JOINT SUBMISSION

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

Cosovan v. Republic of Moldova (Application no. 13472/18)

Submitted on: Octomber 23, 2023

Authors of the joint submission:

A. Promo-LEX

Promo-LEX Association[1] 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. 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.

B. The People's Advocate Office (The Ombudsman institution)

The People's Advocate Office[2] is an autonomous institution, independent from any public authority, legal person, regardless of the property type and legal form of organization, and from any decision-maker at all levels. The Ombudsman institution was established in 1998 originally as the Human Rights Center, which became the People's Advocate Office in 2014. The People's Advocate work is governed by the UN General Assembly Resolution no. 48/134 of December 20, 1993, the Principles relating to the Status of National Human Rights Institutions (the Paris Principles) and other international treaties in the field of human rights, as well as the Constitution and other laws of the Republic of Moldova.

C. E.P.L.N. (European Prison Litigation Network)

The European Prison Litigation Network (EPLN)[3] is an international non-governmental organization (INGO) granted participative status with the Council of Europe. It was founded in 2013 by a group of NGOs, lawyers, and researchers active in the penitentiary field in different countries. The Network aims to strengthen the judicial protection of prisoners' fundamental rights in the Member States of the Council of Europe.

[1] www.promolex.md https://promolex.md/misiune/?lang=en
[2] http://ombudsman.md/en/
[3] https://www.prisonlitigation.org/

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I. Introduction

i. The Cosovan Group Overview

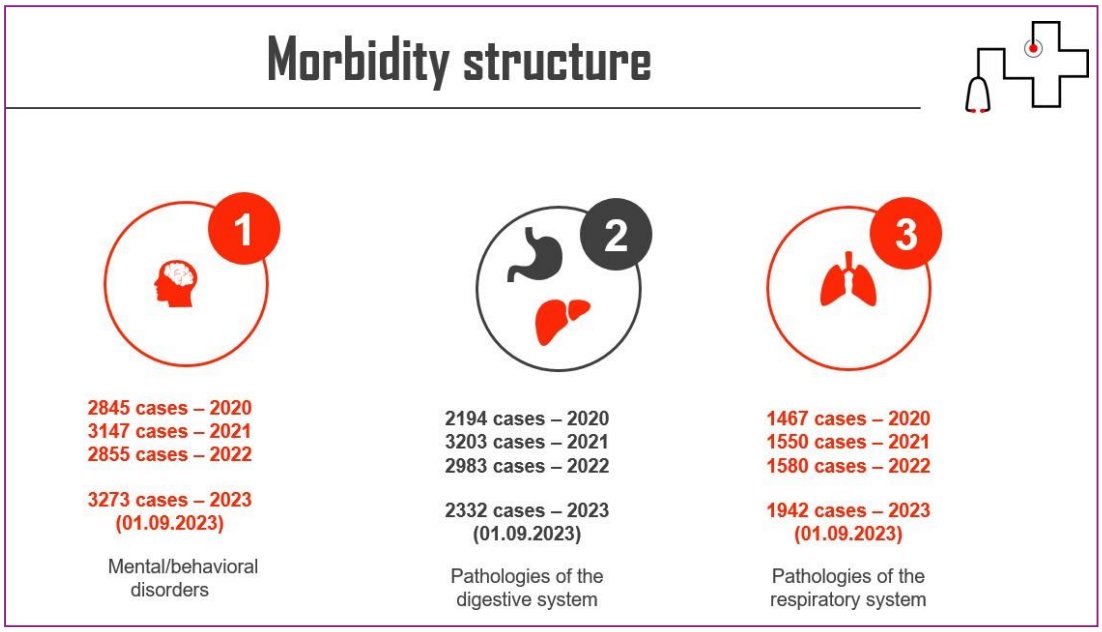
1. The *Cosovan group* comprises cases concerning, among other prison issues, the lack of access to adequate medical care in detention (including specialised medical care), as well as the lack of effective domestic remedies (Articles 3 and 13). In the *Cosovan* judgment, the Court highlighted several systemic problems of the medical care in prisons:
    * *Poor quality of medical care.* The Court noted that Prison hospital no.16 had not been officially accredited as a medical institution. The medical personnel didn't respect the scheme of treatment. Adjustment of the dosage and the number of medicaments with various drugs wasn't made by a specialist. While specific medical procedures were prescribed to the applicant, they were not thoroughly followed through.
    * *The lack of independence of prison doctors from the prison administration.* Medical services to detainees were provided on a contractual basis (due to them not being covered by the general medical insurance scheme), which implied additional expenses for the prison. The administration thus had incentives to limit detainees' treatment outside the prison, which led to a conflict of interests for the prison doctors, which should have been avoided. In this respect, the CPT urged the Moldovan Government to transfer responsibility for doctors working with detainees from the Department of Penitentiary Institutions to the Ministry of Health. It is also noted that the National Committee Against Torture emphasised the lack of independence of prison doctors from the prison administration as a serious problem. In addition, the administration had to organize the transportation and guard each detainee treated in public hospitals, which posed logistical and financial complications.
    * *Discrimination of post-conviction vis-à-vis pre-trial detainees in the application of protective measures in case of a severe illness***.** The Court noted that the applicant's disease was legally qualified as grounds for release from the post-conviction detention. Despite the domestic court acknowledging that the applicant's illness was in its terminal stage, and posed danger to his life, he was kept in detention for another 17 months. The Court did not find any justification to distinguish persons held in pre-trial and post-conviction detention in terms of the applicability of the medical release procedure to them and held this distinguish to be discriminatory.
2. The present submission under Rule 9.2 is based on exhaustive research, including a detailed analysis of Action Plans of February 13, 2023 and October 3, 2023, submitted by the authorities. It also involved a thorough examination of the legal framework, publicly available statistics, data collected by the Ombudsman's Office, and obtained by the Promo-LEX from the Ministry of Justice, the National Prison Administration (*hereinafter referred to as NAP*), the Ministry of Health, and the Ministry of Social Affairs and Population Protection. This process of data collection and analysis took place between June and September 2023, aiming to provide a comprehensive perspective on the realities of the prison system in the Republic of Moldova.

3. The objective of this submission is to shed light on the current state of medical care in the penitentiary system, focusing on structural and systemic challenges that impede the provision of equitable and comprehensive care to inmates. In this regard, this submission aims at:
    * Offering a comprehensive overview of the existing medical care conditions in prisons.
    * Identifying the inherent structural and systemic challenges faced by medical professionals and inmates.
    * Highlighting the implications of inconsistent or lacking health policies.
    * Proposing recommendations that can potentially overhaul the health care system in prisons, ensuring the well-being of inmates and thereby, a safer, healthier society upon their reintegration.

II. Contextual Overview

i. The epidemiological picture of the prison population

4. Many people with chronic illnesses and complex medical needs are held in places of detention (more than 40% of the prison population, according to the NAP). As a result, incarcerated people face high levels of chronic diseases. Detainees do not benefit from medical assistance from CNAM funds and do not have insurance. Prophylaxis, screening, and out-patient examination is not sufficiently implemented due to the overload and insufficiency of the medical staff. Widespread chronic diseases in prisons emphasizes the urgent need for specialized medical services. A significant number of prisoners grapple with enduring health challenges that necessitate regular and advanced care. *There were 16,498 ill detainees in the penitentiary system in 2021*[4]*, 15,321 in 2022,*[5] *and 14 957 in 2023.*[6]



[4] 2021 National Penitentiary Administration Report on the activity of the penitentiary administration // https://drive.google.com/file/d/1ltu2_qZ8BYQznVTuSEvjVPPfO0j67MOr/view
[5] 2022 National Penitentiary Administration Report on the activity of the penitentiary administration system // https://drive.google.com/file/d/1lwPQj2QaMNceE2_xb4LNq1H8qf9CbKH8/view
[6] According to the data provided by the NAP regarding the situation as of September 1, 2023

