

March 2016

Republic of Moldova  
Report to the UN Universal Periodic Review

26th session of the UN Human Rights Council on Universal Periodic Review  
(second round)

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This report is prepared by the **Coalition of NGOs for UPR Moldova**, whose expert examination is focused on **torture, fair trial and access to justice**.



**Civil Rights Defenders** is an independent expert organization founded in Stockholm in 1982 with the aim of defending human rights, in particular people's civil and political rights, while also supporting and empowering human rights defenders at risk.

Since 2004 Civil Rights Defenders has empowered hundreds of human rights defenders in Moldova. We provide financial and organisational support to human rights organisations operating in Moldova.

**Address: 67 Sciusev Str., floor 3, Chisinau, Moldova; MD 2012; [www.crd.org](http://www.crd.org)**



**GENDERDOC-M**

organization of the Coalition on Anti-Discrimination, National Youth Council of Moldova, ILGA-Europe (European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association) and IGLYO (International Lesbian, Gay, Bisexual, transgender and Queer Youth and Student Organization).

**GENDERDOC-M Information Centre (GDM)** was established on 8 May 1998. It is a non-governmental organization that advocates for and lobbies LGBT (lesbian, gay, bisexual and transgender people) rights in Moldova. GENDERDOC-M Information Centre is a member

**Address: 72/1 Valeriu Cupcea Str., Chisinau , Moldova, MD 2021; [www.gdm.md](http://www.gdm.md).**

**IDOM**  
INSTITUTUL PENTRU  
DREPTURILE OMULUI

The Moldovan **Institute for Human Rights (IDOM)** is a nongovernmental organization founded in 2007 by a group of human rights experts with the aim to raise awareness, promote and defend human rights at national and international levels. The strategic areas of the

IDOM are the rights of persons living with HIV/AIDS; rights of people with mental disabilities placed in psychiatric facilities and social care houses; prohibition of ill-treatment in places of pre-trial detention and the right to health.

**Address: 95 "A" Mitropolit Dosoftei Str., Chisinau, Moldova, MD 2004; [www.idom.md](http://www.idom.md).**



JURIȘTII PENTRU DREPTURILE OMULUI

The main statutory purpose of the Public Association “**Lawyers for human rights**” is to secure effective implementation of the ECHR in Moldova. To achieve this purpose, LHR represents persons at the ECtHR, informs the legal community and media through press-releases about the essence of this jurisprudence, maintains and

develops database of Moldovan judges and prosecutors [www.magistrat.md](http://www.magistrat.md).

**Address: 2 Vlaicu Pircalab Str., office 13, Chisinau, Moldova, MD 2009; [www.lhr.md](http://www.lhr.md).**



The Centre for Analysis and Prevention of Corruption (CAPC) is a public, national, non-profit, non-governmental, non-political organization, established in 2000. The statutory goals of the CAPC are: contributing to reducing the level of corruption in the country to such a level that would not affect the citizens’ rights and

freedoms; raising awareness of the danger of corruption for the state; study the level of penetration of corruption in the society and in the state; identifying areas that were affected to a greatest extent by corruption; increasing transparency of the activity of state and political institutions; establishment of a public supervision by the society over the activity of state bodies.

**Address: 27 Sfatul Tarii Str/, office 6, Chisinau, Moldova, MD-2012; [www.capc.md](http://www.capc.md).**

### **Relevant UPR recommendation from the 1<sup>st</sup> cycle:**

- 1. Ensure greater policy and institutional control over the State Security Corps and Forces in order to avoid cases of excessive use of force and abuse against detainees;*
- 2. Intensify its efforts to address discrimination against Lesbians, Gays, Bisexuals and Transsexuals (LGBT), and to investigate and prosecute crimes against LGBT-community members;*
- 3. Take measures aiming at reinforcing the fight against torture and impunity;*
- 4. Put an end to impunity whenever it occurs, investigate all complaints of torture and ill-treatment by law enforcement officers, prosecute and punish those responsible and ensure that information obtained under torture is not admissible in courts.*

