

Romania
PEOPLE'S ADVOCATE

Summary of the
Special Report
on the conditions of detention in prisons and detention
and remand centres, determining factors in respecting human
dignity and the rights of persons deprived of liberty

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***Author: Mrs. Magda Ștefănescu, Deputy Ombudsman,
coordinator of the Field on the prevention of torture in places of
detention***

Contributors :

***- Mrs. Silvia Lobonțiu and Mr. Nicolae Voicu, counsellors of the
Field on the prevention of torture in places of detention***

***- Mrs. Emma Turtoi, Head of Office – Constitutional
Contentious and Appeal in the interest of the Law Office***

***- Other counsellors of the same Office and of the Department for
Constitutional Contentious, Appeal in the interest of the Law, Analysis
of Normative Legal Acts, External Relations and Communication***

Authorised translation by: Mr. Andrei Plaveț, counsellor

Coordinator, Victor Ciorbea,

People's Advocate

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places of detention (NPM)***

Preliminary Points

Preamble

In the exercise of the powers established by law, namely under Art. 26 para. (2) of Law No. 35/1997 on the organization and functioning of the People's Advocate institution, republished, as amended and supplemented, “If the Ombudsman finds, during inquiries conducted, gaps in legislation or serious cases of corruption or breaches of the laws of the country, it shall present a report containing its findings to the Presidents of both Houses of Parliament or, where applicable, to the Prime Minister.”

The history of the Special Reports drawn up by the People's Advocate in the matter of execution of custodial sentences and the normative legal acts adopted by the competent authorities which have considered the proposals contained therein

a) **In 2003**, in exercising its powers, the People's Advocate institution prepared a **Special Report on the execution of custodial sentences in prisons**, in which were made the following *proposals*: adoption of a new law on the execution of punishments - the normative legal act regulating, at that time, the execution of punishments was the Law No. 23/1969 - and the adoption of a regulation for implementing the Law on the execution of punishments. The proposals of the People's Advocate were considered in adopting the following **normative legal acts in the matter**:

- Government Emergency Ordinance No. 56/2003 on certain rights of persons executing custodial sentences (approved by Law No. 403/2003);
- Order No. 3131/C/2003 of the Minister of Justice on the duration and frequency of visits, number and weight of food packages and goods that can be received, kept and used by persons executing custodial sentences;
- Order No. 3352/C/2003 of the Minister of Justice concerning the obligations and prohibitions of the persons executing custodial sentences and the disciplinary measures imposed for committing disciplinary offenses;
- Law No. 275/2006 on the execution of punishments and measures ordered by the judicial bodies during the criminal trial (which repealed the Government Emergency Ordinance No. 56/2003);
- Order No. 3042/2007 of the Minister of Justice on the duration and frequency of visits, number and weight of packages and categories of goods that can be received, kept and used by persons executing custodial sentences (which repealed the Order No. 3131/C/2003 of the Minister of Justice);
- Government Decision No. 1897/2006 approving the Regulation for implementing Law No. 275/2006 on the execution of punishments and measures ordered by the judicial bodies during the criminal trial.

b) In 2008, it was prepared the Special Report on regulations issued by the Minister of Justice and the Director General of the National Administration of Penitentiaries in the matter of the execution of punishments and the educative measure of confinement of juvenile offenders in re-education centres, which sought to determine the establishment of the appropriate legal framework for the execution of custodial sentences and educational measures. This report included the following proposals:

- ▶ completion of Law No. 275/2006 with express provisions concerning the right to a certain type of food for detainees, corresponding to their religion;
- ▶ issuance by the Minister of Justice of orders concerning the minimum binding rules on food for persons executing custodial sentences and the minimum binding rules on conditions of accommodation for persons executing custodial sentences as well as the rules under which the administration of the place of detention provides, free of charge, a number of newspapers or other publications to the detainees;
- ▶ finding ways to achieve harmony between Law. No. 275/2006 and Law No. 24/2000 on legislative technique norms for drafting normative legal acts, republished, with subsequent amendments and supplements, with a view to ensuring transparency in the process of decision-making by the Director General of A.N.P. (National Administration of Penitentiaries) and informing the persons deprived of their liberty, the civil society and the institutions involved in defending the rights and freedoms of persons deprived of their liberty, of the decisions on the execution of punishments issued by the Director General of A.N.P.;
- ▶ adoption of a new normative legal act to regulate the educational measure of confinement of juvenile offenders in re-education centres, in accordance with the relevant international provisions, refocused towards the best interests of the child.

Following the abovementioned Special Report, the Ministry of Justice sent to the People's Advocate institution a reply according to which:

- within the Ministry was formed a team of specialists for drafting a new law on the execution of punishments;
- the suggestion regarding the right to food according to the religion of the prisoners was considered in drafting the new law on the execution of punishments;
- The National Administration of Penitentiaries has prepared and submitted to the Ministry of Justice for approval the **draft order** for approving the mandatory minimum norms on housing conditions for the persons deprived of liberty, **which regulates the minimum area and volume of air that must be ensured to every person deprived of liberty, the standards for equipping the detention rooms, toilets and sanitary installations, the sources of natural light, artificial light and heat supply;**

- the leadership of the National Administration of Penitentiaries ordered that all issued normative legal acts to be published in the Official Gazette of Romania, Part I;
- new law on the execution of punishments and measures ordered by the judicial bodies during the criminal trial will regulate the educational measures for minors, so that, at the date of its entry into force, the Decree No. 545/1972 to be repealed.

Subsequently, was adopted the **Law No. 254/2013 on the execution of punishments and measures ordered by the judicial bodies during the criminal trial**, which repealed both Law No. 275/2006 on the execution of punishments and measures ordered by the judicial bodies during the criminal trial and the Decree of the State Council No. 545/1972 on the execution of the educative measure of confinement of juvenile offenders in re-education centres. Please note that, **pursuant to Art. 189 para. (1) of Law No. 254/2013, the prisons for minors and juveniles and the re-education centres were reorganized in detention centres and educational centres.**

c) In 2014, in collaboration with UNICEF, it was prepared the **Special Report on respecting the rights of children deprived of their liberty in Romania.**

The *proposals* formulated in the Special Report aimed, inter alia:

- ▶ adoption of a normative legal act on the establishment of the National Preventive Mechanism against Torture in detention;
- ▶ urgent adoption, by the courts, of the organisational measures necessary for avoiding the exposure of accused children in spaces where other cases are being judged;
- ▶ verifying the way in which legal assistance is being ensured to the minors during the investigation and the adoption and implementation of the necessary measures for ensuring that all children receive legal assistance, including the monitoring measure;
- ▶ inclusion, in the training plans developed by A.N.O.F.M. (the National Agency for Employment) of activities specifically designed for the category of juveniles deprived of their liberty;
- ▶ identifying and implementing measures for ensuring access to special counselling services for the children deprived of liberty;
- ▶ formalizing the institutional framework necessary for the social reintegration of detainees, by approving the National Strategy for social reintegration of persons deprived of their liberty.

The context of this Special Report, its purpose and sources

a) The causes which determined the ex officio proceeding of the Ombudsman and the preparation of this Special Report

In early 2015, the television station Realitatea TV, other TV stations as well as printed media have launched an information campaign on the situation and conditions of detention in prisons.

Pursuant to Art. 14 para. (1) of Law No. 35/1997 on the organization and functioning of the People's Advocate institution, republished, as amended and supplemented, the People's Advocate was notified ex officio and ordered investigations throughout the prison system in Romania as well as the preparation of this Special Report.

Besides the aspects mentioned in the press, there was requested information on: dining conditions in prisons, water and electricity supply program, quality of water and food, distribution of hygienico-sanitary products, allocation of prisoners according to the degree of danger, existence of laundry drying rooms, the number of deaths and the number of detainees who resorted to protest consisting in food refusal, from 2014 to the date of the investigations, events involving inmates in the period 2014-2015 (physical assaults, sexual relations between inmates or between prison staff and inmates) and other relevant aspects of the situation in prisons.

Subsequently, the investigations were extended to the detention and remand centres, subordinated to the Ministry of Internal Affairs, with the same objectives as the investigations conducted in penitentiaries; the National Administration of Penitentiaries and the General Inspectorate of Romanian Police sent, at the request of our institution, statistical data on the conditions of detention in the subordinated units.

b) The purpose of the Special Report

The purpose of the Special Report is to contribute to respecting human dignity and the rights of persons deprived of liberty, by identifying shortcomings in the prison system and detention and remand centres during the investigations conducted by the representatives of the People's Advocate institution, by making use of the information obtained and by proposing measures to contribute to the

observance of the relevant constitutional provisions, international regulations and laws, especially in terms of ensuring decent conditions of detention.

Also, the Report can be a useful tool for all authorities involved in the ongoing reform process of the prison system, highlighting the challenges it faces, and the appropriate measures to improve the situation of inmates and personnel of the prison administration system. The data contained in the Report represents also an informative basis necessary for an overall analysis of the situation in some prisons, constituting the premises for the next steps of our institution (issuing new recommendations, special reports, visits carried out by the Field on the prevention of torture in places of detention).

Also the Special Report is an attempt, perhaps late and insufficient, to prevent the European Court of Human Rights to issue a pilot-judgement against Romania.

c) Sources

This Report has as a main source, the findings of the investigations conducted by the 14 territorial offices and the headquarters of the People's Advocate institution following ex officio proceedings. To capture certain aspects of the detention system, there were used case files from the activity of the Field on army, justice, police, prisons, included in the 2014 Activity Report of the People's Advocate institution and Visit Reports compiled by the Field on the prevention of torture in places of detention.

Chapter I. Legislative framework

This Special Report has been prepared taking into consideration, primarily, the **constitutional provisions** of: Art. 22, Art. 11 para. (1), Art. 20 and Art. 148. (1) - (3).

1. International regulations

1.1. The main relevant international regulations, adopted by the General Assembly of the United Nations (Romania is a member of the United Nations since 1955):

► **Universal Declaration of Human Rights**, adopted on 10 December 1948 and signed by Romania on December 14, 1955.

► **International Covenant on Civil and Political Rights**, (adopted on 16 December 1966 and ratified by Romania by Decree No. 212/1974), which established the **Human Rights Committee**. The competence of the Committee to receive and consider complaints from individuals who claim to be victims of a violation of any of the rights enunciated in the Covenant was established by the **First Optional Protocol to the Covenant**, adopted on 16 December 1966, to which Romania adhered by Law No. 39/1993.

► **Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment**, (adopted in New York on 10 December 1984, to which Romania adhered by Law No. 19/1990), which established the **Committee against Torture**, with the role of monitoring the implementation of the obligations of States Parties established by the Convention and to examine the reports of States Parties and individual complaints.

► **Optional Protocol to the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment**, adopted in New York on 18 December 2002, signed by Romania on 24 September 2003 and ratified by Law No. 109/2009, whose goal was to establish a system of regular visits undertaken by independent international and national bodies to places where persons are deprived of their liberty in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. It was also established the **Subcommittee on Prevention of Torture and Other Cruel Inhuman or Degrading Treatment or Punishment**, each State Party being required to establish, at national level, one or more visitation bodies to prevent torture and other cruel inhuman or degrading treatment or punishment.

In this context, by the Government Emergency Ordinance No. 48/2014, within the People's Advocate institution it was established the *Field on the prevention of torture and other cruel, inhuman or degrading treatment or punishment in places of detention*,

which conducts visits ex officio, based on an annual visitation plan or unannounced or on the basis of a notification from any person or the acknowledgment in any way of the existence of a situation of torture or other cruel inhuman or degrading treatment or punishment in a place of detention.

According the Government Emergency Ordinance No. 48/2014, *place of detention* means any place where persons are deprived of their liberty by the decision of an authority, at its request or with its consent or acquiescence and *deprivation of liberty* is defined as any form of detention or imprisonment or the placement of a person in a public or private place of detention that he/she cannot leave at will, by the order of any judicial, administrative or other authority [Art. 29²].

► **Other UN documents which provide for the prohibition of torture:** *UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, adopted on 9 December 1975; the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, adopted on 29 November 1985.

Provisions prohibiting torture and other ill-treatment are also set out in international instruments which protect specific rights: Art. 37 of the *Convention on the Rights of the Child*, Art. 10 of the *Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, Art. 15 of the *Convention on the Rights of Persons with Disabilities*; *International Convention for the Protection of All Persons from Enforced Disappearance*.

► **UN Standards on the Prevention of Torture:** *Standard Minimum Rules for the Treatment of Prisoners*, adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders, approved by Economic and Social Council by resolution No. 663 C (XXIV) and 2076 (LXII); *Basic Principles for the Treatment of Prisoners*, adopted by Resolution No. 45/111 of 14 December 1990; **Body of Principles on Detention**, adopted by Resolution No. 43/173, on 9 December 1988; **The Tokyo Rules**, adopted by Resolution No. 45/110 of 14 December 1990; **The Beijing Rules**, adopted by Resolution No. 40/33 of November 1985; **The Riyadh Guidelines**, adopted by Resolution No. 45/112 of 14 December 1990; *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, adopted by Resolution No. 45/113 of 14 December 1990; **The Bangkok Rules**, adopted by Resolution No. 2010/16 of 22 July 2010.

► **Standards regarding the activity of persons involved in law enforcement:** *Code of Conduct for Law Enforcement Officials*, adopted by Resolution No. 34/169 of 17 December 1979.

► **Standards on the role of doctors in the Prohibition and Prevention of Torture: Principles of Medical Ethics** adopted by Resolution No. 37/194 of 18

December 1982 and the **Istanbul Protocol**, adopted by Resolution. 55/89 of 4 December 2000.

1.2. Regulations adopted by the Council of Europe (Romania is a member since 1993):

Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, ratified by Romania by Law No. 30/1994; **The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**, adopted in Strasbourg on 26 November 1987 and the **Protocols No. 1 and 2**, adopted in Strasbourg on 4 November 1993, ratified by Law No. 80/1994, under which, in 1997, was established the *European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, whose aim is to examine the treatment of persons deprived of their liberty in order to protect them against torture and inhuman or degrading treatment or punishment; **Recommendations** of the Committee of Ministers to Member States: Rec (2006) 2, Rec (2001) 10, Rec (1995) in 1257 and Rec (1999) 22.

1.3. Regulations adopted by the European Community or European Union (Romania is a member since 2007): **The Charter of Fundamental Rights of the European Union** (2012/C 326/02); **Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment**, adopted in 2001, revised in 2012; **Council Regulation (EC) No 1236/2005** concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, as amended and supplemented.

2. National legislation in the field

2.1. Criminalizing torture and ill-treatment at national level

► **The Code of Criminal Procedure** establishes, unequivocally, through Art. 102 para. (1), **the exclusion of evidence obtained through torture and evidence derived therefrom from use in criminal proceedings**. However, the prosecutor is obliged to order a forensic autopsy, if the death occurred while the person was in police custody, in the custody of the National Administration of Penitentiaries, during non-voluntary hospitalization or for any death that raises suspicion of human rights violations, of torture or of any inhuman treatment [Art. 185 para. (2)].

► **At the level of protection through criminal rules**, the Criminal Code distinguishes:

1. When there is good reason to believe that a person's life is in danger or that a person will be subjected to torture or other inhuman or degrading treatment if they would be expelled, it will not be ordered the **complementary punishment** of prohibiting the foreign person to stay on the territory of Romania [Art. 66 para. 4)].

2. The criminalization of offenses against justice:

- **Torture** is defined by Art. 282 of the Penal Code as the act of a public servant performing any function involving the exercise of state authority or of other person acting at the instigation of or with his/her consent or acquiescence to inflict severe physical or mental pain or suffering to a person: **a)** to obtain from this person or a third person information or statements; **b)** for punishing the person for an act he/she or a third person has committed or it is suspected that he/she has committed; **c)** for the purpose of intimidating or pressuring them or to intimidate or put pressure on a third person; **d)** for a reason based on any form of discrimination.

- **Abusive investigation** (Art. 280 of the Penal Code.) With two variants: **a)** the use of promises, threats or violence against a person prosecuted or trialled in a criminal case by a criminal investigation body, a prosecutor or a judge, to persuade this person to give or not to give statements, to give false statements or withdraw his/her statements; **b)** producing, falsifying or presenting false evidence by a criminal investigation body, a prosecutor or a judge;

- **subjecting to ill-treatment** (art. 281 of the Penal Code.) With two variants: **a) subjecting a person to the execution of a sentence or the execution of a security or educational measure, in other ways than those provided by legal provisions;** **b) subjecting to inhuman or degrading treatment of a person in arrest, detention or during the execution of a security or educational measure consisting in deprivation of liberty.**

2.2. Criminal Executional Legislation

The execution of sentences and custodial measures shall be in accordance with the provisions of the Criminal Code, the Code of Criminal Procedure and the Law. 254/2013, as amended and supplemented.

2.3. Secondary legal norms related to Criminal Executional matters:

Government Decision No. 652/2009 on the organization and functioning of the Ministry of Justice, as amended and supplemented; **Government Decision No. 1849/2004** on the organization, functioning and powers of the National Administration of Penitentiaries, as amended and supplemented; **Government Decision No. 584/2005** on the establishment of specific activities and funding of health units of the Defence, Public Order and National Security system, as well as health units of the Ministry of Justice, as amended and supplemented; **Order No. 2003/C/2008** of the Minister of Justice for the

approval of the Rules of organization and functioning of the National Administration of Penitentiaries, as amended and supplemented; **Decision of the Plenum of the Superior Council of Magistracy No. 89/2014** for the approval of the Rules of organization of the activity of the surveillance judge for the deprivation of liberty; **Order No. 1676/C/2010** of the Minister of Justice approving the Rules on security of the detention places subordinated to the National Administration of Penitentiaries.; **Order No. 988/2005** of the Minister of Administration and Interior approving the Rules of organization and functioning of places of detention and remand centres in police units of M.A.I. (unpublished); **Order No. 432/2010** of the Ministry of Justice for the approval of instructions on nominal and statistical records of persons deprived of liberty; **Decision No. 550/2011** of the Director General of the National Administration of Penitentiaries on the approval of the Rules of organization and functioning of prison-hospitals, as amended and supplemented; **Decision No. 507/2012** of the Director General of the National Administration of Penitentiaries on the approval of the Rules of organization and functioning of penitentiaries.

2.4. Secondary legal norms regarding the rights and activities of prisoners:

Order No. 2056/C/2007 of the Minister of Justice approving the Methodological Norms establishing the rights of persons deprived of liberty to equipment and hygienico-sanitary materials; **Order No. 2714/C/2008** of the Minister of Justice on the duration and frequency of visits, weight and number of packages and categories of goods that can be received, purchased, stored and used by persons in execution of custodial sentences, as amended and supplemented; **Order No. 433/C/2010** of the Minister of Justice approving the Mandatory Minimum Norms on housing conditions for detainees; **Order No. 2713/C/2001** of the Minister of Justice by which were approved the instructions on the enforcement of food norms in peacetime for the staff of the Ministry of Justice (unpublished); **Order No. 3541/C/2012** of the Minister of Justice approving the updated values of the food norms for persons deprived of their liberty; **Order No. 310/2009** of the Minister of Administration and Interior on feeding the staff of M.A.I. in peacetime (unpublished); **Order No. 2199/2011** of the Minister of Justice approving the Rules on conditions of organizing and conducting educational, cultural and therapeutic activities as well as psychological counselling and social assistance in prisons; **Order No. 429/C/2012** of the Minister of Justice on healthcare for persons deprived of their liberty in the custody the National Administration of Penitentiaries; **Order No. 1072/2013** of the Minister of Justice on the Rules regarding religious assistance for persons deprived of their liberty in the custody of the National Administration of Penitentiaries; **Decision No. 438/2013** of the Director General of the National Administration of Penitentiaries approving the Methodology for granting rewards to persons in the custody of the National Administration of Penitentiaries, on the basis of a Credit System for rewarding

participation of detainees in educational activities and programmes, psychological and social assistance activities and programmes as well as work, including work in hazardous conditions; **Decision No. 377/2014** of the Director General of the National Administration of Penitentiaries, amending the Methodology for granting rewards to persons in the custody of the National Administration of Penitentiaries, on the basis of a Credit System rewarding the participation of detainees in educational activities and programmes, psychological and social assistance activities and programmes as well as work, including work in hazardous conditions, approved by Decision No. 438/2013 of the Director General of the National Administration of Penitentiaries.