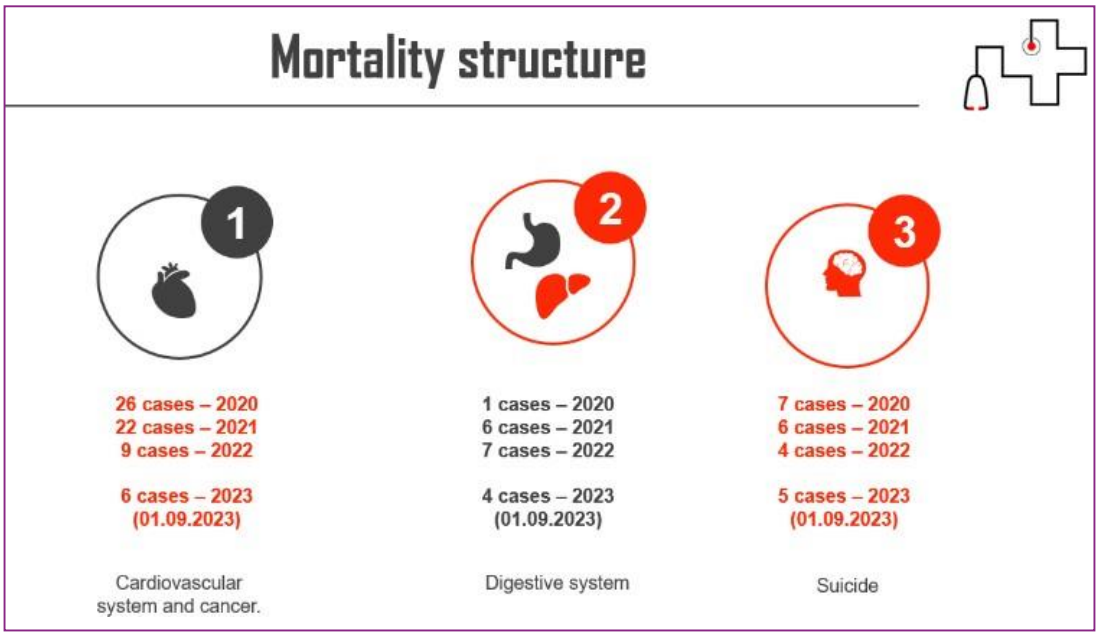
5. Within the boundaries of the prison system, the widespread nature of chronic diseases emphasizes the urgent need for specialized medical services. A significant number of prisoners grapple with enduring health challenges that necessitate regular and advanced care. This section will delve into the range of chronic conditions that are most prevalent among prisoners and the challenges they encounter when seeking specialized medical services.
6. According to information provided by the Medical Directorate of the NAP, mental disorders rank first or second in morbidity structure, with an average of 3,000 diagnoses recorded annually. This figure should be assessed in relation to the total number of individuals held in detention in 2022 – 6,084 persons.
7. Despite that the prison system offers outpatient services within the medical sections of each penitentiary, inpatient medical services in Penitentiary No. 16, and external medical services under contracts, provided by the IMSP Clinical Psychiatry Hospital *(refer to the sum of services contracted by the Ministry of Justice in the paragraph 34-37 of this submission)* and IMSP Psychiatry Hospital Bălți, there are substantial gaps in the approach and treatment of inmates. For example, the psycho-neurology section of Penitentiary No. 16 - Pruncul – has a treatment capacity for only 36 patients, under the care of a single psychiatrist. Furthermore, several medical sections in penitentiaries are facing a staff shortage, with multiple vacant psychiatrist positions. It is important to note that, thanks to the support provided by the Council of Europe, the NAP has developed a Strategy for assisting individuals with mental disabilities. However, the strategy was not approved due to its format not aligning with the policy document templates adopted by a government decision.

High Mortality Rate

8. The penitentiary system continues to face challenges related to inmate mortality. While there was a notable uptrend in deaths within the system in 2018,[7] recent data from the National Administration of Penitentiaries reveals a decline in the number of deaths in 2021 by 15 cases. Nevertheless, the overall mortality rate is still a concern. The Ombudsman and the Council for the Prevention of Torture further highlight ongoing issues regarding access to medical, psychosocial, and mental health services for detainees, particularly those from vulnerable groups.
9. In 2022, the mortality rate dropped to 23 deaths within the penitentiary system. Nonetheless, it's not clear whether this decrease resulted from improved medical care or simply due to a reduction in the inmate population during this period.[8] However, we notice a renewed increase in the number of deaths in 2023, with a total of 24 individuals deceased in the penitentiary system as of 1 September 2023.

[7] Report on the observance of human rights and freedoms in the Republic of Moldova in 2019 http://ombudsman.md/wp-content/uploads/2020/03/RAPORTUL2019-FINAL.pdf; Balance sheet report of the activity of the penitentiary administration system for the first semester of 2020 https://drive.google.com/file/d/1ScyOiRlRnYx5KtDNImEfm4PFoHEOPEok/view

[8] On January 1, 2023, 6,084 people were detained in the penitentiary system compared to 6,396 who were detained in 2021. Thus, there was a decrease in the number of detainees by 312 people (4.88%).



ii. Main findings of internal audits

10. ***Key Issues Identified by the Quality Council's Audit Across Several Prisons (2021):***

* For inmates with hypertension (HTA), diuretic preparations are missing from the treatment regimens. The administration of antihypertensive treatment is not documented in the outpatient medical records. HTA screening is not carried out, biochemical investigations monitoring (cholesterol, urea, creatinine), and continuity of treatment monitoring is not ensured.
* The annual prophylactic check-up is carried out intermittently. Glucose, cholesterol, ECG, lung X-ray, consultation with the general practitioner, and other necessary investigations in accordance with the inmates' age are performed sporadically.
* In some penitentiaries, the medical staff cannot be identified from medical records; only the signature is present, but the deciphering or doctor's stamp is missing.
* The instrument sterilization procedure is not followed.
* The inmates' medical records do not contain informed consent.
* In some penitentiaries, it is claimed that appropriate treatment is provided but it is not specified in the medical records. Indication forms are incomplete.
* The medical staff does not have qualification categories.
* The degree of implementation of the standard operational procedure (SOP) regarding medical devices is not met.

11. ***Key Issues Identified by the Quality Council's Audit Across Several Prisons (2022):***

* The informed consent form is not completed according to the SOP.
* Patients with hypertension (HTA) are prescribed medication, but not consistently and not fully. The administration of antihypertensive medication is not documented in the medical records. Screening of inmate patients with HTA is not conducted; monitoring of biochemical tests (cholesterol, urea, creatinine), monitoring of treatment continuity is not ensured. Cases of unjustified changes to the HTA treatment were identified.

* The Institutional Clinical Protocol regarding HTA is not followed. The general practitioner does not document medical examinations in outpatient medical records. Treatment recommendations are made on makeshift sheets (Penitentiary No.6).
* Bodily injuries are reported directly to the duty officer and not to the prosecutor. Sanitary conditions in the clinical laboratory office are not ensured, with persistent humidity and mold (medical section of Penitentiary No. 13).
* Medication provisioning is done, but the frequency of administration is not specified in the medical records.
* The degree of implementation of the SOP regarding medical devices (maintenance plan, metrology) is not achieved.
* Prophylactic control and regular check-ups with the required investigations are not conducted.
* The sterilization procedure is not followed.
* Primary examinations are incomplete, formal; examination of systems and organs is superficial. Recommendations are superficial and do not always match the recommendations enunciated in Penitentiary No.16 with hospital status.
* Not all medical staff have a qualification category.
* In the medical records, the identity of the medical personnel is unclear: only the signature is present, the deciphering or stamp of the doctor to identify them is missing. The name and the position of the person conducting the examination are not always decipherable.

12. Key issues identified by the Quality Council's audit across Prison hospital no.16 (2022):[9]

* Not every department has monitoring and continuity of investigations and consultations.
* The offices within the diagnostic laboratory do not meet the relevant standards.
* The surgery department, including the surgical block, does not meet the evaluation and accreditation standard. There is a persistent sharp smell of cigarettes.
* The SOP regarding medical devices is not signed and implemented. The metrology of medical devices is not monitored, except for the sterilizer (pulmonology department).
* Medication provisioning is done, but not in all cases are the recommendations (dosages, etc.) correctly formulated.
* Not in all cases is the management of concomitant diseases (Viral Hepatitis, HTA) monitored (internal medicine department, psychoneurology department).
* Instructions from specialists of other profiles are not followed (e.g., medical investigations are documented without the specialists' conclusion; recommendations do not indicate treatment for concomitant pathologies) (psychoneurology department).
* Changing treatment schemes for chronic pathologies (HTA) without justification (internal medicine department).
* The sanitary and hygienic condition of Penitentiary No. 16 is relatively satisfactory.

