

2. LEGAL AND INSTITUTIONAL FRAMEWORK OF THE REPUBLIC OF MOLDOVA

The milestone of the Moldovan legislation in relation to the rights of prisoners represents the Constitution of the Republic of Moldova, as "its supreme law"[90]. Its preamble stipulates that human dignity and human rights are considered as supreme values.[91] To emphasize, Article 4 of the Constitution enshrines on the human rights, as it lays down that "[t]he constitutional provisions regarding human rights and freedoms shall be interpreted and applied in accordance with the Universal Declaration of Human Rights, the pacts and other treaties to which the Republic of Moldova is a party."[92]

After the proclamation of independence, The Republic of Moldova has ratified practically the entire set of important international treaties on respect for human rights, including ICCPR with the 2 optional protocols, UN CAT and the OPCAT.

In addition, the Republic of Moldova has acceded to numerous instruments and partnership programs with the European Union, among which it joined the Council of Europe on July 13, 1995. As a Member State, it has ratified the ECHR and most of the protocols it includes. The Republic of Moldova committed to respecting the rights guaranteed by them and recognized the jurisdiction of the ECtHR. It ratified the ECPT in 1996, which entered into force in 1998.

Article 24(2) of the Constitution of the Republic of Moldova explicitly prescribes that no one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment. On the same line, the prohibition of torture and inhuman and degrading treatment is included in Article 24 of the Constitution. This prohibition is subsequently reflected in the Criminal Code as serious and, depending on aggravating circumstances, a particularly serious offence.[93]

2.1 Statute for the execution of the sentence by the convicted persons

The specific law which contains concrete provisions regarding the standards on the living conditions in prisons is the Government decision on the approval of the Statute for the execution of the

[90] Constituția Republicii Moldova (The Constitution of the Republic of Moldova) 29.07.1994, e.i.f. 27.08.1994 Article 7
[91] *Ibid.* Preamble
[92] *Ibid.* Article 4
[93] Codul Penal al Republicii Moldova (The Criminal Code of the Republic of Moldova) 18.04.2002, e.i.f. 14.04.2009, Article 166[1]

sentence by the convicted persons[94]. This Decision of the Government is the inclusive and comprehensive legal instrument which contains provisions regarding the accommodation of prisoners, hygiene requirements as well as the medical assistance in penitentiaries.

Section 9 of the present Decision is dedicated to the rights and obligations of the convicted persons. Amongst the rights prescribed in Article 87 there is the right to "be informed about their rights and obligations; to decent and kind treatment by the prison administration; to receive free medical care and medicines; to submit requests and complaints (complaints, proposals, notices) to the penitentiary administration, the hierarchically superior bodies, the courts, the prosecutor's office, the bodies of the central public authorities and the local public administration, the public associations, as well as the interstate organizations for the defence and respect of human rights."[95]

Section 38 of the Decision in question concerns the rules for accommodation and material insurance for detainees. Article 464 of establishes the milestone standard, which prescribes that "each prisoner shall be provided with accommodation space of not less than 4 square meters, which must be natural and artificial lighting, heated and ventilated according to the building regulations."[96]

Each detainee is provided with an individual sleeping place[97], clothing, underwear and footwear, as well as with bed linen as needed, according to the rules and model established by the Department of Penitentiary Institutions.[98] In order to ensure the needs of personal hygiene, the prisoners are provided with soap and detergents according to the established norms.[99]

Prisoners are fed three times a day with hot food, in the hours set by the day's program, in special rooms or in cells. After receiving the food, the dishes used by the inmates are subjected to sanitary processing. In order to maintain order during the feeding, in the canteens, there are representatives of the penitentiary administration. Prisoners are provided with permanent access to drinking water.[100]

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[94] Hotărârea Guvernului Nr. 583 cu privire la aprobarea Statutului executării pedepsei de către condamnați. (Government decision Nr. 583 on the approval of the Statute for the execution of the sentence by the convicted persons). 26.05.2006, e.i.f. 16.06.2006
[95] *Ibid.*, Article 87
[96] *Ibid.*, Article 464
[97] *Ibid.*, Article 468
[98] *Ibid*., Article 470
[99] *Ibid*., Article 473
[100] *Ibid*., Article 475-477

Further on, Section 40 concerns the sanitary-hygienic and anti-epidemic rules in penitentiaries. Accordingly, strict compliance with the sanitary-hygienic and anti-epidemic rules in the penitentiaries is ensured and the medical Service of the penitentiary or the doctor serving the penitentiary is obliged to regularly check the condition and cleanliness of the clothing, of the inmates' bedding, their correspondence with the season.[101]

At least once in 7 days for the detainees, the bath is organized, with the obligatory change of underwear and bedding, and in the necessary cases - the trim.[102] Depending on the possibilities of technical-material insurance and within the limits of the allocated funds, the daily shower is allowed. Disinfection of residential, social-communal rooms and warehouses is carried out periodically, according to the established sanitary norms.[103]

The rules providing for medical assistance in penitentiaries are enshrined in Section 41. Medical assistance according to the law is provided by qualified medical personnel, free of charge, whenever necessary or on request.[104] Every penitentiary must have the service of at least one general practitioner, a dentist and a psychiatrist. In the penitentiaries with the capacity of detention of 100 and more places, besides the medical unit, stationary healing centres are created.[105] Prisoners benefit from therapeutic, surgical, psychiatric and dental assistance. On his own, the convicted, with the consent of the penitentiary administration, and the prevented one - with the consent of the penitentiary administration and the criminal investigation body, the investigating judge or the court, can also benefit from the services of a private doctor.[106] Patients in need of specialized emergency medical intervention are transferred without delay, under guard and supervision, to specialized medical institutions of the penitentiary system or to the public curative institutions of the Ministry of Health.[107]

Furthermore, the respective Decision contains a number of annexes. For instance, annexe nr. 24[108] list the inventory objects from the equipment of the disciplinary isolator cells:

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[101] *Ibid*., Article 491-493
[102] *Ibid*., Article 495
[103] *Ibid*., Article 496
[104] *Ibid*., Article 501
[105] *Ibid*., Article 502
[106] *Ibid*., Article 504
[107] *Ibid*., Article 506
[108] Anexa nr. 24 la Hotărârea Guvernului Nr. 583 cu privire la aprobarea Statutului executării pedepsei de către condamnați (Annex 24 to the Government decision Nr. 583 on the approval of the Statute for the execution of the sentence by the convicted persons). 26.05.2006, e.i.f. 16.06.2006

1. Folding beds, which are locked during the day with a lock;

2. Table fastened to the floor;

3. Chairs along with the table (fastened to the floor);

4. Wall cabinets or shelves;

5. Clothes hanger.

Likewise, annexe nr. 25[109] enshrine the norms for arranging the cells in the disciplinary isolators:

"1. Day lighting is ensured by installing the windows, the size of which must not be less than 0.9x0.6 m. For ventilation, the windows are equipped with fanlight. In addition to the windows, metal grilles with grid eyes no larger than 100x200 mm are installed.
3. The cell doors are equipped with viewfinder and visor. The visage opens at the side of the corridor and is fixed in a horizontal position. At the doors of the cells, additionally, on the inside are installed metal grating doors with 100x200 mm eyepiece, equipped with visor.
4. The cells are featured with floor closet vessels and washbasins separated by a wall 1,0 meters high from the floor level.
5. The cells of the disciplinary isolators are equipped with folding beds, which lock with the lock the day, with stools according to the number of prisoners and with table, fixed well by the floor.
6. Suspended shelves are installed to keep toiletries in cells.
7. The respective cells are equipped with a basic lighting system and with service lighting system from the 36V network, with the location of the switches outside the given rooms.
8. In the cells of the disciplinary and prison isolators, no electrical outlets are installed.

The Statute for the execution of the sentence by the convicted persons is complemented by the Order of the Ministry of Justice regarding the approval of the Regulation regarding the assurance of medical assistance to prisoners[110]. Thus, Point 14 of the present regulation says that "[t]he medical examination of the persons detained in the penitentiaries is compulsory upon receipt in the

[109] Anexa nr. 25 la Hotărârea Guvernului Nr. 583 cu privire la aprobarea Statutului executării pedepsei de către condamnați (Annex 25 to the Government decision Nr. 583 on the approval of the Statute for the execution of the sentence by the convicted persons). 26.05.2006, e.i.f. 16.06.2006
[110] Ordinul Ministerului Justiției Nr. 478 privind aprobarea Regulamentului cu privire la modul de asigurare a asistenței medicale persoanelor deținute în penitenciare (Order of the Ministry of Justice regarding the approval of the Regulation regarding the assurance of a medical assistance to prisoners). 15.12.2006, e.i.f. 29.12.2006

penitentiary, and during the execution of the sentence, at the request or in a planned way, but not less than once in every 6 months."[111] In an equally important manner, Point 16 says that "[i]n case the prisoner has bodily injury or traces of torture, it is necessary for the doctor to examine him/ her, with the necessary medical assistance." [112] Regarding the findings of the existence of bodily injuries or traces of torture when the prisoners arrived in the penitentiary the administration of the institution is obliged to notify in writing, in the shortest term, the Department of Penitentiary Institutions and the territorial body of the Prosecutor's Office in which the penitentiary is located.[113]

Prophylactic medical examination of the detainees is carried out by the doctors of the medical unit, with the involvement of the specialized doctors from the penitentiary hospital. During the compulsory medical check-up the therapist, the psychiatrist, the dentist participate. The results of the prophylactic medical examination are recorded in the inmate's outpatient medical card. During the compulsory medical check-up of women, the gynaecologist should also be included[114].

At first glance, the legal framework with regard to the rights of prisoners seems to be thorough and elaborated, while in compliance with the international standards analysed previously in this paper.