2.5. The National Strategy for Social Reintegration of Inmates, 2015 – 2019, approved by Government Decision No. 389/2015, which has **three strategic objectives:** developing institutional and inter-institutional capacity; development of educational and social assistance programmes for the period of detention and informing public opinion; facilitating post-detention assistance at system level.

2.6. Secondary normative legal acts in Criminal Executional matters, which have not been adopted

The Government of Romania

► Art. 187 para. (2) of Law No. 254/2013 provides that, within 6 months from the entry into force of this paragraph (19 August 2013), **but no later than the date of entry into force of the law** (1 February 2014), the Government had to adopt, **by decision**, the **Implementing Rules of Law No. 254/2013 and the Decision on the organization, functioning and powers of the National Administration of Penitentiaries;**

► According to Art. 120 para. (4) of Law No. 254/2013, by Government Decision, had **to be established remand centres.**

Minister of Justice

► In accordance with Art. 15 para. (3) and Art. 120 para. (6) of Law No. 254/2013, *a regulation, approved by Order of the Minister of Justice, shall establish the necessary measures for prison safety;*

► Pursuant Art. 120 par. (5) of the same law, *"by Order of the Minister of Justice shall be established the penitentiaries under whose circumscription shall function the remand centres, as well as the rules of organization and functioning thereof";*

► According to Art. 50 para. (3) of Law No. 254/2013, the Minister of Justice had to issue the Order on **minimum mandatory food norms.**

Minister of Internal Affairs

► Pursuant to Art. 107 of the same law, had to be issued: the Order of the Minister of Internal Affairs on the organization and functioning, in the subordination of the Ministry of Internal Affairs, of detention and remand centres, the regulation on the organization and functioning of detention and remand centres as well as the measures

necessary for the safety thereof, approved by Order of the Minister of Internal Affairs, currently being applicable the provisions of **Order No. 988/2005** of the Minister of Internal Affairs, **unpublished**.

Minister of Internal Affairs and Minister of Justice

► The Common Order of the Minister of Interior and Minister of Justice which establishes the prisons, detention centres, remand centres, and re-education centres in whose circumscription operate detention and remand centres.

Until the date of this Special Report, in the active legislation, there have not been identified the abovementioned secondary normative legal acts, the Ministry of Justice informing us through letter No. 71610 of 21 September 2015 that *"all mentioned projects are in the final stage of preparation at the Ministry of Justice, to be promoted expeditiously in the near future"*. The Minister of Internal Affairs did not send a response.

It is true that the **Government Emergency Ordinance No. 3/2014** on the necessary implementing measures for enforcing the Law No. 135/2010 on the Code of Criminal Procedure and for the implementation of other laws was adopted. **However, we appreciate that the ultra-activity of the old secondary rules is not enough, because the old rules do not confer guarantees for a number of rights of the inmates.**

The failure to adopt, within 2 years from the entry into force of the law, norms detailing actual and concrete ways in which persons deprived of liberty can exercise their rights, tends to determine the impossibility of fully exercising the rights guaranteed in the legislation.

In addition, not issuing the subsequent norms of Law No. 254/2013 raises concerns over the observance of the provisions of Art. 79 of Law No. 24/2000 on legislative technique norms for drafting normative legal acts, republished, according to which *"the orders and instructions **shall be developed within the period prescribed by the superior legal act or, where appropriate, within a period that makes possible their carrying out.**"*

3. The relevant case law of the European Court of Human Rights

The European Court has ruled on the violation of Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as follows: **in 2014**, out of 248 decisions, **34 against Romania**; in 2013, out of 253 decisions, **33 against Romania**; in **2012**, out of 292 decisions, **37 against Romania**; in **2011**, out of 287 decisions, **26 against Romania**.

In the last 4 years, from all EU Member States, Romania has had the most convictions for the violation of Art. 3 of the Convention. In the period 1 January to 1 September 2015, there were pronounced 24 judgements of conviction against Romania for the violation of Art. 3 of the Convention, of which 17 were final.

3.1. ECHR Case law in cases against Romania, in terms of violations of Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms in the penitentiary system

Among the significant decisions, in this chapter, we highlight the case ***Bragadireanu v. Romania*** (The Court found that in this case, prison conditions, particularly overcrowding and the lack of access to hygiene and other facilities appropriate to his state of health, have caused the applicant suffering that reached the threshold of inhuman and degrading treatment); the case ***Bujorean v. Romania*** (The Court recalled that Art. 3 of the Convention obliges the state to ensure that all detainees have conditions which are compatible with the respect for human dignity, not subject them to distress or hardship of an intensity exceeding the level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured.).

3.2. ECHR Case law in cases against Romania, in terms of violations of Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms in detention and remand centres: Case ***Burlacu v. Romania*** (The Court considered that in this case, the conditions of detention which the applicant has endured more than four years, in particular overcrowding prevalent in his cell, have violated his dignity and have inspired feelings of humiliation); Case ***Catana v. Romania*** (Although the Court recognized that in this case there was no indication that there actually was the intent to humiliate or debase the applicant during his detention in the remand centre of Bacau County Police Inspectorate, the absence of any such purpose does not exclude the violation of Art. 3).

3.3. Pilot judgments and ECHR Case law in cases against other countries, in terms of violations of Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms

Number of ECHR judgements which found the violation of this norm:

- In 2014, **891** decisions, of which **4** on the prohibition of torture, **174** on inhuman or degrading treatment, **55** on the lack of an effective investigation and **15** cases in which the applicant had been expelled to a country where ill-treatments are being applied to persons deprived of liberty;

- In 2013, of a total of **916** decisions, **11** on the prohibition of torture, **163** on inhuman or degrading treatment, **67** on the lack of an effective investigation and **12** cases

in which the applicant had been expelled to a country where ill-treatments are being applied to persons deprived of liberty;

- In 2012, **1,093** decisions, of which **24** on the prohibition of torture, **169** on inhuman or degrading treatment and **99** on the lack of an effective investigation;

- In 2011, **1,157** decisions, of which **15** on the prohibition of torture, **183** on inhuman or degrading treatment and **89** on the lack of an effective investigation;

3.3.1. Relevant Pilot judgments handed down

The role of the pilot judgment is to help States Parties to fulfil their duties in the implementation of the Convention, to improve the protection of human rights at national level, to ensure the fastest remedy to violations, fastest and most effective repair of damages caused to individuals, to hasten the process of resolving the systemic or structural problems underlying the repetitive cases. *At the same time, the pilot judgment procedure avoids cascading convictions of the States concerned* (Case *Ananyev and Others v. Russia*, Case *Torreggiani and Others v. Italy*, Case *Neshkov and Others v. Bulgaria*, Case *Varga and others against Hungary*).

3.3.2 Other relevant ECHR judgments: case *Mandic and Jovic v. Slovenia*, case *Štrucl and Others v. Slovenia*, case *Payet v. France* etc.

Chapter II. Degree of occupancy in places of detention and criteria for separating inmates

1. PRISONS

1.1. General considerations and regulations in the matter

Prisons are specialized public services whose main duties are the custody of inmates during the execution of their custodial sentences and forming a proper social attitude, adequate for reintegration to normal life in society, after release.

Deprivation of liberty must be carried out under conditions that **ensure respect for human dignity**, healthcare, develop skills useful for reintegration into society, without exceeding the unavoidable level of suffering inherent in detention.

According to Art. 11 para. (1) and (5) of Law No. 254/2013, life imprisonment and imprisonment are executed specifically designed places, called prisons. The prison where the convicted person serves a sentence of imprisonment shall be determined by the National Administration of Penitentiaries. The prison in which the convicted person will serve the sentence, shall be determined so that it's located as close as possible to the domicile of the convicted person, taking into account sentence regime, the security measures that need to be taken, the needs for social reintegration, gender and age.

The Order of the Minister of Justice No. 433/C/2010 provides that the spaces for the accommodation of detainees must respect human dignity and ensure:

- a) at least 4 m² per person deprived of liberty, for closed or maximum security regime;**
- b) at least 6 m³ of air per person deprived of liberty, for open or semi-open regime.**

The rules referred to establish that the National Administration of Penitentiaries must take all necessary measures to progressively increase the number of spaces for individual accommodation and to rearrange the existing ones. The detention rooms to be built and those who are to undergo capital repairs must

provide an area of at least 4 sqm for every person deprived of liberty for shared rooms, and 9 sqm, then for individual rooms. Detention rooms must be fitted with beds for every person deprived of liberty, bunk beds shall have no more than two beds stacked on top of each other. Exceptionally, the detention rooms may have bunk beds with 3 levels, with the condition to ensure at least 6m³ of air for every inmate as well as the other requirements for equipping detention rooms.

A convicted person for whom it was not established yet the regime of execution, it shall apply the appropriate regime of execution for the duration of his/her prison sentence, after completing the period of quarantine and observation.

In the matter of separation of categories of inmates, the Implementing Regulations of Law No. 275/2006 provide that in the period of quarantine and observation, convicted persons are housed in separate rooms, by gender, age, health status, legal situation, the nature of the offense and other legal requirements, internal order or safety. Also, the inmates who represent a risk for the security of the prison are housed separately in special rooms, within the sections of the maximum security regime.

Convention for the Protection of Human Rights and Fundamental Freedoms categorically prohibits torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct.

One of the problems currently faced by the prison system is overcrowding, its consequences affecting also other activities, including detention conditions. Thus, overcrowding reduces the space that needs to be allocated to each prisoner, lowers the standards of hygiene, reduces time spent outdoors, determines shortness of healthcare, insufficient educational and productive activities, increases violence and, in particular, the risk of suicides and self-mutilation, etc.

The deficit of accommodation places in prisons generates a violation of the dignity of inmates, so that keeping them in precarious physical conditions of imprisonment constitutes a violation of human rights.

According to CPT norms, overcrowding is an issue of direct relevance to CPT's mandate. All services and activities within a prison will be adversely affected if it is necessary to cater for more prisoners than the number for which it was

created. Moreover, the level of overcrowding in a prison, or in a particular part of it, may be such that, in itself, represents physically inhuman and degrading treatment.

In its case law, the European Court of Human Rights stated that the serious lack of cell space is an important factor in qualifying detention conditions as degrading (case *Tudor v. Romania*, case *Marinescu v. Romania*).

Measures to offset overcrowding through diversification of inmates' activities outside detention rooms, by extending the duration of the daily walk, by building new detention facilities and making capital repairs to the existing ones or transfer of inmates in less crowded units, are not enough to manage the overcrowding phenomenon.

According to Rec22(99), the expansion of prison capacity should be regarded as an exceptional measure. As much as possible, should be applied solutions such as semi-liberty, open regime, permission to leave the prison and external placement of inmates, to help treat and restore inmates, maintain links with the family and community and reduce tension in penal institutions. Member States should consider reclassification of certain types of crimes so as not to attract custodial sentences.

According to the CPT Norms, investing large amounts of money in prison infrastructure is not a solution. Rather, should be revised the laws and practices in force concerning custody pending trial and sentencing as well as the range of non-custodial sentences available.

In accordance with the European Prison Rules, there should be paid special attention to the space available to inmates, hygiene and sanitary conditions, ensuring sufficient and properly prepared and presented food, healthcare and the possibility to enjoy outdoor activities.

The United Nations Standard Minimum Rules for Non-custodial Measures recommend that Member should take the necessary steps towards the development of non-custodial / alternative measures and their use should be encouraged, closely monitored and systematically evaluated.

According to the opinion of prof. Dr. Ioan Chiş, expressed in "*International instruments of Executorial Criminal Law* " (ANI Publishing House, Bucharest, 2005, pp. 406-407), conditional release may seem the most promising measure in reducing the length of the detention. It is also the smartest, because it is based on the idea of planned return in the community with support, assistance and supervision.

In 2014 (according to the information provided by the National Administration of Penitentiaries, on **13 May 2015**), there have been discussed in the Parole Commission the cases of **22,566 inmates**, of which 10,962 first-time offenders and 11,604 repeat offenders. For **12,405 inmates** (6794 first-time offenders and 5611 repeat offenders), the commissions have proposed to the courts the conditional release, the courts accepting the **proposals for 10,403 prisoners** (5687 first-time offenders and 4716 repeat offenders), rejecting **2002** (1107 first-time offenders and 895 repeat offenders).

According to information provided by the National Administration of Penitentiaries on **11 September 2015**, the situation of the proposals for conditional release on the first semester of 2015 was: **5323 conditional releases**, **10,120** inmates were being **discussed in the Parole Commission**, **5365** proposals for conditional release, **4755** prisoners delayed by the commission, **177 replacements of the educational measure / release from the prison**, **274** proposals for replacements of the educational measure / release from the prison and **229** inmates delayed by the commission.

We mention that, according to Art. 100 of the Penal Code, in calculating fractions of terms of punishment [imprisonment], is taken into account the part of a prison sentence that may be considered by law as served on the basis of work performed.

Regarding the part of the prison sentence that may be deemed as served based on work performed, we mention that an **important role is played by the prison, which has the obligation to take the necessary steps to identify opportunities to ensure the involvement in work of as many inmates as possible.**

According to the 2014 Annual Report of the National Administration of Penitentiaries, there was an increase in the number of prisoners involved in paid lucrative activities by 16% compared to 2013. **8532 prisoners** were selected and assigned to carry out lucrative and household activities. Of these, **3390** were engaged in paid lucrative

activities under service contracts. The amount of 40.18 million lei is the revenue obtained from lucrative activities in 2014, which is 30% more than in 2013.

Also, from the information communicated by the National Administration of Penitentiaries on 13 May 2015, results the following: inmates used for work under service contracts (10.3%); inmates used for work for the benefit of the prison (1.4%); inmates used for necessary household activities in the prison (14.9%); number of days/person used for voluntary work (0.2%) of the total of (0.45 days / person / year); the total average number used for work (26%); number of unused inmates able to work (56.9%).

Structure of prisoners used for work in relation to the detention regime (as a percentage of the total number): maximum security prisons and closed regime (25%); semi-open and open prison regime (30%); detention centres (20%); educational centres (5%); prison hospitals (11%).

Professional qualification: inmates qualified through training courses in 2014 – (2310); inmates who attended initiation vocational courses in 2014 – (259).

In relation to the above, given that for granting conditional release is taken into account the duration of work performed during detention, the administrations of every prison must take steps to attract as many beneficiaries of labour as possible, so that an increased number of detainees can benefit from conditional release, which would have an immediate consequence a reduction the degree of occupancy in prisons.

The current regulation on conditional release does not ensure fair treatment for detainees who cannot work for reasons that are not imputable to them.

In addition, the Parole Commission may create a presumption of partiality in resolving parole requests made by inmates. **In this context, we consider that the participation of a representative of a nongovernmental organization in the parole proceedings would be an important factor for increasing the transparency and impartiality.**

Regarding the degree of occupancy in penitentiaries, the Ombudsman has issued Recommendations to: **Iași Penitentiary** to reduce overcrowding (on 25 August

2015 there were 1508 inmates, the capacity calculated to 4m²/inmate was 699, and the degree of occupancy calculated to 4m²/inmate, was 215.74%); **Târgu Jiu Penitentiary**, where in a usable floor area of 42.43 m² (8.21 m long and 5.16 m wide) were accommodated 35 inmates, so that **for one inmate the available area was of approximately 1.21 m²**; **Galați Penitentiary**, which had 1078 beds installed and accommodated 931 inmates, while the legal capacity was 506 inmates; **Focsani Penitentiary**, accommodated at the date of the visit 771 inmates, while the legal capacity was 517 inmates.

1.2. Facts and conclusions of the investigations conducted by the representatives of the People's Advocate institution

The facts

On **31 December 2014**, according to the 2014 Annual Report of the National Administration of Penitentiaries, there were 44 penitentiaries (33 penitentiaries, 6 prison-hospitals, 3 detention centres, 2 educational centres) which had the following profiles: 1 prison for women and 6 sections for women in other prisons; 3 detention centres; 2 educational centres; **16 prisons with semi-open and open regime; 16 prisons with maximum security and closed regime**; 6 prison-hospitals. **In 23 units there were special sections for remand.** According to the same report, there were **30,156 inmates** in detention, 26,893 of them (89.18%) with final sentences, 2,514 (8.34%) in remand and sentenced in first instance, 601 (1.99 %) in detention centres, 148 (0.49%) in educational centres. The structure of the finally convicted persons, according to the duration of the sentence of imprisonment: **1-5 years → 14.363**; 5-15 years → 10 075; over 15 years → 593; **up to 1 year → 450**, life sentences → 161.

Regarding detention conditions, the deficit of accommodation places calculated at 4m²/inmate was of 11.170 places, so that in order to limit the effects of overcrowding, the National Administration of Penitentiaries focused on developing the infrastructure of the penitentiary administration system by: the commencement or continuation of works, development of technical projects (transforming 2 auxiliary administrative pavilions into detention areas - Giurgiu Penitentiary; transforming a stable

into detention areas - Işalnița Section - Craiova Penitentiary), implementing a grant from Norway (modernization of the youth section in Bacau Penitentiary and the establishment of a therapeutic centre for women in Gherla Penitentiary), modernizing the detention areas of Târgu Ocna Penitentiary-Hospital.

It was aimed **the rehabilitation of 1380 places** by finishing the repair works in: the detention area of Codlea Penitentiary (100); the detention area of Mărgineni Penitentiary (200); Sections VII-VIII - Aiud Penitentiary (80); the detention area of Baia Mare Penitentiary (200); the detention area of Iasi Penitentiary (800).

On 31.10.2015, in the prison system were being deprived of liberty **28,358 persons**. Of these, 27,647 were in prisons, 459 in detention centres and 252 in educational centres. **In terms of legal status, 1,622 were remanded, 829 were convicted by a first instance judgment and 25,907 were convicted by final judgement.**

According to the data received, the convicted persons are being incarcerated according to the principle of separation by gender and age, namely major or minor. During quarantine and observation, convicts are housed separately per rooms, depending on sex, age and other legal requirements of internal order or safety.

Convicted women are serving their sentences separate from men convicts and young convicts are serving their sentences separate from convicts aged over 21 years. The minors detained on remand are usually accommodated in common, separate from adults. Prior to being presented before the judicial bodies, minors in remand can be transferred in special remand sections of prisons for a period not exceeding 10 days, accommodated separately from adults. Minors executing the educational measure of deprivation of liberty are accommodated separately.

Regarding the separation according to the imprisonment regime, for closed regime the inmates shall be housed according to the principle of separation of women from men and minors and young people from other adults, taking into account other criteria as well.

In prisons and prison sections for women shall be ensured the separation in rooms by age and imprisonment regime. In prison-hospitals, separation is performed according to medical criteria and the sex of the inmates. A final criterion is the separation of

persons remanded pending trial or prosecution from persons convicted by a final judgment to a term of imprisonment, which are investigated in remand custody awaiting trial in another case.

Repartition in rooms of vulnerable inmates is done according to Art. 80 of the Implementing Regulations of Law No. 275/2006.