### **Justice reform**

The most notable successes in implementation of the Justice Sector Reform Strategy (JSRS) in the Republic of Moldova (RM) has been achieved in developing the legal framework of functioning justice institutions that is relatively satisfactory. Thus, the Law on selection, evaluation of performances and career of judges (07.05.2012); a set of anticorruption laws (12.23.2013); Law on disciplinary responsibility of judges (07.25.2014); Law on Prosecutor's Office (02.26.2016) and the draft Law on the National Integrity Centre (approved in first reading on 25.02.2016) were approved. The justice budget has been increased and a system of random distribution of cases was introduced.

During implementation of the JSRS, the justice budget has been increased. Consequently, it was possible to increase the amount of judges' salaries, to significantly increase the number of courts' staff, to reconstruct the courts buildings. Also, a system of random distribution of cases was introduced. However, the level of trust in justice has decreased<sup>1</sup> and no positive changes on the quality of justice act have been achieved.

Despite significant financial investments made in the justice sector and the existence of a legal framework, largely corresponding to international standards, its implementation is difficult due to quality of laws and resistance from the judiciary system.

Thus, new procedures for selection and evaluation of performances of judges have been implemented since March 2013, the Board on selection and career of judges and the Board on evaluation of performances of judges have been established that have a legal framework and a sufficient technical and material base to achieve the purposes for which they have been created. Monitoring of the Boards' activity<sup>2</sup> allowed finding that examination of candidates, process of selection of judges, and performances evaluation is conducted formally, and their decisions are not relevant for the Superior Council of Magistracy.

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<sup>1</sup>According to the Public Opinion Barometer, in November 2015, only 1% of respondents have very much confidence in justice, 11% have a certain trust and 56% have no trust and 27% have a little trust in the judiciary [http://www.ipp.md/public/files/Barometru/Brosura\\_BOP\\_11.2015\\_prima\\_parte\\_final.pdf](http://www.ipp.md/public/files/Barometru/Brosura_BOP_11.2015_prima_parte_final.pdf)

<sup>2</sup><http://www.capc.md/ro/publications/>

Also, the system of random distribution of cases in courts is vulnerable and can be manipulated through the human factor. A file can be distributed to a certain judge because of several technical problems, such as technical possibilities of unjustified blocking of several judges in the program for a short period of time; lack of technical settings on distribution cases if there is a minimum number of active judges only; repeated distribution of cases; recording of multiple cases under the same name, etc.<sup>3</sup> Although public perception of the possibility to manipulate the system of random distribution of cases<sup>4</sup> is increasing, at the moment, the court has considered a single criminal case, involving seven persons, including a former magistrate and two former employees of a court from Chisinau. Recently, former clerks concerned in a case were sentenced to suspended imprisonment.

Judgments publicity is achieved by making them available on courts portal, but courts do not place all judgments or post them with delay and some judgments cannot be downloaded at all. Cases with major resonance in which high-rank former officials are targeted, are examined in court with closed doors without plausible reasons.

The toolkit for implementation of the disciplinary responsibility of judges, established by the Law on Disciplinary Responsibility of Judges, was found to be ineffective because it encourages judges' impunity and consequently is not likely to reduce the number of citizens' complaints on the judge's activity. According to official data, 72% of all complaints filed in 2014 were dismissed by the Judicial Inspection as being obviously unjustified. Of these, only 28% of them were appealed against to the admissibility panels of the Disciplinary Board. Rejected decisions issued by the Judicial Inspection are not published and the appeals against these are rejected at a rate of 97%. The rate of commencement of disciplinary procedures in 2015 decreased by almost 27% compared to 2014, although the group of subjects who submit complaints was extended. Moreover, sanctioning rate of judges decreased fourfold.<sup>5</sup> A relevant case is that of a judge involved in the raider attacks against the bank Banca de Economii (the Savings Bank) of Moldova, which was dismissed by the Supreme Council of Magistracy and later, on 15.02.2016, the Supreme Court of Justice cancelled the Supreme Council of Magistracy decision by which he was declared incompatible with the position of judge.