2.3 Institutional Framework

The National Administration of Penitentiaries is the administrative authority subordinated to the Ministry of Justice, which exercises the powers and implements the state policy in the field of enforcement of criminal penalties depriving of liberty, of the preventive measure in the form of preventive arrest, of the sanction of the administrative arrest, as well as of the security measures applied to persons deprived of their liberty.[115] The competences of the National Administration of Penitentiaries are as following:

> *"a) ensures the execution of the criminal penalties, of the preventive measure in the form of the preventive arrest and of the sanction of the administrative arrest;*
>
> *b) it ensures the order of law, the legality and equality in the penitentiary institutions, the security of the persons deprived of liberty, including during their escort, of the personnel*

[111] *Ibid.*, Point 14
[112] *Ibid.*, Point 16
[113] *Ibid.*
[114] *Ibid.*, Point 20
[115] Legea Nr. 300 a Parlamentului Republicii Moldova cu privire la sistemul administrației penitenciare (Law nr. 300 of the Parliament of the Republic of Moldova regarding the system of penitentiary administration). 21.12.2017, e.i.f. 16.05.2018, Article 9

within the system of the penitentiary administration and of the persons located in the territory of the penitentiary institutions;

c) maintains the regime of entry, exit, as well as the public order at the control and crossing points in the penitentiary institutions;

[…] g) provides food, medical assistance and essential items for the inmates, according to the norms established by the Government;

[…] k) ensures, in the field of competence, the application of the provisions of the international treaties and the acts of the international organizations to which the Republic of Moldova is a party;

l) ensures the cooperation, in the specific fields of activity, with the similar bodies of the neighbouring states, other states or communities of states according to the international treaties to which the Republic of Moldova is a party."[116]

Another institution with competences towards the protection of the rights of prisoners is the Ombudsman. According to art.24 Law no. 52 of 2014 regarding the Ombudsman, in his activity of prevention of torture, the Ombudsman presents his recommendations to the authority or the person in charge with a view to improving the behaviour towards persons deprived of liberty, improving the conditions of detention and torture prevention.[117]

Consequently, in accordance with the provisions of Law no. 52 of 2014 regarding the Ombudsman, The Council for the Prevention of Torture was established. The purpose of the Council is to protect individuals against torture and other cruel, inhuman or degrading treatment or punishment, as a National Mechanism for the Prevention of Torture, in accordance with the OPCAT.[118] In accordance with Article 30 and 32 of the respective law, the Council for the Prevention of Torture may carry out preventive and monitoring visits in places where persons deprived of liberty are or may be located. According to Point 5 of the Regulation of organization and functioning of the Council for the prevention of torture[119], the mission of the Council is to ensure the protection of people against torture and other cruel, inhuman or degrading treatment or punishment, namely by:

[116] *Ibid.*, Article 13

[117] Legea Nr. 52 cu privire la Avocatul Poporului (Ombudsmanul) (The law on the People's Counsel(Ombudsman)), 03.04.2014, e.i.f. 09.05.2014, Article 1

[118] *Ibid.* Article 30

[119] Regulamentul de organizare și funcționare a Consiliului pentru prevenirea torturii (Regulation of organization and functioning of the Council for the prevention of torture), 05.07.2016

- carrying out preventive and monitoring visits in places where persons deprived of liberty are or may be located, placed there by the disposition of a state body or at its indication, or with its consent or tacit consent;
- drawing up reports after each preventive or monitoring visit, according to the working methodology;
- formulating recommendations regarding the improvement of the behaviour towards persons deprived of liberty, of improving the conditions of detention and the prevention of torture;
- formulating proposals to improve the legislation in order to eliminate the causes and conditions that create premises for the violation of human rights, according to the field of competence;
- contributing to establishing and maintaining collaborative relationships with national and international governmental and non-governmental organizations, which work in the field of torture and human rights prevention, to capitalize on their positive experiences and to carry out joint activities designed to help prevent torture;
- contributing to constant cooperation and communication with the UN Subcommittee on the Prevention of Torture.

What can be inferred from the presented missions is that the Council has merely recommendation competences, lacking the real, punitive and effective action against the violators of the rights of prisoners.

2.4 Provisions regarding the imprisonment sentence and the pre-trial detention

Besides the assessment of the national standards regarding the prisoners' rights, for the purposes of the dissertation it is also relevant to examine the national provisions regarding the sentences and the pre-trial detention to which offenders and persons suspected of commitment of an offence are subjected.

Chapter VII of the Criminal Code[120] of Moldova designates the criminal punishment. According to Article 61 of that chapter, "criminal punishment is a measure of state coercion and a means of correcting and re-educating the convict applied by the courts, in the name of the law, to persons who have committed crimes, causing certain shortcomings and restrictions on their rights."[121] Further on,

[120] The Criminal Code of the Republic of Moldova, Chapter VII
[121] *Ibid.,* Article 61 p. (1)

the purpose of the punishment is to restore social equity, to correct and re-socialize the convict, as well as to prevent the commission of new crimes by both the convicts and other persons.[122] The legislature then reiterates by highlighting that the execution of the sentence must not cause physical suffering nor degrade the dignity of the convicted person.[123]

The categories of punishments established by the legislature which are applied to individuals who committed crimes are as follows[124]:

a) fine;
b) deprivation of the right to hold certain positions or to exercise a certain activity;
b[1]) deprivation of the right to drive means of transport or cancellation of this right;
c) withdrawal of the military or special rank, of a special title, of the degree of qualification (classification) and of the state distinctions;
d) unpaid work for the benefit of the community;
f) imprisonment;
g) life imprisonment.

At the same time, the legislature prescribed that some punishments can be applied as main punishments (i.e. fine, imprisonment, life imprisonment), whilst others can be considered only as complementary (i.e. withdrawal of the military or special rank, of a special title, of the degree of qualification/ classification and of the state distinctions) and to be applied only in conjunction with a main punishment.[125] It seems that the criminal code provides a relatively wide range of punishments for the conviction on the condemned persons. However, as how it will be shown in the Chapter 4 of this paper, the judiciaries are tending to use extensively the imprisonment punishment. Other punishments have mostly a complementary effect. Due to this practice, the issue of overcrowding in prisons is occurring.

As for what concerns the pre-trial detention, it is enshrined in the Title V, Chapter II of the Code of Criminal Procedure[126], called "Preventive measures". Article 175 of this Chapter prescribes that "the coercive measures by which the suspect, the accused, the defendant are prevented from taking

[122] *Ibid.*, Article 61 p. (2)
[123] *Ibid.*
[124] *Ibid.*, Article 62 p. (1)
[125] *Ibid.*, Article 62 pts. (2)-(6)
[126] Cod Nr. 122 de Procedură Penală a Republicii Moldova (Code Nr. 122 of Criminal Procedure of the Republic of Moldova). 14.03.2003. e.i.f. 05.11.2013

certain negative actions on the conduct of criminal proceedings, security and public order or on ensuring the execution of the sentence are preventive measures."[127] The preventive measures are aimed at ensuring the proper conduct of the criminal process or preventing the suspect, the accused, the defendant from hiding from the criminal investigation or trial, so that they do not prevent the establishment of the truth or to ensure the execution of the court sentence.[128]

The list of the preventive measures established by the legislature consists of: the obligation not to leave the locality; the obligation not to leave the country; personal guarantee; the guarantee of an organization; temporary lifting of the driving license; removal from the driving of the means of transport; the transmission of the military under supervision; the transmission of the minor under supervision; provisional release under judicial control; provisional release on bail; house arrest; pre-trial detention.[129] Similarly to the imprisonment punishment, the competent authorities extensively apply the pre-trial detention. This issue will be further elaborated in Chapter 4.

To conclude on the current chapter, the author must say that in contrast to the hypothesis that the national legislation is not in compliance with the international standards, the asserted provisions do not contravene to the provisions prescribed in the international instruments for the rights of the prisoners.

[127] *Ibid.*, Article 175 p. (1)
[128] *Ibid.*, Article 175 p. (2)
[129] *Ibid.*, Article 175 p. (3)

3. PRISONERS' RIGHTS VIOLATIONS IN MOLDOVA

For two decades, the same systemic problems were stated with regard to the rights of prisoners in the imprisonment and detaining institutions, such as under-funding of those institutions, overcrowding, lack of hygiene, poor health care, insufficient staff, hostile and abusive relationships, self-harm, detention in basements, cold cells, insufficient light, humidity, poor hygiene conditions, dysfunctional drainage and ventilation system, lack or insufficiency of bed linen, blankets and essential hygiene items, inefficient and disinfecting measures, and so on.

Inter alia, in the 2009 Concluding Observations (hereinafter referred to as COs) of the Human Rights Committee on the second report submitted by the Republic of Moldova[130] it was mentioned the significant reduction in the total number of detainees in the State party's prisons. However, "the Committee [was] concerned at overcrowding in individual facilities and that conditions remain[ed] harsh [compared to the first periodic report], with insufficient ventilation and lighting, poor sanitation and hygiene facilities and inadequate access to health care"[131]. The Committee urged the State party to ensure as a matter of urgency that conditions in places of detention are improved to meet the standard set out in article 10, paragraph 1, of the UN CAT. Later on, in the 2016 COs on the third periodic report of the Republic of Moldova, the Committee expressed its concerns regarding the still existing shortcomings of overcrowding, poor hygiene conditions and lack of access to proper health.[132]

The outdated and un-adapted infrastructure for the cellular system, which does not allow the separation of convicts into small sectors, combined with the lack of custody personnel, leads to the perpetuation of violence and subculture in the penitentiary environment. The penitentiary system continues to face serious problems in matters related, including, to ensuring the minimum guarantees of detention, in particular, because of the passivity of the political factor and the insufficient actions of the executive. These shortcomings are permanently reflected in the international reports, the judgments of the European Court of Human Rights, the reports of the Ombudsman Office, the media and the associative sector.

[130] Concluding Observations of the Human Rights Committee on the Second Periodic Report Submitted by the Republic of Moldova under Article 40 of the Covenant. CCPR/C/MDA/CO/2. 4 November 2009, par. 21
[131] *Ibid.*
[132] Concluding Observations of the Human Rights Committee on the Third Periodic Report of the Republic of Moldova, CCPR/C/MDA/CO/3, 18 November 2016, par. 27

3.1 Precarious material prison conditions

In the first COs on the reports submitted by the Republic of Moldova under Article 19 of UN CAT[133] the UN Committee Against Torture expressed its concern regarding the poor material conditions prevailing in police detention facilities and prisons[134]. Some insignificant ameliorations were pointed out in the second COs (i.e. reconstruction, repairs and maintenance work carried out in a number of penitentiary institutions starting from 2007[135]). Nevertheless, the conditions still remained harsh, with insufficient ventilation and lighting, poor sanitation and hygiene facilities. The Committee suggested that the state has to "continue to make available the material, human and budgetary resources necessary to ensure that the conditions of detention in the country are in conformity with minimum international standards"[136].

In the third COs, the Committee pointed out the material conditions in penitentiary institutions that in some cases endanger lives of inmates and amount to inhuman and degrading treatment. The Committee also observed a lack of an effective mechanism to examine complaints from inmates about their treatment and conditions of detention.[137]

The CPT has also made several periodic visits of the Moldovan prisons. For instance, in the 2015 periodic visit, it found that the national standard of at least 4 m^2 of living space per person was far from being met in most of the prisons visited, in many cases being less than 2 m^2 [138]. Also, the CPT noted the poor state of repair and hygiene, limited access to natural light, insalubrious sanitary facilities, infestation by vermin, etc.[139]

An interesting fact that was pointed out by the CPT is actually the difference in material conditions between different cells and inmates. For instance, "[w]hile the majority of inmates had to sleep in cramped rooms equipped with old narrow bunk beds and a few old cupboards, a number of prisoners' rooms offered conditions which could be described as bordering on the luxurious: the

[133] CAT COs, CAT/C/CR/30/7
[134] *Ibid.*, par. 5(l)
[135] CAT COs, CAT/C/MDA/CO/2, par. 18
[136] *Ibid.*, par. 18(a)
[137] CAT COs, CAT/C/MDA/CO/3, par. 17
[138] Report to the Government of the Republic of Moldova on the visit to the Republic of Moldova carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 11 June 2018, CPT/ Inf (2018) 49, Strasbourg, 13 December 2018, par. 30
[139] CPT/ Inf (2018) 49, par. 27

room equipment included divan beds, kitchenettes, multi-drawer fridges, aquaria, carpets on the floor, large TV sets with floor standing loudspeakers, leather armchairs, and suspended ceilings."[140]

In the *Ciorap* group of cases, the ECtHR found the unsanitary conditions/hygiene as one of the main problems regarding the conditions of detention in Prison No. 13. The Court noted that the Penitentiaries' Department confirmed the presence of parasitic insects in prison. The Government have not commented on this, nor on the applicant's complaint made in his letters regarding the presence of damp, the lack of beds, the presence of rodents and the lack of access to either daylight or electricity for up to 18 hours a day during the applicant's solitary detention for 10 days. [141] Therefore, the Court held that the declaration of the government which indicated to the presence of windows and ventilation system was not sufficient to invalidate the specific allegations.

