



COMMUNICATION

in accordance with Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and the terms of friendly settlements

Group of cases: I.D. v. the Republic of Moldova (no. 47203/06)

Submitted on: April 20 2020

DESCRIPTION OF THE CASE 3

ABOUT PROMO-LEX 4

ABOUT EPLN (EUROPEAN PRISON LITIGATION NETWORK)..... 4

GENERAL MEASURES: DOMESTIC REMEDY TO CHALLENGE POOR CONDITIONS OF DETENTION 4

GENERAL MEASURES: OVERCROWDING IN THE PRISON ESTABLISHMENTS 9

GENERAL MEASURES: MEDICAL ASSISTANCE IN PRISON ESTABLISHMENTS 11

RECOMMENDATIONS 15

About the group of cases

1. This group of cases concerns violations of Articles 3 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms on account of poor material conditions of detention in establishments under the authority of the Ministries of Internal Affairs and Justice and the lack of access to adequate medical care (including specialized medical treatment) in these facilities and the detention facility of the National Anticorruption Centre, together with the absence of effective domestic remedies in both respects.
2. The European Court for Human Rights indicated under Article 46 that the authorities should, without delay, put in place an effective preventive and compensatory remedy, or a combination of remedies, in respect of inadequate conditions of detention.
3. Other violations found by the Court concern repeated force-feeding of the applicant (Article 3); censorship by the prison authorities of the applicants' correspondence, failure to ensure acceptable conditions for meetings with family members, lack of reasonable clarity as to the scope and manner of the exercise of discretion by the prison authorities as regards the authorization of family visits (Article 8); failure to comply, promptly, with the Court's indications under its Rule 39 to keep the applicant in a specialized medical institution (Article 34).

The decision of the of CM on the I.D. group v. the Republic of Moldova (Application No. 47203/06)¹

4. On 1348th meeting, 4-6 June 2019 (DH), as regards to General Measures, CM:
 - noted with satisfaction the entry into force, as of January 2019, of the legislation introducing preventive and compensatory remedies to challenge conditions of detention which the European Court considered, in principle, as effective and strongly encouraged the authorities to continue training and capacity building measures for the competent authorities (in particular to ensure adequate awards of monetary compensation, in compliance with the case-law of the European Court) and invited them to provide, by March 31 2020, information on their functioning in practice;
 - noted with interest that the measures taken so far allowed a reduction of the prison population in 2018 and strongly encouraged the authorities to pursue their efforts to further reduce overcrowding, including through reduced recourse to detention on remand, and provide information on the progress achieved;
 - strongly urged the authorities to sustain their efforts in the building of the new prison and to abide by the indicated timeframe of end-2022 and, in the meantime, to continue improving conditions of detention in Prison No. 13 as well as other Prison establishments, and to provide information on the further measures taken or planned;
 - invited the authorities again to provide information on the following outstanding issues: measures taken to remedy the violations of Article 8 on account of censorship of detainees' correspondence and bans on family visits; measures taken to ensure that the six reopened police detention facilities provide Convention-compliant conditions of detention: provision of food, sanitary conditions, out-of-cell activities in police establishments, placement of persons in police detention facilities beyond the statutory 72-hour period; measures taken to ensure adequate and timely medical assistance in detention, including in the detention facility of the National Anti-corruption Centre; questions related to the finding of a violation of Article 34;
 - decided to resume their examination of these cases at one of their Human Rights meetings in 2020.

¹ CM/Del/Dec(2019)1348/H46-16

The object of the submission

5. By this submission, we would like to stress the attention of the Committee about general measures indicated by the Committee such as:
 - Application of the national legislation introducing preventive and compensatory remedies to challenge conditions of detention;
 - Efforts implemented by the authorities to further reduce overcrowding, including through reduced recourse to detention on remand;
 - The process of building of the new prison by the indicated timeframe of end-2022 and the process of improving conditions of detention in Prison No. 13 as well as other Prison establishments;
 - measures taken to ensure adequate and timely medical assistance in detention
6. The undersigned association would like to pay special attention to the application of the national legislation introducing preventive and compensatory remedies to challenge conditions of detention medical assistance in penitentiaries, and lack of medical assistance in the national prisons.

ABOUT PROMO-LEX

7. Promo-LEX Association² is a non-governmental, not-for-profit and politically independent human rights and advocacy organization established in 2002 and registered with the Ministry of Justice of the Republic of Moldova on July 19, 2002.
8. Promo-LEX's Mission is to advance democracy in the Republic of Moldova through promoting and defending human rights and strengthening civil society. Promo-LEX does its work through two Programs: Human Rights Program and Monitoring Democratic Processes Program.

ABOUT EPLN (EUROPEAN PRISON LITIGATION NETWORK)

9. The European Prison Litigation Network (EPLN)³ is an international non-governmental organization (INGO) granted participative status with the Council of Europe.
10. EPLN was founded in 2013 by a network of NGO jurists, lawyers and researchers active in the penitentiary field in different countries. The Network aims at heightening the judicial protection of prisoners' fundamental rights in the Member States of the Council of Europe.