[9] To consult further: Report on the monitoring visit carried out in Penitentiary no. 16 – Pruncul on July 22-23, 2019 http://ombudsman.md/wp-content/uploads/2020/02/P-16-Pruncul.pdf; Report on the monitoring visit carried out in Penitentiary no.16 – Pruncul on February 22, 2022 http://ombudsman.md/wp-content/uploads/2022/04/Raport-CpPT_P16_22.02.2022-FINAL_FINAL_pe-site_expediat-autoritatilor.pdf?fbclid=IwAR1slBRP8aW0vzWOMvnKB7QJcdWiSyVovBH30UbsilK6GgZWSZ9jmBIx39s

13. Key Issues Identified by the Quality Council's Audit Across Several Prisons (2023):

* Medical examinations documentation upon the inmates' arrival in the penitentiary is superficial and incomplete. Some of the inmates lack a radiological examination.
* Periodic medical exams are not always carried out. Systemic treatments do not always have continuity. They are incompletely documented in medical records.
* For patients with HTA, the treatment plans and their continuity are not always adhered to. There are cases where the treatment is missing and is not indicated in the medical records. Provision with antihypertensive medication is insufficiently done and not specified in all medical cards. HTA screening is not done, monitoring of biochemical investigations (cholesterol, blood sugar) is not carried out.
* Not all HIV patients are monitored. Continuity of treatment focuses only on monitoring the patient. The procedure for releasing antiretroviral treatment is not clearly carried out. Evidence of continuous release of antiretroviral drugs is missing. Documentation of bodily injuries is not always carried out. It is not reported to the prosecutor (Penitentiary No. 13 and its medica department).
* The sterilization procedure of medical instruments is not adhered to, it is not done according to the SOP.
* In the Women's Penitentiary No. 7 (Rusca), the documentation of medical exams upon the inmates' arrival is superficial (the time is not indicated, identifying the medical staff is not always possible, only the signature is present). Periodic medical examinations lack continuity; prescribed recommendations are not fulfilled. The treatment plans for inmates with HTA are not adhered to. HIV patients are not monitored; the continuity of treatment is monitored only by the patient.
* Primary medical examinations are incomplete, formal, and the examination of systems and organs is superficial. Recommendations are superficial and do not always match the recommendations received by the inmate patient in Penitentiary No. 16 with hospital status. The names of the medical staff and the role of the person conducting the examination are not always decipherable.
* Systemic medical treatments do not always have continuity. They are incompletely documented in medical records.
* Medical staff do not have qualification categories.

iii. Key Recommendations from International and National Institutions

14. The health care services in prisons have been constantly in the sight of national, regional, and international human rights mechanisms. Recommendations on improving access of inmates to medical, mental health, and psychosocial services were addressed previously to the Government during the second and third UPR cycles,[10] by the EU bodies, [11] the CPT,[12] as well

[10] Universal Periodic Review - Republic of Moldova https://www.ohchr.org/en/hr-bodies/upr/md-index
[11] Recommendation No 1/2022 of the EU-Republic of Moldova Association Council of 22 August 2022 on the EU-Republic of Moldova Association Agenda [2022/1997] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22022D1997. The EU-Republic of Moldova Association Programme 2021-2027, which supports the implementation of the Association Agreement, identified a number of priority areas, including ensuring adequate medical treatment for detainees (including for those in pre-trial detention).
[12] 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 28 January to 7 February 2020

as by the UN Committee against Torture,[13] by the National Preventive Mechanism[14] and the People's Advocate.[15] In recent months, the issue of prison medicine has once again come under the scrutiny of the relevant international and national bodies.

2023 Report of the CPT.[16]

15. The CPT in its 2023 Report on Moldova noted with dissatisfaction the continuing subordination of the prison healthcare services to the Ministry of Justice and highlighted the European trend to place them, to a great extent or entirely, under the responsibility of the Ministry of Health. The CPT expressed its view that a greater involvement of health authorities in this area (including the questions of staffing, trainings, evaluation of clinical practice, certification, and inspection) improves the quality of healthcare in detention and enhances the realisation of the principle of the equivalence of healthcare.

UN Human Rights Committee (UN CCPR).[17]

16. At the July 2023 session, UN Human Rights Committee included the issue of medical services in penitentiaries in the List of issues prior to the submission of the 4th periodic report, Moldovan Government being expected to clarify the issues related, among others, to staff shortages, including medical staff, the quality of medical services in detention. [18]

Moldovan Council of Prevention of Torture (CpPT)

17. Serious problems were pointed out by the CpPT in July 2019,[19] and later reiterated in 2022,[20] following the monitoring visit carried out at Penitentiary no. 16-Pruncul:
    * Penitentiary no. 16 - Pruncul. Lack of accreditation as a medical institution, leading the medical services for detainees being provided outside the legal framework.[21]
    * Despite ongoing renovation and reconstruction, doctors' offices, and patient rooms, there are serious violations of the sanitary and epidemiological standards.
    * The most common illnesses encountered in detainees are mental and behavioral disorders. The CpPT was concerned about the high rate of suicides, which is the most common cause of death among detainees, after cardiovascular disease.

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http://ombudsman.md/wp-content/uploads/2020/10/Raportul-CPT_vizita-2020.pdf; and from 5-13 December 2023 https://rm.coe.int/1680ac59d8

[13] Concluding observations on the third periodic report of Republic of Moldova https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2FMDA%2FCO%2F3&Lang=en

[14] Report on the monitoring visit carried out in Penitentiary no. 16 – Pruncul on February 22, 2022, http://ombudsman.md/wp-content/uploads/2022/04/Raport-CpPT_P16_22.02.2022-FINAL_FINAL_pe-site_expediat-autoritatilor.pdf?fbclid=IwAR1slBRP8aW0vzWOMvnKB7QJcdWiSyVovBH30UbsilK6GgZWSZ9jmBIx39s

[15] http://ombudsman.md/wp-content/uploads/2023/08/Raport-anual-privind-respectarea-drepturilor-omului-EN.pdf

[16] 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 5-13 December 2023 https://rm.coe.int/1680ac59d8https://rm.coe.int/1680ac59d8

[17] UN Human Rights Committee/ List of issues prior to the submission of the fourth periodic report of the Republic of Moldova/ 2 August 2023 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FMDA%2FQPR%2F3&Lang=en

[18] UN Human Rights Committee/ List of issues prior to the submission of the fourth periodic report of the Republic of Moldova/ 2 August 2023 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FMDA%2FQPR%2F3&Lang=en

[19] Report on the monitoring visit carried out in Penitentiary no. 16 – Pruncul on July 22-23, 2019 http://ombudsman.md/wp-content/uploads/2020/02/P-16-Pruncul.pdf

[20] Report on the monitoring visit carried out in Penitentiary nor.16 – Pruncul on February 22, 2022 http://ombudsman.md/wp-content/uploads/2022/04/Raport-CpPT_P16_22.02.2022-FINAL_FINAL_pe-site_expediat-autoritatilor.pdf?fbclid=IwAR1slBRP8aW0vzWOMvnKB7QJcdWiSyVovBH30UbsilK6GgZWSZ9jmBIx39s

[21] Law no. 552 of 18.10.2001 On the assessment and accreditation in health care system, art. 2, art. 11 (3)(amended in 2020) https://www.legis.md/cautare/getResults?doc_id=122910&lang=ro#

* The CpPT was concerned about the lack of psychiatrists and the mental health strategy in the prison system. Prison environment requires complex medical and psychological interventions to rule out suffering of the ill prisoners and provide them with the medical monitoring and the prescribed treatment.
* The health care provided did not meet the quality standards, wich was not systematically verified by the competent institutions of the Ministry of Health.
* Detainees' right to health was violated in view of the inadequate treatment, lack of medical staff, and non-compliance with national treatment protocols and standards.

III. Structural Challenges in Prison Healthcare: Systemic Organizational Lapses

18. Although the relevant Regulation adopted in 2022 in theory provides certain advantages, its implementation is hindered by numerous challenges, stemming from systemic or structural problems of prison healthcare.[22]

III.1 Problems relating to the organisation of care

Accreditation of Medical Units in Prisons: Standards vs. Reality

19. According to the relevant regulations[23], all hospital services, including medical services in prison system, are subject to health operating authorization. Without it no health care provider can operate.[24] This aspect remains highly problematic.
20. In the Republic of Moldova, there are two parallel medical systems:
    1) The public accredited medical system (under the authority of the Ministry of Health)
    2) The medical services of the penitentiary system (under the authority of the Ministry of Justice).[25]

21. The medical service of the penitentiary system comprises:

Outpatient medical assistance:

* 16 outpatient medical wards in penitentiaries.

Inpatient medical assistance:

* Penitentiary No. 16 with the hospital status.

22. While the procedure for health evaluation and accreditation was launched in 2021[26], the National Prison Administration initiated the evaluation procedure for the purpose of accrediting certain prison medical units only in 2021.