In the case of Modarca v. Republic of Moldova[142], the ECtHR the applicant complaint about his condition of detention while being detained in the Prison nr. 3 in Chisinau. The Court found that the applicant was not provided with enough lighting in the cell, due to the fact that the window was blocked by a metal netting. Similarly, the water and electricity were discontinued for certain periods, including during the night time. As a consequence, the applicant and his inmates were avoiding going to the toilet in that periods in order to reduce the smell.[143] At the same time, the applicant was not provided wither with bed lining or clothes. He also had to repair the broken furniture from the cell, along with his inmates.[144] In the Court's opinion, the conditions of detention of the applicant amounted to inhuman and degrading treatment and constituted a violation of applicant's rights under Article 3 of the ECtHR.

On the same line, during a preventive visit to the Penitentiary Nr. 18 from Brănești, the Ombudsman Office found precarious conditions for people who were held in the box for prisoners under hunger strike. During the visit, it was found that the box office for people on hunger strike was a makeshift, uncomfortable and non-compliant room with minimum detention standards, especially for the category of persons placed in the respective room for the intention to protest. The access to the box

[140] CPT/ Inf (2018) 49, par. 33
[141] ECtHR, 12066/02, *Ciorap v. Moldova*, par. 68
[142] ECtHR 14437/05, *Modarca v. Moldova*
[143] *Ibid.*, par. 65
[144] *Ibid.*, par. 66

was performed through a door with grilles locked with a lock by the service officer. [145] The contact with other inmates was possible through a gateway through the bars. Subsequently, the box continued with an accessory entrance, as well as the bars. There could be observed dust on the ground. On the right side of the box, there was a Turkish toilet in a derisory condition. Water was constantly flowing in the toilet to prevent the spread of odor. The access to the improvised space in the form of a bedroom was taking place through a hallway, which ended with four beds located along the walls. The lingerie belonged to the prisoners.[146] The room had no window. The only possibility to have light and air in the room was to leave the door opened during the day and night, including during cold periods. There followed a space where there was a sink with a faucet in the corner of the room. The officials responsible for carrying out the visit assumed that if necessary, other people could be placed in that room. There were no stools, cabinets for storing personal belongings in those rooms. All the inmates' belongings were on the floor, as they did not have any furniture where to store them. [147] (Annexes 1-3)

In another visit to the Penitentiary Nr. 3 from Leova, the Ombudsman Office officials found that the bedroom of one cell was not airy and cigarette smoke predominated. On the walls of the bedroom and the floor mould was found. The beds in the bedroom were two levelled, covered with blankets to ensure privacy. [148] In that bedroom, prisoners did not fully enjoy the facilities used daily by convicts, such as the sleeping space, the day space and the sanitary facilities. The officials considered that large bedrooms inevitably entail discomforts in everyday life, creating impediments to the prison administration in the organization of regime conditions.[149] Correspondingly, the same situation was attested in another sector of the penitentiary.[150] (Annexes 4- 6)

In a following visit of the Ombudsman Office to a Police Inspectorate from Briceni, it was stated that in all the cells there was an unbearable odour, poor sanitary-hygienic condition (garbage/household waste), increased humidity, greasy walls, as well as lack of heat (low

[145] Raport privind vizita preventivă. Penitenciarul nr. 18 Brănești. Boxa pentru deținuți la Greva foamei. (Report on the preventive visit. Penitentiary no. 18 Brănești. The box for Prisoners at Hunger Strike). Direction of the prevention of torture. Ombudsman Office, 05.08.2019, p. 3
[146] *Ibid.*
[147] *Ibid.*
[148] Raport privind vizita preventivă. Penitenciarul nr. 3 Leova (Report on the preventive visit. Penitentiary Nr. 3 Leova). Direction of the prevention ogainst torture of the Ombudman Office, 08.08.2019, p. 3
[149] *Ibid.*
[150] *Ibid.*

temperature). [151] The toilet in each cell was isolated from the rest of the cell by a wall with a height of 1 m. It was opened and did not provide decent conditions and privacy (it was not provided with an access door or curtain). A specific unpleasant smell persisted in the cells due to the unhygienic state of the toilet. In the same condition was also the washbasin from the cells. In two cells the beds were placed near the toilet which created discomfort for the detained persons.[152] (Annexes 7-10)

3.2 Overcrowding

In the second COs of the UN Committee Against Torture on the Republic of Moldova, it was pointed out the reduction of the prison population after the government reduced the minimum and maximum penalties, prompted a general review of penalties and reoffending and provided for alternatives to detention.[153] However, those were not enough to exclude the issue of overcrowding. The Committee suggested that the state should "[t]ake the measures necessary to alleviate the overcrowding of penitentiary institutions through, inter alia, the application of alternative measures to imprisonment and initiating at its own initiative a review of sentences"[154]. In the third COs, the Committee expressed its serious concerns about the reports of overcrowding in at least 6 penitentiary institutions, out of 17 existing penitentiaries in the country.[155]

Regarding the issue of overcrowding, the CPT stated that in the Moldovan prisons it had reached disturbing proportions.[156]

Similarly to the violations regarding the standards on material conditions, it was found by the CPT a differentiation in the accommodation areas, where "while many inmates were held in seriously overcrowded cells/dormitories (between 2 and 2.5 m^2 of living space per prisoner), certain privileged prisoners lived in spacious rooms (with up to 9 m^2 of living space per person)."[157] Hence, the CPT reiterated its recommendation for the Moldovan government to reduce the rooms' occupancy rates, including by distributing prisoners more evenly throughout the available accommodation.

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[151] Raport privind vizita preventivă. Inspectoratul de poliție Briceni (Report on the preventive visit. Police Inspectorare in Briceni). Direction of the prevention of torture. Ombudsman Office, 16.11.2019, p. 3
[152] *Ibid.*
[153] CAT COs, CAT/C/MDA/CO/2, par. 18
[154] CAT COs, CAT/C/MDA/CO/2, par. 18(a)
[155] CAT COs, CAT/C/MDA/CO/3, par. 17
[156] CPT/ Inf (2018) 49, par. 27
[157] CPT/ Inf (2018) 49, par. 33

The Court has already found that overpopulation in itself raises an issue under Article 3 of the Convention (*inter alia* Ostrovar v. Moldova[158]), especially when it lasts for long periods as in the case of the applicant, who was detained on remand for over five years in prison no. 3. Specifically, in the case of Ostrovar v. Moldova, it was noted by the Court that the two cells in which the applicant was detained measured 25 m² and 15 m² (according to the applicant) and 28.4 m² and 19.3 m² (according to the Government).[159] According to the information provided by the Government, which was not contested by the applicant, the cells were designed for 14 and 10 inmates respectively. Accordingly, the cells were designed to provide between 1.78 and 2.02 m² and between 1.5 and 1.93 m² for each inmate. The Court considered that such accommodation cannot be regarded as attaining acceptable standards.[160]

A striking case at the ECtHR regarding the issue of overcrowding in penitentiaries of the Republic of Moldova in the case of Arseniev v. Moldova[161]. The applicant submitted that he had been detained at the same time and in the same prison, and even in the same cell, as Mr T. Ciorap, in respect of whose prison conditions the Court had found a violation of Article 3 of the Convention in Ciorap v. Moldova. He considered that the conditions of detention were no different from those in which Mr Ciorap had been detained. According to the ECtHR, in the case of Ciorap the main "findings corresponded to those made by the CPT in its report on its visit to Moldova in 2004: despite a drastic reduction of the number of detainees in prison no. 3, each detainee still had less than 2 m^2 of space. It further noted that the domestic authorities also conceded that that prison had occasionally been overpopulated."[162] The applicant was detained in a cell of a total of 7.9 m^2, along with other 5 inmates. Therefore, there were only 1.32 m^2 available per person.[163] The Court doubted that the applicant could have had 5 m^2 of space as suggested by the Government throughout his five-year period of detention while other detainees had less than half that space.[164] In such circumstances, the Court finds that the applicant was detained in inhuman conditions of detention, notably severe overcrowding (six persons in a cell measuring 7.9 square metres, which is 1.3 square metres per

[158] ECtHR 35207/03, *Ostrovar v. Moldova*
[159] *Ibid.*, par. 82
[160] *Ibid.*
[161] ECtHR 10614/06, *Arseniev v. Moldova*
[162] ECtHR, 12066/02, *Ciorap v. Moldova*, par. 68
[163] *Ibid.*, pars. 13-14
[164] *Ibid.*

person, far below the statutory minimum of 4 square metres per person), which he had to endure for many years, spending up to 23 hours a day in such conditions.[165]

Prison overcrowding was also noted by the Ombudsman Office during several monitoring visits. For instance at the Penitentiary Nr. 18 from Brănești at the time of the visit, 730 persons were detained on a detention ceiling of 652 persons.[166] In the previously mentioned preventive visit to the Penitentiary Nr. 3 in Leova, the Ombudsman Office stated that "Sector 3 section no.1 constitutes a cabin-type bedroom in which 60 prisoners were placed at the time of the visit. In this "bedroom" each prisoner has approximately 1.70 m2 of living space."[167]

3.3 Inadequate health care

The HRC noted in its first COs that the State party is "inform[ed] that all persons taken into custody are entitled to a medical examination upon request but it remain[ed] concerned at reports that, when carried out, these [were] frequently perfunctory"[168].

On the same line, the UN Committee Against Torture expressed the concern regarding the lack of doctors dealing with prisoners.[169] The same concern was mentioned in the second report, in which allegations of restricted access to doctors by persons detained by the police, particularly at the early stages of detention, despite existing legal guarantees.[170] The committee stressed that "medical reports of independent doctors do not have the same evidentiary value as medical reports issued by medical service staff of the places of detention"[171].