Although in the middle of 2014 the legal framework in respect of decrease in the immunity of judges in corruption cases has been amended, in 2014-2015 crimes committed by 17 judges were investigated. Criminal cases concerning 8 judges were opened in courts. 3 judges were found guilty, including 2 irrevocably, of whom only one was subject to the real service of the sentence.<sup>6</sup> However, even in this case, the convicted judge left the courtroom before delivery of the sentence, managing to leave the country. This final sentence against the judge was delivered with suspension of its service, and as for the third criminal case on a judge who is not yet final, the Court of Appeal (on 02.15.2016) decided that the

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<sup>3</sup>[http://www.cna.md/sites/default/files/studiu\\_pigd.pdf](http://www.cna.md/sites/default/files/studiu_pigd.pdf)

<sup>4</sup>This perception of the public is fed also by the possible manipulation of the system of random distribution of cases at the Supreme Court of Justice, which became publicly known and widely publicized.

<sup>5</sup><http://crjm.org/category/publications/justitie/>

<sup>6</sup>[http://www.cna.md/sites/default/files/statdata/raport\\_cna\\_24.02.16.pdf](http://www.cna.md/sites/default/files/statdata/raport_cna_24.02.16.pdf)

magistrate's actions allegedly do not contain elements of the charged corruption offence, qualifying the case as an administrative offence. In these circumstances, there are suspicions that authorities mimic the fight against corruption, including in the justice sector.

The reform of bailiff profession has not brought the expected results at the moment of its launch. The types of sentences, which were not served until commencement of the reform, are not still serviced and the execution expenses, as a rule, increased significantly.

Approval of the set of anticorruption laws in December 2013 to discourage corruption acts has not produced the expected results. Thus, the Constitutional Court found inaccuracies in the wording "illicit enrichment" of a criminal offence, which can create deficiencies in implementation as invoked by prosecutors, considering necessary to issue a recommendation to the Parliament to remove it. Until adjusting the legislative act to the rigors of the Constitutional Court, the illicit enrichment is inapplicable, and the institution of "extended confiscation" as a result of the Constitutional Court interpretations, will be applicable only since 2018<sup>7</sup>. In the same time, the Constitutional Court reviewed the constitutionality of certain provisions from the Law on Professional Integrity Testing, which effectively abolished it, hence making it inapplicable.<sup>8</sup>

### **RECOMMENDATIONS:**

1. Reset the activity of Board on selection and career of judges and of Board on performances evaluation of judges so as to ensure selection and promotion of professional and honest judges;
2. Ensure that the Superior Council of Magistracy motivates its decisions on appointment and promotion of judges;
3. Review technical parameters of the system of random distribution of cases in the courts so as to exclude any manipulation by the human factor;
4. Ensure plenary and judgments publicity in time;
5. Ensure public hearings by providing access to court rooms to public;
6. Strengthen an effective mechanism for disciplinary responsibility of judges (publicity of Judicial Inspection decisions);
7. Involve the Supreme Council of Magistracy bodies in fighting corruption in the judiciary system;
8. Review bailiffs' fees to exclude payments for services that they do not really have granted;
9. Amend the anti-corruption set of laws from 2013 to make them applicable and implementable.

### **Access to Justice for LGBT People**

Although the GENDERDOC-M Information Centre has enjoyed a relative success in accessing justice to defend the rights of LGBT people and activists thus seeking effective remedy for victims of human rights violations, the organization has encountered continuous resistance from prosecutor's office to investigate bias-

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<sup>7</sup><http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=358414>

<sup>8</sup><http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=358415>

motivated crimes and bias-motivated speech based on sexual orientation and gender identity. For example, following several refusals of prosecutor's office to initiate investigation and/or carry it out effectively in cases of violation of LGBT people's rights, in 2015 GENDERDOC-M submitted 5 claims against Moldova for ineffective investigation of allegation of bias-motivated crimes to the European Court of Human Rights.