GENERAL MEASURES: DOMESTIC REMEDY TO CHALLENGE POOR CONDITIONS OF DETENTION

Introduction of the prevention and compensatory mechanism in the Republic of Moldova

11. As a result of the [Shishanov v. Moldova](#) judgment (11353/06, September 15 2015, §188), the Parliament of the Republic of Moldova adopted two laws (Nos 163⁴ and 272⁵), adopting, among others, a remedy for complaints about detention conditions. These two laws were published on October 20, 2017 and December 12, 2018 respectively, and the provisions as to the new compensatory remedy entered into force on January 1, 2019.
12. The Committee invited the Government to provide information on the measures envisaged to offer redress in the meantime to detainees complaining about their conditions of detention, including in cases pending before the European Court (*see the decision of 1310th meeting, 13-15 March 2018*).
13. According to the new remedy, a) the procedure is administered by a judge who should provide the necessary guarantees of independence and impartiality and all the other guarantees associated with judicial proceeding; b) the burden of proof on the detainee should not be excessive; the judge was required, in order to assess the conditions of detention, to take account of the principles laid down

²www.promolex.md

³ www.prisonlitigation.org

⁴ [Law no. 163](#), of 20-07-2017

⁵ [Law no. 272](#), of 29-11-2018

by the Court; c) the judge is allowed to examine the case in a three-month time limit, and the judges had to ensure strict adherence to this term and, where circumstances demanded a special analysis, they had to examine a case even in a shorter timeframe (see [Atanasov and Apostolov v. Bulgaria](#) (dec.), 65540/16 and 22368/17, June 27, 2017, Note 209).

14. As to the *preventive aspect* of the remedy, the judge could have the remedy of the situation for the Prison institution for 15 days; after this period, the Prison service had to inform the judge of the concrete measures taken.
15. As to the *compensatory aspect* of the remedy, the new provisions could be summarized as follows: For offenders, the forms of compensation were: (i) reduction of punishment, based on a day-to-day exemption for ten days of imprisonment under precarious conditions; (ii) where such remedy did not provide sufficient compensation or where detention under such conditions lasted less than ten days, a pecuniary compensation of up to 100 Moldovan lei (approximately EUR 5,10 as to January 1 2019) for each day detention in precarious conditions should be provided.
16. After the ECtHR issued the decision in the case of [Draniceru v. Republic of Moldova](#) (dec.) - 31975/15, all the applications submitted to the Court as a result of poor conditions of detention were declared inadmissible, as a result of entering in force at the national level of the new remedy described above.
17. In this context, Promo-LEX Association provides *pro bono* legal assistance to more than 15 applicants in the process of using the new remedy. In the next months, Promo-LEX Association will continue to monitor the application of the new remedy in the assisted cases from the perspective of the efficiency of the remedy in relation to the improvement of the condition of detention in individual cases, as well in general, and if the amount of compensation provides an efficient remedy as well. The promo-LEX organization will also monitor the application of the new provisions in other similar cases.
18. However, during the initial stage of the application of the new laws by the national Courts, Promo-LEX Association noticed problems of application and interpretation by the national Courts, which will be described in the following paragraphs.

Main concerns

19. In the previous communication of the Promo-LEX submitted in accordance with Rule 9.2 of the Rules of the Committee of Ministers, Promo-LEX raised several concerns in relation to the new compensatory mechanism, which are related to:
 - *The capacity of the investigative judges to apply the new preventive and compensatory remedy;*
 - *Risks of misinterpretation of the provisions of laws Nos 163 and 272;*
 - *A Non-uniform interpretation concerning the pecuniary compensations;*

Based on the information collected by Promo-LEX organization from June 2019 to March 2020, we formulate the main concerns in relation to the national judicial practice on the application of the prevention and compensatory mechanism.

- a. *The actual judicial practice on the application of the new preventive and compensatory remedy is not efficient in relation to the examination of the cases in the terms provided by law, improvement of the detention conditions in a term of 15 days, the amount of the pecuniary compensation and the possibility to recover the material damage and cost of the legal services*
20. In 2019, the national judiciary system included between 45 and 50 investigative judges, which includes more than 14% of all judges of the national general jurisdiction⁶.
21. The workload of the investigative judges has increased insignificantly in the past years, in computation with other judges, part of the national judiciary system. The workload of the investigative judges varies significantly across the system. In 2018, every investigative judge had an average caseload of 1168 cases and materials (in 2018, 52560 cases were examined by the investigative judges in respect to the application of the preventive measures, authorization of the

⁶ [The list of investigative judges, as to December 10 2018](#)

special investigative measures and other types of request and complaints filed by the parties⁷). This number, however, is more prominent for the investigative judges from Chisinau and Balti (up to 5000 cases and materials examined by a judge, without the cases provided by the new preventive and compensatory remedy). In these circumstances, should also be considerate that in under the competence of the Chisinau judges are the Prison nr. 13, as well other four prisons).