In the third COs, the UN Committee Against Torture stressed the pending issue of the right to health from the previous reporting cycle. In particular, the Committee found that "arrested persons do not always receive medical examinations promptly upon deprivation of liberty, with such examinations often not conducted until the second day after arrival in so-called police isolators, and that in some cases the examinations are carried out by paramedics and may amount only to asking the person about his or her state of health"[172] The Committee than urged the government to ensure that this

[165] *Ibid.*, par. 42
[166] Report on the preventive visit. Penitentiary Nr. 18 Brănești ... *Op. Cit.*, p. 2
[167] Report on the preventive visit. Penitentiary Nr. 3 Leova ... Op. Cit., p. 3
[168] HRC COBs. CCPR/C/MDA/CO/2, par. 21
[169] CAT COs, CAT/C/CR/30/7, par. 5(m)
[170] CAT COs, CAT/C/MDA/CO/2, par. 10
[171] *Ibid.*
[172] CAT COs, CAT/C/MDA/CO/3, par. 8(b)

fundamental legal safeguard is enjoyed in practice by all detained persons, included arrested persons and those in pretrial detention. At the same time, the Committee stressed that "health care in penitentiary facilities is insufficient, that unqualified staff provide medical services to inmates, that inmates are not permitted to obtain private medical assistance or referred to outside specialists when necessary, that the needs of inmates with disabilities and those who require mental health and psychosocial services cannot be adequately accommodated, and that the health care and hygiene needs of women in the penitentiary system are not adequately addressed. The Committee is also concerned at reports concerning particularly poor material conditions, the inadequate quality of medical services, and disciplinary sanctions against patients at the penitentiary hospital (Penitentiary No. 16), and at the fact that medical staff in the penitentiary system is not independent of the prison management."[173]

A recent striking case of denial of access to healthcare during pre-trial detention was the case of Serghei Cosovan. Several national (Promo-Lex) and international NGOs (Amnesty International[174], World Organization Against Torture[175]), the Ombudsman Office[176] was calling for urgent action for Serghei Cosovan, who was not able to access necessary health care in pre-trial detention for his acute cirrhosis. The authorities were ignoring the medical grounds in the case for his release for treatment in an external, specialised hospital and have […] remanded him to 30 more days in pre-trial detention [several times]. While in detention, according to his lawyers and as demonstrated during the regular court hearings to extend his remand, Serghei Cosovan's pre-existing cirrhosis (scarring of the liver) worsened, resulting in repeated haemorrhages, which require surgery to be stopped. He also developed a hernia. Both conditions require specialised medical treatment, which is not available in Penitentiary Institution number 16. Serghei Cosovan's lawyers made numerous attempts to change his remand to judicial supervision, with reference to Order 331 of the Ministry of Justice of Moldova from 2006, which stipulates that some seriously ill prisoners should be exempt from punishment. On 24 April, in recognition of the severity of his medical condition and urgent medical treatment required, a court in Chisinau acknowledged that the order should be extended to cover pre-trial detainees and instructed Serghei Cosovan to be released and placed under house

[173] CAT COs, CAT/C/MDA/CO/3, par. 19

[174] Amnesty International Moldova. Urgent Action: Cosovan Serghei. Grave Health Concerns for Detainee with Cirrhosis. 12.06.2018, Available at: https://amnesty.md/en/media/urgent-action-cosovan-serghei/

[175] Republic of Moldova: Denial of adequate medical care of Mr. Serghei Cosovan while in detention. Case MDA 180518. World Organization Against Torture (OMCT), Geneva, 18 May 2018, Available at: https://www.omct.org/urgent-campaigns/urgent-interventions/moldova/2018/05/d24874/

[176] Ombudsman Office of the Republic of Moldova. Press Release. 24.05.2018, Available at: http://old.ombudsman.md/en/content/press-release-4

arrest. As Serghei Cosovan was leaving the detention centre officers from the Police Department of Chisinau Municipality rearrested him, informed him he was being investigated for new fraud allegations and placed him in remand for 72 hours. On 27 April, the court ordered Serghei Cosovan's return to pre-trial detention, ignoring his grievous health concerns. He was returned to the detention centre the same day.[177]

3.4 The preventive and compensatory remedy for inadequate detention conditions

In the case of Shishanov v. Moldova, the ECtHR found a violation of Article 3 of the Convention, due to overcrowding, poor living and hygiene conditions, insufficient quantity and quality of food in the penitentiaries where the applicant was detained. The Court held that the "state has a legal obligation to implement, under the control of the Committee of Ministers, the appropriate general and / or individual measures to guarantee the right of the applicant to whom the Court has found an infringement."[178] The Court also stated that the main responsibility of the State concerned is to choose, under the supervision of the Committee of Ministers, the measures taken in its internal legal order to fulfil the obligation provided for in Article 46 of the Convention, including individual or general measures.[179]

As a general measure, the Court considered that the Defendant State must make available to the litigants an adequate and effective mechanism, which will allow the competent authority to thoroughly examine the complaints regarding the precarious conditions of detention and to grant adequate and sufficient compensation. With regard to one or more remedies to be adopted to address the issues identified in the present case, the Court recalled that, in terms of detention conditions, "preventive" and "compensatory" remedies must be to coexist in a complementary way. Thus, when a complainant is held in conditions contrary to Article 3 of the Convention, the best possible way to recover is to quickly cease the violation of the right not to undergo inhuman and degrading treatment. In addition, anyone who has undergone detention that violates their dignity must be able to obtain compensation for the suffered violations.[180]

[177] Amnesty International Moldova … *Op. Cit.*
[178] ECtHR 11353/06, *Affaire Shishanov C. République De Moldova*, par. 124
[179] *Ibid.* para. 125
[180] *Ibid.* paras. 130-131

In an attempt to establish such a mechanism, the On July 20, 2017, the Parliament of the Republic of Moldova adopted Law no. 163[181] for the modification and completion of some legislative acts (Law no. 163), which provided for in Article II the introduction of new preventive and compensatory remedies in cases of detention under inappropriate conditions. The provisions regarding these remedies were to enter into force on January 1, 2019. On November 29, 2018, the Parliament of the Republic of Moldova adopted Law no. 272 for the modification of some legislative acts (Law no. 272)[182], which, among others, substituted some provisions of Law no. 163 and the Criminal Procedure Code. In particular, it amended part of the provisions of Law no. 163 with reference to the preventive and compensatory remedy. The legal provisions regarding these remedies entered into force on January 1, 2019. In a letter dated January 22, 2019, the Government informed the Court of these developments.

According to the laws mentioned above, Article 385 of the provisions of the Code of Criminal Procedure of the Republic of Moldova establishes the following:

> *"[...] 4) If in the course of the criminal prosecution or the trial of the case, violations were found that seriously affected the rights of the defendant (...), the court examines the possibility of reducing the punishment of the defendant as compensation for these violations.*
>
> *5) In case of the violation of the rights regarding the conditions of detention, guaranteed by article 3 of the Convention for the defence of human rights and fundamental freedoms, according to the jurisprudence of the European Court of Human Rights, the reduction of the sentence will be calculated as follows: two days of imprisonment for a day of preventive arrest.*
>
> *6) In case the convict was in preventive arrest, under the conditions specified in par. (5), not less than 3 months until the case is brought to trial, when establishing, as the main penalty, the unpaid work for the benefit of the community, the fine or the*

[181] Legea Nr. 163 a Parlamentului Republicii Moldova pentru modificarea și completarea unor acte legislative (Law no. 163 of the Parliament of the Republic of Moldova for amending and completing some legislative acts, 20.07.2017, e.i.f. 12.12.18)

[182] Legea Nr. 272 a Parlamentului Republicii Moldova pentru modificarea și completarea unor acte legislative (Law no. 272 of the Parliament of the Republic of Moldova for amending and completing some legislative acts, 29.11.2018, e.i.f. 01.01.19)

deprivation of the right to hold certain functions or to exercise a certain activity, he is released from the execution of the punishment by the court."[183]

Specifically, the new mechanism possesses two aspects as advised by the ECtHR in the case of Shishanov v. the Republic of Moldova.

Preventive aspect of the mechanism – Under these new provisions, the judge can order a prison to remedy the situation within fifteen days; after that time, the prison service has to inform the judge of the concrete measures taken.

Compensatory aspect – The new provisions can be summarised as follows:

– For individuals serving a sentence, the forms of compensation were: (i) a reduction in sentence, on the basis of one to three days of remission for ten days of detention in unsatisfactory conditions; (ii) where such remission did not provide sufficient compensation or where the detention in such conditions lasted less than ten days, pecuniary compensation up to 100 Moldovan lei (about EUR 5.10 as at 1 January 2019) for each day of detention in unsatisfactory conditions.

– For persons in pre-trial detention, the court which decided on any custodial sentence would reduce that sentence by two days for each day of pre-trial detention in unsatisfactory conditions. If this proved impossible, the prisoner would be entitled to seek compensation through a civil action.[184]

In the decision of 12.02.2019, Draniceru v. the Republic of Moldova, the ECtHR took the view that the new remedy, in principle, offered prospects of appropriate redress in the event of violations of the Convention stemming from poor conditions of detention. However, as it was a remedy which had not existed for very long, this analysis was necessarily carried out by the Court on the basis of the statutory provisions. That conclusion did not, therefore, rule out, if necessary, a possible review of the question in the light of decisions taken by the domestic courts and their effective enforcement.[185]

Nevertheless, just one year after the entry into force of the preventive and compensatory mechanism, the effectiveness of it was challenged by the government. The Ministry of Justice has submitted to

[183] *Ibid.*, Article 385, points 4-6
[184] ECtHR 31975/15, *Draniceru v. the Republic of Moldova,* Information Note on the Court's case-law 226, February 2019, p. 1-2
[185] *Ibid.*

the Government a draft law[186] meant to suspend the reduction of the sentence of the convicted who were held in precarious conditions of imprisonment or detention. In the informative note[187] for the approval of the draft law, it is stated that during the monitoring of the implementation of the mechanism created, in accordance to the statistical data of the National Penitentiary Administration, it was found that up to 10.02.2020, 5372 complaints of the prisoners regarding the precarious conditions of detention in the penitentiary institutions in the country were registered, from the total of about 6700 detainees in state custody.[188] The Ministry of Justice stressed that there was a potential to retain the circumstances of detention conditions contrary to the ECHR standards with reference to each of the units of the national prison system, as the 5372 complaints filed were received, in effect, uniformly from all 17 prisons.[189] Out of the total number of complaints addressed, approximately 3445 were examined, and solutions were given in the case of 2402 complaints. 1471 of them were admitted. As it appeared, the application of the mechanism has generated an uneven practice of its application and has allowed the reduction of the sentences on an alarming number of imprisoned persons. By way of example, it was found the unmotivated reduction of the terms of punishment in the absence of real mechanisms of application of the percentage amount. At the same time, some judges, although correctly calculating the term to be reduced, make serious errors in pronouncing the judgment, applying the double reduction of the term of preventive arrest from the sentence established, ignoring the fact that when delivering the sentence this period of detention has already been included within the penalty term.[190] Withal, the Ministry of Justice holds that the evolution of the application of the compensatory mechanism reveals the tendency of its application to a significant number of prisoners, if not the absolute majority of them, which, in the existing socio-economic conditions, clearly contravenes the will of the legislator, by drastically undermining the institution of criminal responsibility and affecting the principle of individualization of the criminal punishment.[191]

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[186] Proiectul de Lege cu privire la suspendarea aplicării reducerii pedepsei condamnatului deținut în condiții precare de detenție (The draft law on the suspension of the application of the reduction of the sentence of the convicted prisoner under precarious conditions of detention. Ministry of Justice of the Republic of Moldova, 12.02.2020)

[187] Notă informativă privind aprobarea proiectului de lege cu privire la suspendarea aplicării reducerii pedepsei condamnatului deținut în condiții precare de detenție (Informative Note for the approval of the draft law on the suspension of the application of the reduction of the sentence of the convicted prisoner under precarious conditions of detention). Ministry of Justice of the Republic of Moldova, 12.02.2020