Conclusions of investigations carried out by representatives of the People's Advocate institution in the penitentiary system

a) the existence of prisons with a high degree of overcrowding, e.g.:

► ***Iași Penitentiary: 1534 inmates were accommodated in a legal capacity of 763 places. In the section for closed regime and maximum security, the rooms measured 33m² and in each room were being housed 24 to 26 inmates.***

► ***Craiova Penitentiary: 1174 inmates were accommodated in a legal capacity of 674 places. The inmates were accommodated in bunk beds with two and three levels. Regarding the usable floor area of the rooms, from the measurements made, resulted, for example, the following: Semi-open regime section for women – in detention room E 1.5, with a floor area of 23.00 square metres, were housed 23 inmates, which means an area of 1.00 square meter per inmate. Section 3 - remand - in room No. E 3.23 closed regime, with a floor area of 38.5 square metres, were accommodated 27 inmates, which means an area of approximately 1.42 square metres per inmate; Section 4 - closed regime, youth and transit – in room No. E 4.25, with a floor area of 20.6 square metres were accommodated 10 inmates, which means an area of approximately 2.06 square metres per inmate; Section 5 - closed regime – in room E 5.36, with a floor area of 32.2 square metres were accommodated 20 inmates, which means an area of approximately 1.61 square metres per inmate; Section E7 - maximum security regime, vulnerable non-smokers, in room E 7.101, with a floor area of 11.75 square metres were accommodated 6 inmates, which means an area of approximately 1.95 square metres per inmate;***

► ***Galati Penitentiary: 979 inmates were accommodated in a legal capacity of 496 places and were installed 1081 beds.***

► *Mărgineni Penitentiary: 821 inmates were accommodated in a legal capacity of 516 places. There were identified cases where prisoners were sleeping two in one bed or three in two beds.*

► *Focșani Penitentiary: 781 inmates were accommodated in a legal capacity of 514 places.*

► *Aiud Penitentiary: 992 inmates were accommodated in a legal capacity of 775 places. The number of beds installed was 1142.*

► *Slobozia Penitentiary: 600 inmates were accommodated in a legal capacity of 435 places and 666 beds were installed.*

► *Colibași Penitentiary: 719 inmates were accommodated in a legal capacity of 561 places.*

► *Miercurea Ciuc Penitentiary: the legal capacity was 239 places and there were accommodated 176 inmates over this limit and were installed 518 beds.*

We note that in some prisons there was no overcrowding (*Vaslui Penitentiary, Arad Penitentiary, Buziaș Education Center*).

b) overcrowding in some prison sections caused by persons remanded or inmates in transit:

► In *Poarta Alba Penitentiary* there were times when the number of inmates exceeded the legal capacity, during the period in which they had to be presented before courts. In Section E.4, the occupancy rate was 120.66.

c) comparing the legal accommodation capacity of the prison to the number of inmates does not reflect the reality in the detention rooms:

► In *Drobeta Turnu Severin Penitentiary* the accommodation capacity was 745 places, and there were housed 840 inmates. In room No. E 4.3, with an area of 37.18 m², the usable floor area available per inmate was approximatively 1.6 square metres.

d) overcrowding in detention rooms:

According to the information provided by the National Administration of Penitentiaries (Letter registered at the People's Advocate institution under No. 6362 of 13 May 2015), **the number of accommodation places calculated according to European standards is 18,986 and the number of beds installed is 37,137 (4,374 one level beds; 15,494 - 2 level bunk beds; 17,269 - 3 level bunk beds).**

The structure of the detention rooms in relation to the number of beds installed (% of total): 14.7% rooms with 1 bed, 26.18% 2-bedded rooms, 21.5% rooms with 4-6 beds, 7.8 % rooms with 7-9 beds, 16.39% rooms with 12 beds, **8.55% rooms with 24 beds, 3.99% rooms with 30 beds, 0.58% rooms with 50 beds, 0,31% rooms with over 50 beds. Therefore, most beds installed, namely 17.269 beds, were bunk 3 level bunk beds.**

► In *Focșani Penitentiary*, in the closed regime section, there were rooms with 40 inmates, where the beds occupied at least 75% of the room, so that the space left free was insignificant.

► In *Bistrița Penitentiary*, in Section 4, 5 of the 7 rooms had an area of 71.5 square metres and each had 39 beds installed.

► In *Iași Penitentiary*, in the high security and closed regime section, each room was 33 m² and there were 24 to 26 inmates per room.

e) the main priority of the detention units commanders was to ensure individual beds for all inmates, as well as to respect the courts decisions in the cases where inmates have won lawsuits on the conditions of accommodation. Therefore:

► In *Mărgineni Penitentiary*, in closed regime sections, **were periods when, because of overcrowding, there could not be ensured an individual bed for each inmate, even if there were installed 3 level bunk beds, so that the inmates were housed either three in two beds or two in one bed.**

► In *Tulcea Penitentiary* in Section 1, floor 1, for closed regime, **each inmate had available an area of 1.71 square metres.**

► In *Codlea Penitentiary*, *for inmates who have won lawsuits on the conditions of accommodation, it was being ensured according to O.M.J. No. 433/C/2010. If there*

were more court orders requiring the observance of the legal provisions on conditions of accommodation, the penitentiary would be unable to comply with these judgments.

f) to mitigate the effects of overcrowding, prison managements have taken a number of measures to ensure that prisoners spend as much time as possible outside the detention room, by engaging them in various activities and using them at work.

► In *Oradea Penitentiary* during **hot weather**, inmates assigned to serve the sentence in open and closed **regime participated in various activities at the sports base of the prison** and the agro-zootechnical household, being organized 72 series with an average of 20 inmates. In 2014, daily, 110 detainees participated in **lucrative activities**, being realised revenues of 1.403.000 lei, of which 40% was given to the inmates. 60 inmates, serving their sentence in open regime, carried out productive activities, unsupervised outside prison. It was encouraged a constant participation to volunteer activities outside of the prison.

► In *Târgșor Penitentiary*, the female inmates were working in the agro-zootechnical household, in a workshop (clothing) for an external beneficiary, sorting waste, or activities for the benefit of the prison. The average number of persons working was 120-130.

g) penitentiaries are determined to request, from the National Administration of Penitentiaries, to approve the reduction of the number of beds installed in detention rooms, in order to observe the legal provisions. E.g.:

► *Botoșani Penitentiary* requested the elimination of the third level of bunk beds in the 4 rooms of Section VII and room E.5.1 in Section V, having an area of **66.08 m² and 60 beds installed**. In February 2015, it has been requested from the Safety of Detention and Penitentiary Regime Directorate of the National Administration of Penitentiaries (following the report drawn up by members of APADOR-CH, after the visit to the prison), to approve the reduction of the number of beds installed (level 3 of bunk beds) in room E51 and in the 4 rooms within Section E7. For implementing this measure, were to be removed 73 beds (20 in room E51 and 53 in Section E7), meaning a reduction of the total number of beds from 1298 to 1225.

► In *Giurgiu Penitentiary*, the prison administration ordered the removal of a level of bunk beds in the rooms with 6 places.

h) to address the issue of overcrowding, prison units have made requests for transfer addressed, in some cases weekly, to the National Administration of Penitentiaries, which have been approved or not. E.g.:

► In the case of *Iași Penitentiary*, have been proposed for transfer 330 inmates, assigned in all imprisonment regimes, except semi-open regime, and have been received approvals for the transfer of 56 inmates. Also, it has been proposed the transfer of 752 inmates assigned to maximum security regime, closed regime and open regime, but this transfer has not been approved.

► *Galați Penitentiary* (degree of occupancy 197.38%) had requested to stop transferring large groups of inmates from other prisons. In 2014 were analysed and proposed for transfer 263 inmates, but the National Administration of Penitentiaries approved the transfer for only 80 of them.

► *Slobozia Penitentiary*. Each week, the prison director asks the National Administration of Penitentiaries to approve transfers, with the aim to reduce overcrowding.

We note that in the Romanian prison system, the transfer is used as a measure of solving temporary the overcrowding phenomenon. But according to CPT norms, **the continuous moving** of a prisoner from one establishment to another can have **very harmful effects on his psychological and physical state**. Moreover, such a prisoner will have difficulties in maintaining close contacts with his family and lawyer. **The overall effect of successive transfers on the prisoner, could, under certain circumstances, amount to inhuman and degrading treatment.**

On the other hand, the transfer procedure is abused by prisoners who practice the so-called "prison tourism", generated through fictitious claims made by inmates to courts. The transportation of inmates to present them before courts for hearings, generates very high costs, sometimes even at the expense of investing these sums for improving conditions of detention (*Focșani Penitentiary*). In 2014, there were formulated 2188

applications for transfer to other prisons, of which 1692 by inmates and 496 by their relatives.

The situations presented above are caused also by insufficient and unclear regulations in the matter of transfers and the lack of any means of verifying their appropriateness and legality. The transfer can be an arbitrary instrument of the prison system and a means of abusive exercise of a right by inmates. In these circumstances, it is necessary to establish a legal framework aimed, on the one hand, to ensure a fair balance between the necessity of the transfer measure and the discretionary power of the authorities involved and, on the other hand, to stop "prison tourism".

i) invoking measures for reducing overcrowding by developing feasibility studies on building additional floors to some prisons, as commitments for the future, which have not materialized. In this regard, Târgu Jiu Penitentiary made reference to a study approved by the Technical-Economic Council of the National Administration of Penitentiaries on **02.10.2012**, which was going to receive approval for the following steps, namely the design and execution of the investment project.

j) overcrowding is a source of the state of general dissatisfaction of the inmates and, at the same time, hinders the smooth running of the prison staff's activity.

The grievances of inmates, according to information provided by the National Administration of Penitentiaries, on 13 May 2015, in the 2014-2015 timeframe, **were expressed in 8508 requests, complaints and referrals. Of these, 1549 were complaints.**

In 2014, were applied 15,811 disciplinary sanctions and were reported 41 cases of use of force.

k) criteria for separating inmates:

► In *Focșani and Bacău Penitentiaries*, inmates were housed observing the separation criteria set by the National Administration of Penitentiaries, such as belonging to certain groups with other sexual orientations or to professional groups.

► In *Târgu Ocna Re-education Centre* the persons housed in the unit were distributed in compliance with the separation criteria in rooms according to age. When it was noticed that, among certain persons, there were risks of aggression, the necessary preventive measures were taken.

1.3. Important aspects resulting from the settlement of petitions and ex-officio referrals registered at the People's Advocate Institution, in the years 2014 and 2015

■ **An inmate notified the People's Advocate Institution expressing his dissatisfaction with the conditions of detention in Iași Penitentiary, asking us to help him obtain the change of the imprisonment regime and the transfer to Vaslui Penitentiary.**

During the investigation conducted, on 25 June 2015, in Iași Penitentiary, the representatives of the People's Advocate institution, found that, in room No. 3.3, where the inmate was housed, **were held 26 persons. The surface of the room was 32.85 m² and 114.97 m³ of air, of which an area of about 10 m² was allocated to the bathroom and a clothes storage space, while bunk beds were arranged on three levels. The room and the bathroom, each had a window with bars, which did not provide adequate natural lighting, and due to the fact that they were deteriorated, could not provide thermal comfort either.**

In the bathroom, there were two separate sanitary facilities (with two sinks and two showers), in an advanced state of decay, **unsanitary and inadequate to the large number of inmates.** Although the bathroom window was open, there was a strong smell of mould, and **the walls were not painted and dirty.**

Personal hygiene items and clothing that no longer fitted the storage space near the bathroom, were kept in handbags & shopping bags on beds. The mattresses and linens were old, but in an acceptable condition.

The meal is served in the room, in bed.

According to the prison management, the unit had a capacity of 750 places, but about 1,500 prisoners were housed.

As for the transfer request made by the prisoner, after the investigation conducted by the People's Advocate representatives, Iasi Penitentiary informed us that the inmate was transferred, on 17 July 2015, to Vaslui Penitentiary.

■ Previous steps taken by the People's Advocate institution concerning Iași Penitentiary:

- in 2014, the People's Advocate institution conducted an investigation in Iasi Penitentiary, following the petition made by an inmate who notified us regarding the conditions of detention (old mattresses, bedbugs and cockroaches).

Petitioner's allegations were confirmed by prison management.

The People's Advocate notified the National Administration of Penitentiaries, with the request to examine the funding prioritization to Iasi Penitentiary.

The National Administration of Penitentiaries informed us that Iași Penitentiary receives funds from the state budget and from the own revenues, of which 41% was allocated to ensure conditions of accommodation for the persons deprived of liberty. The budget for 2015 will be substantiated by the necessity to improve conditions of detention, in the next period. **(File No. 3060 / 2014*)**

- In February 2015, during the investigation conducted by representatives of the Territorial Office Iași, following the ex officio proceeding of the Ombudsman regarding the conditions of detention in prisons, it was found that in Iași Penitentiary were housed 1,534 inmates, at legal capacity of detention of 763 inmates. In the section for closed regime and maximum security regime, each room had an area of 33 m² and accommodated 24 to 26 inmates.

As for meal serving conditions, in cell block - Section A (operational since 1983), meals were being served in the room – the facility was built without a dining hall. In cell block - Section B (operational since 1997), meals were being served in the room – the facility was built without a dining hall. In the multipurpose pavilion – Section D (operational in 2012), meals were being served in the dining room, specially arranged for this purpose.

- In March 2015, following another investigation carried out by the People's Advocate institution, the management of Iași Penitentiary confirmed overcrowding (occupancy over 200% and nearly 300% in Section 1). The People's Advocate notified the National Administration of Penitentiaries and required the observance of Art. 48 of Law No. 254/2014.

The National Administration of Penitentiaries informed us that only in case of a positive budget revision, may new funding be allocated to Iași Penitentiary.

As regards "re-examining the provisions of O.M.J. No. 2714/2008 on goods that inmates are allowed to keep and receive in prison, in cases of system failure to ensure decent living conditions for the period of deprivation of liberty", the National Administration of Penitentiaries said that the normative legal act was reviewed and included in the Draft Implementing Regulations of the Law No. 254/2013.

In relation to this, the Ombudsman issued a recommendation to the National Administration of Penitentiaries asking: 1. to reduce prison overcrowding in Iași Penitentiary, given that, according to the website of the National Administration of Penitentiaries, on 25 August 2015, there were housed 1,508 inmates, at a capacity of 699 places, calculated at 4m²/inmate and the overcrowding rate was 215.74 %; 2. to order the necessary legal measures to be taken to ensure decent accommodation and dining, provide space for storage of goods, provide appropriate natural lighting; 3. to order the necessary legal measures to be taken to ensure a sufficient number of toilets to the number of inmates; 4. to order the necessary legal measures to be taken to ensure adequate supervision of inmates, in order to avoid cases when they are subjected to physical assaults by other inmates (File no. 5537/2015).

According to the information provided by the National Administration of Penitentiaries, on 12 October 2015, they were aware of the issues raised concerning prison overcrowding. In this regard, the National Administration of Penitentiaries ordered, within the limit of their powers, measures for increasing accommodation space, improving detention conditions, ensuring an individual bed for each person, and transferring inmates to other penitentiaries with lower degrees of occupancy.

Currently, all penitentiaries are facing the phenomenon of overcrowding, especially for inmates included in the closed regime and maximum security regime, so that the possibilities of the National Administration of Penitentiaries to counter this phenomenon are limited. The efficacy of the measures taken by the National Administration of Penitentiaries, largely depends on the evolution of the number of inmates, in relation to the legal capacity of detention.

Improving detention conditions is a priority, therefore, from the 60,631 thousand lei, which represent the amount supplemented, 7,600 thousand lei, were allocated for this purpose: making current repairs to detention rooms: 3,810 thousand lei; procurement of linen and bedding: 1,390 thousand lei; purchase of inventory items: 2,400 thousand lei.

In the Action Plan of the Strategy for the Development of the Judiciary 2015-2020, approved by Government Decision No. 1155/2014, it was proposed the modernization and development of the penitentiary system infrastructure, through current repairs, capital repairs and investments with a view to achieve, by 2020, the target of modernizing 3,000 accommodation places in penitentiaries as well as starting the construction of 4 new prisons.

Iași Penitentiary asked the National Administration of Penitentiaries for support with a view to transferring 764 inmates, incarcerated in closed regime, to other prisons, in order to comply with the minimum standards for detention conditions, imposed by **Judgement No. 1721/2015 of Iași Court**. In relation to the distribution of inmates in closed regime, in other prisons, the National Administration of Penitentiaries could not order the transfer to other prisons, but is considering the cases in which the Court found violations regarding compliance with minimum mandatory requirements.

In the context of a chronically under-funded prison system, Iași Penitentiary prioritized its works, on the budget Article 20.02 (in 2014 – 90,000 lei and in 2015 – 150,000 lei). Actions have been taken to improve conditions of detention (reconditioned metal beds - approx. 200; mattresses reconditioned in the prison workshop; local repairs;

The manner in which a sufficient number of toilets can be provided is correlated with outcome of the measures that will be taken to reduce overcrowding, but also with

the possibility of creating new spaces for detention. Supplementing the number of toilets in Iași Penitentiary is hampered also by the layout of the building.

To reduce the number of assaults, the management of Iași Penitentiary took and continues to take into account, in distributing inmates to cells and in planning the daily activities, the existing misunderstandings between prisoners and past conflicts that existed between them, so that the inmates in question do not intersect with each other.

In the first semester of 2015 were made 3,190 moves from one section to another and, according to the monthly analysis of the heads of sections, among prisoners there were 7 clashes, 16 fewer than in the first semester of 2014, when there were 23.

Failure to ensure standards of accommodation, coupled with the high temperatures, lead to tense situations between prisoners, which facilitate the occurrence of negative events, the worsening their health and also to the multitude of complaints concerning conditions of detention and thus, overcrowding, which led to obtaining the conviction of Romania in proceedings before the ECHR.

The data presented show that the measures taken by the National Administration of Penitentiaries are not enough to combat the phenomenon of overcrowding. Therefore, they should be complemented with legislative measures to reduce the number of inmates. Moreover, in the meeting of 13 March 2015, the Committee of Ministers of the Council of Europe, by its decision regarding the Group of cases Bragadireanu, made reference to: intensifying efforts to improve detention conditions, determining the real impact of the new provisions of the Criminal Code and Code of Criminal Procedure on the evolution of the number of inmates and taking further legislative measures, whereas the existing legislative measures are unable to reduce / stop the phenomenon of overcrowding.

With regard to the above, the National Administration of Penitentiaries submitted a proposal to the Minister of Justice, on the creation of a working group consisting of representatives of the Superior Council of Magistracy, the Ministry of Justice, the Ministry of Finance and the National Administration of Penitentiaries, to identify viable solutions for the Romanian legal system, of those listed in *Rec (99) 22 concerning prison overcrowding and prison population inflation* (File no. 291/2015).

2. DETENTION AND REMAND CENTRES

2.1. General considerations and regulations in the matter

According to Art. 9 of the International Covenant on Civil and Political Rights, everyone has the right to liberty and security of person. **No one shall be subjected to arbitrary arrest or detention.** No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. **It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.** Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

According to Art. 108 of Law No. 254/2013 **in detention and remand centres are being preventively detained and arrested persons during criminal prosecution. The state must ensure to individuals detained or arrested decent detention conditions, observing their rights and protection.**

Rec (2006)13 establishes, as a principle, that in view of both the presumption of innocence and the argument in favour of liberty, the remand in custody of persons suspected of an offence shall be the exception rather than the norm. In individual cases, remand in custody shall only be used when strictly necessary and as a measure of last resort; it shall not be used for punitive reasons. In order to avoid inappropriate use of remand in custody the widest possible range of alternative, less restrictive measures relating to the conduct of a suspected offender shall be made available. Remand prisoners shall be subject to conditions

appropriate to their legal status; this entails the absence of restrictions other than those necessary for the administration of justice, the security of the institution, the safety of prisoners and staff and the protection of the rights of others.

Remand prisoners receive a special treatment, in certain respects more favourable than that of convicts, justified by the presumption of innocence, which, however, does not derogate from the general rules of investigations.

Detention and remand places in the Police units of the Ministry of Internal Affairs are organized and function within the General Inspectorate of Romanian Police, the General Directorate of Bucharest Police and the County Police Inspectorates. The detention and remand centres are directly subordinated to the heads of the Police units or subunits, and are coordinated by the heads of the criminal investigation bodies of the Judicial Police where they function. In detention and remand centres can be deprived of liberty mainly the following categories of persons: detained, remanded in custody, convicted offenders, categories which are kept separate from each other, on the following criteria: the category to which the person belongs, sex, minors separated from majors, persons protesting in the form of food refusal etc. [Art. 1 para. (1) - (3), Art. 3 para. (1), Art. 4 para. (1) of the Order of the Minister of Internal Affairs No. 988/2005].

The persons deprived of liberty are housed in common rooms, in compliance with the hygienico-sanitary conditions, based on surface area and volume, number of beds, as well as natural lighting and ventilation. **To prevent the occurrence of negative events, in each room are accommodated mandatory minimum two persons.** In situations where in the detention and remand centre is detained only one person, he/she shall be transferred to the nearest detention and remand centre that can provide the necessary conditions provided by law. **Detention and remand centres are organized and arranged so as to provide the necessary conditions for applying the execution regime of custodial measures in terms of housing, feeding, hygiene, health, as well as guarding and supervision of persons in custody.** The detention rooms are located on the premises of police units or subunits and are equipped with sanitary installations,

heating, lighting as well as natural and artificial ventilation, **ensuring for each person, at least 6 cubic metres of air.**

CPT recommended to Romania in the 2008 Report, the adoption of measures to ensure that every prisoner in detention and remand centres has at least 4 square metres of living space in collective cells.