[22] Order of the Ministry of Justice no. 343 of Dec. 29, 2022, put in place the Regulation on the organization of medical assistance for inmates in penitentiary institutions. Ministry of Justice Order No. 343 of 29.12.2022 On the approval of the Regulation on the Organization of Medical Assistance for Inmates in Penitentiary Institutions https://www.legis.md/cautare/getResults?doc_id=135397&lang=ro
[23] Section 23/2 § 2 and annex No. 2 to Law No. 10/2009 On state public health https://www.legis.md/cautare/getResults?doc_id=125959&lang=ro
[24] Ministry of Health Reply No 24/3126 of 30 August 2023
[25] The health system in prisons is under the National Prison Administration (NAP), subordinate to the Ministry of Justice. At the central level of the NAP, there is the NAP Medical Directorate, which is directly subordinate to the Director of the NAP. Organizationally, the NAP Medical Directorate is responsible for the activities of the medical sections within the prisons (including Prison no.16 with hospital status). Organizational Structure of NAP https://www.anp.gov.md/index.php/structura-anp
[26] Law No. 552 of 10-18-2001 on Health Assessment and Accreditation https://www.legis.md/cautare/getResults?doc_id=138755&lang=ro

23. This procedure applies to all medical service providers and takes place once every 5 years. To initiate this process, an applicant shall submit a request to the National Agency for Public Health (under the Ministry of Health). The Agency takes a decision on accreditation, conditional accreditation, or non-accreditation and, in case of approval, issues a five-year certificate. After obtaining the accreditation, medical service providers shall undergo continuous annual evaluation, an independent and systematic process of evaluating the compliance of the services provided with the health-care regulatory framework.[27]

20. Primary and specialized care is provided by medical departments at each prison level. To date, 14 medical departments have been accredited[28]. Prison no. 6 did not receive accreditation, due to its medical department's failure to "*implement recommendations for elimination of significant problems in the medical care field" (according to the Ministry of Health), neither* Medical department of Prison no. 10 (facility for juveniles).
21. Despite the accreditation delivered, there is a drastic difference between the conditions described in the accompanying letters to the accreditation certificates, as well as the evaluation reports, and the reality. The National Agency for Public Health recommended to align the work of the medical departments in certain prisons with the accreditation standards, but these recommendations have not been fully implemented.

> *For instance, Prison No.13: the National Agency for Public Health in 2021 recommended the medical department of prison no. 13 to organize continuous professional training of all employees and certification of medical workers to determine their qualification level; to ensure the proper handling of outpatient medical records; to bring the laboratory's work in conformity the applicable regulations; to organise and ensure necessary major and ongoing renovations in compliance with sanitary and hygienic requirements. By 2023, as a result of an internal medical audit, the Quality Council of National Prison Administration found that the* medical *staff did not have qualification categories; medical records were not properly and fully filled in; the planned renovation of the laboratory and other premises was not finished. Consequently, the recommendations put forward by in 2021 were not implemented even by 2023, which raised questions about the effectiveness of the accreditation process.*

22. What is more disturbing is that the Agency was to conduct **mandatory annual assessments** of the medical departments and to withdraw the accreditation if the standards were not observed. However, none of the medical sections accredited in 2021 have undergone this evaluation. According to the Ministry of Health,[29] the evaluation of the medical sections accredited in 2021 should have taken place in 2022. The Ministry referred to the COVID-19 pandemic as the reason for the absence of assessment. However, the COVID-19 restrictions during the same period (November 2022), didn't prevent the NAP to provoke an evaluation to get medical section of Penitentiary No. 4 being accredited.
23. Moreover, in the view of the pandemic argument, the Decisions of the National Extraordinary Public Health Commission[30] do not provide for any exemptions. Furthermore, even in 2023, the respective medical sections were not re-evaluated, in an apparent breach of the domestic law. Accordingly, it is unclear whether these sections still operate in accordance with the applicable health care standards.

[27] Art. 11 of the Law No. 552 of 10.18.2001 On Health Assessment and Accreditation https://www.legis.md/cautare/getResults?doc_id=138755&lang=ro
[28] Penitentiaries nos. 1 - 3, 5, 7 - 9, 11 - 13, 15, 17, and 18; Prison no.4 received full accreditation only in 2023
[29] Ministry of Health response no.24/3126 of 30 August 2023
[30] Decisions of the Extraordinary National Public Health Commission (2022) https://cancelaria.gov.md/ro/apc/coronavirus

24. In addition, according to audit reports conducted by the NAP Quality Council, significant deficiencies were observed in the work of the accredited medical sections, affecting the quality of care *(see above p.10-13).*

Penitentiary No. 16 with the status of a hospital: illegal functioning in the absence of sanitary authorization and accreditation

25. The relevant regulation[31] does not explicitly specify that Penitentiary No. 16 has the status of a prison hospital[32], but classifies it as a prison institution. According to Law No. 300/2017, the main function of Penitentiary No. 16 is to ensure temporary detention of all categories of detainees requiring inpatient medical care.[33]
26. The right to carry out medical and pharmaceutical activities is reserved for medical service providers who have been evaluated and accredited.[34] However, according to the Ministry of Health, there are no current requests from the Ministry of Justice (through the NAP) for obtaining operating health authorisation for Prison No. 16 (pending before the National Public Health Agency (ANSP) or before its territorial subdivisions). The Ministry of Health stated that the head of Penitentiary No. 16 and its superiors are responsible for ensuring the compliance of its work with relevant legal provisions, meaning substantial requirement[35], as well as fulfillment of evaluation and accreditation standards and the rules for equipping and organising medical assistance, **which are mandatory for medical service providers regardless of their type and legal form**.
27. Similar clarifications were provided by the NAP.[36] According to them, the prison authorities were planning to initiate the process of obtaining health authorisation and accreditation. The NAP have not specified the relevant timeline, and have not referred to any public policy document in this regard. Additionally, from the information provided, it is evident that such process is extremely costly, and there are well-founded suspicions that it will not be initiated in the near future.
28. According to the NAP, Penitentiary No. 16 received a technical report and cost estimate for the reconstruction of the surgery block in the amount of 232,142.0 lei. Authorities acknowledged that the resources available in the current budget allocated to the prison system are insufficient to support these costs. Furthermore, the NAP mentioned that the application to the ANSP for initiating the obtaining of health authorisation and accreditation will only be possible after completing the reconstruction.
29. Penitentiary No. 16, which currently provides unaccredited medical services to patients-detainees and functions without a health permit, operates outside the national legal framework and in breach of the principles of quality and equivalence of medical services in

[31] The Government Decision No. 437/2018, which regulates the organization and operation of the National Prison Administration,
[32] Law No. 300 of 21.12.2017 On the penitentiary administration system, see Section 11 (4) provides that Prison hospitals serves as places of temporary detention for all categories of prisoners requiring in-patient medical care, subject to the requirements of separate detention according to the illness, sex, and age, as well as their procedural status.
https://www.legis.md/cautare/getResults?doc_id=136291&lang=ro#
[33] Report of the National Council for the Prevention of Torture (2022),pag.10 http://ombudsman.md/wp-content/uploads/2022/04/Raport-CpPT_P16_22.02.2022-FINAL_FINAL_pe-site_expediat-autoritatilor.pdf?fbclid=IwAR1slBRP8aW0vzWOMvnKB7QJcdWiSyVovBH30UbsilK6GgZWSZ9jmBIx39s
[34] According to the answer provided by the Ministry of Health regarding the question of accepting the operation of a provider of medical and pharmaceutical services *without holding a health sanitary authorization and accreditation,* the Ministry emphasized that according to legal provisions, specifically article 23/2 paragraph 2 and annex No. 2 of Law No. 10/2009 on state public health supervision, all hospital assistance activities, including diagnostic and treatment medical activities carried out in hospitals, including those in the prison system, must be subject to health operating authorization (Ministry of Health response no.24/3126 of 30 August 2023).
[35] Sanitary Regulation on hygiene conditions for medical-sanitary institutions (Government Decision No. 693/2010)
[36] Answer of the National Administration of Penitentiaries no. 8-2076 of 21 July 2023

detention. This finding is supported both by the Ministry of Health and by the Council for the Prevention of Torture (CpPT) in the two monitoring reports covering Prison No. 16 *(see above p.12 and p.17).*

The lack of a response to the problem of under-staffing of healthcare professionals

Medical Staff Shortage

30. In response to the Promo-LEX Association's inquiry about the medical staff shortage in the prison system (including Penitentiary No.16), the NAP indicated the following needs:

Penitentiary No.16 with hospital status:

Doctors	15,75 positions
Nurses	25,5 positions
Additional medical staff	15 positions
Total	**56,25 positions**

Outpatient medical sections of prisons:

Doctors	11 position
Additional medical staff	11 positions
Nurses	16 positions
Total	**38 positions**

Medical Staff Norms

31. According to the NAP information there are currently no approved Medical Staff Norms for the prison system, and the Ministry of Health Medical Staff Norms are not applicable. These Norms are a vital element in managing the medicine within the prison system, as it would allow to determine staff needs with reference to the actual workload and tasks complexity. Adopting such a document would bring clarity and unify the requirements related to the medical staff necessary in each prison ward. They would promote transparency and accountability regarding hiring and managing medical staff.