22. Also, it should be considered that in Moldova, the general rate of admissions of the prosecutor's request to apply the preventive arrest by the investigative judges is above 80% starting with 2006 and culminating by 94,2 % admission rate in 2019⁸. The most significant number of arrested people were registered in Chisinau. Subsequently, the most significant part of them are placed in prison nr. 13 (842 people in arrest placed in Prison nr. 13, as to the information provided by the National Prison Administration as to January 1, 2020⁹).
23. During the monitoring period, Promo-LEX assisted and provided direct and indirect representation in 15 cases related to the application of the compensatory mechanism. In this respect, out of the total number final decisions were issued just in 5 out of the total number of cases, despite according to the legislation, the investigative judges have to examine the cases in a period not less than three months. In the rest of the 10 cases, the court examinations proceedings are still pending in the front of the investigative judges. According to Promo-LEX data, the 90 % of the Court hearings were postponed because the legal representatives of the prisons in the Court did not provide the Prison Report on the conditions of detentions, which is not mandatory for the examination. However, in practice, the Investigative Judges refused to continue the case examination if the prison administration did not provide the report. According to the data presented by the Government in their revised action report, §8, it can take between 4 and 6 months for the courts of law with jurisdiction over several prisons to examine this type of cases, which exceeds the time period set in the laws on the preventive and compensatory mechanism.
24. The findings mentioned above reconfirmed our concerns mentioned in the last communication on the ID group of cases¹⁰, related to the observance of 3 months' term provided by law. Based on the real workload on the investigative judges, especially in Chisinau and Balti, the terms of examination (3 months) provided by the new preventive and compensatory remedy were not respected in the majority of cases.
25. Another concern mentioned in the previous report was related to the capacity of the prison administration to improve the conditions of detention of a detainee in a period of 15 days. The practice showed, even the detainees used the compensatory mechanism, the national prison administrations, as well the administration of the prisons did not improve the conditions of detentions of the prisoners, in any of the possible aspects or standards provided by the CPT. The Government didn't refer to the implementation of these important legal provisions in the revised action report.
26. As to the official statistics provided by the national prison administration, in 2019 based on the provisions of the compensatory mechanism, to a number of 1410 detainees were reduced the detention term, out of which 137 detainees were released. Also, by February 10 2020, 5372 detainees asked to apply in respect to them the legal provisions on the preventive and compensatory Mechanism.
27. Detainees submitted the complaints from the following prisons (all of the prisons existing and under the control of the Government of the Republic of
28. Of the total of 1471 complaints admitted by the court, the distribution on prisons is as follows:
 - Prison 1 – 173;

⁷ Report of the National Agency for Court Administration, for 2018, available here: <https://aaij.justice.md/en-tech/report-type/rapoarte-statistice>

⁸Report on the Research on the Application of Pre-trial Detention in the Republic of Moldova (Report) <https://rm.coe.int/report-research-pre-trial-detention-eng-final/16809cbe15>

⁹, Statistics provided by the National Prison Administration, as to January 1 2020, available here: <https://drive.google.com/file/d/1dAzhP28gZ0cZl5xRx fdM4dqvK0YMAAdP/view>

¹⁰ https://promolex.md/wp-content/uploads/2019/06/ID_communication_2005_19.pdf

- Moldova, except prison nr. 10 - just one case):
- Prison 1 – 307;
 - Prison 2 – 250;
 - Prison 3 - 477;
 - Prison 4 – 460;
 - Prison 5-163;
 - Prison 6 – 363;
 - Prison 7 – 146;
 - Prison 8-113;
 - Prison 9 – 460;
 - Prison 10-1;
 - Prison 11 – 249;
 - Prison 12-103;
 - Prison 13 – 648;
 - Prison 15 – 238;
 - Prison 16 – 122;
 - Prison 17 – 100;
 - Prison 18 – 656:
- Prison 2-70;
 - Prison 3 – 280;
 - Prison 4-190;
 - Prison 5-96;
 - Prison 6-46;
 - Prison 7 – 10;
 - Prison 8-15;
 - Prison 9 – 155;
 - Prison 10-1;
 - Prison 11-34;
 - Prison 12 – 19;
 - Prison 13 – 52;
 - Prison 15 – 90;
 - Prison 16 – 24;
 - Prison 17-15;
 - Prison 18 – 200;