2.2 The facts and findings of the investigations conducted by the representatives of the People's Advocate institution

Facts

According to information given by the General Directorate of Bucharest Police (Letter No. 325 269 of 14 April 2015), there are **51 detention and remand centres** with **1,868 accommodation places**, of which **1,520 meet the conditions imposed by European norms.**

The structure of the persons deprived of liberty, in relation to the duration of imprisonment: **1,155 persons deprived of liberty**, of which **39 detained, 1,072 remanded** (949 up to 3 months; 118 - from 3 to 6 months; 4 - from 6 to 9 months, and 1 - from 9 to 12 months); **44 convicted offenders** (37 - up to 3 months, 1 - from 3 to 6 months, 1 - from 6 to 9 months; 0 - from 9 to 12 months, 5 - over 12 months). **Therefore, most of the persons in remand custody are remanded for a period up to 3 months (949). However, detention in remand must not be the rule and must be justified in the shortest time possible and its duration must be proportionate to the seriousness of the offense.**

The conclusions of the investigations conducted by the representatives of the People's Advocate institution, in detention and remand centres, regarding the degree of occupancy and the requirements for separation

a) **Detention and Remand Centre No. 5 Bucharest** was closed in 2012, and in the former detention rooms were arranged offices for the employees of Police Section No. 7.

b) Some **Detention and Remand Centres were located in old buildings:** **Detention and Remand Centre Alba** is located at the ground floor of building B, built in

1906, in the courtyard of Alba County Police Inspectorate, used by Alba County Police Inspectorate since 1968; *Detention and Remand Centre Sibiu*, is located in the semi-basement of the building of Sibiu County Police Inspectorate, **built in 1969.**

c) some of the centres complied with the European rules regarding the 4 square metres: (for example: *Detention and Remand Centres in Gorj, Mehedinți, Tulcea, Brașov, Hunedoara, Sibiu and Buzău counties*).

d) other detention and remand centres could ensure compliance with the European rules only for certain rooms: (*Detention and Remand Centres in Brăila, Prahova and Neamț counties, Detention and Remand Centre No. 2 Bucharest*)

e) the criteria for separating persons deprived of liberty:

► In the *Detention and Remand Centre Timiș*, the persons in police custody were held separately according to the following criteria: **a)** the category to which they belong (detained, remanded, convicted); **b)** sex; **c)** juveniles separate from adults; **d)** those in refusal of food separately from other people; **e)** persons in remand custody separately from convicted offenders. Juveniles were accommodated in the a detention room separate from other categories of persons deprived of liberty.

► In the *Detention and Remand Centre Dolj* were respected the legal provisions regarding the distribution in rooms of the different categories of persons.

2.3. Important aspects resulting from the settlement of complaints and ex-officio referrals of the People's Advocate Institution, registered in 2014 and 2015

■ The People's Advocate Institution was notified, in 2015, by the High Court of Cassation and Justice, which requested that, in the exercise the its duties, until the next hearing, to communicate if investigations were carried out at the Police Section No. 12, in relation to a culprit.

Regarding the issues raised, the Ombudsman ordered an investigation regarding: the area of the room where the culprit was detained; number of people in the room; his state of health; location dining place and toilet; access to light and ventilation; pests.

The investigation carried out in the Detention and Remand Centre No. 7 Bucharest, revealed the following: the centre was provided with 5 rooms with a housing capacity of 20 places in the semi-basement, courtyard for walks, office, warehouse, and the office of the head of the Centre. Room No. 5 (in which the culprit was detained until the date of the investigation) had an area of approx. 11 m², where there were 4 bunk beds with metal frame, a table and 4 plastic chairs, a metal box for TV, the bathroom consisted of a Turkish style WC (squat toilet), sink and shower, which were separated from the room itself by a plastic curtain.

The culprit was detained in Room No. 3 of the Detention and Remand Centre No. 7 Bucharest (where he was the day of the investigation), coming from the Detention and Remand Centre No. 1 (Central Detention and Remand). Room No. 3 had been occupied by four people, and at the time of the investigation, there were three people. Meals were served in the detention room, as the Centre was not provided with a special dining hall. In the room there was a plastic table, which the inmates placed near the metal door when they were eating, so as to be as far away as possible from the toilet which was not provided with a door or other enclosure (this way was obtained the greatest distance possible from the toilet, which was no more than 3 metres).

The room No. 3 was equipped with fluorescent lamps, which provided artificial lighting, vigil lamp, located on the lateral wall, two windows with the size 82x53 cm with protection systems; the rooms were provided with ventilation system.

The People's Advocate institution informed the High Court of Cassation and Justice that the verification was carried out in Police Section No. 12 and the problems encountered will be included in a Special Report. The High Court of Cassation and Justice, giving due consideration to the findings of our institution, decided that there was a violation of Art. 3 of the European Convention on Human Rights against the petitioner.

Thus, the supreme court ordered the detention place to ensure the culprit's personal space, provided by Article 1 para. (4) of Annex I to the Order of the Minister of Justice No. 433/2010, by housing in the cell of the culprit a number of persons in compliance with the recommended norm for collective cells. According to Art. 13 of the European Convention on Human Rights, the court ordered to ensure

a specially equipped room, in compliance with the security rules, where the complainant can eat his meals, thus observing the norms established by Art. 4 of Annex I to the Order of the Minister of Justice No. 433/2010 (File no. 4967/2015).

Chapter III.

Accommodation conditions for persons deprived of liberty in prisons and detention and remand centres (hygienico-sanitary conditions, natural and artificial light, ventilation, hygienico-sanitary products, storage of goods, drying rooms for laundry, electricity and water supply program, courtyards for walks)

1. PENITENTIARIES

1.1. General considerations and regulations in the matter

The authorities housing persons deprived of liberty must ensure adequate accommodation conditions, hygiene requirements, especially in terms of cubic metres of air, minimum floor surface, lighting, heating and ventilation, such as to preserve health.

Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms provides that all Member States have the obligation **to ensure to all detainees conditions which are compatible with the respect for human dignity**, adopting rules governing the execution of imprisonment sentences, such that the detainee is not subjected to humiliating treatment or situations that would exceed the unavoidable level of suffering inherent in detention and, given the practical demands of imprisonment, **to ensure acceptable conditions of living and health.**

The national legislation regulates the mandatory minimum housing conditions of persons deprived of liberty by the Order of the Minister of Justice No. 433/C/2010. Under this act, the windows of the rooms must be large enough so that inmates can

read normally in natural daylight and to allow the entrance of fresh air, and artificial light shall satisfy the recognized technical standards in the field. The artificial lighting in the accommodation rooms for inmates is installed so that the inmates can switch it on and off. Vigil light used at night to ensure supervision shall be installed so that only the supervising guard in the detention section can switch it on and off.

Accommodation rooms shall be fitted with furniture, so as to provide inmates appropriate conditions for sleeping, storage of goods and personal items, as well as for conducting educational activities. **Accommodation rooms shall be fitted with beds and necessary bedding for each person deprived of liberty, with tables and benches or chairs, cabinets for storage of personal belongings.**

Sanitary groups and installations in accommodation rooms must ensure permanent access to drinking water and allow every person deprived of liberty to satisfy their physiological needs whenever necessary, in hygienic conditions and privacy. The bathrooms shall be fitted with sanitary installations and must have at least one sink, one toilet and one shower for maximum 10 inmates.

The sanitary installations shall be adequate to enable every prisoner to satisfy their physiological needs when necessary and in a clean and decent manner.

As for the distribution of hygienico-sanitary materials, **according to the Order of the Minister of Justice No. 2056/2007, the quantities established are maximal and cannot be exceeded. However, with the approval of the director of the place of detention, may be procured and distributed smaller quantities than those established, if this does not impede normal activities.** Inmates can purchase, from the prison store, undergarments, hygienico-sanitary materials, food, newspapers, books and more.

Under the provisions of Art. 83 of the Implementing Regulations of Law No. 275/2006 on the execution of punishments and measures ordered by the court in the course of criminal proceedings, the persons deprived of liberty must be given the **opportunity to shower at least twice a week.** Those working in places with increased epidemiological risk or any other places if the situation requires it, must be given the opportunity to shower daily.

Underwear, bed linen and personal clothing of inmates shall be washed and maintained by the administration of the place of detention. The laundry supervisor must make sure that washed items are dried only in places specially designated for this purpose.

Every inmate has the right to daily walk outdoors for at least one hour, depending on the execution regime of the sentence of imprisonment.

Rec(2006)2 establishes that the spaces of detention, especially those for the accommodation of inmates at night, must respect human dignity and privacy, and must meet the minimum standards of health and hygiene, taking into account the climatic conditions and, in particular, the floor space, volume of air, lighting, heating and ventilation; in all buildings where prisoners must live, work or cohabit: windows must be large enough so that inmates can read or work by natural light in normal conditions and allow entrance of fresh air, except where there are installed adequate air conditioning systems; artificial light shall satisfy recognized technical standards in the field; an alarm system should allow detainees to immediately contact the staff; minimum conditions with regard to the matters covered will be stipulated in national legislation; cells or other spaces for inmates must be clean; inmates should have access to safe sanitation which also protects their privacy; adequate spaces for bath or shower must be made available, that inmates can use at a suitable temperature, daily or at least twice a week (or more frequently if necessary), in accordance with the general rules of hygiene; prison authorities will provide cleaning products to inmates, including toiletries and cleaning and maintenance products; every inmate shall be provided with individual bed and bedding which shall be properly maintained and renewed at intervals that allow it to remain in a proper condition; all detainees should have the opportunity to perform, at least one hour a day, exercise outdoors if weather permits it; if the weather does not allow prisoners to exercise outdoors, alternatives must be offered.

According to CPT norms, the need for prisoners to be allowed outdoor exercise, at least 1 hour a day, is widely accepted as a basic safeguard, and is preferable that it is part of a wider program of activities. CPT emphasizes that all

inmates, without exception (including those punished by detention in isolation), must be given the opportunity to do outdoor exercise every day. Equally, outdoor exercise facilities should be reasonably spacious and provide shelter from inclement weather. Ready access to proper toilet facilities and the maintenance of standards of hygiene are essential components of a humane environment. Inmates should have regular access to shower. It is desirable that running water be available in the current cell.

Following the visit in 2014, the CPT recommended, for example, to be taken the following measures in the places of detention visited: in **Oradea Penitentiary** to be carried out the necessary renovations and repairs in Sections E3 and E4, and to be changed the deteriorated furniture and mattresses; improving access to artificial light in the closed regime cells of **Târgșor Penitentiary**; regular pest control in the buildings of **Arad Penitentiary**.

Concerning hygienico-sanitary conditions, CPT found that it was given very little soap and detergent to the inmates. In Târgșor Penitentiary, female inmates were given only 5 menstrual pads per month. CPT recommended that the authorities take steps to repair and renovate the sanitary facilities in detention facilities Arad, Oradea and Târgșor; it was also recommended providing sufficient personal hygiene products and detergent for the inmates to be able to clean their cells.

Failure to ensure detention conditions in accordance with Art. 3 of the Convention on Human Rights and Fundamental Freedoms cannot be motivated by budgetary constraints. Precarious conditions of detention combined with overcrowding can generate inhuman or degrading treatment prohibited by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In its case law, ECHR held that Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms imposes obligations on the State to protect the physical comfort of the persons deprived of liberty; in addition, besides the health of prisoners, their comfort must be ensured adequately, taking into account the practical requirements of imprisonment (*Case Bragadireanu v. Romania*,

Case Stanciu v. Romania, Case Stark v. Romania, Case Ciuca v. Romania, Case Grozavu v. Romania, Case Gabriel Radu v. Romania, Case Pavalache v. Romania etc.).

1.2. Facts and conclusions of investigations carried out by the representatives of the People's Advocate institution

According to information provided by the National Administration of Penitentiaries (Letter No. 6362 of 13 May 2015):

A. places of accommodation calculated according to European norms: 18.986

B. beds installed: 37,137 (one level beds - 4374, two level bunk beds - 15 494, three level bunk beds - 17,269)

C. detention rooms structure in relation to the number of beds installed: rooms with one bed: 14.7%; rooms with two beds: 26.18%; rooms with 4-6 beds: 21.5%; rooms with 7-9 beds: 7.8%; rooms with 12 beds: 16.39%; rooms with 24 beds: 8.55%; rooms with 30 beds: 3.99%; rooms with 50 beds: 0.58%; rooms with over 50 beds: 0.31%.

a) the existence of detention places located in old buildings or buildings with other destination: *Colibași Penitentiary's* buildings were used as detention places in the years 1958-1960, and 2003, when the building for maximum security detention was built; Building A of *Iași Penitentiary* was built in 1983.

b) the existence of seepage, moisture and/or mould in accommodation rooms: *Craiova Penitentiary (in some rooms), Miercurea Ciuc Penitentiary (in all rooms).*

► In *Poarta Albă Prison Hospital*, in the toilets of the psychiatric ward there were leaks in the ceiling. In the toilets of the medical section and the rooms for the chronically ill there was mould on the walls, and the other rooms of the same section had seepage and the paint was exfoliated on parts of the walls.

► In *Colibași Penitentiary* the detention room in which were held five 19-year old smokers, the hygienico-sanitary conditions were questionable and there was a heavy smell. The walls were blackened by smoke, affected by moisture and partially

by mould, the linens were not clean. The bathroom was occupied by numerous domestic waste.

c) improper ventilation of some rooms: *Mărgineni Penitentiary* (32 people in a room with 30 beds - room No. 25 Section 3; or 27 people in a room with 24 beds – Room No. 30 Section 3).

d) the existence of mattresses with a high degree of wear: *Craiova Penitentiary*, *Miercurea Ciuc Penitentiary*, *Bacau Penitentiary*, *Târgu Mureş Penitentiary*, *Colibaşi Prison-Hospital*.

e) some rooms did not provide conditions for satisfying the physiological needs in privacy, because the toilets were placed in the same room where prisoners were incarcerated, usually at one end of the bed and separated by metal frames on which shower curtains were mounted (*Giurgiu Penitentiary*).

f) the existence of old carpentry. In the transit detention rooms for women in *Colibaşi Penitentiary* the windows did not close properly due to old carpentry.

g) heating in transit detention rooms for women did not provide at least 19° (*Colibaşi Penitentiary*).

h) lack of showers in some rooms and insufficient bathrooms compared to the number of inmates in rooms: *Brăila Penitentiary*, where some rooms were lacking showers or they did not work properly; *Botoşani Penitentiary*, inmates in section 7 had to go to another section because their bathrooms were did not have showers.

i) the existence of deteriorated sanitary installations:

► In *Colibaşi Penitentiary* in the closed regime detention room for smokers in Section I, some of the showers lacked the shower heads, the shower trays were old and some were clogged or deteriorated. There were found sinks with broken faucets, the water did not have enough pressure and the siphon was broken and leaked.

► In *Giurgiu Penitentiary* in some of the visited rooms, the shower trays were partially deteriorated. There were found sinks with broken faucets, the water did not have enough pressure or the faucet was missing (e.g. *detention room for minors*).

► In *Mărgineni Penitentiary*, the sanitary installations, even though functional, were old, rusty and had improvisations (e.g. in some rooms there was no shower, the faucets were rusted and the pipe was extended with a hose).

j) the existence of insect pests in some detention rooms: in *Focsani Penitentiary* (although in 2014 were carried out 4 insect pest control actions, and in January 2015, were done another 2), in *Slobozia Penitentiary*, in *Mărgineni Penitentiary* (during summer) in *Poarta Albă Penitentiary*, in *Tulcea Penitentiary*, in *Ploiești Penitentiary* (during summer), *Bacau Penitentiary*, in *Miercurea Ciuc Penitentiary*.

k) electricity supply according to schedule of each prison, under the plan of measures to reduce budgetary expenditure:

► In *Iași Penitentiary*, in rooms, daily from 05:00 to 09:30 and 15:30 to 22:00; power socket: Monday - Thursday and Sunday: 05:00 to 23:00; Friday - Saturday: 05:00 to 24:00.

► In *Satu Mare Penitentiary*, electricity was not supplied permanently, but depending on the program and activities which were carried out in the prison, according to the Decision No. 40437/03.06.2010 of the Director General of the National Administration of Penitentiaries.

In other penitentiaries, the electricity supply was constant: *Jilava Penitentiary in Bucharest*, *Arad Penitentiary*, *Vaslui Penitentiary*, *Braila Penitentiary*, *Târgu Ocna Education Centre*.

l) drinking water was provided on a schedule, given the budgetary restrictions:

► In *Mărgineni Penitentiary* inmates have complained that the water was insufficient, and that they have to keep water for toilet and washing in plastic barrels.

► In *Poarta Albă Penitentiary* water is being supplied on a schedule only during the summer.

m) hot water supply schedule: in *Arad Penitentiary*, once a week, according to a schedule; *Târgșor Penitentiary*, 1-2 hours / day; *Mărgineni Penitentiary* an hour every day though its autonomous heating system.

n) washing personal clothing by inmates and drying bed linens in detention rooms:

► In *Botoșani Penitentiary* inmates did not want shared bed linens washing.

► In *Miercurea Ciuc Penitentiary, Bacau Penitentiary, Constanta Penitentiary, Targu Mures Penitentiary, Poarta Albă Penitentiary* personal clothing were dried in the rooms.

► In *Mărgineni Penitentiary* in almost all rooms visited, detainees had personal items washed and hanged to dry on the radiator and on ropes tied to the top level of the bed (room No. 30 inmates – non-smoking closed regime). **The discussions with detainees, revealed that laundry was washed at the prison laundry, but because there wasn't a drying room, they were returned wet to the inmates; bed linens were left to dry outdoors in the yard, uncovered, and in winter it took additional time to dry.**

o) distribution of hygienico-sanitary products to the inmates:

► In *Colibași Penitentiary*, in October 2014, due to the lack of budget, there have *not been provided hygienico-sanitary materials to the inmates.*

► In *Tichilești Penitentiary for Minors and Juveniles*, the budgeted funds were not enough to cover the necessary hygienico-sanitary products in compliance with this normative legal act, so that the prison has constantly taken steps to supplement them, by attracting sponsorships or externally funded projects.

p) lack of cabinets for the storage goods and personal items, because of space constraints in Giurgiu Penitentiary, Colibași Penitentiary, Codlea Penitentiary, Galați Penitentiary and Brăila Penitentiary.

► In *Miercurea Ciuc Penitentiary* and *Targu Mureș Penitentiary*, the existing furniture in the rooms was inadequate and insufficient.

► In *Mărgineni Penitentiary* each room had one closet and several small cabinets for personal belongings, but they were insufficient.

q) size and facilities of prison courtyards:

- ▶ In *Aiud Penitentiary*, there were 20 spaces for outdoor activities.
- ▶ In *Colibași Penitentiary*, courtyards could provide leisure activity outdoors for all prisoners, **but they were not arranged as required by law** (e.g. not covered, had no benches).
- ▶ In *Brăila Penitentiary* courtyards were delimited with bars and were equipped with benches, sewerage system and gateway for inmates.
- ▶ In *Oradea Penitentiary*, there were 4 small courtyards. They were equipped with cover, telephone and box for complaints / referrals.
- ▶ In *Tulcea Penitentiary*, the courtyards could not be used at full capacity, since they were not separated according to the rules on compliance with the regimes of imprisonment and thus ensuring the right of the detainees to walks outdoors was **deficient**. To ensure this right to all inmates, the prison management has prepared schedules according to which inmates could spend time in the courtyard, depending on their regime of imprisonment.

1.3. Important aspects resulting from the settlement of petitions and ex-officio referrals registered at the People's Advocate Institution, in the years 2014 and 2015

■ **Ion** (fictive name) informed us about the treatment to which he was being subjected in *Galați Penitentiary*. During our investigation, it was found that inmates kept their cold water in a barrel.

The prison management said that drinking water being was provided from the city's drinking water network, and that cold water was being supplied according to this program: 06:30-08:30, 13:00-16:30, 18:30-21:00; the bathrooms in the rooms were equipped with water storage containers, to be used while water was not running. **This situation has been justified by the management by invoking budgetary constraints on utilities expenditure.**

According to the letter of the Control Body of the Ministry of Justice, in 2014, the management of *Galați Penitentiary* has set the objective of replacing the water pipes for cold water (inflow), from the cold water meter mounted by *SC Apa Canal Galați* to the

thermal substation, in order to eliminate losses on the network. Another proposed objective was to replace sink faucets (most of which were damaged) with automatic faucets (with mechanical timer), and to replace all pipes for cold and hot water, with new generation pipes (type PPR), the existing water pipes were old metal pipes, which caused multiple breakdowns. It was also envisaged replacing the water basins of the toilets in the rooms, because very few of them were working. A particularly important issue, involving high costs, is the replacement of supply pipes in the basement.