The importance of an Integrated Human Resources Development Strategy in the Healthcare Sector: Addressing Challenges in the Penitentiary System

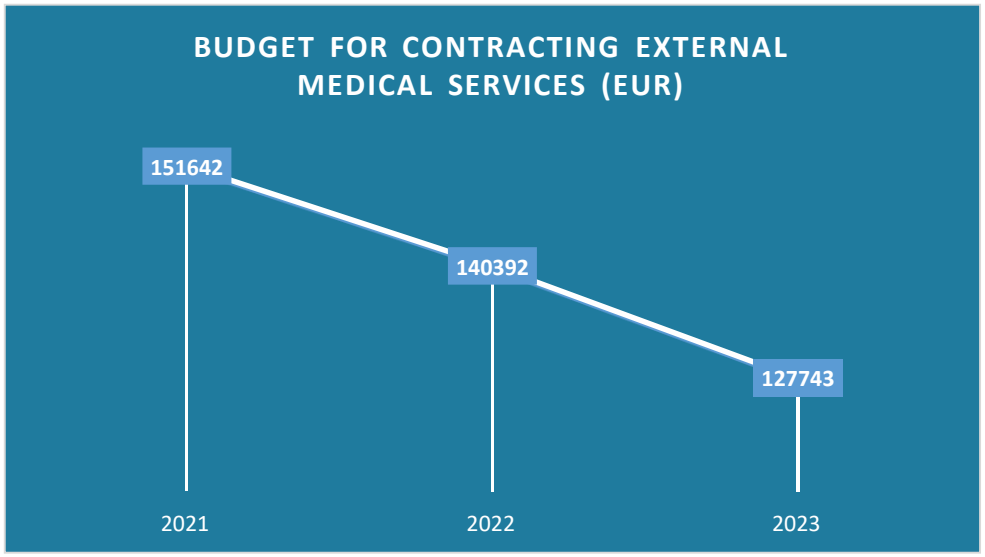
32. The medical staff of the penitentiary hospital comprises two categories: *officers and agents – civil servants with special status, and contracted staff.* According to NAP official information, the shortage of medical staff in relation to the number of detainees requiring medical assistance continues to be a severe problem, entailing the insufficient implementation of the national and institutional clinical protocols and medical standards. The existing staff is overburdened, compromising the quality of care. [37]

[37] See also: WHO: Prisons and Health (2014) https://apps.who.int/iris/bitstream/handle/10665/128603/9789289050593-eng.pdf?sequence=3%20%20Image?%20Yes

33. However, as confirmed by the NAP and the Ministry of Health, the Action Plan for the Human Resources Development Strategy in the health system for 2016-2025[38] did not cover prisons. Neglecting the needs of medical professionals in the prison system not only jeopardizes the health of prisoners but also compromises broader public health goals.

Budgetary and Financial Restrictions

34. Inmates do not benefit from the mandatory public health insurance. Medical care in prisons is financed from the public budget (the budget of the Ministry of Justice and the NAP), as well as from other sources permitted by legislation, such as donations, material aid, or grants. The Ministry of Justice, through the NAP, annually contracts specialized medical services from the public medical system, as the medical service within the penitentiary system does not have the necessary capacities to provide such services.
35. According to official data, to ensure qualified medical care for incarcerated persons in 2021, contracts were signed with 19 public medical-sanitary institutions under the Ministry of Health. The total amount of allocated funds for medical services was 3,186,000.00 lei. In 2022 and 2023 contracts were signed with 17 facilities, and the amount of funds was reduced to 2,813,000.00 lei (2022) and 2,597,900.00 lei (2023).

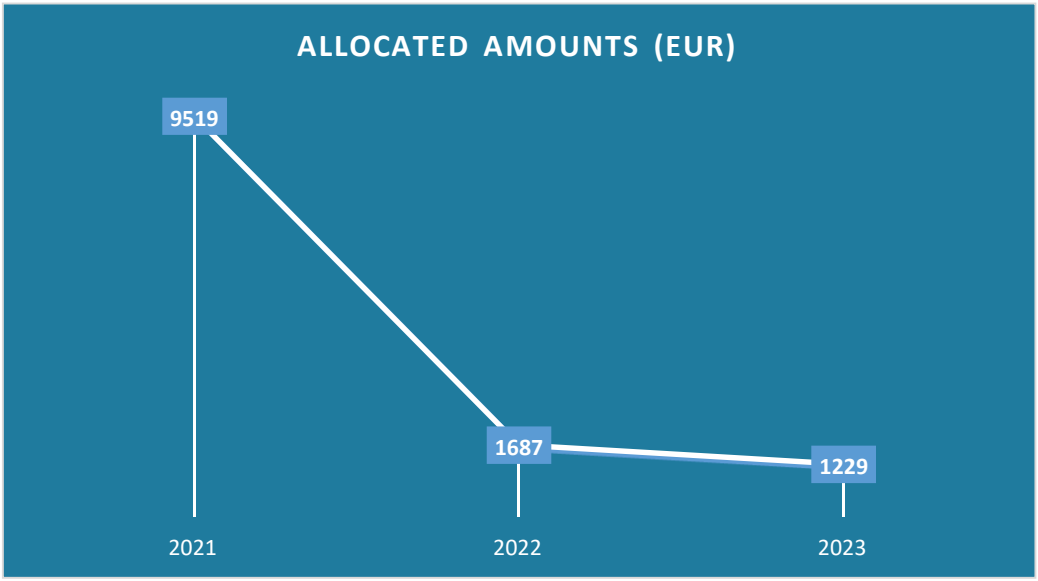


* *At the exchange rate of the National Bank of Moldova*

36. The table below summarises the information about public and private medical services providers specializing in conditions representing typical causes of mortality and morbidity in prisons, as well as most typical ailments in detention. It contains information about contracts made in 2021-2023 and their amounts.

[38] Government Decision No. 452 from 15.04.2016 on the approval of the Human Resources Development Strategy in the health system for the years 2016-2025. https://www.legis.md/cautare/getResults?doc_id=92216&lang=ro

Institution	Funding under contracts		*Year*
	Allocated (lei)	**Spent**	
Institute of Emergency Medicine	300,000	193,467.4 lei (EUR 9,208)	2021
	400,000	276,241.9 lei (EUR 13,786)	2022
	60,000	1st quarter 2023 - 33,029 lei (EUR EUR 1,624)	2023
Clinical Psychiatry Hospital	25,000	14,408.7 lei (EUR 685)	2021
	25,000	21,517 lei (EUR 1,072)	2022
	150,000	1st quarter 2023 - 365 lei (EUR 18)	2023
Oncology Institute	140,000	57,147 lei (EUR 2,720)	2021
	140,000	19,200 lei (EUR 958)	2022
	600,000	1st quarter 2023 - 139,755 lei (EUR 6,872)	2023
Cardiology Institute	100,000	60,747.9 lei (EUR 2,886)	2021
	50,000	48,722 lei (EUR 2,431)	2022
	20,000	1st quarter 2023 - 0	2023
IMSP Clinical Hospital "Holy Trinity"	550,000	336,375.6 (EUR 16,010)	2021
	650,000	537,052.7 (EUR 26,803)	2022
	70,000	1st quarter 2023 - 930.0 (EUR 45)	2023
National Center for Prehospital Emergency Medical Assistance (112) – Ambulance transport services	200,000	No information provided	2021
	33,818.2	No information provided	2022
	25,000	No information provided	2023



* At the exchange rate of the National Bank of Moldova

37. According to the NAP a 1-hour work of ambulance transport services for one prisoners is is **808 lei.** The number of 112 service requests reported by penitentiary authorities in 2021 and 2022 was 655 requests and 670 requests, respectively, which signifies the apparent insufficiency of the funds allocated for these services.

The lack of a methodology in determining the need for medical services in the prison system.

38. Seeking clarification about the contracting process for medical services in the prison system, we requested details about the selection criteria and the methodology for assessing needs, to obtain information about any existing methodology or regulations. We were also interested in whether any analysis or study had been carried out regarding the specific medical needs of the prison system in 2021-2023.
39. The authorities' response was straightforward: there are no studies focusing on the medical needs within the prison system. Furthermore, the process of contracting medical providers takes place in the absence of a clear methodology or a regulatory framework. Instead of a structured analysis, authorities use data on medical services from previous years as a reference to estimate future needs. This method, based on estimates and without a clear strategy, indicates an approach that does not efficiently prioritize the actual medical needs of inmates, highlighting the crucial need of rigorous and transparent planning.

40. Conclusions / observations:

- *Decreasing financial allocations:* there is a clear trend of diminishing funds allocated for specialized medical services for inmates. We notice a progressive decline in the amounts allocated annually, from 3,186,000 lei in 2021 to 2,597,900 lei in 2023.
- *Allocation versus expenses:* in all cases, actual expenditures are below the contracted value. This suggests that although funds are allocated for medical services, they are not fully used, and inmates might not receive complete medical services. For instance, for the Emergency Medicine Institute in 2021, out of the allocated sum of 300,000 lei, only 193,467.4 lei were spent. This pattern recurs for most institutions, indicating possible underuse of resources or inadequate planning.
- *Lack of clear methodology in contracting external medical services*: there are significant variations in the annual contracts with different institutions, exemplified by the contracts with the Emergency Medicine Institute, which increased notably in 2022 but plummeted in 2023. Even though there is an evident need for medical services in the penitentiary system, providers are contracted without a standardized approach or well-defined methodology. This leads to inefficiencies and inappropriate allocation of resources where they are most needed.
- *Ambulance service:* we note that the average rate for an ambulance service is 808 lei per hour, and the number of requests has increased from 655 in 2021 to 670 in 2022. Nevertheless, the sums allocated for ambulance transport have decreased substantially, potentially indicating underfunding of this crucial service.
- *Lack of obligatory medical insurance for inmates:* inmates do not benefit from the healthcare insurance system, which is why any additional medical service depend solely on the Ministry of Justice's budget. From interviews with inmates, complaint analysis, and statistical data concerning morbidity and mortality, it is evident that financing is disproportionate to the needs, considering the discrepancies between allocated sums and the actual expenses.