29. The data mentioned above show that the mechanism becomes popular in a relatively short time. The statement is reconfirmed through the data provided by the Ministry of Justice in its revised action report.
30. As to the pecuniary compensation, according to the new mechanism, a pecuniary compensation of up to 100 Moldovan lei (approximately EUR 5,10 as to January 1 2020) for each day of detention in precarious conditions should be provided. Out of the total number assisted by Promo-LEX, in 5 cases the national Courts granted just 50 Moldovan lei (approximately EUR 2,55) for each day of detention in poor condition of detention. On the focus group organized with the participation of other lawyers representing similar cases in the Court, the lawyers communicated that in the cases assisted by them, the Courts decided to grant just EUR 2,55 for being detained in poor conditions of detention. Only in one single case, a lawyer communicates that the Court granted EUR 5,10 as a pecuniary compensation for one day of detention. The compensations are granted as moral damage for being placed in poor conditions of detention, and just in the cases were the reduction of the imprisonment term is not applicable. The same practice is reconfirmed in the revised action report of the Ministry of Justice.
31. According to the response of the Ministry of Justice nr. 3202 of March 26 2020, the total amount of the compensations granted as a result of detention in poor conditions of detention is 1787175 MDL which is about 89.000 EUR. There is no other public data related to the average compensation decided on a case and other relevant indicators.
32. As to the material damage, in one case where Promo-LEX asked for the material damage and the compensation of the legal assistance, the Court refused the request on this side and granted just the moral damage to the detainee. During the focus group, other lawyers also reconfirmed the issue of the refusal of the Courts to grant financial compensation concerning potential material damage supported by the detainee as a result of his placement in poor conditions of detention, as well compensation of the legal assistance provided by the lawyers.
33. In this respect, according to the ECtHR practice, the amount of moral damage granted depends on the seriousness of the violation of the ECHR and the effect of this violation on the applicant, but also other circumstances (e.g. age and health the applicant, the stake for the applicant, etc.). When establishing the amount of moral damage, the ECtHR takes into account the level of living (income) of the State concerned.
34. It is necessary to mention that, the ECtHR asks for moral damages awarded at the national level for the violation of the ECHR to be comparable to those granted by the ECtHR in similar cases (*see Ciorap no. 2 c. Moldova, 2010*).

35. However, the compensation provided by law and decided by the national Courts in the cases of poor conditions of detention does not correspond to the principles mentioned above established by the ECtHR, to the reference to the Moldavian cases also. As a consequence of the above mentioned, the detainees using the mechanism may be further considered as having the status of victims of the violation of art. 3 of the ECHR.

b. The suspension of the preventive and compensatory mechanism

36. One of the released persons, according to the provisions of the compensatory mechanism, is the former prime minister of the Republic of Moldova, Filat Vladimir. Ex-Premier Vladimir Filat, who was sentenced to nine years in jail for influence peddling and passive corruption in 2015, was released on parole based on the compensation mechanism last December. His jail term was reduced for the degrading conditions in which he was held at Prison No. 13.
37. As a result of his release, based on the preventive mechanism, several politicians representing the Government¹¹ and the opposition¹² started debates other this and stated that the mechanism should be revised, to prevent similar situations like in case of Filat, where persons sentenced for serious crimes are liberated prematurely from the prison, using the preventive and compensatory mechanism.
38. As a result, in January 2020, the Government started debates regarding the adjustment of the laws on the preventive and compensatory mechanisms. According to the Government, the courts of law excessively apply the compensation mechanism for damages due to poor detention conditions concerning prisoners. This endangers state security. The Ministry of Justice said it would create a working group that will reassess the regulations regarding the compensatory instrument. A moratorium could be ultimately instituted on this.
39. On February 26 2020, The parliamentary commission ¹³ for national security, defence and public order organized final public hearings on the topic of the suspension of the action of the laws on the preventive and compensatory mechanism.
40. During the hearing, acting director of the National Administration of Penitentiaries Vladimir Cojocaru, who was questioned by the Parliament's commission on national security, defence and public order, said the mechanism took effect on January 1, 2019, and during the year the almost 7,000 detainees submitted more than 5,000 applications to have their jail term reduced. Nearly 2,500 applications were examined, and 1,400 of these were accepted. As many as 128 persons were released from prison last year under this mechanism. One of these persons returned to jail.
41. According to Vladimir Cojocaru, particular shortcomings were identified in the process of implementing the mechanism. The judges apply different formulas when calculating terms, mainly in the case of persons in remand detention. Under some of the decisions, a day of remand detention in poor conditions is equal to a two-day reduction in the jail term. But there are also decisions by which the jail term is reduced by three days for one day of remand detention. The goal pursued by this instrument is not achieved.
42. The commission's chairman Alexandru Jizdan said the National Anticorruption Center's objections weren't taken into account when the mechanism was worked out. The Center ascertained excessive discretion when reducing the punishment. "There are examples when this mechanism is applied by order of judges. The presented figures reveal suspicions of corruption," he stated.
43. Minister of Justice Fadei Nagachevski said this instrument in Moldova's conditions has a place in the legal system. Still, given the alarming figures concerning its utilization by courts of law, state security is in danger. There are signals that rapists, persons convicted of perverse actions are set free from jails before time. There are risks that the crime rate will increase.

¹¹ <http://a-tv.md/eng/index.php?newsid=71634>

¹² <https://cotidianul.md/2019/12/04/maia-sandus-reaction-regarding-the-release-of-vlad-filat/>

¹³ <http://www.parlament.md/Actualitate/Comunicatedepresa/tabid/90/ContentId/5967/language/ro-RO/Default.aspx>

44. On the other side, the Ministry of Justice mentioned in the revised action report that during the implementation of the compensatory remedy at the national level, the practitioners found several legal shortcomings, which determined the lack of a uniform application of this remedy at the national level and the reduction of the criminal punishment in respect of a great number of detainees. However, those several legal shortcomings are not mentioned and were not published and debated during the project phase of the suspension law.
45. As a result, on March 12 2020, The Parliament approved in second reading the government proposal¹⁴ to suspend the legislative provision that allows the reduction of the prison sentence on the grounds of poor detention conditions. According to the law, the suspension was applied till May 1, 2020¹⁵. During the period of the suspension, the Government should create a working group and propose amendments to the laws on the preventive and compensatory mechanism¹⁶. According to the amendments adopted, the provisions of the preventive and compensatory mechanism related to the pecuniary compensation of the moral damage as a result of the detention in poor condition of detention are still applicable.