In relation to the above, **in his *Recommendation*, the Ombudsman asked the National Administration of Penitentiaries to order the legal measures necessary for ensuring drinking water supply.**

The National Administration of Penitentiaries informed us that the water supply was being ensured through the supplier "*SC Apă Canal Galați*" (*main source*) and by the exploitation of a drilled well inside Galați Penitentiary. Drinking water was distributed according to an approved supply schedule, for 8 hours daily. **(File No. 8415/2014*)**.

■ **The People's Advocate institution - the Field on the prevention of torture in places of detention carried out an *unannounced visit* to Craiova Penitentiary, to verify detention conditions and treatment of detainees**

In the custody of the prison were 1,132 persons deprived of liberty (distributed in rooms according to imprisonment regimes, gender, age, degree of risk to the safety of the place of detention), **the legal capacity was 680 places, occupancy being 166%.** The total number of beds installed was 1,359.

In the prison were working 449 people, employees of the National Administration of Penitentiaries and there were 36 vacancies. Within the **Service for Safety of detention and Penitentiary Regime** were **311 persons employed** and **16 vacant posts**, within the **Department for Social Reintegration** were **26 persons employed** and **9 vacant posts**, and within the medical department were **14 persons employed** and **8 vacancies**.

In all rooms visited, prisoners were housed in bunk beds on 3 levels, except for room No. 103, Section E7 where there were bunk beds on 2 levels. **The surface of the rooms visited varied between 1.19 and 2.92 sq.m / person.**

Window sizes generally provided suitable conditions for reading and other current daily activities in natural light, and natural ventilation was also good. However, room No. 111, Section 8A was **partially dark**, natural lighting being ensured by only one window (1.50m x 1.10m) with bars mounted on the outside which were disrupting natural light that entered through the window; also in room No. 18, Section E3, natural lighting was provided by four small windows (1.50 m x 0.65 m), **which was insufficient in relation to the size of the room - 83.71 sq.m.**

Electrical outlets were placed in the room and the on-off switches were outside the room (room No. 16, Section E3). Light could be switched on and off only by the supervisor. Artificial lighting was being ensured in the time intervals 16³⁰-22⁰⁰ and 6⁰⁰-8⁰⁰. **Between 8⁰⁰-16³⁰, it was forbidden to use electric lighting.** Vigil lightning was used between 22⁰⁰-6⁰⁰.

Visited detention rooms had simple furniture for dining and storing personal property. However, the **existing furniture was insufficient**. Also, the rooms were equipped with bathrooms, sinks, showers, toilet bowls, running water, except for room No. 103, Section E7, **which had no shower**. Cold water was being supplied continuously and hot water according to an approved schedule, 3 days a week, one hour / day. **The time allotted to shower was insufficient for the rooms where more prisoners were accommodated. The privacy of the inmates wasn't respected and congestion was created, especially in the mornings. Art. 5 para. (2) of the Annex to O.M.J. No. 433/C/2010 provides a minimum norm of one sink, one toilet and one shower, for maximum 10 inmates.**

Although the rooms and bathrooms visited were generally clean, **it was detected the presence of cockroaches under the mattresses in room No. 16 Section E3; inmates complained about the presence of bedbugs at night.** Food was stored in bags under the beds, in small storage spaces. In room No. 103, Section E7, food was stored in the bathroom.

Generally, inmates said that they received underwear from family, preferring it instead of the one provided by the place of detention. The mattresses checked were in good condition, both the fabric and the from mattresses.

Some detainees claimed that the personal hygiene products distributed to them were unsuitable in terms of quality. Following verifications made during the visit, it was found that the hygienico-sanitary materials provided were in compliance with Regulation No. 8 of O.M.J. 2056/C/2007.

Following the findings, the **Ombudsman recommended the prison management to take legal measures in order to:** 1. Manage overcrowding, given that there were accommodated **1,132 inmates in a legal capacity of 680 places**, meaning 452 persons over the legal capacity. 2. **Ensure appropriate artificial lighting, especially in rooms where, at the date of the visit, it was found that the natural light was insufficient, especially between 8⁰⁰–16³⁰, when the use electric lighting was forbidden;** 3. **Ensuring decent dining conditions in the sections where food was being served in the rooms and extending the dining hours, so that the time allotted to be at least 20 minutes for each series;** 4. **Equipping rooms with furniture for the storage of goods and personal effects;** 5. **Ensuring conditions for cold storage of perishable goods purchased by the inmates from the prison store or received periodically in packages from family or other persons;** 6. **Performing insect pest control with greater frequency and checking the effectiveness of the materials used;** 7. **Extend the program for hot water supply; supplementation shower facilities and toilets.**

2. DETENTION AND REMAND CENTRES

2.1. General considerations and regulations in the matter

As for the accommodation of persons in detention and remand centres, they must ensure respect for human dignity and the presumption of innocence. The treatment of detained or remanded persons needs to be adapted to their legal status, taking into account that the presumption of innocence entails more favourable treatment than for convicts. For these categories of persons, unfavourable conditions of incarceration are not justified.

According to Art. 8 and Art. 9 of the UN Body of Principles, *"Persons in detention shall be subject to treatment appropriate to their unconvicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons"* and *"the authorities which arrest a person, keep him under detention or investigate the case shall exercise only the powers granted to them under the law."*

Persons detained or remanded in detention and remand centres shall be subject to a separate regime of imprisonment, for the smooth running of the criminal trial, with respect for fundamental rights, and they can benefit from psychological and moral-religious assistance, inside the detention centre, under security and surveillance, as determined by the implementing regulation of the law [Art. 111 para. (1) and (2) of Law No. 254/2013].

The provisions of Art. 5 and Art. 7 of the Order of the Minister of Internal Affairs No. 988/2005 provide that inmates are accommodated in collective rooms in compliance with the hygienico-sanitary norms, according to the floor area and volume, number of beds and the possibilities of natural lighting and ventilation. To prevent the occurrence of negative events in each room are accommodated, mandatory, minimum two persons. The detention rooms are located on the premises of Police units and are equipped with sanitary installations, heating, lighting, as well as natural and artificial ventilation ensuring for each person at least 6 cubic metres of air.

On bedding, Art. 36 para. (3) and (4) of the same legal Act establishes that every person subject to deprivation of liberty must be provided with individual bed, mattress, pillow, pillowcase, bed sheet, towel and blanket. In winter, shall be provided 2 blankets per person. Persons subject to custodial measures may receive, with the approval of the head of the unit, items of equipment and bedding, from family members or others.

According the Order of the Minister of Internal Affairs No. 503/2008, persons held in detention and remand centres have the right to receive monthly: 1 pc. disposable razor, 1 pc. soap (100-150 g) and quarterly 1pc. (tube 50-100 g) shaving cream.

As for the right to outdoors walk, according to Art. 37 para. (1) of the Order of the Minister of Internal Affairs No. 988/2005, detainees and unconvicted prisoners are provided, daily, from 1 to 2 hours for adults and from 1 to 3 hours for minors, in the courtyards arranged inside detention and remand centres, in strict compliance with the rules of separation, under police supervision.

Art. 30 of the same legal Act provides that from bedtime until morning, persons subject to custodial measures shall not be taken out of their rooms. Are excepted persons in the following situations: a) they suddenly fell ill and are transported immediately to the nearest health unit, case in which the doctor of the detention centre is immediately notified; b) are exposed to an imminent danger that cannot be removed otherwise; c) are about to be transferred; d) the occurrence of calamities or events that require total or partial evacuation of the detention centre; e) in special cases for criminal prosecution activities, with the approval of the head of the Police unit or subunit where the detention place functions or his deputies, and in their absence, with the approval of the head of the competent criminal investigations body, ensuring, after these activities, appropriate rest time.

Regarding the abovementioned legal provisions according to which persons deprived of liberty cannot be removed from their rooms from bedtime until morning, we consider that they constitute a form of violation of human dignity, given that in some places of detention, the rooms are not equipped with toilets.

Moreover, the exception for removal from room of persons detained, in the timeframe from bedtime until morning, in special cases, for criminal prosecution activities, may give rise to potential abuses of the prosecution bodies, given that the places of detention are located on the premises of Police stations. As such, the provisions of Art. 30 of the Order of the Minister of Internal Affairs No. 988/2005 creates preconditions for wrongful actions of the prosecution bodies and for the violation of human dignity.

According to the CPT Norms, police custody (is or should be) of relatively short duration. However, the conditions of detention in police cells must meet certain basic requirements.

All police cells should be clean and reasonably sized given the number of people accommodated in them and must have adequate lighting, preferably natural light. Cells must be designed so as to allow rest, and people forced to spend the night in detention should each have a mattress and a blanket. Persons in police custody should have access to clean toilets, in decent conditions, and have adequate opportunity to wash. They must have access to drinking water at all times and receive food at appropriate moments, including a full meal at least once a day. Persons held in custody for 24 hours or more, should, where possible, be offered outdoor exercise every day.

The visit carried out by CPT in 2014 has revealed that except Oradea Detention and Remand Centre, which had recently been totally renovated and offered very good accommodation, the material conditions observed in other detention and remand centres visited **continued to remain mediocre, similar to those observed during the 2010 visit (overcrowding, high degree of wear, insalubrity, insufficient natural light and ventilation).**

Following the visit, CPT recommended, for example, the Romanian authorities to order appropriate measures to ensure that in the detention and remand centres of the Police: security devices in addition to those required for windows to be removed and windows to be widened (Detention and Remand Centres No. 10, 11, 12); Every imprisoned person should have a clean mattress and bedding; - Persons incarcerated in Arad Detention and Remand Centre to have immediate access to proper toilets, including during the night; the use of buckets and plastic bottles must stop; maintenance and cleaning of cells and sanitary installations should be provided regularly.

2.2 The facts and findings of the investigations conducted by the representatives of the People's Advocate institution

In the detention and remand centres were found the following:

a) lack of toilets in the rooms, so that physiological needs could be satisfied in shared bathrooms, only on request, so that supervisory staff was required to accompany the person deprived of liberty. Lack of toilets in detention rooms represents a deficiency that generates degrading treatment, because when a person

depends on another person to satisfy his physiological needs, represents a humiliating situation. For example: Detention and Remand Centres in Iasi, Satu Mare and Alba.

b) insufficient number of toilets in the shared restrooms in relation to the number of persons in custody. For example *Detention and Remand Centres in Mehedinți, Botoșani*.

c) the existence of flooded restrooms and sanitary installations presenting a high degree of wear:

► In *Buzău Detention and Remand Centre*, toilets were covered with plastic bottles filled with water.

► In *Mehedinți Detention and Remand Centre*, all sanitary installations were very worn.

► In *Ialomița Detention and Remand Centre*, in most rooms, toilets and sinks were worn and stained / rusted.

d) the faulty manner in which toilets were installed in accommodation rooms. The separation of toilets from the rest of the room, was done with curtains, partitions or bulkheads that were not built up to the ceiling, so that the right to privacy was not ensured (e.g. in *Brașov Detention and Remand Centre, Caraș Severin Detention and Remand Centre, as well as Detention and Remand Centres No. 3, No. 4, No. 6-12 Bucharest*).

e) the use of Turkish style WC (squat toilet) as shower tray is another matter likely to raise concerns regarding the of respect for human dignity (*C.R.A.P. Argeș and Vâlcea*).

f) location of detention rooms in the semi-basement of detention and remand centres, so that adequate natural light and ventilation were not properly ensured. Most of the detention spaces for persons detained and remanded were located in the semi-basements of the units (*Detention and Remand Centres in Gorj, Brașov, Mehedinți,*

Hunedoara, Dâmbovița, Bistrița Năsăud, Iași, Neamț, Prahova, Satu Mare, Sălaj, Sibiu, Tulcea, Botoșani, Cluj, Buzău, Constanța, Teleorman, Giurgiu).

In some centres, the rooms were located **on the ground floor: *Detention and Remand Centres in Bihor, Caraș-Severin, Maramureș, Ialomița, Mureș***. In other centres, the rooms were **on the ground floor and above ground (*Harghita, Galați*) or on the ground floor and in the basement (*Olt*)**.

For respecting human dignity it must be borne in mind that **the location of detention places in the basements of buildings can create a less favourable situation for persons in detention and remand custody than for the convicted offenders in penitentiaries.**

g) natural light and inadequate artificial lighting:

- ▶ In *Maramureș Prahova*, no room had direct light and ventilation.
- ▶ In *Mehedinți Detention and Remand Centre*, natural lighting was poor, and because of dense nets at the windows, the light in the rooms was dim.
- ▶ In *Prahova Detention and Remand Centre*, the windows were at the upper end of the wall, small, and their opening was towards the courtyard, which was surrounded by a wall, or towards the space for drying laundry, which was covered with plastic. **From the rooms, one could not see the sky and the natural light in the room was weak. In the rooms, was used artificial lighting during the day (bulb / neon) that the detained persons claimed it damaged their eyesight.**

h) poor ventilation of rooms:

- ▶ In *Mehedinți Detention and Remand Centre, Neamț county*, in the detention rooms, the windows could be opened only from outside, therefore people could not let fresh air into the room when they wanted.
- ▶ In *Prahova Detention and Remand Centre*, ventilation in rooms was insufficient; persons in detention complained about the **existence of dust**, which created respiratory problems.
- ▶ In *Vaslui Detention and Remand Centre*, there was no possibility to ventilate the rooms.

- In *Vrancea Detention and Remand Centre*, room ventilation was deficient.

i) high degree of wear of bedding components:

► In *Neamț and Mehedinți Detention and Remand Centres*, mattresses were very worn.

► In *Brașov Detention and Remand Centre*, pillows were worn, they could not be washed / cleaned, but they could still be used. The mattresses were **either in very good condition (nearly new), or in poor condition, the latter needed to be changed.**

► In *Covasna Detention and Remand Centre*, it was necessary to replace the mattresses.

j) discontinuities in the supply of hot water, heat and electricity:

► In *Galați Detention and Remand Centre*, the building was connected to the supply network of the city and, at the time of the visit, there were problems in service delivery. Hot water, heat and electricity supply **was stopped throughout the city and, therefore, these utilities were also stopped in Galați Detention and Remand Centre.** In each detention section, electric kettles were made available to the persons detained.

► In *Teleorman Detention and Remand Centre*, hot water was provided once a week, while other centres respected the legal provisions regarding the supply of hot water for bathing twice a week (for example, *Detention and Remand Centres in Iași, Neamț, Vrancea, Bacău, Covasna*).

► In *Detention and Remand Centres Argeș, Vâlcea, Constanța, Gorj, Giurgiu* electricity was supplied continuously, and in the time interval 22:⁰⁰-6:⁰⁰, in every room was ensured a vigil light. In *Detention and Remand Centres Harghita, Arad, Bistrița Năsăud, Timiș, Brașov* as well as in *Detention and Remand Centre No. 1 Bucharest* electricity was supplied continuously.

k) washing and drying clothing items by detainees:

► In *Detention and Remand Centre Giurgiu*, personal belongings of detainees were washed and dried in the courtyard, and in *Detention and Remand Centre Arad* didn't exist a room equipped with a washing machine for washing linens and underwear.

► *Detention and Remand Centre Dâmbovița* didn't have a washing machine and there was no space for washing / drying clothes.

► In *Detention and Remand Centres Suceava, Botoșani, Covasna, Ialomița, Sălaj* garments were dried in the detention room, and in *Detention and Remand Centres Bistrița Năsăud* and *Maramureș* in the room or on the hallway, on the radiator.

► In *Arad Detention and Remand Centre*, garments could be dried in barbershop of the centre.

l) uneven distribution of hygienico-sanitary materials in Detention and Remand Centres:

► In *Giurgiu Detention and Remand Centre*, detainees were not receiving these products, and in *Covasna Detention and Remand Centre*, the detainees received, upon admission, only one hand soap, for which they had to sign.

► In *Neamț* and *Bacău Detention and Remand Centres* hygienico-sanitary products were distributed within the limit of the available funds and especially to the persons who lacked the financial means or who were not visited.

► In *Gorj Detention and Remand Centre*, hygienico-sanitary products, toilet paper and soap were distributed monthly or whenever needed, upon signature, within the limit of the allocated budget, and at the request of the persons detained.

m) some courtyards were undersized, uncovered:

► In *Prahova Detention and Remand Centre* the surface of the courtyards (without visual opening to the outside; covered with opaque Plexiglas) was insufficient and there was no possibility of extending them.

► In *Vâlcea Detention and Remand Centre* there was a room for walking, improvised at a higher floor, that could only provide limited activities in terms of spending time outdoors, and was covered with a canopy.

► In *Argeș Detention and Remand Centre* there were minimal conditions for spending time outdoors due to the old infrastructure of the building.

► In *Brașov Detention and Remand Centre*, there were 3 rooms for walking, mostly covered, which allowed natural light, but provided little space.

► *Dolj Detention and Remand Centre* had 4 courtyards for walking, with a total size of 83.95 m², with concrete floor, uncovered.

► In *Detention and Remand Centre No. 1-4, 6-12 Bucharest*, they were undersized.

► In *Detention and Remand Centre No. 4 Bucharest*, the right to walking could be exercised only from Monday to Friday, because on Saturdays and Sundays were working fewer guards.

► In *Cluj Detention and Remand Centre*, there were 8 courtyards with an area of about 10 square metres, and the detainees had the right to walk daily.

n) storage space for detainees' personal effects. In some detention and remand centres, the detainees were obliged to keep their belongings in bags under the bed or hung on walls. E.g:

► In *Prahova Detention and Remand Centre*, there was no furniture for personal effects, but there was a room where the detainees could keep these goods. Most people remanded kept these goods in bags in their rooms.

► In *Detention and Remand Centres Bistrița-Năsăud, Caraș Severin, Maramureș, Buzău*: There was no furniture in the rooms for storing personal effects (nightstands or shelves).

► In *Detention and Remand Centres Neamț, Vrancea, Călărași* and *Detention and Remand Centre No. 7 Bucharest*, the rooms did not allow to be fitted with furniture for storing personal effects, given their small size.

► In *Dâmbovița Detention and Remand Centre*, there were no cabinets for storing personal belongings, which were stored in bags.

► In *Detention and Remand Centres Brăila and Galați* there were no lockers / cabinets for storing personal effects, which were kept under the beds or hung on walls.

o) complaints regarding the confidentiality of discussions during the visits. In *Prahova Detention and Remand Centre*, the visitation area was intended both for meetings between detainees and families and meetings between detainees and their

lawyers. This visitation room had about 10 square metres and was furnished with 2 tables, 2 benches, 4 chairs, a table on which stood a scale for weighing the packages received and a seat for the supervisor.

During the talks, the supervisor remained in the same room, with no separation devices to provide visual supervision only. The visitation program approved by the Internal Rules of the Centre was 30 minutes per week - Monday to Thursday with the family, and any day of the week, with the lawyers, observing the procedures for approval.

2.3. Important aspects resulting from the settlement of complaints and ex-officio referrals of the People's Advocate Institution, registered in 2014 and 2015

■ **The Ombudsman approved the proposal for the settlement of a complaint regarding the conditions of detention in *Detention and Remand Centre No. 1 Bucharest*, by conducting a visit with the objectives of verifying the conditions of detention, medical care and treatment of persons deprived of liberty.**

Subsequently, the Ombudsman was notified ex officio on the health of a person remanded, diagnosed with chronic heart disease and diabetes, which has been aggravated during incarceration; in the course of the visit were verified the following issues, and was found that:

***Detention and Remand Centre No. 1 Bucharest* had a capacity of 150 places.** During the visit, there were detained 112 people, of which 47 women, the Centre being the only one in the municipality of Bucharest where can be incarcerated people with medical problems and / or drug addicts. The rooms for women were located on the ground floor and those for men were in the semi-basement.

In May, was completed the first sanitation of the centre in recent years; also, were purchased and installed air conditioners, through a Norwegian Financial Mechanism, but due to the age of the building's electrical system, they could not be used. By the same project were to be changed the windows, the sanitary installations, to be rearranged and refurbished the courtyards, to be modernized the visitation rooms and

to be created a room with equipment for gymnastics. **The medical section has also been optimized.**

The insulation of the toilets, although it had been improved by fitting plastic folding doors, was poor. The bathrooms had no ventilation, no natural light nor electricity of their own. The WCs were not well insulated, therefore odours of sewage were entering the room, as well as rats or other rodents, reason for which the inmates had covered the holes of the toilets with plastic bottles.

Hot water was supplied daily from 09:00 to 19:00 and **cold water** permanently. All rooms visited were equipped with television. On the inside of the metal doors of the rooms were posters with the visiting hours, extracts from regulations etc.