[188] *Ibid*., p. 2

[189] *Ibid.*

[190] *Ibid*., p. 3

[191] *Ibid.*

Among the cases of resonance in which this compensatory mechanism was applied is one of the former prime-minister Vlad Filat[192]. On July 30, 2019, the Chisinau District Court reduced the sentence with nine years' imprisonment by 682 days, and subsequently, it was released.[193] In August 2019, the former sportsman Ion Șoltoianu, sentenced in 2013 to 12 years in prison for murder, the illegal keeping of weapons and blackmail, was released from the Penitentiary no. 13, by the instrumentality of the same compensatory mechanism.[194]

The project of suspension of the mechanism was not seen unanimously as a positive action undertaken by the Government. *Per contra* to the Government, the Ombudsman Mihail Cotorobai expressed his deep concern about the Government's intention to suspend the application of the reduced sentence of the detained prisoner under precarious conditions of detention and qualifies the action in question as a step backwards in ensuring respect for human rights in detention in the Republic of Moldova. Accordingly, he points out that detainees will have to endure degrading and inhumane conditions for long periods because the state is not able to provide them with adequate conditions in places of deprivation of their liberty.[195] Among other things, the Ombudsman mentioned that, basically, all the prisons are of old architecture, of Soviet organization and not adapted to human detention as such. Large spaces (of the cabin type) influence both the detention regime of the detainees, the health and their ability to participate in the resocialization programs. [196] More than 80% of the convicts spend all the time inside the institutions due to lack of jobs and other forms of employment. On their own, the penitentiaries do not have/have limited occupational areas specific and useful to the detained persons. The "resocialization" aspect is maintained in the process of recording the written documentation, rather than a succession of actions in the field.[197]

[192] Vlad Filat is the former prime minister of the Republic of Moldova, sentenced in 2016 to 9 years in prison in a corruption case, being accused of passive corruption and traffic of influence.
[193] A. Frunza. Parlamentul a votat: Deținuții nu vor putea cere reducerea pedepsei pentru condiții precare până în septembrie (The Parliament has voted: Prisoners will not be able to demand the reuction of the punishment for the precarious conditions until September). Ziarul de Gardă. 12 March 2020, Accessible: www.shorturl.at/bdjH1 (12.03.2020)
[194] *Ibid.*
[195] Opinia avocatului poporului în legătură cu intenția guvernului de a institui moratoriu la aplicarea mecanismului compensatoriu pentru detenția în condiții contrare articolului 3 CEDO (Opinion of the Ombudsman on the Government's intention to establish a moratorium on the application of the compensatory mechanism for detention under conditions contrary to Article 3 ECHR). Press-release. 13.02.2020: Accessible: www.shorturl.at/ePRYZ (13.02.2020)
[196] *Ibid.*
[197] *Ibid.*

At the same time, the decision of the Government to suspend the mechanism was criticised by the lawyer Vladislav Gribincea[198]. He wrote his opinion on a social network, stressing that "if we want to have good relations with the Council of Europe and avoid convictions at the ECtHR, then the mechanism that allows reducing the penalties of the prisoners due to the precarious conditions of detention should not be abrogated. If the practice is deficient, it must be changed, not the law."[199] However, Gribincea holds that certain adjustments of the mechanism are required. If the prisoner convicted of violent acts or organized crime has not been corrected, he cannot be released for the simple fact that he was detained in poor conditions. He presents a public danger and is entitled to only compensation.[200]

Notwithstanding the controversies in the civil society, the deputies voted the project submitted by the Government, at the sitting of March 12, 2020. The application by the courts of reducing the sentence of the detained prisoner under precarious conditions of detention was suspended and the Government was tasked with the submission to Parliament by 1 September 2020 of a draft law on improving the compensatory mechanism.[201]

The author of the paper supports the governments' initiative to suspend the mechanism, as *de facto,* it is not effective. It would have been effective in the case in which the current practice would not face constant violations of prisoners' rights, and the courts would have had to apply the mechanism only in a few individual cases.

In the current situation, where the violations are systemic, persistent in all detention and imprisonment facilities, the mechanism has to be applied in the cases of almost all prisoners. Does it mean "effective" if we reduce the sentence of all prisoners due to inadequate condition but do not solve the problem in actual fact by eradicating the causes? In the case of Shishanov v. Moldova, the Court itself recalls that the first finding of a violation by the Republic of Moldova of article 3 of the

[198] Vlad Gribincea is a moldovan lawyer and Executive director of the "Legal Resources Centre form Moldova". He is known for representing the applicant in the case of *Ilaşcu and Others v. Moldova and Russia* before ECtHR.
[199] M. Stratan. "Dacă practica este deficientă, ea trebuie schimbată, nu legea". Vladislav Gribincea, despre suspendarea mecanismul de reducere a pedepselor condamnaților deținuți în condiții precare. ("If the practice is deficient, it must be changed, not the law." Vladislav Gribincea, about suspending the mechanism for reducing the penalties of prisoners held in precarious conditions), NewsMaker, 13.02.2020, Accessible: www.shorturl.at/syST7 (13.02.2020)
[200] *Ibid*.
[201] Proiectul privind suspendarea reducerii pedepsei condamnatului deținut în condiții precare de detenție, votat de Parlament. (The project regarding the suspension of the reduction of the sentence of the convicted prisoner under precarious conditions of detention, voted by the Parliament. Press release). Directorate-General for Communication and Public Relations of the Parliament of the Republic of Moldova. 12.03.2020, Accessible: http://www.parlament.md/Actualitate/Comunicatedepresa/tabid/90/ContentId/6056/language/ru-RU/Default.aspx (12.03.2020)

Convention due to the precarious conditions of detention in its prisons, was established in the Ostrovar decision[202] and since then the Court has regularly found the same violation in over thirty cases against Moldova[203]. Moreover, the Court held the repetitive nature of the problems identified in the present case is confirmed by the fact that more than seventy lawsuits against the Republic of Moldova were pending at that time before the Court, which concern the conditions of detention and which, at first glance, raise a problem of compatibility with article 3 of the Convention.[204] Further on, even against the governments' initiative to suspend the mechanism, the members of the civil society do recognize that the majority of the prisoners are detained in precarious conditions.

In the Draniceru decision, the ECtHR *a priori* declared the mechanism effective, holding that there was no evidence to suggest that this new remedy would not offer genuine prospects of improving unsatisfactory conditions of detention or that it would not be capable of providing prisoners with an effective possibility of ensuring that the conditions met the requirements of Article 3 of the Convention.[205] However, the author recalls that the mechanism in question consists of two aspects- the preventive and the compensatory aspects. As mentioned before, the ECtHR stated that when a complainant is held in conditions contrary to Article 3 of the Convention, the best possible way to recover is to quickly cease the violation of the right not to undergo inhuman and degrading treatment[206]. From the analysed information, the author concludes that the preventive aspect of the mechanism cannot be applied in practice. Since the authorities lack the means and sources to prevent the prisoners from being detained in precarious conditions (i.e. cell repair, transfer to another cell etc.). At the same time, the incapacity of the authorities to improve immediately the conditions of detention were stressed by the ECtHR in the case of Mitrofan v. Republic of Moldova, where the court found that such improvements depended on the allocation of resources from the State budget.[207]

In the present circumstances in which the preventive aspect cannot be applied, the authorities have practically no choice but to apply only the compensatory aspect. The last one also raises reasons for concern. In the draft law presented by the Ministry of Justice, it was mentioned the inconsistent practice of the mechanism's application. Consequently, we can face situations in which

[202] ECtHR 35207/03, *Ostrovar v. Moldova*
[203] ECtHR 11353/06, *Affaire Shishanov C. République De Moldova*, par. 127
[204] *Ibid.*
[205] ECtHR 31975/15, Draniceru v. the Republic of Moldova, Information Note on the Court's case-law 226, February 2019, p. 2
[206] *Ibid.* par. 131
[207] ECtHR, 50054/07, *Mitrofan v. The Republic of Moldova*, par. 58

complainants whose name has more weight in the Moldovan society tend to be compensated in redundancy, the others risk to remain detained in the same conditions without any compensation. Therefore, there are major concerns for abuses. In addition, in a shadow report presented by the Legal Resources Centre from Moldova regarding the Ciorap group cases, it was recalled that "the Moldovan judges were reluctant so far to act proactively in ordering a redress for the violation of the [ECHR]"[208]. The ECtHR established at least 13 violations of the Convention for the insufficient compensations granted to the applicants, 4 of which concern insufficient compensations for the violation of Article 3 of the Convention[209]. *Per ensemble*, the Moldovan authorities are condemning prisoners to serve their sentence in precarious conditions from the very beginning. Nevertheless, the need for the application of the mechanism is indispensable. The suspension of the mechanism will undermine the prisoners' rights, because this way they will be left without any mean of redress at all. The author recalls that the ECtHR declared the mechanism *a priori* efficient, which means that it is not that much effective in the current circumstances. If supposedly the mechanism is used in very few individual cases, which will not have a systematic character, the mechanism will be considered absolutely efficient and without any shortcomings. Therefore, the government will have nothing to do but to maintain the mechanism and introduce other measures for alleviation of the prisoners' rights violations.

As a conclusion to the present paragraph the author wants to highlight numerous violations of prisoners' rights in the Republic of Moldova. By analysing the COs of the international bodies, it was possible to establish that the Republic of Moldova was regularly urged to improve the prison conditions, to reduce the overcrowding and to provide adequate health care to the prisoners under its custody. Minor improvements were possible to observe after the monitoring visits of the competent authorities. However, the general situation remained distressing. On the same line, the only possibility for redress for prisoners' rights violations, namely the preventive and compensatory mechanism is at stake. The government is concerned with the big number of offenders that achieve the reduction of the sentences and the money that they have to pay due to this mechanism, rather than the alleged suffering inflicted to the prisoners.

[208] Communication in accordance with Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements. CIORAP v. MOLDOVA group cases (conditions of detention). Legal Resources Centre from Moldova, Chisinau, 19 February 2018, p. 5
[209] *Ibid.*

4. RECOMMENDATIONS AND MEASURES

As it can be inferred from the previous chapter, the state's practice regarding the prisoners' rights is far from being in compliance with the international standards and even the national standards. The author has established that the issues of precarious material conditions, inadequate healthcare and overcrowding in prisons of the Republic of Moldova are inter-related and mutually-generating phenomena. One of the factors that catalyses these phenomena is the punitive penal system.

"Penal Reform International suggests a ten-point plan to reduce overcrowding: informed public debate, using prison as a last resort throughout all stages of the criminal justice system, increasing prison capacity, diverting minor cases, reducing pre-trial detention, developing alternatives, reducing sentence lengths and ensuring consistent sentencing, developing solutions to keep youth out of prison, treating rather than punishing drug addicts, the mentally disordered and terminally ill offenders and ensuring fairness for all."[210] Taking into consideration the realities of the Republic of Moldova, the author elaborated 3 groups of measures that are meant to reduce/ eradicate the issues of prisoners' rights violations in the Moldovan prisons. The measures described have to be considered in an interrelated way, so to achieve complex and long-lasting results.