GENERAL MEASURES: OVERCROWDING IN THE PRISON ESTABLISHMENTS

Current situation

46. Currently, the prison system consists of the Department of Penitentiary Institutions, 19 prisons, including two prisons with suspended activity, 4 specialized institutions (Guard, Surveillance and Escort Troops Division, Training Center, Special Intervention Team, Center for Technical and Material Supply) and nine state enterprises of the penitentiary system¹⁷.
47. According to the situation as of April 1 2020, the detention ceiling was of 6,735 places. As of this date, the penitentiary institutions held 6632¹⁸, persons, compared to 7115 persons at the situation of January 1, 2019¹⁹.
48. Despite all the efforts to humanize the criminal legislation regarding the decrease in sentences, the rate of the population imprisoned in the Republic of Moldova in 2019 constituted 197 prisoners to 100,000 inhabitants, which largely exceeds the European average, by about 140 prisoners.
49. The implementation of the preventive and compensatory mechanism, in correlation with lack of the specific policies and visions in relation to the implementation of the alternatives to incarceration and well, systemic reform of the penal policy, showed that the preventive and compensatory mechanism had a limited impact to the systemic problem of overcrowding in the Moldavian prisons.
50. The obsolete infrastructure unadapted to the system of cells does not allow to separate prisoners in small sectors, and the insufficient number of custodial staff, lead to continued violence and subculture in penitentiaries. The European Committee for the Prevention of Torture (CPT) criticized the phenomenon of bullying and ill-treatment of some categories of prisoners intensively. In addition, the unofficial hierarchy, ruled by its own rules and its interaction with criminal groups outside the penitentiary system threatens the safety of the entire society.
51. Overcrowding is caused by the fact that the national legislation does not provide for alternative means of punishment Alternatives to imprisonment proved to be much more efficient for the offenders with a medium to low risk. In most of the European countries, various forms of execution of sentence are implemented, such as the execution of the full or partial term in the open penitentiaries, in treatment centres, at home with or without the electronic monitoring and in the community under special conditions. Besides the long period of imprisonments, the overcrowding is caused by the reduced number of conditionally released persons.

¹⁴ https://gov.md/sites/default/files/document/attachments/intr14_183.pdf

¹⁵ , https://www.legis.md/cautare/getResults?doc_id=121125&lang=ro

¹⁶ <https://radiochisinau.md/parlamentul-a-votat-in-lectura-finala-proiectul-care-prevede-suspendarea-mecanismului-prin-care-poate-fi-redusa-pedeapsa-condamnatilor-aflati-in-conditii-precare-de-detentie---105415.html>

¹⁷ Information provided by the National Prison Administration, available here: <http://www.anp.gov.md/>

¹⁸ https://drive.google.com/file/d/1dAzhP28gZ0cZl5xRx_fdM4dqvK0YMAAdP/view

¹⁹ , Statistic information available here: https://drive.google.com/file/d/12j_EeNysZplUF7vDiA6RG9eu5uSqB7XG/view

52. At to the infrastructure of the national prisons, it didn't improve substantially during the reporting period, except the capital modernization of some Leova and Balti prison facilities. Also, no substantial refurbishment had reportedly been carried out in the establishment for decades, and the prison as a whole had a decrepit and run-down appearance. The general conditions of detention in the establishment could well be characterized as degrading. The vast majority of the prisoners stay in very cramped conditions in large-capacity dormitories, which inevitably meant a lack of privacy for inmates in their everyday lives. Usually, in national prisons, a few bigger dormitories comprised separate multi-occupancy rooms (some of which had no door), while most of them were simply divided into small living areas in a makeshift manner (usually by blankets or garment sheets). It is evident that most of the prisoners do not enjoy sufficient leaving space, and in some units space provided was far below the established standard of 4 m² per inmate.
53. According to the last reports of the National Preventive Mechanism and the Ombudsman office, in prison nr. 13, it remained the case that many cells were in a poor state of repair and hygiene and had insufficient ventilation, in addition to being severely overcrowded (the living space per prisoner in some cases is less than 2 m²). Further, access to natural light was limited in a large number of cells, due to the small size of cell windows. Moreover, one of the prison's quarantine cells (in which prisoners could spend up to 15 days) had no access to natural light, with the two existing windows opening onto a dark corridor.
54. In relation to other national prisons, the NPM noted striking differences in conditions of detention between different accommodation areas. For example, while many inmates were held in seriously overcrowded cells/dormitories (between 2 and 2.5 m² of living space per prisoner), certain privileged prisoners lived in spacious rooms (with up to 9 m² of living space per person). A similar situation was observed in the infirmary of the prison health-care units. Yet the most remarkable difference lay in the furnishing of some of the rooms. While 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 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.