The courtyards for walking, with an approximate size of 25 sq.m., had white painted walls and cement floors; they were fully covered with wire mesh. **They were neither equipped with bathrooms, nor benches.**

It was also visited a **visitation room**; it was renovated and equipped with a table, 4 plastic chairs, carpet and curtain. Natural lighting was provided through a window as wide as an entire wall.

The spaces for visits of relatives and meetings with lawyers did not appear to be sufficient to ensure the possibility to conduct visits in good conditions. The supervision of visits was done by leaving the door open for visual observation from the access hallway, where everyone passed by.

Rooms for the storage of food in refrigerators - there were three such rooms, one located on the ground floor and two in the semi-basement of the building. The spaces were clean, airy; the refrigerators showed a relatively high degree of wear and were fitted with padlocks. It was assigned one fridge for every room of detention. The detainees had access to these rooms according to a schedule.

The storage room for the luggage of the persons in custody was fitted with shelves on all walls, a table, 2 chairs, a radiator, a triple window, and artificial lighting was ensured by neon tubes.

The library of the centre was provided with 7 shelves stacked on each wall, table, chair, triple window, floor covered with linoleum. There were relatively many books,

new, covering various areas of interest. The persons detained had access to the library to borrow books, according to a posted schedule.

Rooms for exercising the right to phone conversations - on the ground floor there was a room for exercising the right to telephone calls, where there were installed 4 telephone terminals, a table, a chair, a trash can and three radiators. Natural lighting was provided by two windows fitted with bars. In the semi-basement of the building was the second room for telephone calls, furnished similar to the one on the ground floor, but smaller; there were installed 6 public telephones and was not provided with window. In both rooms, there were a call register and a register for telephone appointments with the family (max. 30 min./day, 3 times/week). For telephone conversations with legal defenders, access was permitted every day from 08:00 to 21:00.

Space for activities - there were no suitable spaces for the persons incarcerated in the centre to conduct leisure activities.

Detention and Remand Centre No. 1 Bucharest did not have a food preparation facility, which is provided by Rahova Penitentiary Bucharest , under an arrangement with the General Directorate of Bucharest Police. The meals were served in the rooms. The persons incarcerated preferred to eat food received from visits. Three detainees have said that the food provided was not suitable for the special regime for hepatitis and diabetes - aspect which was also the object of an Emergency Preliminary Report.

During the visit, were found non-perishable food stored in rooms; the people incarcerated said to the members of the visiting team that the perishable goods received from family were stored in refrigerators.

Within Detention and Remand Centre No. 1 Bucharest operated a medical office, in which were working 1 doctor and 6 nurses, and which was subordinated to the Medical Direction of the Ministry of Internal Affairs. For emergencies there was a protocol signed between the General Directorate of Bucharest Police and the Ambulance Service.

The medical office monitored the state of health of persons in custody, there were individual medical records and the detainees had access to the medical office for

consultations under an appointment made in the morning. The medical office was provided with stethoscope, blood pressure cuff, pulse oximeter and glucometer.

In the Visit Report, the Ombudsman *recommended* the management of Detention and Remand Centre No. 1 Bucharest to take the legal measures in order to:

1. take the necessary steps to identify ways to obtain another building that would allow to arrange detention rooms in accordance with the law and international standards, and until the implementation of the measure to proceed to:
a. remedy the deficiencies of plumbing and sewage; b. disinfection and urgent pest control of all spaces; c. adapt the electrical installation to the power consumption suitable to the needs of the detainees; d. to examine the possibility of purchasing food in catering system so that it allows a customized menu appropriate to the diagnoses of people with various medical conditions; e. ensuring proper food; f. considering the possibility of setting up spaces for leisure activities; g. examine the applications of detainees, given the nature of the requests in ensuring the right to protection of health; h. more efficient allocation of investments, according to the urgency of needs;

2. amending the Internal Rules of the centre, so as to allow inmates to call several phone numbers on the approved list, within the maximum time allowed.

Chapter IV.
Quality of food and water and dining conditions
in penitentiaries and detention and remand centres

1. PENITENTIARIES

1.1. General considerations and regulations in the matter

During the period of imprisonment, the convicted persons should receive adequate food and drinking water.

According to the Standard Minimum Rules for the Treatment of Prisoners, *every prisoner shall receive from the administration, at the usual hours, good quality food, well prepared and served, and having sufficient nutritional value to maintain his health and forces. Every prisoner should be able to have drinking water available.*

Prisoners shall be provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the nature of their work. The requirements of a nutritious diet, including its minimum energy and protein content, shall be prescribed in national law. Food shall be prepared and served hygienically. There shall be three meals a day with reasonable intervals between them. Clean drinking water shall be available to prisoners at all times. The medical practitioner or a qualified nurse shall order a change in diet for a particular prisoner when it is needed on medical grounds. [Art. 22 - Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules]

CPT norms state that the prisoners should have access to drinking water at all times and to receive food at appropriate times, including a full meal at least once a day.

According to Art. 50 of Law No. 254/2013, "the administration of each prison shall provide adequate conditions for the preparation, distribution and serving of food according to food hygiene rules, depending on age, health, nature of work performed, respecting religious beliefs declared by the person convicted, in an affidavit. Convicted

persons shall have access to drinking water. Mandatory minimum food norms are established, after consultations with specialists in nutrition".

We mention that because the Ministry of Justice has not yet issued the mandatory minimum food norms, currently are applicable the provisions of O.M.J. No. 2713/C/2001 (unpublished). According to Art. 51 of the mentioned normative legal act, feeding of inmates is based on specific food rules, differentiated on categories of prisoners. Depending on the structure of food norms, are established daily menus based on which the ten-day table of food distribution is drawn up. When drawing up the ten-day table shall be envisaged achieving a varied menu, **taking into account the availability of products in the warehouse, supply possibilities, the endowments of the food preparation facilities and food products that can be provided from the agro-zootechnical household or from suppliers.** To achieve the variation of daily menus and to remove any difficulties in the food supply, product substitutions can be made. **When, due to objective reasons, the menus cannot be respected,** they can be replaced by others, only with the opinion of the medical practitioner and approval of the deputy for logistics (or, depending on the case, similar positions). In the same context, according to Art. 69 para. (1) of the same order, for inmates for which were established and approved by the medical practitioner dietary meals, **the rations established by the food norms can be eliminated, reduced or be introduced rations of new products,** without exceeding, however, the daily average calories approved for that norm. In establishing dietary menus, **the medical practitioner must take account of the existing stocks of food and the possibilities of supply.** These menus will be approved by the deputy for logistics.

Regarding the abovementioned legal provisions, we consider **that they allow, on the one hand, to change the quality and quantity of food, such as to make it possible for exceptional circumstances to become rules in compiling the menu for detainees, and on the other hand, they establish a permissive framework that can generate abuses from authorities, who may take advantage of the legal text cited to justify the quality and quantity of food allocated.**

As for granting food adequate to religion, in the 2008 Special Report on the regulations issued by the Ministry of Justice and the Director General of the Administration of Penitentiaries in the matter of execution of sentences and educative measures of confinement for juvenile offenders in re-education centres, the Ombudsman has proposed drafting a set of mandatory minimum food standards for detainees, as required by Art. 35 para. (2) of Law No. 275/2006.

The proposal was based on information provided by the National Administration of Penitentiaries, according to which the right to food corresponding to the religion of the person deprived of liberty, other than Christianity, was achieved in accordance with the religious beliefs, under *“the instructions on application of food norms, in times of peace, for the personnel of the Ministry of justice - General Directorate of Penitentiaries” approved by OMJ no. 2713/C/2001*. Also, at that time, **was under development the Order of the Minister of Justice on mandatory minimum food standards**. Until the entry into force of this normative legal act, which aimed at improving food standards for inmates, these standards were established by O.M.J. No. 2713/C/2001.

In this regard, we note that, despite the proposal made by the People’s Advocate since 2008, so far has not been issued the Order of Minister of Justice on mandatory minimum food standards, although, both Law No. 275/2006 and Law No. 254/2013, provided that this order needs to be issued.

Minors and young people confined in re-education centres, prisons for juvenile offenders and young offenders as well as juveniles imprisoned in prisons receive, free of charge, the food rights provided by Norm No. 15 (3,820 calories), according to the provisions of O.M.J. No. 2713/C/2001.

Persons deprived of their liberty, during the period of confinement in nursing homes and hospitals, as well as pregnant women, shall receive, free of charge, the food rights provided by Norm No. 18.

The weight of meals "shall be" typically 500 grams first course, and 250-350 grams second course; these may differ depending on the food norm and how the food products have been distributed by meals and days. **The time interval between two meals should not exceed 7-8 hours, but not to be less than 4 hours.** To ensure quality control

of food prepared, at each meal, shall be taken food samples, which are kept 48h and verified by the medical practitioner of the unit (similar).

By O.M.J. No. 3541/C/2012 were approved the updated values of food norms for persons deprived of their liberty.

The medical personnel performs the daily control of the state of hygiene in the kitchen, checking quality, expiration dates, how food to be prepared is stored, compliance with the food circuit (**according to Art. 126 of O.M.J. No. 429/C/2012**).

The provisions of Art. 4 of the Mandatory Minimum Rules on Housing Conditions of Sentenced Persons, approved by O.M.J. no. 433/C/2010 establish that: rooms shall be equipped with furniture, so as to provide detainees with **dining conditions**. As far as possible, and in compliance with the security norms, **penitentiaries shall provide specially arranged dining halls where meals are served.**

In its case law, **ECHR has underlined the need for observance of the right to food** of the persons deprived of liberty, in the cases *Macovei v. Romania* and *Vartic v. Romania*.

Following its visit in Romania, in 2014, CPT recommended the Romanian authorities to *take measures to guarantee the quality and quantity of food distributed to persons deprived of liberty in prisons and other places of detention in Romania, the observance of minimum standards on daily intake of protein and vitamins* and to ensure that the caloric norms on the date of the visit comply with the minimum standards for daily intake. The Committee also recommended that the kitchens should be regularly inspected, paying special and constant attention to the compliance with hygiene norms.

1.2. Facts and conclusions of investigations carried out by the representatives of the People's Advocate institution

The facts

According to information provided by the National Administration of Penitentiaries, **almost all buildings in which penitentiaries function, were built before 1989, based on plans that did not include the construction of dining halls.**

However, it was succeeded, by rearranging the existing spaces, to create dining halls in three prisons, where **approx. 3,000 inmates** can eat their meals. **There are 22 units without dining halls, where food is served in detention rooms.** For the transportation of the food prepared to the place where it is served, are used stainless steel or aluminium containers with the capacity of 10-25 litres.

Preparing food for the inmates is performed in specially designated areas (kitchens) equipped with specific equipment, namely: stainless steel marmites, potato peeler machines, cabbage choppers, hotplates and refrigeration equipment (cold rooms, refrigerating chests, refrigerators, freezers). For cooking are used stainless steel dishes that are purchased periodically.

According to the National Administration of Penitentiaries, the 2015 budget allocation for housing the detainees **amounts to 198,001,261 lei. Considering the number of inmates existent in March 2015, the monthly average cost was 550.79 lei month/person, namely 18.11 lei / day / person.**

Conclusions of investigations conducted by the representatives of the People's Advocate institution

a) food quality:

► ***Colibași Penitentiary:*** appropriate conditions were ensured for the preparation, distribution and serving of meals, depending on age, health, nature of work performed, respecting religious beliefs declared by each person convicted. Colibași Penitentiary had its own bakery with sanitary authorization and the kitchen also had sanitary-veterinary and food safety authorization. The kitchen and its annexes were well managed, organized and maintained. The monitoring of drinking water revealed that the microbiological parameters were between the permissible value boundaries.

► In ***Buziaș Re-education Centre***, only by attracting sponsoring, was achieved an improvement in food quality.

► ***Botoșani Penitentiary:*** food was ensured daily, in the amounts established, based on the allocation of rights, depending on norms, according to the note prepared by the shift manager and approved by the Deputy Director of Security of Detention and

Prison Regime. The ten-day menu was prepared according O.M.J. 2713/C/2001 by the person responsible for the food sector, and approved by the economic-administrative deputy director and the medical office.

b) the diversity and quantity of food:

- ▶ In *Brăila Penitentiary* inmates have asked for **food diversification**.
- ▶ In *Bacău Penitentiary* some detainees complained about the **quantity of food received**, especially concerning milk and cheese.

c) **the existence dining halls:** *Pelendava Penitentiary* had **14 dining halls**: one with 74 places, organized in Section E1; one with 40 places organized in Section E4; dining halls with the capacity of 10 seats, organized in Sections E2 and E3, one for each detention room. However, **in other prisons, there were dining halls only in some sections, and in the other sections meals were served in the room** (e.g. *Penitentiaries: Craiova, Drobeta Turnu Severin, Focșani*).

There were prisons in which the prisoners were dining in their rooms, on the edge of the bed or, by turns, due to insufficient number of folding tables distributed for this purpose (*Penitentiaries: Codlea, Colibași, Miercurea Ciuc, Târgu Mureș, Slobozia, Aiud, Arad, Brăila, Galați, Timișoara, Mărgineni, Tulcea, Ploiești, Giurgiu*).

d) kitchen facilities:

▶ In *Mărgineni Penitentiary*, the existing facilities were insufficient and worn. Some appliances were rusty and the kitchen looked outdated due to the old ceramic tiles on the walls (cracked and damaged), that necessitated improvements to avoid food problems (the potato peeler machine and the vegetable mincer showed signs of rust and were very worn out; in the vegetable warehouse there was a very old and worn cabbage chopping machine with wooden accessories).

- ▶ In *Bacău Penitentiary*, the kitchen had poor ventilation.

e) water quality:

► In *Galați Penitentiary* and *Brăila Penitentiary* inmates have **complained about the quality of water**, although according to drinking water analysis report, it was in the normal parameters established by law.

► In *Mărgineni Penitentiary* inmates **did not receive drinking water continuously**. The prison had two sources of drinking water - **a deep well, which did not provide a constant flow and the municipal network, with its limits**.

1.3. Important aspects resulting from the settlement of petitions and ex-officio referrals registered at the People's Advocate Institution, in the years 2014 and 2015

■ **Mihai** (fictive name) **notified us regarding the non-compliance with the mandatory minimum quality and quantity food norms in *Giurgiu Penitentiary***.

In relation to this complaint, the People's Advocate institution notified the National Administration of Penitentiaries, which has informed us that:

The feeding of the prisoners detained in *Giurgiu Penitentiary* is performed according O.M.J. No. 2713/C/2001. Food is distributed from the food warehouse, one day before the scheduled date to prepare food, according to the structure of the daily menu. Products are weighed and distributed for processing and preparation in the presence of representatives of the prisoners, and food is prepared in stainless steel cooking pots (marmites).

At each meal, food samples are collected, that are kept for 48h; food quality is checked daily from an organoleptic point of view by a medical professional, directly in the kitchen, noting the conclusions of the checks made. Prisoners have a representative in the kitchen who can complain about any irregularities observed.

Food for each section of detention is taken by the supervisor of that section, who is responsible to assist and to verify the distribution of food to the rooms, evenly for all prisoners. The weight of a meal is usually 500 grams first course, and 250-300 grams second course; these weights may differ depending on the food norm and how the food products have been distributed by meals and days.

The complainant was assigned, according to the prison register, to food norm No. 18 (ill persons) and received daily a chicken leg, 125 grams (raw meat).

At Giurgiu Penitentiary, substitution for pork was done according to the laws in force, in conformity with Annex No. 14 B of O.M.J. No. 2713/C/2001.

The food is transported in aluminium containers, in compliance with the hygiene rules. The containers are washed daily, therefore the allegations of the complainant are founded.

In relation to the matters complained of, checks were carried out by the Prison Inspection Service inspectors on 05.11.2014, being watched, by sampling, video recordings of lunch being served, during which were found cases of theft of food, including in E4 section, where the detainee's cell was, as well as situations when the supervisors didn't oversee the distribution of food.

Although the quality of food was adequate at the time of the control, at the level of the prison were not ordered measures to monitor meal serving within sections, in order to prevent food theft by inmates. It was ordered the drafting of an action plan to improve the efficiency in the activity of feeding the prisoners, which will be monitored by the Prison Inspection Service (File no. 12042/2014).

■ **The People's Advocate institution - the Field on the prevention of torture in places of detention carried out an unannounced visit to Craiova Penitentiary, during which were found the following:** prisoners in sections E3 and 8A were eating their meals in the two dining halls of the sections, and **the rest of the prisoners in their rooms.** Were visited the dining halls located in Sections E3 and 8A, which were clean and well maintained, equipped with tables and chairs. Only in Section 8A, the dining hall had a toilet.

The meal times in Craiova Penitentiary were as follows: breakfast between 6⁰⁰-7⁰⁰, lunch between 12⁰⁰-14⁰⁰, and supper between 18⁰⁰-19⁰⁰. For people with diabetes – regime 18 – five meals, were distributed three meals and two food supplements at 10⁰⁰ and in the timeframe between 15⁰⁰-16⁰⁰; For people with diabetes – regime 18 – six meals, were distributed three meals and three food supplements at 10⁰⁰, in the timeframe between 15⁰⁰-16⁰⁰ and at 21⁰⁰.

Following the above, **the Ombudsman recommended the prison management to take legal measures to ensure decent dining conditions for inmates, in the sections where food was served in the rooms and to extend the feeding schedule, so that the time allotted to be at least 20 minutes for each series.**

2. DETENTION AND REMAND CENTRES

2.1. General considerations and regulations in the matter

According to Art. 34 of the Order of the Minister of Internal Affairs No. 988/2005, *the detained and remanded persons as well as the convicts have the right to food according to the legal norms, taking into account their health, based on the recommendations of the medical practitioner.* Hot food is distributed directly in the detention rooms, and, where appropriate, to the working places outside the prison, **three times a day**, ensuring the necessary dishes and a spoon. For the detained and remanded persons as well as the convicted offenders, who, for religious reasons, ask some specific food, it shall be provided, whenever possible, by the administration of the place of detention, family or others, with medical approval, in order to prevent voluntary or accidental poisoning. If persons subject to custodial measures are missing more than 8 hours from custody, shall receive, with medical approval, cold food.

According to Art. 58 of the O.M.J. No. 2713/C/2001 "feeding the persons detained or remanded by the bodies of the Ministry of Internal Affairs, the Public Ministry or the courts can be made by the General Directorate of Penitentiaries, within the limit of the possibilities and according to the agreements concluded with these institutions, with the reimbursement of the cost of the food norms allotted to them.

Providing food to persons deprived of liberty, "within the limit of the possibilities", creates the framework for potential abuses by authorities, which may take advantage of the legal text cited to justify the quality and quantity of food allotted.

Providing food "within the limit of the possibilities" to persons detained, remanded or convicted, who, for religious reasons, ask for some specific food,

constitutes a violation of the right to food, given that the feeding should be an obligation of the place of detention and food obtained as a result of the right to packages or shopping shall be only a supplement, conditioned by the financial possibilities of the person deprived of liberty or his family.

According to Art. 2 Para. (4) of the Order of the Minister of Internal Affairs No. 310/2009, the food norms given to inmates, according to the law, and the rules for their application are developed by the Ministry of Justice and Civic Freedoms – the National Administration of Penitentiaries and the structure of the food norms is provided in Annex No. 2 of the Order.

We recall that the Ombudsman issued a *Recommendation* in an Emergency Preliminary Report, in which he asked the doctor and the management of the Detention and Remand Centre No. 1 Bucharest to review the periodicity of receipt of packages by the persons detained as well as the quantity of food that they can receive in packages, especially for the persons having medical conditions that require a special diet.

During the visit in 2014, the CPT delegation received numerous complaints from all detention centres visited, regarding the quality and quantity of food served. **This was not surprising since the food came from neighbouring prisons.**

2.2 The facts and findings of the investigations conducted by the representatives of the People's Advocate institution

Facts

From the information provided by the General Inspectorate of Romanian Police, the right to food was ensured in **37 centres by preparing food in prison, in 10 centres by preparing food in their own facilities, and in 4 centres food was provided by catering service.**

Conclusions of the investigations conducted by the representatives of the People's Advocate institution in detention and remand centres:

The investigations conducted by the People's Advocate representatives in detention and remand centres revealed that the persons in custody enjoyed proper food. The persons detained could complete their meals from own sources, namely from packages received during visits and shopping.

a) providing food in detention and remand centres:

► Most of the centres provided food prepared in penitentiaries. The food in all detention and remand centres in Bucharest was prepared in Rahova Penitentiary. The *Detention and Remand Centre Gorj* provided food from *Târgu Jiu Penitentiary*, *Detention and Remand Centre Harghita* provided food from *Miercurea Ciuc Penitentiary*, *Detention and Remand Centre Mehedinți* provided food from *Turnu Severin Penitentiary*, *Detention and Remand Centre Bihor* provided food from *Oradea Penitentiary* etc.