- *Need for analysis and studies:* the absence of studies analyzing the specific needs of inmates between 2021-2023 suggests a lack of long-term planning. Without such analysis, it is impossible to anticipate and adequately respond to inmates' medical needs.

41. In conclusion, the data analysis points to underfunding and potential inefficiency in administering funds intended for inmates' medical services. This might be one of the substantial reasons for the high morbidity and mortality rates in prisons. From the presented data, it is evident that while the State allocates resources for medical care in prisons, it does not spend them efficiently or in full amount. The lack of proper planning, clear methodology, and analysis identifying the actual needs will exacerbate or maintain this situation.

Problems concerning the constant availability of care

42. A number of establishments do not provide access to care in the evenings and at weekends, due to staff shortages. The NAP claims that round-the-clock service is unnecessary since the efficiency of an 8-hour shift has already been demonstrated. In cases of medical emergencies outside of working hours, the emergency service (112) is contacted. The independence of doctors in prisons and the insufficiency of medical personnel: the lack of balance between patient rights and institutional interests.

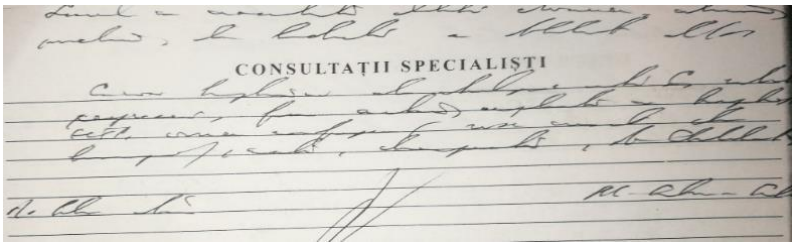
Improper handling of medical records in prisons

43. For an accurate and comprehensive description of the care, national legislation requires correct, detailed, and omission-free completion of medical records.[39]
44. When medical records are not managed appropriately, crucial information about instances of mistreatment or abuse can be lost, tampered with, or deliberately concealed. Medical records play a crucial role in documenting the physical and psychological state of prisoners, as well as any signs of mistreatment or torture they may have experienced. These records serve as vital evidence in legal proceedings, human rights investigations. Proper medical records not only serve as a safeguard for patients but also as a tool for healthcare professionals to communicate, make informed decisions, and ensure continuity of care.
45. Flaws in handling of medical records lead to a number of problems: (i) Records may be incomplete, inaccurately recorded, or deliberately manipulated to hide evidence of abuse. In some cases, medical staff may face pressure or intimidation to alter records or refrain from documenting instances of ill-treatment. Such actions hinder the collection of evidence and undermine the ability to address human rights violations effectively. (ii) The improper handling of medical records not only obstructs justice but also undermines the trust between

[39] Section 11 of Law on patients' rights of 27.10.2005 no.263 https://www.legis.md/cautare/getResults?doc_id=133163&lang=ro# ; the instruction on the completion of the Patient's Medical Record (Order of Ministry of Health no.265 of 3 August 2009 on the Instruction on the completion of the patient's medical record): *"the patient's medical record is an official document, compiled by medical staff, in which information related to the diagnosis of the disease (trauma), the evolution of the pathological process over time, and the treatment applied is recorded. Serves, when necessary, as a source of information for medico-legal expertise, especially in cases of trauma or issues related to the quality of medical care received by the patient. When the information contained in the Medical Record is brief and does not fully reflect the volume of care provided, the medical staff and the medico-legal expertise cannot correctly argue the correctness and completeness of the medical care. Medical records serve to document diagnostic research, argue the established diagnosis, justify the patient's hospital admission, record and confirm the prescribed treatment, all procedures and investigations undertaken, information regarding the evolution and dynamics over time of the pathological process, all curative actions undertaken to improve the patient's condition, and ensure the continuity of the curative process. Entries in the medical record are made legibly."* https://ms.gov.md/sites/default/files/legislatie/ordin_nr._265_din_03_august_2009.pdf

prisoners and medical staff. When individuals perceive that their medical records are mishandled or manipulated, they may hesitate to seek medical assistance or disclose instances of mistreatment, fearing retaliation or a lack of credibility.

46. As a result of the monitoring carried out by the Promo-LEX Association, it has been found that the medical records in prisons are often filled in improperly:
    * *The completion is not digitized*
    * *The prescribed treatment scheme is not clearly indicated.*
    * *Medical records are illegible.*
    * *The description of the dynamic monitoring of the patient is lacking.*



An excerpt from a medical record from the penitentiary system

47. The *internal medical audit across the medical departments of prisons* established that the medical treatments were often not detailed in the medical records. The instruction sheets were incomplete. Treatment recommendations were made on makeshift pieces of paper and were not included in the medical cards. Systemic medical treatments do not always have continuity. They are inadequately documented in the medical records. Additionally, the medical records failed to clearly identify the medical personnel involved. Only signatures were present, but the deciphering or stamping of the doctor to identify them was absent. The names and roles of the medical staff, and the person conducting the examination were not decipherable in every instance.
48. The inconsistencies and inadequacies highlighted by the Quality Council's audit, including the discontinuity of medical treatments and their incomplete documentation, can result in severe health implications for the patients, making it essential for the institutions to rectify this lapse and ensure consistent care. Digitizing medical documentation in penitentiaries is a crucial step towards modernizing and streamlining the healthcare system in detention. Moreover, it ensures that every patient is accorded suitable care, and all medical decisions are both traceable and accountable.
49. The authorities provided details to the Committee of Ministers, prompting the development of an action plan centered on improving medical care within detention facilities. A few initiatives have been earmarked for 2023. Importantly, one of these initiatives underscored the importance of digitalizing medical records, with the aim of assimilating the penitentiary healthcare system into the broader national medical records system. **Yet, this initiative remains neither executed nor anchored to a specific execution timeline.** Even more concerning, according to official information, the digitalization of medical documentation within the penitentiary healthcare service is not being implemented due to a lack of financial resources.
50. Through digitalization, access to information becomes faster and more secure. Furthermore, automated data consistency checks can be implemented, and alerts can be generated in the event of missing critical information. Additionally, data archiving and retrieval become more efficient, thus enhancing continuous patient monitoring and the overall improvement of healthcare services in penitentiaries.

III.2 Problems linked to the status of health professionals and the attachment of medicine to the prison administration

Double Loyalty of Medical Staff in Penitentiaries

51. The medical staff of the penitentiary institutions belongs to the prison service, which entails their "double loyalty" when making medical decisions.[40] Such "double loyalty" may be defined as a clinical role conflict between professional duties towards a patient and obligations, explicit or implied, to the interests of a third party (such as an employer, an insurer, or the State). Thus, the priority in making medical decisions lies with the interests of the penitentiary administration and not with the interests of the patient.[41]
52. According to the recently adopted regulation on organisation of medical care for inmates: *"in cases of major emergencies, admitting sick inmates to a public health institution, on a doctor's recommendation, **can** be ordered by the Prison Director or the officer on duty. For longer stays, the transfer must subsequently be approved by the NAP's Director order."* This complex bureaucratic procedure poses significant obstacles to providing prompt and efficient care and makes this approach counter-productive and harmful in in practice.
53. The medical staff's subordination to prison authorities has direct implications for the quality and objectivity of medical care provided to inmates:

    * *Contractual Relationship:* an employment contract directly signed by the doctor of the nurse with the NAP Director create an obvious hierarchical relationship. Being the medical staff's direct employer, the Director has significant control over their decisions and actions.
    * *Financial Implications:* dependency on the Prison Director can have serious implications when it comes to financial decisions. For instance, if an external medical service requires funding allocation, the doctor might feel compelled to seek approval, even if they believe the service is essential for the patient. This issue was evident in the *Cosovan* case, where the applicant faced significant difficulties in accessing specialized services he desperately needed.
    * *Regulation on Medical Assistance:* the current regulation stipulates that, in major emergency cases, the admission of inmates to a hospital can be ordered by the Prison Director or the Duty Officer. This provision introduces another layer of bureaucracy in the medical decision-making process.
54. The lack of independence of the medical staff severely affects the quality of medical care provided to inmates, and violating the following principles:
    * *Professional independence standard:* a fundamental principle in medical care is the doctors' professional independence. This involves their ability to make medical decisions based on the patient's needs and health status without external influences, pressures, or contingencies. In the current system, where medical staff is subordinated to the Prison Director, professional independence is compromised.