The construction of the new prison

55. For several years now, there have been plans to replace the existing prison with a new remand facility near Chişinău. According to the information provided by the authorities, the construction of the new establishment, which had been repeatedly postponed in the past, was now planned to start by the end of 2018 and its opening was envisaged for the end of 2021.
56. Based on the information provided by the Ministry of Justice²⁰, The National Prison Administration organized auctions repeatedly during 2019 for the purchase of the construction services of the new penitentiary, as well as services for supervision of the construction works. The submitted offers did not meet the requirements of the tender documentation. For this reason, as well as to avoid the exaggerated extension of the period of purchase of the mentioned services, at the recommendation of the CEB it was decided to apply the negotiation procedure, according to point 3.7.5 of the Procurement Guide of the CEB, for selecting the company that will perform the works of construction, and, respectively, of the company supervising the works.
57. On February 11 2020, there was opened the offers for the purchase of the supervision services of the construction works. An offer was submitted by a single company. Following the evaluation of the submitted technical offer, the technical evaluation report was prepared and submitted to the CEB, according to which the participating company accumulated 81 points, exceeding the minimum threshold of 80 points.
58. On March 3, 2020, the bids were opened for the purchase of the construction services of the future penitentiary. Out of the four companies that were registered for participation, 3 of them submitted the offers, namely: Rizzani de Eccher S.p.a .; Media Security Consortium, JV, PKE Austria, UCGEN

²⁰ Letter Nr. 02/3315 of April 9 2020

Proje Turkey; AS Group Investment LLC. After opening the tender files, the members of the IPU procurement group initiated the examination procedure. The established verification period is about 120 days.

59. According to the Ministry of Justice, currently, in order to evaluate the tenders qualitatively and taking into account the complexity of the tender documentation, the members of the IPU procurement working group evaluate the cost estimations with the identification of all the arithmetic and quantity errors, including verifying the presence of the technical specifications and authorizations from the producers for equipment and equipment.
60. According to the provisions of the Agreement between the Government of Republic of Moldova and CEB, the construction works had to be completed on December 31, 2017, and the final inauguration of the penitentiary was planned for June 30, 2018. At the request of the Ministry of Finance from January 2019, the CEB has extended the project implementation deadline until December 31, 2022.

GENERAL MEASURES: MEDICAL ASSISTANCE IN PRISON ESTABLISHMENTS

General situation

61. Health care in the penitentiaries is guided by the same ethical principles as in the community. The main principles are set by the World Medical Association's Declaration of Geneva (1948, the last version in 2006), the International Code of Medical Ethics (1949, last version in 2006), Decision No 37/194 (of December 18 1982) of the United Nations General Assembly and the Recommendation No R (1998) April 7 April 8, 1982, of the Committee of Ministers of the Council of Europe on aspects of ethics and organization of the health care in the penitentiaries.
62. The State is in charge of providing health care services for prisoners. Prisoners should benefit from the same health standards as the community does and dispose of free access to the necessary health care services without discrimination based on their legal status.
63. In the national penitentiary system, the health care is provided under the general health care legislation and under the Regulation on Ensuring Health Care to Persons from Penitentiaries²¹.
64. According to this Regulation, any penitentiary should ensure health care at least by a general doctor, a dental doctor, a gynaecologist (in the penitentiaries for women) and a psychiatrist. In penitentiaries with at least 100 places, there must be permanent, an inpatient rehabilitation centre for the provision of health care to each detainee. The medical exam of prisoners should be compulsory when entering the penitentiary. In case a prisoner is found to have some bodily injuries or torture traces, a doctor should examine him or her, providing the necessary medical aid. The institution administration must notify, as soon as possible, the Department of Penitentiary Institutions and the territorial body of the Prosecutor's Office in whose constituency the penitentiary is located, in written form, about the existence of bodily injuries or torture traces to prisoners that came in the penitentiaries.
65. According to the data provided by the Ministry of Justice, the budget for the provision of medical assistance in the penitentiary system consists of three components: i. Medical articles and para pharmaceuticals; ii. medical services and iii. medical equipment. For the year 2019, the following financial resources have been allocated: 8.151.800 mln. MDL for medical articles and para pharmaceuticals; 4.681.500 mln. MDL for medical services and 3.359.000 mln. MDL for equipment. Based on the actual occupancy of the prison system, it results that an amount of about 120 EUR per/year was budgeted for medical needs for each detainee.
66. According to the Ministry, the chapter of drugs and para pharmaceuticals, the medical services within the penitentiary system are fully insured, while the needs for equipping equipment/machinery are not fully covered.
67. Also, in order to ensure qualified medical assistance to the persons held in the prison administration system, contracts were concluded with 16 public medical-sanitary institutions.

²¹ privind aprobarea Regulamentului cu privire la modul de asigurare available here, <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=319608>.

68. In part regarding the provision with human resources of the medical services during the year 2019, within the penitentiary administration system out of the total of 248 units of medical personnel, about 195 units were occupied, 53 others being vacant. According to the data provided by the Medical Directorate of the National Prison Administration, there is the insufficient medical staff (mainly doctors therapist, psychiatrist and dentist) in the penitentiaries: no.2-Lipcani; No. 5-Cahul; No. 6-Soroca; No. 8-Bender; No.12-Bender; No.16-Chisinau.