4.1 The necessity of the penal reform

The researches show that the escalation of prison population in many countries is many times caused by factors which are not related to crime rates. Rather than that, the increase in the prison population is generated by the punitive criminal justice policies in the country. Unlikely a decade ago, the judicial courts are tending to have recourse of the imprisonment sentences in an exaggerated manner and even establish longer sentences. For instance, instead of dealing with minor offenders for insignificant offences with having recourse to fines, suspended sentences and restorative justice measures, those offenders are simply sentenced to a custodial punishment.[211]

[210] Handbook of basic principles and promising practices on Alternatives to Imprisonment. Criminal Justice Handbook Series. - United Nations Office on Drugs and Crime. Vienna, New York, 2007, p. 5

[211] Background paper on the Workshop on Strategies and Best Practices against Overcrowding in Correctional Facilities (A/CONF.213/16) – Strategies and Best Practices Against Overcrowding in Correctional Facilities. United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), March 2011, p. 14

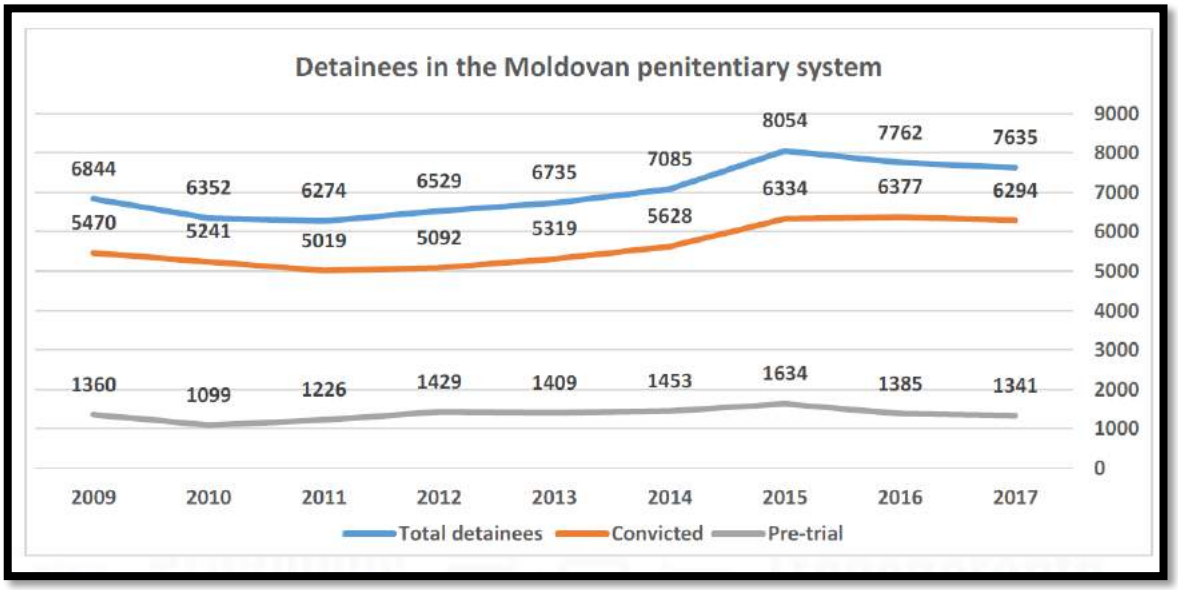
4.1.1 Revision of the imprisonment punishment

The penal reform has to consist of the reducing of the scope of imprisonment and developing fair sentencing policies.

By its 2013 action plan, the Government undertook to reduce the number of remanded persons and, implicitly, the prison population. The official statistics (Graphics 1. Detainees in the Moldovan Penitentiary System) proves the contrary. The prison population in Moldova increased from 6,735 in December 2013 to 7,635 (+ 13.4%) in December 2017. [212]

Graphics 1. Detainees in the Moldovan Penitentiaries

Source: *Centre of Legal Resources of Moldova (2018)*



According to the official statistics[213], the number of convicted persons, in 2019, was 11.6 thousand people, which means that, every day, 32 people are convicted. There was an average of 43.4 convicts per 10 thousand inhabitants compared to 41.1 in 2015. Women represented 6.5% of the total number of convicts, and an average of 5.4 convicted women per 10 thousand women compared to 85,3 men sentenced per 10 thousand men. The rate of convicted minors is 7.4 convicted per 10,000 children aged 0-17. Criminals are most often convicted of transportation crimes, theft and

[212] Communication to the Department for Execution of Judgements of the European Court of Human Rights, Committee of Ministers of the Council of Europe. Ciorap v. Moldova group of cases (condition of detention). Legal Resurces Centre from Moldova. Chisinau, 19.02.2018, p. 2

[213] Nivelul infracționalității în Republica Moldova în anul 2019 (The level of crime in the Republic of Moldova in 2019). National Bureau of Statistics of the Republic of Moldova. 28.02.2020, Available at: https://statistica.gov.md/newsview.php?l=ro&idc=168&id=6595

hooliganism. In most cases, criminals were convicted of transportation crimes - 31.4%, theft - 12.9%, acts of hooliganism - 8.6%, drug-related crimes - 7.5%, and crimes against public authorities and state security - 4.5%, etc. The following punishments were most frequently applied: unpaid work for the benefit of the community - 3977 people (34.2%), conditional sentence - 2582 people (22.2%), deprivation of liberty - 2449 people (21.0%), fine - 2288 (19.6%). In the case of minors, conditional sentencing predominates (42.1%), followed by deprivation of liberty (25.1%) and unpaid community service (18.4%).[214]

The National Bureau of Statistics also offers data regarding the imprisonment and people who are serving the imprisonment sentence. Imprisonment was mainly applied to those who committed serious and particularly serious crimes. In 2019, the number of persons serving their sentences in penitentiary institutions is 5598 prisoners, in reduction with 11.6% compared to 2015. At the same time, out of a total of detainees, about 6.3% are women. At a rate of 10,000 inhabitants there is an average, 20.9 prisoners. In most cases, the prison sentence was applied to persons who committed serious crimes in proportion of 42.9%, particularly serious crimes - 29.2%, exceptionally serious crimes - 11.9%, and those who committed less serious crimes and mild crimes - in proportion of 15.9%. The detainees have a term of atonement of 5 to 10 years According to the sentence period, 35 percent of detainees serve their sentences within 5 to 10 years of deprivation of liberty. During 2019, there were 127 people in life imprisonment, 5.0% less compared to the previous year. At the same time, the number of juveniles detained in closed penitentiary institutions was 44 minors.[215]

Consequently, the official data sets a number of 5598 of prisoners in 2019. This number is supposed to be lower than the number of prisoners in Republic of Moldova in 2015. However, it can be observed that this number is lower than the number presented by the Centre of Legal Resources of Moldova. According to the graphics, the number of prisoners in 2015 was 6334. It is unclear what number is indeed correct. In this case, either the number provided by the centre is increased, or the number of the Bureau of Statistics is lowered. Nevertheless, both of the numbers are still high, considering the constant presence of the issues of overcrowding in prisons, already stated in various reports by various bodies. This number should not be undermined especially because most likely, those persons will have to serve their sentence in conditions which are far from being in compliance with the international standards for the rights of prisoners. If to refer again to the data of the National Bureau of Statistics, as an average prisoners are serving their sentences from 5 up to 10

[214] *Ibid.*
[215] *Ibid.*

years. This obviously constitutes a long term, and just aggravates the debasing and humiliation of those persons who have to live in inappropriate conditions.

As an argument, the author is of the opinion that it is not the gravity of the punishment which matters, but it is the systemic, transparent and equal application of it, and only in cases where other forms of punishment will not contribute to the rehabilitation of the offender and the achievement of the scope of the criminal punishment.

4.1.2 Revision of the preventive pre-trial measures

More than 15% of the prison population are the persons arrested pending trial. Most of the pre-trial detainees are detained in Prison No. 13. Thus, as of 31 December 2017, out of 1,069 persons detained in that prison, 826 (77%) were pre-trial detainees. In fact, the reluctance of judges and prosecutors to apply non-privative measures pending trial is the main reason of overcrowding of the Prison No. 13.[216]

The clear national provisions (Articles 185 and 308 (8) of the Code of Criminal Procedure), in particular following the amendments introduced in 2016, which specifically addressed the case law of the ECtHR, led to a specific examination of the performance of the parties and the judicial system (from the point of view of addressing it in decisions) regarding the substantiation of the insufficiency of alternative and non-custodial measures.[217]

The pre-trial detention and house arrest are currently applicable only in the circumstances in which the person who is accused of the commitment of an offence for which the punishment represents imprisonment for more than 3 years. This change has resulted after the amendment of the statutory limitation of ordering the preventive arrest in August 2018.[218]

The way the preventive arrest is prescribed in the provisions of the Code of Criminal Procedures, implicitly prioritize it when relating to the relevant Articles of the Code. The insufficient range of preventive non-custodial measures is caused by the conceptually defined appropriateness of bail and judicial control measures. The application of these specific measures is possible only as

[216] Communication to the Department for Execution of Judgements of the European Court of Human Rights, Committee of Ministers of the Council of Europe. Ciorap v. Moldova group of cases (condition of detention)… *Op. cit.*, p. 2
[217] Report on the Research on the Application of Pre-trial Detention in the Republic of Moldova. Council of Europe, Chisinau, 2020, p. 44
[218] *Ibid.*, p. 48

complementary measures to the preventive arrest, and not as distinctive methods.[219] At the same time, the provisional release under judicial control or bail is not granted to the accused, the defendant if there are data that he will commit another crime, will try to influence witnesses or destroy the means of evidence, to hide from the criminal prosecution bodies, from the prosecutor or, as the case may be, from the court.[220]

Thus, the preventive arrest is extensively applied by the national courts, despite the provision of the Code of Criminal Procedures, which says that "[w]hen resolving the issue of pre-trial detention, the investigating judge or the court has the obligation to examine as a matter of priority the opportunity to apply other preventive, non-custodial measures, then those of alternative to pre-trial detention, and to reject the request for pre-trial detention when unmotivated. sufficient or if the reasons given are not supported by evidence confirming the reasonable grounds for application."[221] The investigating judge or the court has the right to order any other preventive measure provided in art. 175 of the Code.