In another example, in September 2015, the Supreme Court of Justice refused to find an Orthodox Bishop liable for defamation and incitement to discrimination against gay people in a clear and evident case of violation of current legislation. Following the release of this judgment, GENDERDOC-M submitted another claim against Moldova for violating GENDERDOC-M's right to fair trial based on sexual orientation and gender identity.

For three years already, police and prosecutor's office refuse to prosecute activity of organized extremist homophobic gangs with an evident right-wing agenda that literally hunt down gay and bisexual men via on-line dating websites, attack GENDERDOC-M office, disrupt LGBT activities and threaten LGBT activists and other human rights defenders with violence. Despite numerous attempts to report their illegal actions and overall extremist activity to police and prosecutor's office, members of these gangs continue assaulting and literally torturing gay and bisexual men, as well as attacking the annual Pride March and braking in the GENDERDOC-M office. They act as if they are aware of their impunity, which confirms GENDERDOC-M's suspicions that their actions may be backed by some high-ranking officials in the police, prosecutor's office or in the state Information and Security Service.

## **RECOMMENDATIONS**

1. Ensure effective investigation of bias-motivated crimes, bias-motivated incidents and hate speech against LGBT people and activists by police and prosecutor's office.
2. Ensure independence and incorruptibility of judicial system and Prosecutor General's Office as well as direct responsibility of judges and prosecutors for unfair trial and ineffective investigation.
3. Carry out systematic and continuous training for police investigators and prosecutors on effective investigation of bias-motivated crimes, bias-motivated incidents and speech, including those based on sexual orientation, gender identity and gender expression.

## **Torture and Ill-treatment**

According to the Concluding Observations of the UN Committee against Torture<sup>9</sup> serious legislative and logistic constraints impede effective functioning of the National Preventive Mechanism (NPM) established under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

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<sup>9</sup>[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fMDA%2fCO%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fMDA%2fCO%2f2&Lang=en)

One of the major concerns in the field relates to the current legal provisions of the Law on People's Advocate (Ombudsman)<sup>10</sup> adopted on 03 April 2014, which does not explicitly specify the competence, structure and functions of the NPM, as requested by the CAT.

The NPM in Moldova has not functioned effectively since 2013. Poor legal framework, lack of financial and administrative autonomy, absence of a specialized subdivision dedicated to the NPM cause a gradual collapse of the Consultative Council (the 10 members of civil society that established jointly with the ombudsman the NPM). The work of the NPM has been reduced to the outcomes of the activity of 2 -3 staff members of the ombudsman office.

Adoption of a new Law on Ombudsman in April 2014 has not solved the problem of functionality of the NPM. Although a new subdivision that would assist the Council for the Prevention of Torture and the ombudsman in carrying out its mandate as the NPM was created, the Law on Ombudsman and the Rules of organization and functioning of the Office of the Ombudsman did not make clear the role and responsibilities of that subdivision<sup>11</sup>. At this moment, though the ombudsman's office commenced drafting the Regulation of functioning of the Council for the Prevention of Torture, the authorities started to amend Chapter V of the Law on Ombudsman, dedicated to the NPM. No steps have been taken in order to initiate the contest for the position of member of the Council for Prevention of Torture.

In these circumstances the number of monitoring visits constantly decreases every year. For instance, in 2012 the NPM made 251 monitoring visits, in 2013 – 227 visits, in 2014 – 128 and in 2015 only 68 monitoring visits.

### **Ill-treatment in Police Custody**

Although significant efforts have been taken by the Government to reduce the vulnerability of people detained in police custody (during 72 hours) by improving the material conditions, there are many cases of where the right not to be subjected to ill-treatment in police detention is still violated.

Detainees escorted to other regions for prosecution activities or court hearings are subject to inhuman and degrading treatment as they are not provided with food and sometimes water a whole day. Cases have been reported when detainees were held a whole day in freezing escort vehicles that lack air conditioning, during winter time, without even participating in any procedural activities. These people often do not get any food that day, because they are held out of the institution during breakfast (lunch) or dinner time.