[40] Promo-LEX monitoring Report 2 | Managing the COVID-19 pandemic in the prison administration system https://promolex.md/wp-content/uploads/2022/04/RAPORT-DE-MONITORIZARE-2-Gestionarea-pandemiei-de-COVID-19-%C3%AEn-sistemul-administra%C8%9Biei-penitenciare.pdf

[41] Raportul Consiliului Național pentru Prevenirea Torturii (2022) pag.10 http://ombudsman.md/wp-content/uploads/2022/04/Raport-CpPT_P16_22.02.2022-FINAL_FINAL_pe-site_expediat-autoritatilor.pdf?fbclid=IwAR1slBRP8aW0vzWOMvnKB7QJcdWiSyVovBH30UbsilK6GgZWSZ9jmBIx39s

* *Equivalence of medical care:* another crucial standard is ensuring that inmates receive the same quality of medical care as the one available in the community. Transferring doctors' subordination from the Ministry of Justice to the Ministry of Health could significantly contribute to ensuring this equality. The Ministry of Health has extensive experience and expertise in managing health services, allowing it to promote higher standards in providing medical care in penitentiaries. Moreover, transferring an inmate to a public medical institution for medical care should not depend on the Prison Director's decision, on the funds allocated by the Ministry of Justice for medical service contracts, or the availability of prison staff to provide escort (as observed in the *Cosovan* case). The decision to transfer inmates to a civilian medical institution should be made exclusively by the medical personnel prescribing the necessary treatment, without external interventions and not subject to organisational conditions. This would ensure that priority is given solely to the inmate's health status and not to other considerations.
* *Urgent interventions:* medical emergency situations require immediate and efficient responses. The complex and bureaucratic procedure envisaged by the *Regulation on the organisation of medical assistance for inmates* can delay admission and appropriate treatment. Transferring doctors' subordination to the Ministry of Health could simplify this process and ensure quicker access to necessary treatment for inmates in major emergency cases.

55. Ensuring the independence of the medical staff by transferring them to the Ministry of Health is crucial for guaranteeing adequate and equal medical treatment for inmates, as well as for upholding professional and ethical standards in the field of medical care. The medical staff's dependence on the Director of the Penitentiary affects the quality and timeliness of the medical care provided to inmates. It is essential that medical decisions are based on the needs and interests of patients, without external administrative interference or pressure. Regulations and policies need to be revised to ensure that the health and well-being of inmates are prioritized.
56. Also, in departments facing a shortage of specialist doctors, patients are redirected to civilian medical institutions. However, the NAP has not specified that ambulance transport services provided by the National Center for Pre-Hospital Emergency Medical Assistance 112 are contracted by the Ministry of Justice.
57. In *Cosovan*, the Court took into account financial and logistical complications associated with treating inmates in public hospitals, including transportation and security. Plus, medical services for inmates are provided under a contract scheme since they are not covered by the general medical insurance. This results in extra costs for the penitentiary administration. Hence, the administration is interested in limiting inmates' treatment outside prisons, which can and often does create a conflict of interest for the prison doctors. According to the Court's recommendations, this situation needs to be resolved. In this context, the CPT asked the Government to transfer the responsibility over the prison medical service from the Ministry of Justice to the Ministry of Health. Additionally, we reiterate that the National Council for the Prevention of Torture explicitly highlighted the problem related to the lack of independence of prison doctors from the prison administration *(see above p.17).*

Ethical and Confidentiality Concerns

58. The realm of healthcare is bound by strict ethical considerations and the indispensable right to patient confidentiality. Prisons, however, present a unique set of challenges where these standards might be compromised. Whether due to surveillance, administrative policies, or the mere nature of incarceration, inmates might find their medical confidentiality breached and ethical standards overlooked. This segment aims to shed light on these pressing concerns, emphasizing the importance of upholding the sanctity of medical ethics even within prison walls.
59. Ensuring data confidentiality represents a fundamental challenge in penitentiary institutions. According to Law no. 133/2011,[42] medical data or information about health status fall under special categories of personal data. Therefore, the requirements for ensuring the security of personal data established by Government Decision no. 1123/2010 apply.[43] According to Annex no.1, the security of special categories of personal data involves level 2 requirements (N-2) - which, for example, requires the mandatory use of automated means for tracking security incidents of personal data information systems, collecting and analyzing information about these incidents; multifactorial (complex) authentication, which includes passwords and special physical access means with memory or microprocessor cards or passwords and biometric authentication means.
60. In practice, institutions do not ensure the protection of documents containing special data. Medical records are stored inadequately: on open shelves, without any restrictions, thus allowing access to non-medical staff. These irregularities, identified by both CpPT in its report[44] and by Promo-LEX during prisons visits in June 2022, were detailed in a report addressed to the authorities.[45] The authorities raised no objections regarding the observations made in the report.
61. Moreover, in response to the question whether inmates work as nurses in some prisons, as reported by the CpPT,[46] the National Prison Administration informed us that: *"in penitentiary institutions, inmates are employed as disinfectors, also being responsible for carrying out regular cleaning and disinfection in medical sections. If inmates are found to be involved in other activities, they are immediately removed."*

Establishment and implementation of the quality management system for medical services in the penitentiary system: benefits and challenges

62. To advance the implementation of a quality management system for medical services, on March 10, 2021, the National Administration of Penitentiary (NAP) adopted Order No. 129 on the Assurance of Quality in Medical Services Provided. This order established the composition of the Quality Council and set forth its operational guidelines.

[42] Law no. 133 of 08/07/2011 On personal data protection
https://www.legis.md/cautare/getResults?doc_id=136439&lang=ro#
[43] Government Decision no. 1123 of 14/12/2010 on the approval of the Requirements for ensuring the security of personal data when processing personal data within personal data information systems
https://www.legis.md/cautare/getResults?doc_id=16012&lang=ro
[44] Report on the monitoring visit to Penitentiary no. 16 – Pruncul, July 22-23, 2019 (page 19) http://ombudsman.md/wp-content/uploads/2020/02/P-16-Pruncul.pdf
[45] Report on the evaluation of the mechanism to prevent and combat ill-treatment in the penitentiary system of the Republic of Moldova (2022) https://promolex.md/wp-content/uploads/2022/11/Raport-Evaluarea-Mecanismului-de-Prevenire-%C8%99i-Combatere-a-Relelor-Tratamente-%C3%AEn-Sistemul-Penitenciar-din-Republica-Moldova-1.pdf
[46] Report on the monitoring visit carried out in Penitentiary no. 16 – Pruncul on July 22-23, 2019 (pag.19)
http://ombudsman.md/wp-content/uploads/2020/02/P-16-Pruncul.pdf

63. In 2021, the Quality Council began its comprehensive audit of the medical departments in six prisons. This process continued with additional medical audits in 2022 and 2023. These examinations revealed a spectrum of issues, ranging from the omission of treatment details for hypertension patients and irregularities in medical documentation to inconsistencies in adhering to standard operational procedures, along with lapses in hygiene and shortcomings in staff qualifications. To fully grasp the extent and nuances of these challenges across different prisons over the years. For a thorough breakdown of the audit results, kindly refer to the specified paragraphs 10-13 from this submission.

64. *Quality Council: structure, selection process, and subordination to the National Penitentiary Administration:*
    * According to Order No.129, the Quality Council consists of 9 members selected from the Medical Directorate of the NAP (National Administration of Penitentiaries). Members of the Quality Council are appointed by the leadership of the National Penitentiary Administration, upon the proposal of the head of the NAP Medical Directorate, for a period of no less than 3 years. The leadership of the National Penitentiary Administration provides the Council with administrative and operational assistance across all medical department subdivisions, including access to necessary data and information, and plans for the financial resources and time required for these activities.
    * Recommendations and decisions proposed by the Council are presented for approval to the NAP leadership and the directors of the penitentiary institutions, as applicable. The NAP leadership approves the Council's decisions, which become either mandatory or advisable. The NAP leadership assumes responsibility to review the recommendations and decisions proposed by the Council, to initiate certain activities or issue decisions at the "opportune moment". (see art.15 of the Order Regulation).
    * According to the Activity Regulation, the internal reports of the Council focused on quality-related aspects should include: a) *The report on the quality indicators of medical care in table format (which will include the assessment of clinical quality, patient safety, and patient services) – quarterly. b) Perceptions and the degree of patient satisfaction – detailed annual report.*

65. However, this new instrument has a number of shortcomings:
    * *Lack of independence:* Although the Council is intended to ensure quality, it is subordinate to the NAP. All members of the body are selected from within the Medical Directorate of the NAP, while the external independent expert being excluded, altering its relevance and impartiality, affecting its ability to act autonomously. The NAP provides the body with administrative and operational assistance, including access to necessary data and information, and plans for the financial resources and time required for these activities.
    * *Ambiguous nature and role of decisions:* the fact that the Council's decisions can either be mandatory or advisory, without specific differentiation criteria, may lead to confusion in their implementation.
    * *Ambiguity of responsibility:* according to the Regulation (Sect. 15), the NAP management are responsible for implementation of the Council's recommendations, "when the circumstances so require". It decides when the recommendations and decisions shall be implemented, leaving room for delays and changes in priorities.
    * *Limited access to resources:* although the NAP superiors provide administrative and operational assistance to the Council, the financial and time resources allocated for this assistance are not clearly specified. This could limit the Council's ability to conduct detailed evaluations and implement the necessary changes.