4.2 Alternatives to imprisonment

The promotion of human rights provides the underlying rationale for the promotion of prison reform, and indeed the UN standards and norms on crime prevention and criminal justice. However, this rationale alone is often unable to bring about prison reform in countries with scarce human and financial resources. The detrimental impact of imprisonment, not only on individuals but also on families and communities, together with economic factors, must be taken into account when considering the need for prison reform. It is also important that activities focusing on vulnerable groups, including children, women, and prisoners with special needs, should be included in prison reform programmes.[222]

The legislation of many countries provides only an exhaustive list of alternative measures to imprisonment. Even though those may be present in the legislation of a concrete state, the courts may be unwilling to use them. Instead they tend to use imprisonment as the main form of the punishment. The exclusive use of alternatives to custodial punishment may be a feature of a punitive

[219] *Ibid.*
[220] Code of Criminal Procedure of The Republic of Moldova, Article 191 p. (2)- Article 192 (2)
[221] *Ibid.,* , Article 185 p. (3)
[222] United Nations Office on Drugs and Crime. Criminal Justice reform, Accessible: https://www.unodc.org/unodc/en/justice-and-prison-reform/criminaljusticereform.html#prisonreform

criminal justice policy. On the other hand, the limited usage of alternatives can indicate to the incapability of the government to reform the legislation due to limited resources, untrained representatives of the judiciary and clear guidelines for the promotion of the alternatives to the custodial punishment.[223]

In the already stated ECtHR Decision of Draniceru v. Republic of Moldova, The Court urgently requested the Moldovan authorities, and more precisely the domestic courts, to reduce the use of pre-trial detention and increase the use of non-custodial alternatives.[224]

The HR Committee welcomed the State's attempts to improve the conditions by building new detaining facilities. Nevertheless, the Committee suggested that the State party should take concrete steps to improve conditions in prisons and detention facilities in line with the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The State party should consider not only the construction of new prison facilities but also the wider application of alternative non-custodial sentences, such as electronic monitoring, parole and community service.[225]

In Chapter 2 of the present thesis, the author indicated some alternatives to the imprisonment punishment prescribed in the Criminal Code of the Republic of Moldova. Relying on the data offered by the National Bureau of Statistics of the Republic of Moldova, some of them were used in proportion from 20% up to ~ 35 %. However, it should always be borne in mind that the Criminal Code of Moldova allows to use the alternatives as a complementary punishment to the actual sentence of imprisonment, which stands as a main form of punishment. Analysing by the high number of the imprisoned persons, by the constant issue of overcrowding, it can be deduced that these alternatives are not used to the fullest extent. Sentencing policies that promote the programmes of community-based services, but which do not establish any obligation for the government to have recourse to those programmes and develop them are insufficient for the combating of the issue of overcrowding. There is a need of resources to support the alternatives to imprisonment and supervise the offenders, where such alternatives are prescribed by law.[226]

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[223] Background paper on the Workshop on Strategies and Best Practices against Overcrowding in Correctional Facilities… *op. cit.*, p. 13

[224] ECtHR 31975/15, *Draniceru v. the Republic of Moldova,* p. 2

[225] HRC COs. CCPR/C/MDA/CO/3, par. 28

[226] Background paper on the Workshop on Strategies and Best Practices against Overcrowding in Correctional Facilities …*op. cit.*, p. 13

Of particular importance, as far as alternatives to imprisonment are concerned, are the United Nations Standard Minimum Rules for Non- Custodial Measures (the Tokyo Rules)[227], which were adopted in 1986. These Rules have as one of their fundamental aims the reduction of the use of imprisonment.[228]

The Rule 1.5 of this document enshrines that "Member States shall develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender."[229] More than that, "In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of noncustodial measures, from pre-trial to post-sentencing dispositions."[230] The number and types of noncustodial measures available should be determined in such a way so that consistent sentencing remains possible.

The Standard Minimum Rules for Non-custodial Measures provide a comprehensive list of non-custodial measures:

(a) Verbal sanctions, such as admonition, reprimand and warning; (b) Conditional discharge; (c) Status penalties; (d) Economic sanctions and monetary penalties, such as fines and day-fines; (e) Confiscation or an expropriation order; (f) Restitution to the victim or a compensation order; (g) Suspended or deferred sentence; (h) Probation and judicial supervision; (i) A community service order; (j) Referral to an attendance centre; (k) House arrest; (l) Any other mode of non-institutional treatment; (m) Some combination of these measures.[231]

As already mentioned, some of the alternatives are already present in the legislation of the Republic of Moldova. The government has to improve the conditions through which these measures would be applied more actively by the judiciaries. At the same time, the government has to find the means and resources to prescribe new forms of alternatives to imprisonment in the Moldovan legislation, as

[227] United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), General Assembly resolution 45/110, 14 December 1990
[228] Handbook of basic principles and promising practices on Alternatives to Imprisonment … *Op. cit.,* p. 10
[229] UN Standard Minimum Rules for Non-custodial Measures, Rule 1.5
[230] *Ibid.,* Rule 2.3
[231] *Ibid.,* Rule 8.2

it represents a stringent necessity for the alleviation of the issues of overcrowding, precarious conditions in prisons and inadequate healthcare for the prisoners.

4.3 Renovation of prisons and construction of new detaining facilities

The problem of outdated prison and detaining facilities is common for many countries. In their current state, those facilities are not adequate for the prisoners to serve sentences. More than that, they cannot face an escalation of the prison population. The poor conditions of the facilities can be caused by the lack of financial contributions of the government for their maintenance, reparations or even construction of new prisons. Thus, in these circumstances, the issue of overcrowding has nothing else but aggravates. However, the obligation of a government which undertook to respect the rights of prisoners will still imply the positive action for the establishment of new prisons, despite the lack of financial resources. This obligation has to be achieved in complex with other procedural obligations (i.e. the reform of the penal policy and inclusion of it of the alternatives to imprisonment). [232]

In the CPT 2018 report, the committee has mentioned the initiative of the Government to build a new remand facility near Chisinau, the capital of Moldova. It requested from the national authorities a timetable for the construction of the new prison and information on its general layout (overall capacity, size and design of accommodation cells, facilities for out-of-cell association activities, including areas for educational and vocational training, workshops, facilities for outdoor exercise and sport, etc.).[233]

At the same time, the CPT recommended the authorities to preserve the efforts of improving the already existing conditions in the Chisinau Prison. Specifically, "measures should be taken to ensure that cell occupancy rates are reduced in order to provide for at least 4 m^2 of living space per person in multiple-occupancy cells (not counting the area taken up by in-cell toilets) and that cells are sufficiently ventilated and kept in an adequate state of repair and hygiene."[234]

However, the construction of the prison in Chisinau is constantly being postponed by the authorities, due to the reason of the lack of financial resources. As initially planned, the constructed of the

[232] Background paper on the Workshop on Strategies and Best Practices against Overcrowding in Correctional Facilities… *op. cit.*, p. 14
[233] CPT/ Inf (2018) 49, par. 31
[234] *Ibid.*, par. 32

prison was about to start in 2018 and the opening was envisaged for the end of 2021. Recently, the Moldovan authorities announced the initiative to negotiate a loan with the European Development Bank of the Council of Europe to carry out the Prison Construction Project in Chisinau.[235] The new opening date is expected to be at the end of 2022. Until then, the prisoners have no choice but to be detained in the existing precarious conditions.

At the same time, the Moldovan Government has undertaken the reconstruction of other 3 imprisonment and detaining facilities. The law of the state budget provides for a total expenditure of over 443 million lei (~ 23 million EUR at that time), allocated to the Ministry of Justice. Of the total amount, 383 million lei (~ 20 million EUR) are planned for the construction of the new penitentiary in Chisinau, of which 337 million lei (~ 17.5 EUR) will be expenses covered by external resources. In 2019, about 160 million lei (~8 million EUR) were allocated for the construction of this objective, and in 2018 - 139.6 million lei (~ 7 million).[236]

Nevertheless, the Moldovan authorities should always remember the already mentioned rule highlighted by the United Nations Human Rights Committee, according to which, "treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule, which, as a minimum, cannot be dependent on the material resources available in the State party, and which must be applied without discrimination."[237]

Some may argue that the government can simply renovate the existing facilities and there is no need for such drastic and lengthy actions as building new prisons from scratch. However, this statement raises several doubts. First of all, those renovations have anyway to have a financial backup. As it can be inferred, if the projects of the construction of new prisons are financed from loans from other countries and international organizations, the Moldovan government simply does not have the money. The Moldovan Government has also to revise the national budget in the upcoming years, in order to establish an adequate amount of financial sources at least for minor reparations. However, as it was already pointed out in the reports of the civil society, the competent authorities were reluctant to satisfy the complaint of prisoners and improve their material conditions of living in

[235] Autoritățile mai împrumută 10 milioane de euro pentru construcția Penitenciarului Chișinău. (The authorities borrow 10million euros more for the construction of the Chisinau Penitentiary). Portalul Avocaturii de Afaceri din Moldova. Chisinau, 11.10.2019, Accessible: www.shorturl.at/mryEJ (11.102019)
[236] Patru instituții de detenție vor fi reconstruite în 2020. Pentru penitenciarul Chișinău se mai alocă 383 milioane de lei (4 Detaining facilities will be reconstructed in 2020. For the Chisinau Penitetiary 383 million lei more are allocated). Portalul Avocaturii de Afaceri din Moldova, 02.12.2019, Accesible: www.shorturl.at/msuNS, (14.01.2020)
[237] Chapter 8: International Legal Standards for the Protection of Persons Deprived of their Liberty … *op. cit.*, p. 338

prisons at the first call. Some positive actions and improvements can be hardly achieved only after the monitoring visits of the monitoring bodies, either national or international. Although, in the reports concerning the monitoring visits the bodies indeed declared some improvements, it rather concerned some individual cases and were minor in relation to the general goal of renovating all the prisons in the state.

As a conclusion to the last chapter, the author substantiates that according to the statistics (rather official, or provided by the civil society), the number of prisoners in Moldovan imprisonment and detaining facilities continues to be high through the years. This denotes the insufficient actions of the government to alleviate the prisoners' rights violations. In order to improve the situation in the prisons, it is not enough to do small reparations of cell upon the call or complaint of some prisoners. The issues in question require a more comprehensive approach to the improvement of the prisoners' rights within the prisons. As a foremost step to be taken, the Moldovan government has to do a penal policy reform, whilst using the process of decriminalization and involving the non-custodial alternatives for the imprisonment sentence.

CONCLUSION

Everyone is entitled to enjoy the rights that are prescribed by the national laws of the country where they live, as well as prescribed by the international legal instruments. The exercise of those rights shall happen without any discrimination or interference from the third parties. Persons who are serving a sentence in the form of imprisonment or a detained in a pre-trial detention are limited in many of their rights as a consequence of the conviction for the offence they have committed, based on a court's judgement. However, the circumstances and the environment in which those persons serve their punishment might be infringing some other rights, which are not necessary to be limited for the purposes rehabilitation and the scope of the punishment. Besides already convicted and having to carry out a punishment, the conditions of prisoners' custodial treatment may turn into an additional punishment to the one already existing. Whilst, some may argue that this is an indispensable process of re-education of the prisoner and indulgent with the one who represent a danger for the rest of the society, it should always be borne in mind that prisoners', as well as any other person from the society' are endowed with basic human rights that have to be respected due to their inherent dignity. At the same time, because of being under the custody of the state authorities during the execution of the punishment, the state authorities have positive obligations to respect the rights of the persons who are deprived of their liberty and are under their responsibility.

As being a citizen of the Republic of Moldova, the author has always found news about prisoners' rights violations, which triggered her to investigate this issue. As mentioned before, the Republic of Moldova was always a subject before the international organizations, which found it guilty for various aspects of prisoners' rights violations. The author sought to research on the legal impediments leading to prisoners' right violations. Another subject of concern was how the Moldovan Government is tackling the issue. For that purpose, several questions were set. It was obvious that prisoners' rights violations represent a complex issue and can be analysed from different perspectives, taking into consideration many ways of prisoners' rights violations. Therefore, the author decided to limit the present research only to three main issues: namely, overcrowding, precarious conditions of imprisonment and inadequate healthcare for persons deprived of their liberty.