Medical Assistance in Prisons

69. According to the last report²² of the National Preventive Mechanism as a result of the monitoring visit in the only prison hospital nr. 16 held during the period of 22 – 23 July, the following conclusions were drafted:
70. The prison hospital does not comply with the national standards of a medical institution, does not have a health authorization for operation, does not have accreditation for the provision of medical services;
71. The prisoners' right to health is violated due to inadequate treatment, lack of medical staff and non-compliance with national treatment protocols and standards;
72. In the prison nr. 16 there is a lack of medical staff, in the staff states there are no nurse positions, these functions are performed by the detainees. Most medical workers agree to work due to military-grade incentives, which results in higher monthly incomes and faster retirement.
73. Doctors in penitentiaries, work in the penitentiary system immediately after graduating. Most of them have no experience in the civilian system and are not trained to provide specialized services in detention environments.
74. There is no training method regarding penitentiary medicine in the educational institutions of the Republic of Moldova. The categories of qualifications are made within the USMF "N.Testemițanu", College of Medicine.
75. Detainees do not have the status of the insured person. They do not benefit from the volume of services similar to the general population and services provided in most National Programs (diabetes, cardiovascular disease, cancer, etc.).
76. The quality of the medical services provided is not verified by the institutions authorized by the Ministry of Health and Social Protection.
77. The medical facilities are insufficient and require major repairs, the blocks are not adapted for medical institutions. They do not comply with the requirements of the Sanitary Regulation regarding the hygiene conditions for the medical service providers, approved by the GD no.663 from July 23 2010.
78. The medical assistance services provided to women need improvement, including by creating women's salons in all medical departments and identifying the location of the gynaecological office.
79. Medical departments are not accommodated for persons with disabilities, which limits access to services and adequate conditions of detention.
80. The medical protocols applied by doctors are a mixture of national norms in the civil system (of the Ministry of Health) and those developed for the penitentiary system by the Ministry of Justice, taking into account the specificity of the medical assistance in penitentiaries.
81. There is no close collaboration between prisons and public health systems.
82. When transferring the patient from a health-care unit outside the penitentiary, which is not available in the penitentiary, it is necessary to organize an escort. This transfer procedure involves a long series of bureaucratic procedures, thus delaying the timely provision of medical care, during the treatment period recommended by the standards in the civil hospital.
83. Gaps in the exchange of electronic information between the medical services and the hospital, as well as in the information transmission system for the released prisoners.
84. The incidence by tuberculosis in the penitentiary system is 16 times higher, and the risk of tuberculosis disease remains 17 times higher than in the civil system, which indicates the

²² <http://ombudsman.md/wp-content/uploads/2020/02/P-16-Pruncul.pdf>

reservations in the actions taken to control tuberculosis. The success rate of the treatment of sensitive tuberculosis has reached the WHO target - 85%. The under-reporting at the national level of cases with tuberculosis is 13%.

85. The prison system has a Tuberculosis Control Plan for the years 2018-2020, and the Penitentiary no. Sixteen of an internal Plan for tuberculosis infection control for the years 2018-2021 with a series of activities and monitoring indicators. Following the analysis, it can be concluded that several activities provided in the mentioned plans remain more declarative, at the paper level, and the monitoring indicators are not analyzed. It is recommended to prepare periodic reports (quarterly, annually) of progress reports, analyze them and, if necessary, revise the planned actions, as the case may be.
86. Interruptions were observed in performing the radiological examination for tuberculosis with prophylactic purpose, which led to increased incidence through tuberculosis, but also to the exposure of persons to a higher risk of illness. It is recommended to provide a radiological examination for tuberculosis with prophylactic purpose in accordance with national and international provisions (2 times a year).
87. In recent years, the penitentiary system is facing problems in the purchase of anti-TB drugs.
88. Also, in the context of COVID 19 Pandemic, it should be mentioned that the medical prison system is not capable of providing medical assistance in the severe forms of COVID (Prison nr. 16 Hospital is completed just with one old generation ventilator. According to the information provided by the medical staff of the prison, the ventilator is broken). Also, no medical protocols of interaction were elaborated to collaborate in case of COVID 19 cases with the civil medical system. In other words, Moldova is obviously unprepared to handle the outbreak of COVID-19 in prison.
89. In this regard, it should be noted that the prison system is particularly vulnerable to the epidemic. On 23 March, WHO/Europe office warned in its interim guidance that *“people deprived of their liberty (...) are likely to be more vulnerable to the coronavirus disease (COVID-19) outbreak than the general population because of the confined conditions in which they live together for prolonged periods of time. Moreover, experience shows that prisons, jails and similar settings where people are gathered in close proximity may act as a source of infection, amplification and spread of infectious diseases within and beyond prisons”*²³. It therefore stressed that *“the risk of rapidly increasing transmission of the disease within prisons or other places of detention is likely to have an amplifying effect on the epidemic, swiftly multiplying the number of people affected”*. In other words, *“efforts to control COVID-19 in the community are likely to fail if strong (...) measures are not carried out in prisons as well”*²⁴.
90. In view of the very poor state of health of a significant part of the prison population, such an eruption would be likely to overburden the penitentiary health system. Beyond the system's capacity to manage COVID-19 patients, it is the care of pathologies usually encountered in prison that is threatened in the context of the pandemic.
91. There is a strong consensus among the relevant bodies of international organizations²⁵ that a significant reduction in the prison population is the only way to ensure an adequate level of prevention of COVID-19 in detention. From this point of view, unlike other states, the Moldovan authorities have not taken urgent measures to reduce the number of detainees.