► In some centres (*Detention and Remand Centres Dâmbovița, Sibiu, Neamț, Vâlcea, Alba, Buzău*), food preparation was done in the kitchens of the County Police Inspectorates)

► *Detention and Remand Centres Caraș Severin, Olt, Teleorman, Suceava* food was provided by catering.

► To reheat food there were kitchens (*Detention and Remand Centres Mureș, Harghita, Ialomița, Teleorman, Constanța, Vâlcea, Giurgiu*).

b) eating the meals was generally done in detention rooms (for instance, *Detention and Remand Centres Satu Mare, Galați, Maramureș, Bistrița Năsăud, Cluj, Argeș, Brașov, Bacău*), the only centre that had a dining room was the *Detention and Remand Centre Gorj*. In some centres the rooms were not equipped with tables and chairs for dining (*Detention and Remand Centres Olt, Neamț, Sibiu, Vrancea*).

c) food transportation: at *Detention and Remand Centre Bacău* food was brought in aluminium containers; at *Detention and Remand Centre Tulcea* with a **specialized isothermal vehicle**, having sanitary authorization; *Detention and Remand Centre Vaslui* had a transport van provided with a stainless steel cargo space, with the

exclusive destination for food transportation; at *Detention and Remand Centre Giurgiu* food was brought by an isothermal vehicle from *Giurgiu Penitentiary*.

d) water quality:

► *Detention and Remand Centre Suceava*: cold potable water was adequate in terms of quality, being distributed from the urban network, and hot water was provided from the thermal substation of the unit, three times a week for showers (Monday, Wednesday, Friday between 8⁰⁰-16⁰⁰), and whenever necessary, in particular at the admission of the person in the centre.

► *Detention and Remand Centre Tulcea*: the centre had a water supply contract with AQUASERV Tulcea, the public water network, and the quality was checked, tested and ensured by water analysis bulletins issued by Public Health Directorate Tulcea.

► *Detention and Remand Centre Botoşani*: cold potable water quality was adequate in terms of quality, being distributed from the urban network, and hot water was ensured from the thermal substation of the unit and was provided daily except Saturdays and Sundays.

2.3. Important aspects resulting from the settlement of complaints and ex-officio referrals of the People's Advocate Institution, registered in 2014 and 2015

■ The People's Advocate institution - the Field on the prevention of torture in places of detention carried out an *unannounced visit* to *Detention and Remand Centre Dolj* where they found the following: the centre **did not have a dining room**, the meals being served in the rooms. Food was prepared at Craiova Penitentiary. The centre had a room for the receipt and distribution of food and storage of utensils. The persons detained could complete their meals from own sources, during visits.

Perishable foods could be stored in a room specially designated for this purpose which was equipped with seven refrigerators in working order provided with locks.

In the same room, on one of the walls were mounted 40 small cabinets with locks, which were used to store the personal effects of persons in custody.

On the date of the control, two detainees enjoyed special diet due to their medical conditions.

Most inmates preferred to consume food received from visits. The members of the visiting team tasted the food that was served at lunch and found that **the potato soup had no consistency**, the bean dish was well prepared, with good taste, smell, appearance and consistency and the bread served was of very good quality.

The Ombudsman ***recommended the management of Detention and Remand Centre Dolj to take legal measures in order to:*** take necessary steps at the prison unit that distributes food to the centre, in order to improve its quality; examine the possibility of setting up a dining hall, at the centre.

Chapter V.

Medical assistance provided to detainees in prisons and detention and remand centres

1. *PENITENTIARIES*

1.1. General considerations and regulations in the matter

During the period of imprisonment, the preservation of health of the persons imprisoned is one of the most important and most vulnerable matters. Ensuring the health of this category of people should be a priority, by providing appropriate medical care, at least equivalent to that available in the society, given that inmates are dependent on state authority, which must guarantee their right to health. Ensuring the health of inmates is the responsibility of prison administrations and public health bodies.

Health and material conditions in prisons should be regarded mainly as a management problem of the penitentiary institution or the hierarchically superior organization, for these objectives to be in the permanent attention of the administrators concerned. Although health should be a problem concerning the sentenced person, it can only be achieved in the conditions of organization of the penitentiary health system, with specialized medical assistance in and conditions of individual and collective hygiene enabling the preservation of an acceptable degree of health, as in the civil society.

Note that the convicted persons are serving the sentence of imprisonment and not the sentence of deprivation of health or that of deprivation of self-respect. The effectiveness and credibility of a prison are given by the level of cleanliness, collective and individual hygiene, health services and medical care that can be provided to those in need, regularity and frequency of prophylactic measures taken for the existence of an appropriate health status for all categories of convicts.

Health professionals have a moral duty to protect the physical and mental health of detainees. They are specifically prohibited from using medical knowledge and skills in any manner that contravenes international statements of individual rights.

In particular, it is a gross contravention of health-care ethics to participate, actively or passively, in torture or condone it in any way. (Istanbul Protocol).

Medical care in detention facilities is granted *free of charge*, and inmates are obliged to undergo medical examination. Moreover, they are protected from possible physical harm; there are legal provisions stating that the medical practitioner has the obligation to notify the Prosecutor's Office in all cases where he finds signs of subjection to ill-treatments.

Inmates shall be informed of their health status, medical interventions proposed, potential risks of each procedure, the existing alternatives to the proposed procedures.

According to Law No. 254/2013, the right to healthcare, treatment and care of sentenced persons is guaranteed without discrimination as regards their legal situation. The right to healthcare includes medical intervention, primary care, emergency care and specialized medical assistance. The right to treatment includes both health care and terminal care. Healthcare, treatment and care in prisons shall be provided by qualified staff, free of charge, on demand or whenever necessary. A person sentenced to a custodial sentence may request to be examined at the place of detention, by doctor from outside the prison system, that he shall pay from his own money.

According to Art. 16 and Art. 19 of O.M.J. No. 429/C/2012, services provided in primary health care are: a) prophylactic (preventive) services (immunization, monitoring of pregnancy and postnatal period, active diagnosis of disease risk for people at high risk and regular medical checks); b) curative services (for acute or chronic conditions); c) emergency medical services. Doctors in penitentiaries conduct medical examinations of detainees. This is done based on a schedule for presentation to the medical office, according to the provisions of the Framework-Contract on the conditions of granting medical assistance within the health insurance system and its methodological norms for application.

According to *Rec(2006)2*, the medical services provided in prisons will be organized in close contact with the medical system of the local or general state administration. Inmates will have access to health services in the national network

without discrimination. Every prison shall have available at least the services of a general practitioner. Prisons where there is a general practitioner, employed full time, must be visited regularly by a doctor employed half-time. **All detainees have access to the services of a dentist and ophthalmologist.** Ill prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals, when such treatment is not available in prison. Penitentiaries or specialised sections will be organized such as to allow the observation and treatment of prisoners suffering from mental illness or mental disorders. **Healthcare in the prison environment shall provide psychiatric treatment for all prisoners who require such therapy, with special attention to suicide prevention.**

In accordance with Art. 2 and Art. 3 paragraphs. (1) and (2) of O.M.J. No. 429/C/2012, *persons deprived of their liberty enjoy health insurance paid from the state budget, from specially designated funds within the budget of the National Administration of Penitentiaries. The right of detainees to healthcare is guaranteed. These people receive free medical care and medicines.* Specialized medical assistance can also be provided in specialist outpatient units, integrated within the health units of the Ministry of Health or other medical bodies belonging to the ministries which have their own health network, under contractual relationships with a health insurance house.

In its case law, **ECHR held that Art. 3 of the Convention requires the state to ensure to all detainees conditions compatible with the respect for human dignity,** and that the modalities of executing a custodial measure do not subject the person to stress and suffering of an intensity exceeding the level of suffering inherent to detention and that, given the inevitable restrictions of the deprivation of liberty, **health and wellbeing are adequately secured, including the provision of medical treatment necessary.**

According to the CPT Norms, a health care service in prison (and hence those in detention and remand centres – A/N) must be able to provide medical treatment, medical care and, diet, physiotherapy, rehabilitation or other regimes needed, under conditions comparable to those of patients in freedom. The task of prison health

care services should not be limited to treating sick patients. They should also be responsible for social and preventive medicine.

Following the visit carried out in 2014, CPT reiterated that tuberculosis in places of detention is a threat not only to individuals incarcerated and supervisory staff, but for the whole society. It recommended to be carried out tests for tuberculosis at the time of incarceration in all the penitentiaries, as required by the O.M.S. directives. Moreover, with the consent of the prisoners they should be able to benefit, at the moment of the incarceration, of free tests to detect hepatitis virus and HIV.

1.2. Facts and conclusions of investigations carried out by the representatives of the People's Advocate institution

The facts

According to the 2014 Annual Report of the National Administration of Penitentiaries and the information transmitted, the health network of the National Administration of Penitentiaries comprises: 38 primary care clinics, 33 operational dental offices, 6 operational dental laboratories, of which 2 for the execution of dentures for inmates; 1,291 beds for continuous hospitalization.

In 2014, prisoners were granted **854,626** medical consultations, and in the early months of 2015, **126,614**. The number of admissions to the sick ward was **2,785** in 2014 and in the first months of 2015, **513** (according to information provided by the National Administration of Penitentiaries).

Within the medical services were provided **1,147 positions**, of which **730** occupied and **417** vacancies.

Specialized monitoring was ensured by prison-hospitals and the public health network. Thus, in 2014, were made 15,327 admissions in prisons-hospitals and 475 in public health units. It was continued the process of implementing projects on the prevention of transmission of infectious diseases, focusing on testing and medical evaluation of inmates new entrants in the prison system. There were conducted over 16,000 tests for hepatitis C, 822 tests for hepatitis B and 682 tests for HIV.

In 2014, the budgetary provisions approved for the penitentiary administration system at paragraph 20.04.01 - Medicines for the penitentiary system amounted to 10,795,426 lei: for *penitentiaries* – 2,466,000 lei, of which 1,999,000 lei subvention and 467,000 lei own income, and for *prison-hospitals* 8,329,426 lei - 68.060 lei from health transfers, 3,408,631 lei from own revenues from C.A.S.A.O.P.S.N.A.J., and 4,852,735 lei own revenues from the Public Health Directorate.

The number of inmates hospitalized in the network of the Ministry of Health, in 2014 - 475, and in the first months of 2015 - 74. The number of inmates with serious communicable diseases: HIV-314, TB-158, Hepatitis C-1463.

Conclusions of investigations carried out by the representatives of the People's Advocate institution in the penitentiary system

a) the level of certain prisons there was a deficit of medical staff, either through lack of general practitioners (*Penitentiaries Botoșani, Gherla, Mărgineni, Tulcea, Târgu Ocna Re-education Centre*), dentists (*Penitentiaries Iași, Botoșani, Gherla, Brăila, Tichilești, Târgu Ocna Prison-Hospital etc.*), psychiatrists (*Penitentiaries Giurgiu and Gherla*) psychologists (*Tulcea Penitentiary*), or by the shortage of general practitioners (*Penitentiaries Gherla, Focșani*) or the shortage of nurses (*Mărgineni Penitentiary*).

To temporarily cover the staff shortages, it was chosen the solution of concluding service contracts with external medical staff. For example:

► In *Giurgiu Penitentiary*, the medical staff was overloaded and there was a fluctuation of health professionals who were not interested to remain in the positions they occupied temporarily (usually one or two months) in the sick ward of the unit. Daily were consulted on average 60-70 inmates.

► In *Mărgineni Penitentiary*, twice a month, a dentist offered consultations and treatment to prisoners (the same dentist was employed at Găești Penitentiary and also offered medical assistance at Târgșor Penitentiary for Women). The medical service was ensured by **a single doctor, although the in the staff positions were provided 7 posts**

of doctors and by 8 nurses, although in the staff positions were provided 13 posts. The number of daily consultations was very high (over 100 in working days).

► In *Târgu Ocna Re-education Centre*, the doctor position was vacant since 2011, and the incarcerated persons were consulted by the general practitioner - employee of Târgu Ocna Prison-Hospital or a doctor from the community.

b) keeping in penitentiaries persons with mental problems together with other categories of prisoners:

► In *Giurgiu Penitentiary* there wasn't employed a psychiatrist, therefore the inmates with such medical problems were consulted and re-evaluated by psychiatrists in Giurgiu county or in prison hospitals with psychiatric ward. In 2014, there were 140 inmates diagnosed with mental illness, included in the Programme provided by the National Strategy for Aggressive Behaviour. The Psychosocial Assistance Service did not have an exclusive record of programmes and activities of psychosocial assistance in which to be included only inmates with mental illness.

► In *Focşani Penitentiary* there were 69 detainees receiving psychiatric treatment.

► In *Timișoara Penitentiary*, in 2014, there were 166 persons with mental illnesses;

► In *Gherla Penitentiary*, there was a large number of people with mental illnesses or suffering from diabetes and mental illness.

c) monitoring the detainees treated with methadone. In Giurgiu Penitentiary, according to the medical records, there were 6 inmates undergoing methadone treatment. **During the investigations carried out by the People's Advocate representatives,** the prison management could not provide additional information about the care and treatment services available at the level of their detention unit, and data verification revealed that there was no specially trained personnel to provide healthcare for former drug users.

In this context, in order to observe the right to protection of health, **the Ombudsman issued a Recommendation on providing training to Giurgiu Penitentiary staff for monitoring patients treated with methadone** to the Minister of Justice and the Director General of the National Administration of Penitentiaries.

d) deficiencies in providing medication (e.g., for hepatitis C, for respiratory virosis) caused by delays in the process of purchasing medicines.

► In *Colibași Penitentiary* inmates have complained of insufficient medication administered for hepatitis C, and the fact that the medicines for respiratory virosis, were administered three weeks after the request.

► *Botoșani Penitentiary* contacted, in August 2014, the Medical Direction of the National Administration of Penitentiaries, mentioning that the funds for compensated prescription medicines were insufficient and that regarding the provision of healthcare they are facing an acute shortage of medicines at the emergency section, also there was no doctor employed in the prison, and no contract signed with a dentist. On 29 August 2014, the Medical Direction was contacted by Târgu Ocna Prison Hospital, informing them that "the stock of the emergency sector was exhausted; the painkillers, most needed products, were exhausted from 06.08.2014 (Algifen) and 15.08.2014 (Aspirin) ". **On 28 January 2015, Botoșani Penitentiary informed the Medical Direction of the National Administration of Penitentiaries that, on 27 January 2015, was received the annual budget for 2015, for compensated and uncompensated medicines, but there have been allocated less than half of the funds requested.**

e) **inaccuracies regarding the cases of food refusal registered in the records of the medical office and the number of cases registered in the records of the prison administration**, as convicted persons resorting to food refusal maintained their option for this form of protest after the hearing by prison management (for example, *Ploiești Penitentiary*).

f) difficulties in obtaining the certificate of assessment of the degree of disability. For example, in *Târgșor Penitentiary* the request of a female prisoner for a social inquiry was refused, the authorities invoking the vagueness of the law on domicile;

g) difficult cooperation between penitentiaries and some civilian hospitals: The inmates in *Mărgineni Penitentiary* were directed from *Targoviste Emergency Hospital* to hospitals in the prison system or other civil hospitals;

h) people diagnosed with HIV/AIDS were treated only for associated diseases, they did not benefit from the national programme for HIV/AIDS, namely the proper medication, in Târgu Ocna Prison Hospital.

1.3. Important aspects resulting from the settlement of petitions and ex-officio referrals registered at the People's Advocate Institution, in the years 2014 and 2015

■ Adrian (fictive name) held in *Jilava Penitentiary-Hospital* notified us claiming that, although he is infected with HIV/AIDS, he is not given the necessary treatment.

The People's Advocate institution has carried out an investigation in *Bucharest Jilava Penitentiary-Hospital*, following which it was found that the petitioner was diagnosed with HIV/AIDS infection status "C3", "chronic hepatitis with HCV" and "chronic gastritis" and the recommendations were: antiretroviral treatment, treatment with vitamins and hepatoprotectives for general support, immunological and virological re-evaluation every 6 months.

The antiretroviral treatment *has not been administered to the complainant (in whole or in part) during certain periods* because there were "administrative failures" whose cause was "the lack of funds at the level of the Ministry of Health, for the national programme for HIV/AIDS".

Following the investigation carried out and its findings, the People's Advocate institution notified the National Administration of Penitentiaries and the Ministry of Health - Department for Health Programmes, requiring to be ordered the legal

measures on the provision of necessary budgetary resources for ensuring constant administration of antiretroviral treatment for inmates diagnosed with HIV/AIDS.

The National Administration of Penitentiaries informed us that the Prison Hospital Bucharest Jilava has the obligation to efficiently manage the money available, to use funds within the limit of the approved budget, to organize the financial accounting records on programme expenditures, to organize the nominal records of beneficiaries based on the personal identification number, to report the physical and efficiency indicators, but it's *not its responsibility to fund the national health programme*. The claim that antiretroviral treatment was to be purchased by the Penitentiary Hospital Bucharest Jilava constitutes an error, because *"there was no budget sheet for the purchase of specific drugs" and in this regard were taken the steps to the "competent higher authorities to speed up the allocation of financial resources for the national health programme on HIV/AIDS, for the purchase of specific drugs, so that the beneficiaries of this programme can have continuous treatment and with comprehensive scheme."*

The Ministry of Health - National Agency for Health Programmes informed us that **"with effect from 1 April 2013, they fully took over the funding of the National Programme for prevention and control of HIV"**. It was also mentioned that "during 2013, the budget of the National Programme for prevention and control of HIV has been supplemented constantly [...]. However, in the case of some patients with HIV/AIDS, there have been reported short-term discontinuities in the administration of complete therapeutic schemes. **The problems encountered at the end of 2013 have been corrected since February 2014**, when, *following the allocation of the budget for national health programmes, were allocated the necessary funds.*" (File 2019/2014*).

■ **The People's Advocate institution - the Field on the prevention of torture in places of detention carried out a visit to Craiova Penitentiary, during which they found the following:** the prison had a sick-ward with 6 doctors and 8 nurses — 3 general medicine, a psychiatrist, a pulmonologist and a dentist. There were 8 vacancies at the sick-ward. The nursing section had 3 halls for patients with acute and chronic conditions that had to be monitored daily, and 3 isolators for infecto-contagious diseases, with a total of 27 beds.

There was a pharmacy in the medical office containing the necessary medicines and medicinal products needed for emergencies as well as the medicines prescribed by prison doctors, in compensated recipes. In terms of ensuring medical treatment, it was consistent with the recommendations of the medical specialists and medication was distributed based on signature, according to the records studied. The Supply of the emergency unit with medicines and sanitary materials was ensured by Colibași Prison Hospital, and there were no problems in their procurement.

In the period January-August 2015, had been granted 25,617 consultations and were made 285 admissions to prison hospitals. Medical emergencies were treated with priority and if the prison lacked specialized medical personnel, prisoners were present to hospitals within the network of the Ministry of Health

The medical staff of the prison mentioned the **difficulties in providing medical assistance to detainees in the terminal stages**, indicating, for example, the case of a prisoner who was in the sick-ward at the time of the visit, because he had not been admitted in the prison hospital nor in one of the hospitals of the civil network, and **the lack of personnel in the medical office, due to the 8 vacancies in the staff positions**.

2 inmates were diagnosed with HIV/AIDS, following strictly supervised treatment. **Detection and diagnosis of HIV/AIDS was done inside Jilava Penitentiary.** At the medical office, were under treatment and monitoring **13 inmates diagnosed with hepatitis. No screening tests for hepatitis B and C were performed.**

Following the findings, the Ombudsman *recommended* the management of Craiova Penitentiary to take legal measures in order to: hire medical staff (doctors, nurses etc.), according to the staff positions; analyse the opportunity of conducting psychiatric evaluations by a specialist doctor for the diagnosis and treatment of those prisoners who had suspicious behaviours in terms of possible psychiatric disorders; examine the possibility of procuring HIV tests and perform screenings for detecting cases of hepatitis B and C; notify the National Administration of Penitentiaries difficulties regarding the difficulties encountered in the transfer of detainees in terminal stages to prison hospitals.