* *Lack of feedback from incarcerated patients:* no attention is given to the perceptions and satisfaction level of incarcerated patients. Analyzing the satisfaction of incarcerated patients is essential to understand their needs and to improve services.

66. These issues demonstrate the need to review the structure and operation of the body to ensure a much more robust and efficient quality assurance system.

Comments on the Updated Action Plan presented on October 3, 2023

Distorting the interpretation of the legal framework in the Updated Action Plan presented by the Ministry of Justice on October 3, 2023.

67. The Updated Action Plan from the Ministry of Justice, dated October 3, 2023, contains misconstrued interpretations of the legal framework. Particularly in paragraphs 75-84, the Ministry incorrectly portrays the regulations around medical assistance in detention. This misinterpretation not only fails to align with the goal of pinpointing and addressing health-related concerns in prisons but also skews vital information. Additionally, the plan's compensation strategy, heavily tilted towards material compensation, overlooks the pressing need for concrete medical care solutions.
68. Furthermore, the plan seeks to expand the national compensatory mechanism meant for detention conditions to include omissions in medical care. However, this mechanism, primarily crafted for addressing issues with material detention conditions, falls short when addressing the complexities of medical assistance. This is evidenced by the case of *Machina against the Republic of Moldova*, where the ECtHR found no effective remedy for the inmate's inadequate medical assistance complaint. Emphasizing this, the national court's tendency to extend the mechanism to medical assistance lacks a firm legal standing and doesn't account for the severity of health consequences for prisoners.
69. Given the depth of these issues, it is of utmost importance for the Committee of Ministers to meticulously assess the content of the Ministry of Justice's Action Plan. This examination should prioritize a correct and comprehensive approach, safeguarding the core values of Human Rights and ensuring the rights and well-being of inmates are genuinely upheld.

Conclusion: Breaking with Inconsistent and fragmentary Prison Health Policies

70. The penitentiary health system has long stood at a crossroads. While the nation has experienced reforms and policy adjustments over the years, prisons often remained underserved and overlooked in the broader health policy landscape. The resulting inconsistency in prison health policies not only jeopardizes the well-being of inmates but also poses challenges to the healthcare professionals dedicated to serving this population.
71. The prisons, being closed environments, don't attract the same degree of scrutiny or attention as public health matters in the broader community. This often results in a reactive approach to policy-making, rather than a proactive and comprehensive strategy. The key issue from the standpoint of improving medical care for prisoners is the transfer of medicine in prisons under the authority of the Ministry of Health. The UN CAT urged such transfer (see supra) and the ECtHR drew all the consequences in Cosovan from the point of view of quality of care. This shift would allow to ensure the independence of doctors, a *sine qua non* for establishing trust between patients and practitioners, and to ensure better coordination with civilian hospitals. In this respect, the reorganisation of the health system was defined as a priority of the Prison System Development Strategy 2016-2020 and the Action Plan for its implementation.[47]

[47] Approved by Government Decision No. 1462 of 30.12.2016

However, no essential reforms have been proposed or designed regarding the unification of medical services, as recommended by the UN CAT.[48]

72. Currently, no public policy envisages the reform of the medical service in the penitentiary system, especially regarding the transfer of medicine in prison under the Ministry of Health. Moreover, national health policies,[49] do not provide for any actions concerning medical assistance in penitentiaries. In sum, despite the numerous international recommendations recognising the need for reform at the national level, concrete steps towards that change have not been undertaken yet.

IV. Recommendations

Recommendations to authorities regarding public policies:

1) *Medical service transfer:* to develop a concept for reforming medical services in the penitentiary system and to transfer the responsibility for medical care in prisons from the Ministry of Justice to the Ministry of Health.
2) *Holistic approach to integrating prisons into National Health Policies:* to update national health policies and explicitly include prisons in them, to ensure the compliance of the policies with modern medical standards and practices.

Recommendations to authorities regarding the accreditation process of medical services in the penitentiary system:

1) *Annual and consistent evaluations:* to conduct continuous annual evaluations of medical departments in accredited prisons by the National Public Health Agency to ensure that medical care standards are observed.
2) *Implementation of recommendations:* to rigorously and timely implement all recommendations of the National Public Health Agency and to monitor the progress of their implementation.

Recommendations to authorities on the accreditation process of Penitentiary No.16:

1) *Clarification of the status of Penitentiary No. 16*: to develop and harmonize regulations regarding the status of Penitentiary No.16, to ensure that it operates in conformity with the legal framework, including the health care regulations, to initiate the process of its accreditation.

Recommendations to authorities on the Quality Management System in penitentiary medical services:

1) *Independence of the Quality Council*: to include external experts in the Quality Council, such as doctors, public health specialists, and representatives of NGOs, and to ensure the Council's impartiality and objectivity of its decisions.

[48] Concluding observations on the third periodic report of the Republic of Moldova: § 10 http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fMDA%2fCO%2f3&Lang=en

[49] Government Decisions no. 886/2007 On the approval of the National Health Policy; no. 452/2016 on the approval of the Strategy for the development of human resources in the health system for 2016-2025; the 2030 sustainable development agenda in the context of the Republic of Moldova; the National Strategy for the Prevention and Control of non-communicable diseases for 2012-2020; Government Decision on the approval of the National Program for the prevention and control of priority non-communicable diseases in the Republic of Moldova for 2022-2030 and the Action Plan for 2022-2025 implementation.

2) *Clarifying decision status:* to set clear categorisation criteria regarding the status of Quality Council decisions (both mandatory and advisory).
3) *Implementation:* to adopt rules and guidelines for the implementation of the Quality Council's recommendations.
4) *Inmates-patients feedback:* to introduce a mechanism for prisoners to regularly and transparently provide feedback on the quality of medical services they receive.

Recommendations to authorities on medical record keeping and medical form completion:

1) *Digitalization of all medical records and their integration* into the national medical records system, in order to ensuring continuity of healthcare for inmates.

Recommendations to authorities on the confidentiality of medical data:

1) *Storage space restructuring:* to keep medical records in secure areas with restricted access preventing unauthorised access to them by non-medical staff or inmates.
2) *Implementation of advanced security systems:* to implement advanced security systems for medical data protection, including multifactor authentication and automated incident tracking.
3) *Strict disclosure protocols:* to establish strict protocols and rules on access to inmates' medical information.

Recommendations to authorities on the independence of prison doctors and the shortage of medical staff:

1) *Recruitment and employment of medical staff in the penitentiary system:* to take measures to make the medical career in prisons more attractive by improving working conditions, offering competitive salaries and benefits, and creating training and professional development opportunities.
2) *Inclusion of the prison medical services in the Action Plan of the Human Resources Development Strategy 2016-2025:* to explicitly recognise the unique needs and challenges of the prison medical staff in future strategies, to develop specific measures to address the medical staff shortage and to improve the quality of medical care in prisons.
3) *Early elimination of organisational problems:* set up a consultation mechanism between the Ministry of Justice and the Ministry of Health to deal with general issues relating to the organisation of care, strictly excluding issues relating to individual situations.
4) *Promoting medical autonomy:* to ensure the independence of medical staff in making medical decisions and their freedom from interference by the prison administration.
5) *Procedure Simplification:* to simplify procedures for admitting and transferring inmates to public medical institutions and eliminate bureaucratic barriers that can delay treatment.

Recommendations to authorities on Medical Staff Norms and the Medical Personnel Shortage in the Penitentiary System:

1) To develop, adopt, and implement the Medical Staff Norms within the prison system in alignment with the guidelines set by the Ministry of Health.
2) To ensure that prison medical departments function 24/7.
3) To include prisoners in the general compulsory medical insurance scheme.

4) *Equitable remuneration for medical staff:* It is recommended to ensure the payment, as well as compensation for overtime work and overlapping duties, for medical staff in accordance with national provisions, eliminating differences between contract medical staff and special status medical staff. Reviewing the status of doctors employed in the penitentiary system to make it possible to compensate for on-call shifts, not just offering days off.

Recommendations to authorities regarding contracting external medical services from the public health system:

1) To develop of a standardized methodology for contracting medical services.
2) *Optimizing resource use:* to create mechanisms that ensure efficient resource use in the inmate patient's interest and understand why allocated funds are not used to their full capacity.

Yours faithfully,

Submitting organisations:

Promo-LEX Association

The People's Advocate Office

European Prison Litigation Network (E.P.L.N.)

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