²³ WHO/Europe, *Interim guidance on Preparedness, prevention and control of COVID-19 in prisons and other places of detention*, published on 23 March 2020.

²⁴ Ibid.

²⁵ Council of Europe's Committee for the Prevention of Torture (CPT), *Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic*, 20 March 2020; UNAIDS, *Rights in the time of COVID-19 — Lessons from HIV for an effective, community-led response*, published on 20 March 2020 UN Human Rights Office and WHO, *interim guidance paper - COVID 19: Focus on persons deprived of their liberty*, 27 March 2020; UN Subcommittee on Prevention of Torture (SPT), *Advice to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic, adopted on 25 March 2020* ; UNODOC, *Position paper: COVID-19 preparedness and responses in prisons, published on 31 March 2020*; CoE Commissioner for Human Rights, *COVID-19 pandemic: urgent steps are needed to protect the rights of prisoners in Europe*, 6 April 2020.

92. The Council of Europe has a great deal of expertise in the penal and penitentiary field. It should therefore provide guidance to Moldova's action both from the point of view of preparedness and response to COVID-19 in detention facilities and criminal law measures to be adopted in this context. The Committee of Ministers should play a leading role in this perspective.

RECOMMENDATIONS

We call the Committee of Ministers to continue the supervision in the case of I.D. v. Republic of Moldova and other relevant cases and recommend the Moldovan national authorities the following:

Implementation of the preventive and compensatory mechanism:

1. The Government to provide statistics to the Committee of Minister's data as to the application in practice of the newly adopted preventive and compensatory remedy;
2. The Government ensure that the amendment process of the Laws on the preventive and compensatory mechanism will start urgently, to be possible to apply in practice its provisions starting with May – June 2020;
3. The Supreme Council of Magistracy to ensure that the Investigative Judges respect the terms set by law for examining the cases related to the application of the preventive and compensatory mechanism;
4. Ensure that the practice of the application by the investigative judges of the new remedy is effective and the pecuniary compensation (moral and material) provided to the detainees is equitable and following the ECtHR standards;

Improvement of the detention conditions:

5. The Government should bring prison conditions in line with the Standard Minimum Rules for the Treatment of Prisoners and the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules), (CAT/C/AUS/CO/4-5, CAT/C/UKR/CO/6, CAT/C/LUT/CO/3);
6. The Government and the Parliament should take concrete steps to improve conditions in prisons and detention facilities in line with the Convention against Torture and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)., Article 16 of UNCAT and Article 3 of the European Convention on Human Rights. In that regard, 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. Taking due account of basics principles enunciated in appendix to the Recommendation no. R (99) 22, according to which “*the extension of the prison estate should rather be an exceptional measure, as it is generally unlikely to offer a lasting solution to the problem of overcrowding*”, the authorities' response to the structural problem of poor prison conditions should be firmly oriented towards reducing the numbers of persons imprisoned.
7. The National Prison Administration should implement the recommendations given by the CPT after its last visits during the period of 2015 – 2019, like reducing the levels of violence and reducing the overcrowding in cells;
8. The Government should ensure living space under existing international norms;
9. The Government should improve the quality and quantity of food and water provided to detainee;

The construction of the new prison:

10. Until the new prison is constructed, the Government should reduce overcrowding, particularly through the wider application of non-custodial measures as an alternative to imprisonment, in the light of the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules);
11. The Ministry of Justice to provide a detailed timetable for the construction of the new prison in Chişinău 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.)

Medical care in the prison:

12. The Ministry of Justice and the Ministry of Health, Labor and Social Protection should follow the recommendations given by UN Committee for Prevention of Torture and the recommendations made under the UPR and develop a public policy ensuring the transfer of health workers subordinated to the National Prison Administration under the subordination of the Ministry of Health;
13. The Government should provide appropriate and effective medical care of prisoners and detained persons, including adequate medicines;
14. The Government should ensure the recruitment of qualified medical personnel;
15. The Government should increase the budget allocated for health care in penitentiary institutions, including by developing the capacities and the infrastructure of the Pruncul Prison Hospital – P 16;
16. The Government should urgently elaborate and put in practice specific medical protocols for prevention and treatment of COVID 19 and other potentially infectious diseases in the prison system;
17. The Government and parliament should take prompt action to reduce the prison population in conditions allowing effective implementation in detention of the preventive measures required by WHO.

Following the above mentioned, we request the case to be included in every session of the Committee of Ministers until it is executed in full.