Some pre-trial detention institutions are offering food for detainees once per day - the lunch. The menu is the same for everyone, including for those who require a special diet. Sometimes, detainees are not transferred to penitentiary centers, as they should be transferred following the end of procedural formalities and are held in police cells for many days.

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<sup>10</sup><http://lex.justice.md/md/352794/>

<sup>11</sup><http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=361146>

Delayed medical assistance is another problem often faced by people detained in police custody. The IDOM has identified cases when detainees resort to desperate gesture (self-mutilation) to draw attention of the personnel to their health problems.

Also, verbal abuse and unjustified application of force by the personnel is claimed very often in pre-trial detention places.

#### **RECOMMENDATIONS:**

1. Take step to bring Chapter no. 5 of the Law on Ombudsman in line with the Opinion of the European Commission for Democracy through Law (Venice Commission) no. 808/2015<sup>12</sup> and the opinion of the CoE Directorate General Human Rights and Rule of Law from 28.11.2015<sup>13</sup>;
2. Approve the Regulations of the Council for the Prevention of Torture and initiate the process of election of member of the Council for Prevention of Torture;
3. Building capacities of police staff, including personnel that is involved in guarding and escorting prisoners on human rights in detention and the limits of using physical force;
4. Transfer all persons held in police custody to penitentiary centers;
5. Provide food and water for detainees that are escorted out of police institutions, according to the standards provided for in the Criminal Execution Code, and create facilities for placing prisoners during their stay in courts;
6. Ensure that the rights of those arrested are respected during the arrest process and that their relatives have been informed of which detention place they are being held in;
7. Ensure that persons brought to police and those held in preventive detention are effectively registered and that they benefit from immediate qualified legal assistance;
8. Promote the message of “zero tolerance for torture and ill treatment” in the subdivisions of the Ministry of Interiors.

#### **Ill-treatment in Psychiatric Facilities**

Non-government organizations, the ombudsman, the “Non-Discrimination Council”, the lawyer of patients in in-patient psychiatric facilities, international human rights organizations report various forms of ill-treatment in psychiatric facilities or psycho-neurological care facilities in Moldova.

Reports published within the pilot project “Ombudsman in Psychiatric Institutions” reveal multiple cases of a perpetuation in institutions under monitoring of cases of: “cuffs on nape, thrusts, kicks with feet, shouting,

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<sup>12</sup> [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2015\)017-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)017-e)

<sup>13</sup> [http://www.coe.md/images/stories/Articles/CJR-Project/npm\\_omb\\_law\\_md\\_opinion\\_ro.pdf](http://www.coe.md/images/stories/Articles/CJR-Project/npm_omb_law_md_opinion_ro.pdf)

uncensored words and other indecent behavior for a worker of a medical institution”.

The IDOM and partner organizations found cases of placing orphan children and socially vulnerable families in medical psychiatric facilities for a period of 4-6 months; in one of these cases they were accommodated in the department of adults, as a measure penalty, and were subject to intensive medical treatment with neuroleptics.

Deaths in psychiatric facilities are not duly investigated. Despite the high rate of mortality in psychiatric facilities, no assessment of the reasons behind has been made. However, the profile of these institutions should have a mortality rate of less than or equal to the rate of therapeutic institutions<sup>14</sup>.

Ombudsman reports reveal cases of sexual abuse of beneficiaries of psycho-neurological care facilities committed by doctors and nursing staff. The IDOM identified several cases of forced abortion of beneficiaries of residential psychiatric facilities.

The services of psychiatric facilities are reduced, in most cases only to medication. At the same time, a practice commonly applied to patients of psychiatric facilities is intravenous administration of drugs as punishment<sup>15</sup>. There are no approved legal and uniform norms of administration of means of calmness. The time and duration of immobilization are not correctly recorded and not all cases of immobilization are entered in register. Patients are not informed about the way and grounds of immobilization.