Several research questions were addressed in order to analyse the issue. The first one was: What are the international standards regarding the detaining and imprisonment conditions in prisons and

detaining facilities? The author answered this question in the first chapter of the paper. The standards in question can, therefore, be grouped into 3 categories: standards on prohibition of torture, inhuman and degrading treatment, standards on prison conditions and standards on healthcare within prisons. As a method of research, the author analysed the international legal instruments for the protection of the rights of the prisoners. Amongst them, there were major universal and regional human rights instruments, such as: ICCPR, ECHR, as well as specific legal instruments for the protection of prisoners' rights (i.e. UN CAT, ECPT). The analysis of those instruments and their provisions regarding prisoners' right represented an important step conducting the thesis. The standards prescribed within them are ranked to the level of principles, so the state parties to the conventions have to follow them. More than that, some of the instruments set concrete obligations that the signature parties undertook once they signed and ratified them. As for what concerns specific provisions that the instruments are comprised of, they referred to various aspects of prisoners' rights. Some prescribe the right to have access to cells with enough personal space, lightening, ventilation, water and other hygienic facilities. Over provisions concerned the medical help that each prisoner is entitled to upon arrival in the imprisonment or detaining facility, up to his release.

It has to be mentioned that indeed the instruments for prisoners' rights set some basic criteria to guide the state parties. For instance, it was set the standard of 4/7 m^2 of personal space for each prisoner. However, the state parties are left with a margin of discretion in the process of establishing their own national standards, which in the end have to be in compliance with the international ones.

At the very first stage of writing the dissertation, the author had the hypothesis that the issues of concern of the current paper do not represent individual matters, but are interrelated and mutually-generating phenomena. It could be observed that very often circumstances which do not reach one group of standards can breach the prisoner's rights concerning the other group of standards. For instance, if a prisoner was held in a cell with no enough space and with poor sanitary conditions, this led to the aggravation of his physical or mental health. Similarly, it is generally viewed that overcrowded facilities have a negative impact on the prisoners' mental health. At the same time, the presence of a prisoner in such conditions was found to amount to a debasing and humiliating treatment, infringing his inherent human dignity. Therefore, the author assumed correctly that there is a link between the conditions of imprisonment, healthcare and prohibition of torture, inhuman and degrading treatment.

Those observations were possible to make by analysing the already mentioned instruments, the academic works of scholars and by analysing the case law of the ECtHR.

This way, the author comprised both the theoretical and the practical aspects of the matter.

In the second chapter of the dissertation the author drew the attention towards the standards of prisoners' rights prescribed in the legislation of the Republic of Moldova. This way, the author sought to answer to the second research question. The author also had the hypothesis that the legislation of the Republic of Moldova will not be in compliance with the international standards examined in the Chapter 1 of the paper. That being said, the author was expecting to find outrageous shortcomings and inconsistencies with the international instruments. In contrast, by using the comparative method, the author found that for what concerns specific provisions regarding prisons conditions, healthcare and prohibition of torture, the legislation of the Republic of Moldova has incorporated all the required standards in order to have a legal basis that will permit to respect and promote prisoners' rights.

The author has also analysed the provisions regarding the imprisonment sentence and the pre-trial detention. The imprisonment sentence represents one of the main punishments prescribed by the Criminal Code of the Republic of Moldova. It can be also complemented by other supplementing punishments such as: fines, lifting of the driving license, unpaid work for the benefit of the community etc. At the same time, pre-trial detention represents a preventive measure prescribed by the Code of Criminal Procedure of the Republic of Moldova. The author anticipated the following chapters and presumed that the imprisonment sentence and the pre-trial detention are extensively applied by the Moldovan courts. Thus, even though the legislation prescribed other forms of punishment and preventive measure which are more willing to be applied, namely the extensive usage of those represent a cause for overcrowding in prisons.

The third chapter was designated for the elaboration of prisoners' rights violations in Moldova. The author has made reference to the concluding observations of the Human Rights Committee under ICCPR, concluding observations of the United Nations Committee Against Torture under the United Nations Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. According to that concluding

observations and reports, it can be inferred that the issues of prisoners' rights violations represent a common and systemic matter. It was stressed by those monitoring bodies that the Moldovan government taken some positive actions in order to alleviate prisoners' rights violations. However, the shortcomings were outnumbering the positive aspects. The monitoring bodies held that the conditions in the Moldovan prisons remain harsh even after other monitoring visits were conducted before. It was found that the realities on personal space for prisoners are neither in compliance with the national standard of 4 m^2, nor with the international ones. In some cases, the monitoring bodies stated that the prisoner had less than 1 m^2 of personal space, whilst habituating the cell with a lot more inmates than the cell was designed for. Every single report has stressed issues of poor ventilation, poor lightening, the lack of running water and even access toilet. Similarly, there were found cases in which prisoners with serious health issues were denied an adequate healthcare by a specialized doctor. Whereas the prison did not have a competent doctor to cure more serious illnesses, the prison authorities also impeded the transportation of the ill prisoner to a public hospital.

The same sad realities were pointed out by the Moldovan civil society. The author made reference to the reports concluded by the Ombudsman Office after conducting monitoring visits to places of imprisonment or detention. The Ombudsman is also a part of the National Mechanism for Prevention of Torture. However, both the Ombudsman and the Mechanism for the Prevention of Torture have merely declaratory functions. They do not have enough coercive powers to supress the violations of prisoners' rights and hold the competent authorities liable for those violations. The only improvements of conditions of imprisonment and detention which happened after their monitoring visits depended solely on the willingness of the prison administration to alleviate the shortcomings.

Another part of the third chapter constituted the analyses of the preventive and compensatory mechanism for prisoners' rights violations. This mechanism was highly debated at the moment of the writing of the thesis. The government was concerned by the fact that after the application of this mechanism, many offenders have achieved a reduction of their sentence, due to precarious conditions of imprisonment and detention. Therefore, a draft law for the suspension of the mechanism was initiated in the Parliament. The government also held that after the reduction of the sentences, many of the offenders are released and represent a threat for the rest society since they did not go through the whole process of rehabilitation. At the same time, the financial aspect was

pointed out. The government had to pay money for the days in which prisoners' were held in precarious conditions. Whilst, indeed Moldova represents a country with a strikingly poor economy, the wellbeing of the prisoners should not depend on the impossibility or the unwillingness of the authorities to entitle the prisoners with conditions of imprisonment in compliance with the national and international standards. Therefore, it would be a great mistake to leave the prisoners without the only mean of redress for the alleged violations.

By analysing the violations, the author has answered to the third research question, whether the state's practice is in compliance with international standards. Since almost every facility for the imprisonment or detention has shortcomings of a certain level of gravity, the government is subjecting the prisoners to an inhuman and degrading detention in precarious conditions even started with the moment of delivering the order for an arrest or a court judgement of conviction.

The forth chapter of the thesis concerns the measures recommended for the improvement of the penal policy system, since the extensive use of imprisonment and pre-trial detention is the main cause leading to overcrowding in prisons. As urged by the international bodies, the Moldovan government has to implement in the legislation the non-custodial alternative to imprisonment or detention. At the same time, the government has to proceed to the renovation of the prisons that are deteriorated and to build new ones from scratch. The main excuse of the government for the reluctance of fulfilling this obligation is the lack of financial resources. The current reparations and constructions of the prisons are performed from loans from the international organizations and partners. However, the realization of the prisoners' rights should not depend on the lack of the financial resources in the state.

At last, the author has achieved the objective of the thesis by conducting a thorough analysis of prisoners' rights standards, violations of those rights in the Republic of Moldova and by establishing the legal impediments that lead to those violations.

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APPENDICES

Annexes 1-3. Pictures from the preventive visit of the Ombudsman Office to the Penitentiary Nr. 18 in Brănești.

Source: Report on the preventive visit. Penitentiary no. 18 Brănești. Direction of the prevention of torture. Ombudsman Office

Annexe 1.

Annexe 2.

Annexe 3.

Annexes 4-6. Pictures from the preventive visit of the Ombudsman Office to the Penitentiary Nr. 3 in Leova.

Source: Report on the preventive visit. Penitentiary Nr. 3 Leov). Direction of the prevention ogainst torture of the Ombudman Office

Annexe 4.

Annexe 5.

Annexe 6.

Annexes 7-10. Pictures from the preventive visit of the Ombudsman Office to the Police Inspectorate in Briceni.

Source: Report on the preventive visit. Police Inspectorare in Briceni. Direction of the prevention of torture. Ombudsman Office

Annexe 7.

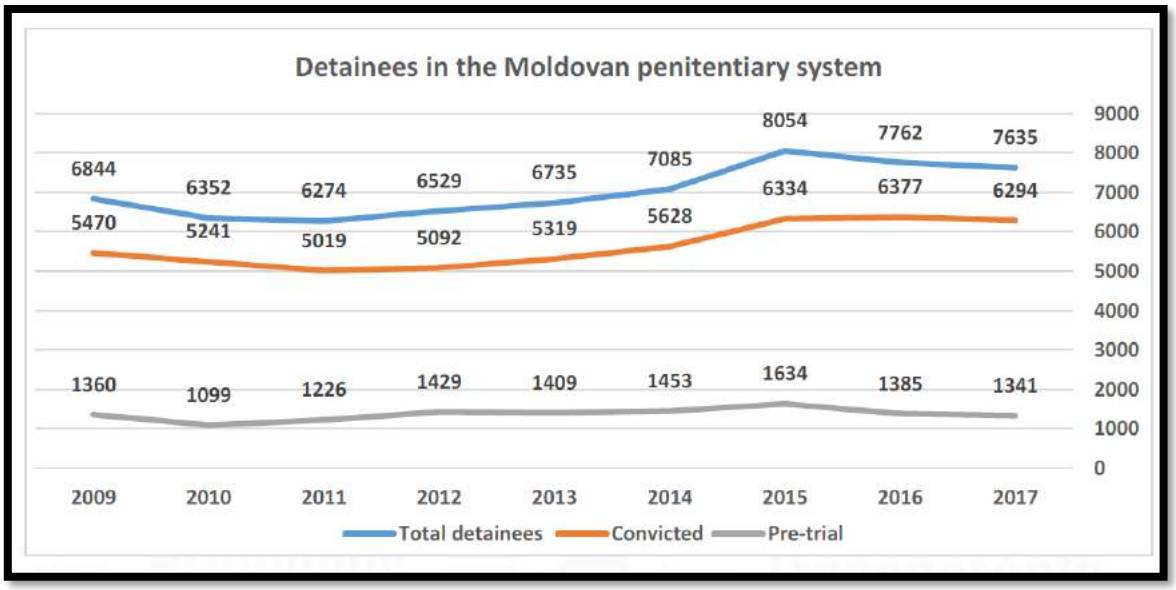
Annexe. 8

Annexe 9.

Annexe 10.

Graphics 1. Detainees in the Moldovan Penitentiaries

Source: *Centre of Legal Resources of Moldova (2018)*



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