Although the law expressly states<sup>16</sup>, there is no mechanism allowing beneficiaries of psychiatric hospitals and psycho-neurological care facilities to file complaints to prosecutor, lawyer or judge, without censorship<sup>17</sup>.

The monitoring visits show that a very significant number of patients are not aware of their rights, they are not properly informed on the conditions of hospitalization and simply are given two forms for signature – one on consenting hospitalization and one for treatment upon admission or shortly thereafter. There are also cases of detention for several days for medication, even after clear verbal complaints about adverse reactions.

Data provided by the Ministry of Health and the Ministry of Labor, Family and Social Protection and the General Prosecutor's Office reveal lack of complaints of ill-treatment of persons with disabilities in psychiatric and psycho-neurological facilities.

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<sup>14</sup> Submission of the Moldovan Institute for Human Rights (IDOM), 27 November 2015, EU-Moldova Human Rights Dialog

<sup>15</sup> Report on the rights of patients in psychiatric hospitals of the Republic of Moldova (April-September 2012), Doina Ioana Straisteanu, Institutional Ombudsman of psychiatric hospitals, page 24. Sources: [http://dis.md/wp-content/uploads/2012/02/RAPORTUL-FINAL\\_6luni-apr-sept-20121.pdf](http://dis.md/wp-content/uploads/2012/02/RAPORTUL-FINAL_6luni-apr-sept-20121.pdf)

<sup>16</sup>Art. 36 of the Mental Health Law

<sup>17</sup>Atlas of Torture: Monitoring and Preventing Torture Worldwide. Final project report -Moldova. December 2013, page 25

On the other hand, there is no procedure of assistance, rehabilitation and provision of prompt services to victims of ill-treatment at psychiatric and residential facilities. Thus, people with mental disabilities who are victims of ill-treatment, remain in the same institutions without any specialized support and assistance.

Complaints filed in the interests of people with disabilities or by beneficiaries themselves on ill-treatment in psychiatric facilities are investigated inefficiently. This is due to the lack of sufficient and required knowledge of prosecutors and criminal investigators about specifics of working with people with psycho-social and intellectual disabilities who act as victims and witnesses, and prejudgment among law enforcement bodies towards people with mental and intellectual disabilities.

Forensic psychiatric expert examination of potential victims of ill-treatment in psychiatric facilities is performed by a department financially subordinated to the Clinical Psychiatric Hospital, a fact that may cast doubt on impartiality and independence of results in such cases.

## **RECOMMENDATIONS**

1. Develop a national Action Plan on deinstitutionalization of persons detained in psycho-neurological facilities.
2. Review personnel policy and train primarily medical staff (doctors of different profile, nurses, orderlies) in the field of human rights, rights of people with disabilities and rights of patients.
3. Introduce outsourcing of expert examination services in evaluation of quality of services rendered, including medical ones, at psychiatric and psycho-neurological facilities;
4. Implement the European Committee for Prevention of Torture recommendations from 2011 and the WHO standards on methods of calming and filing complaints. Implement policies on alternative methods of immobilization, techniques for stress relief of situation and personnel training in their application.
5. Publish an informative material containing rules of coexistence in institution and the rights of hospitalized patients, including information on bodies concerned and procedures of filing complaints.
6. Implement an accommodated mechanism of filing complaints by patients of psychiatric facilities, including in cases of neglect, abuse, immobilization or isolation, admission and treatment without their free consent and other relevant cases.
7. Apply measures for prevention of cases of ill-treatment in psychiatric facilities, such as: creation of decision support services for beneficiaries, deinstitutionalization of persons who can live in community, increasing the number of staff and their training, etc.
8. Train prosecutors and judges in investigation, collection of evidence, and respectively judging cases of allegations of torture in psychiatric facilities.

9. Strengthen the financial, administrative and functional independence of the institution of lawyer of patients in in-patient psychiatric facilities.
10. Improve partnerships with civil society organizations (including organizations of people with disabilities) for implementation of activities on the rights of persons with disabilities in psychiatric and residential facilities.