2. DETENTION AND REMAND CENTRES

2.1. General considerations and regulations in the matter

In the detention and remand centres, the right to healthcare is guaranteed [(Art. 58 paragraph (1) - (2) and Art. 59 para. (1) of the Order of the Minister of Internal Affairs No. 988/2005]. *Health care, treatment and medicines shall be ensured free of charge or for payment, upon request, according to the law, throughout the period of detention, whenever necessary, by the medical staff of the detention centre, by the family doctor or by a specialist doctor.*

The medical examination of persons deprived of liberty is mandatory upon the taking into custody, during which the doctor must ask the person imprisoned a written statement on the medical history and draw up the medical record.

According to art. 61 paragraph (1) of the Order of the Minister of Internal Affairs No. 988/2005, *the doctor is obliged to perform daily medical examinations to persons imprisoned who require medical assistance*, as well as periodical medical checks, to all persons subject to custodial measures.

In police units which do not have medical staff, healthcare is ensured by a doctor who provides medical assistance to other bodies of the Ministry of Internal Affairs. In the absence of medical staff employed in the bodies of the Ministry of Internal Affairs, emergency care is provided by the nearest health unit of the Ministry of Health. The person in custody and can be provided with medical assistance by the family doctor, through the care of his family, and upon the written request of the person concerned, provided that the doctor resides or works in the locality where the detention centre functions. **Persons deprived of their liberty who, due to the complexity of the diagnosis, cannot receive proper medical care or for whom have been issued forensic recommendations, shall be admitted to a hospital within the network the Ministry of Justice or Ministry of Health.** In case of emergency, based on medical recommendation and with the approval of the head of the police unit or subunit where the detention centre functions, detainees are transferred to a medical unit of

those mentioned above. In the health units of the Ministry of Health, shall be ensured, at all times, the guarding of the hospitalized detainee, in shifts, with one or two policemen.

Rec(2006)13 provides that measures will be taken to allow detainees to continue necessary medical or dental treatment begun before detention, if this decision is taken by the physician or dentist of the prison, in consultation with the physician or dentist who started treatment. Detainees will have the opportunity to be consulted and treated by their own physician or dentist, in case of a medical or dental need. The refusal to grant a request for consultation by one's own physician or dentist made by the detained person must be motivated.

According to Articles 56 and 57 of the European Code of Police Ethics, police units **shall provide for the safety, health, hygiene and appropriate nourishment of persons in the course of their custody.** Also, persons deprived of their liberty by the police shall have access to a medical examination by a doctor of their choice, whenever possible.

Following the visit in 2014, the CPT recommended that the Romanian authorities to ensure that any newcomer in a *detention and remand centre* shall, as soon as possible and no later than 24 hours since he was detained, receive a **complete medical examination by a qualified person.** The examination takes place in the sick-ward, in conditions which ensure respect for *medical confidentiality*. **Nothing justifies that police officers, whether in the exercise of escort missions or surveillance are systematically present during such medical examinations; their presence hinders the establishment of an appropriate relationship between doctor and patient and their presence is generally unnecessary in terms of security.**

Also, the CPT has recommended that every time when are observed injuries consistent with possible ill-treatment (including when there is no declaration in this respect), the file of the person concerned shall be brought to the immediate attention of the competent prosecutor, as provided in the Order of the Minister of Internal Affairs No. 988/2005 and the detainees presenting injuries can no longer sign a statement to exculpate police officials from responsibility any responsibility.

2.2 The facts and findings of the investigations conducted by the representatives of the People's Advocate institution

a) usually **upon admission to detention and remand centres persons remanded undergo a medical examination** and during detention medical assistance is provided on request, or in case of emergency, if the situation so requires it, by the county hospitals. For example, in the *Detention and Remand Centres Iași* and *Suceava*, incarcerated persons were consulted by the medical practitioner, **but the medical examination was not performed in all cases upon admission to the detention centre, due to the insufficiency of the medical staff.**

b) medical assistance was provided to the persons detained and remanded by the medical staff of the County Medical Centres of the Ministry of Internal Affairs, a situation that required the **creation of a dedicated medical corps for the detention and remand centres (similar to those in prisons)**. For instance:

► In *Brașov Detention and Remand Centre*, doctors of Brașov County Medical Centre provided permanent medical assistance. The doctor came once a day, mandatory, as well as for newcomers or whenever needed (on request, emergencies). All medicines and necessary medical examinations were ensured. If hospitalization was needed, the person deprived of liberty was hospitalized under guard.

► In *Dâmbovița Detention and Remand Centre*, medical assistance was provided by the medical staff of Dâmbovița County Medical Centre, by 2 doctors and one nurse, every working day, according to requests made by the detainees the previous day or whenever needed (admission to detention). Medical emergencies were ensured both at the level of the medical centre and by Târgoviște Emergency Hospital. Drugs were administered according to the scheme established by the physician and the medical assistant of the centre, under the supervision of medical staff or security guards.

Psychological assistance was ensured by the specialized personnel of Dâmbovița County Medical Centre, at the request of the detainees or at the recommendation of the doctor.

► In *Prahova Detention and Remand Centre*, medical assistance was provided by the medical staff of Ploiești Medical Centre for Diagnosis and Outpatient Treatment,

by 4 doctors and 2 nurses who came to the detention centre every working day, for consultations, according to requests made by detainees the day before.

Specialized consultations were provided by medical specialists in the Polyclinic of the Ministry of Internal Affairs, and in case of medical emergencies, the detainees were sent to the Emergency Hospitals in Câmpina and Ploiești. Drugs were administered according to the treatment scheme established by the doctor and nurses of the centre, under the supervision of medical staff or security guards; the drugs were kept in spaces designated to the storage of prohibited objects.

During its visit, the doctor of the centre underlined **the need for the creation of a dedicated medical corps, as the doctors in the Polyclinics of the Ministry of Internal Affairs perform this activity only within the limits of their job description, and detained persons should receive constant medical assistance, adapted to the specific problems related to the period of detention.**

c) shortage of medical staff, particularly physicians (*Detention and Remand Centres Iași, Galați, Teleorman, Suceava, Brăila*) was invoked in situations where inmates were not subject to medical examination upon admission to detention (*Detention and Remand Centre Iasi, Suceava*). Compared with this, in *Mureș Detention and Remand Centre* permanent medical treatment was provided by 4 physicians, a dentist and 4 nurses.

d) inadequate equipment, insufficient medicines for the medical emergency kit and difficulties in providing medical treatment as a result of the introduction of electronic Health Cards. In *Detention and Remand Centre Vrancea*, with the introduction of the health cards, providing treatments to remanded persons was **cumbersome**. Basically, the doctor prescribed the recipe and the pharmacies could not provide de medicines, due to lack of health cards, **so that the time in which the treatment could be administered was delayed due to the new regulations.**

2.3. Important aspects resulting from the settlement of complaints and ex-officio referrals of the People's Advocate Institution, registered in 2014 and 2015

■ The People's Advocate institution - the Field on the prevention of torture in places of detention carried out an *unannounced visit* to *Detention and Remand Centre Dolj*, having as one of the objectives to verify the provision of medical assistance.

In *Dolj Detention and Remand Centre* medical assistance was provided by the personnel of Dolj County Medical Centre, given that the detention and remand centre did not have any medical positions in its organizational chart. For the provision of medical assistance, were designated 6 persons from the medical centre - 3 primary care physicians with the specialty of family medicine and 3 primary nurses with the specialties of family medicine and hygiene and public health.

In the centre, there was a medical office which functioned as triage room for the inmates. Dolj County Police Inspectorate did not have, except the building of Dolj County Medical Centre, other facilities to comply with the legal requirements for operating a medical office.

Complex medical consultations, including functional explorations (EKG and ultrasound) and emergency medical tests were performed in Dolj County Medical Centre.

The surgical emergencies of persons deprived of their liberty in Dolj Detention and Remand Centre, were handled by the Emergency Service 112. Outside working hours on Saturdays, Sundays and on legal holidays, medical assistance was provided by a doctor and a nurse, based on appointment made by the head of Dolj County Medical Centre, who were called by the supervisors, only when needed. We mention that there was **no emergency ward, nor on-call medical staff permanently present in the centre.**

The administration of treatments was based on the schemes of treatment disclosed to the patients. The drugs were stored on the premises of the medical office, in a space partitioned and labelled with the number of the room and the name of the patient. In the absence of the medical staff, the **treatments were administered under the supervision of the staff on call in the centre.**

The procurement of medicines, free of charge, for inmates, was performed by healthcare professionals, on the basis of recipes prescribed by the three doctors, from the pharmacies which had contracts with Dolj County Medical Centre.

The visiting team noted that specific documents were drawn up: consultations register, medical triage form, the patient's informed consent form, notes on finding traumatic marks.

In 2015, were given 968 consultations to persons deprived of their liberty, and no cases of contagious diseases was registered.

Were highlighted **4 special cases**. On 31.08.2015, was registered in the consultations register a **case of auto mutilation**; one detainee inflicted superficial cuts to himself, on the abdomen, threatened that he will kill himself and refused medical assistance, reason for which, under Art. 16, para (1) letter (b) of Law No. 254/2013, **were used restraints** for a short period of five minutes. **The other 3 cases were persons incarcerated on whom traumatic marks were found by the physicians of Dolj County Medical Centre, traumatic marks which were produced prior to the placement of the persons in detention**; according to the procedures, were informed in writing, the Prosecutor's Office attached to Craiova Court and the Prosecutor's Office attached to Segarcea Court, which will take the legal steps for solving the cases.

In the period 01.01-22.10.2015 there were registered no deaths. From the documents studied and the discussions with the management of the centre, resulted that, in the timeframe January – October 2005, there were registered no cases of refusal of food. Regarding possible cases of physical assaults on detainees by the staff of the unit, between 01.01-22.10.2015 were registered no such cases.

According to the notes drawn up by the physician designated by the Romanian College of Physicians (member of the visiting team), the persons deprived of their liberty in the centre were receiving **medical assistance from doctors and nurses from Dolj County Medical Centre**, doctors who besides this activity were also providing family medicine services to **the personnel of the Ministry of Internal Affairs, the retired staff of the Ministry of Internal Affairs and their family members**. The physician of the visiting team **proposed: establishing a medical assistance department within Dolj Detention and Remand Centre, composed of at least 1 physician and 3 nurses, or moving the centre to the premises of Craiova Penitentiary**; setting up, at the headquarters of Dolj County Police Inspectorate, detention rooms for a maximum 24

hours; avoiding the conflict of interests generated by the fact that the physicians and nurses who were providing medical assistance in the medical office of the centre, were also family doctors and nurses in the medical office of the Ministry of Internal Affairs; verifying the hygiene of the sanitary facilities and providing personal hygiene products for the detainees.

In the viewpoint drawn up by the representative of the Organisation for the Defence of Human Rights, Dolj Branch (member of the visiting team), because access was difficult to specialized medical assistance, he proposed the establishment, by the Medical Department of the Ministry of Internal Affairs, together with O.P.S.N.A.J. Health Insurance House, of ways to provide specialty healthcare in the conditions specific to detention and remand.

The Ombudsman *recommended the leadership of Dolj Detention and Remand Centre to take the necessary legal measures* to identify ways to ensure *permanent medical assistance* in Dolj County Medical Centre.

CHAPTER VI. The prices of products sold by the economic operators inside places of detention and the prices of phone calls made by inmates

1. PENITENTIARIES

1.1. General considerations and regulations in the matter

During detention, the persons deprived of their liberty have the right to shop and make phone calls.

According to Art. 70 para. (1) of Law No. 254/2013, **convicts have the right to buy weekly, from the shopping points inside the places of detention, within the limit of 1/2 of the gross minimum wage, food, mineral water, soft drinks, cigarettes and other goods of those allowed to be received, and those necessary for exercising the rights to petition, correspondence and phone calls, according to Art. 56 para. (1) of the Government Decision No. 1897/2006, approving the Implementing Regulation of Law No. 275/2006.**

The prices of the products sold through the shopping points inside penitentiaries must be within the average prices of similar products practiced on the local market. To this end, special commissions, designated by each penitentiary unit, monthly check the prices of the main products sold in prison stores, to make sure that they are within the average prices of similar products, practiced in at least three stores in the local market (according to the National Administration of Penitentiaries).

By Decision No. 370/2015 of the Director General of the National Administration of Penitentiaries was approved the *Procedure for renting commercial spaces in the penitentiary system and the method of calculation and compliance with the average prices, in prison shops.*

The establishment of commercial point inside the penitentiaries is aimed at creating conditions to ensure to detainees access to a wide range of goods and products to which they are entitled under the law. **The units of the penitentiary system may rent the spaces within their premises, by open “outcry” tender procedure.**

According to Annex 1 to the Procedure – “tender book”, the economic operator undertakes, for example: **to market the entire range of products required to which the persons in custody have access, to display the prices of items, which cannot be higher than the average prices in similar stores in the local market;** on stamps, envelopes and cigarettes will be practiced a 0% gross profit. *Similar stores in the local market* means economic agents "similar" as activity and turnover that operate in the locality or surrounding areas, selling products identical to those sold in the prison shop, as characteristics, unit of measure and quality. For each commercial operation performed shall be issued tax receipt which must contain the name of the product, quantity, unit price and value of products purchased, plus VAT amount.

The physician and other persons designated by the director of the penitentiary, constantly monitor the compliance with the hygienic and sanitary norms in the functioning of prison shops, product quality, expiry dates of products, storage conditions, and other aspects established by the decision of the director of the unit, making written requests for the withdrawal of products spoiled or with exceeded shelf life.

Monthly or whenever circumstances require it, a committee appointed by the decision of the prison director, monitors that the prices charged in the prison shop fall within the average prices practiced in similar stores in the local market. The lessee is obliged to withdraw from selling the products concerned in the same day when he receives the notification from the penitentiary and to change, within 3 working days, the prices to fit the average prices practiced in similar stores in the local market.

According to Art. 65 para. (1) and (3) of Law No. 254/2013, **convicts have the right to make telephone calls** from public phones installed in prisons. Telephone calls are confidential and are conducted under visual supervision. The expenses of telephone conversations are covered by the convicted persons.

According to Art. 24 pt. 1 of Rec(2006)2, prisoners will be allowed to communicate as often as possible by letter, telephone or other means of

communication with their families, other persons and representatives of external organizations and to receive visits from these individuals.

According to the CPT Norms, it is important for prisoners to maintain contact with the outside world and must be given the possibility of saving relationships with family and close friends. CPT emphasizes the need for some flexibility for prisoners whose families live far away (which cannot visit them regularly), regarding the application of rules on visits and telephone calls.

1.2. Facts and conclusions of investigations carried out by the representatives of the People's Advocate institution

1.2.1. Exercising the right to shopping

a) the prices of products sold by the economic operators inside prisons. In *Timișoara Penitentiary, Botoșani Penitentiary* etc., they fell within the average prices of products offered for sale by other local retailers.

In other prisons, the controls carried out by the committees, revealed that some economic operators were practicing higher prices than the average in the local stores (prisons *Poarta Albă, Mărgineni, Focșani, Slobozia, Colibași, Giurgiu*).

b) lack of lasting effects of the measures decided by verification committees of the prisons on economic operators.

c) lack of verification of prices and quality of products sold in the prison shops by the competent authorities (Găești Penitentiary).

d) other deficiencies in the work of economic operators:

► In *Bucharest Jilava Penitentiary* and *Bucharest Jilava Penitentiary Hospital* were found, in isolated cases, products which exceeded their expiry dates, lack of price or product name on display, in some cases.

e) frequency of exercising the right to shopping:

► In *Colibași Penitentiary*, inmates complained that they have the right to shopping one day per week, and some food purchased expired within the 7 days remaining until the next possible shopping.

► In *Bârcea Mare Penitentiary* inmates shopped according to a schedule, and in *Poarta Albă Prison Hospital* twice a week.

1.2.2. Exercising the right to telephone calls

The surveys conducted by the People's Advocate representatives revealed that BVfon Romania SRL and SC Paytel Romania SRL practiced different rates in some prisons. In other prisons, telephone services were provided by both operators BVfon Romania SRL and SC Paytel Romania SRL, and rates were different in the same prison. For example *Bacău Penitentiary*:

SC Paytel SRL: fixed network Romania -0,20 lei/min.; mobile network Romania -0,60 lei/min.; fixed network EU, USA-0,20 lei/min.; mobile network EU-0,60 lei/min.; fixed network Moldova -0,40 lei/min.; mobile network Moldova-0,60 lei/min.; locations outside EU-1,40 lei/min.

BVfon SRL: fixed network Romania -0,27 lei/min.; mobile network Romania-0,80 lei/min.; fixed network and mobile network EU, USA -1,10 lei/min.; fixed network and mobile network Moldova-0,58 lei/min.; other international networks-1,90 lei/min.

There were prisons where telephone services were provided by both operators, and rates were similar for calls in Romania.

As a result of differences in phone call rates found, some prisons have asked the operators to reduce them. In *Miercurea Ciuc Penitentiary*, following a request from the prison, SC BVfon Romania SRL has accepted and approved the implementation of a new list of call rates.

As for duration of telephone calls, varied in each prison: 20 min. in *Focșani* and *Bacău Penitentiaries*, 30 min. in *Bistrița* and *Găești Penitentiaries*, 40 min. in *Timișoara* and *Mărgineni Penitentiaries*, Saturdays and Sundays 55 min. in *Bârcea Mare Penitentiary*, 1 hour in *Aiud Penitentiary* and 3 hours in *Poarta Albă Penitentiary* and *Poarta Albă Penitentiary Hospital*.

Telephones were placed in rooms, sections, courtyards for walking (1-2 in sections at *Târgu Mureș Penitentiary*, 57 in *Gherla Penitentiary* - 10 in rooms and 47 in sections, 10 in

Baia Mare Penitentiary, 43 in Bârcea Mare Penitentiary). Open regime inmates had access to mobile phones during the time when they were working.

1.3. Important aspects resulting from the settlement of petitions and ex-officio referrals registered at the People's Advocate Institution, in the years 2014 and 2015

■ **Andrei** (fictive name), **held in Slobozia Penitentiary**, notified us that prices at the prison shop were much higher than those practiced by other economic operators in Slobozia.

From the direct verification of the prices in the prison shop, it was found that the gross profit practiced and displayed in the shop was between 0 and 60%.

The documents made available and the discussions with the representatives of the prison and the surveillance judge for deprivation of liberty, showed that the prices of products sold in the prison store were regularly checked and that the applicant has not purchased goods from that store since September 2013.

Following our approach, the National Administration of Penitentiaries informed us that *the prices practiced in the prison shop were checked monthly by the prison management and compared with prices in the local market*, the data being presented to the representatives of the prison shop, which have the obligation to adjust the price to the local average prices within 5 days.

The last step in this regard was taken in February 2014, when the economic agent was notified and price adjustments were required to him, the result of the price reductions being reflected in financial documents of the shop. **(File No. 1064/2014*)**.

2. DETENTION AND REMAND CENTRES

2.1. General considerations and regulations in the matter

Persons subject to custodial measures can use the money received from family members or other people, or the money they had on them when they were taken into custody, for the following purposes: to exercise the right to petition and **to purchase**

goods allowed in custody, with the approval of the head of criminal investigations [Art. 48 para. (1) b) and d) of the Order of the Minister of Internal Affairs No. 988/2005]. The **right** of the persons subject to deprivation of liberty, **to telephone calls**, is guaranteed as provided by the law and regulation.

As for the *right to telephone calls*, detainees have the **right to contact their families or others by phone calls, the costs being borne by them.**

The telephone conversations are confidential. The number and duration of phone calls are set by the head of the police unit or subunit custody where the detention centre functions, depending on the number of persons held in custody and the number of telephone lines installed [Art. 33 lit. e) Art. 49 and Art. 50 of the Order of the Minister of Internal Affairs No. 988/2005].

2.2 The facts and findings of the investigations conducted by the representatives of the People's Advocate institution

2.2.1. Exercising the right to shopping

Inside the centres there were no shops selling products requested by individuals in custody. The products necessary were bought by the staff, based on requests from detainees, from the commercial network of the city. Subsequently, the products were distributed, justified by signing a receipt or by filling in a shopping register.

As for *the frequency of shopping*, it was different in each detention and remand centre: once a week (Detention and Remand Centres *Brăila, Dâmbovița, Constanța, Bacău*), twice a week (Detention and Remand Centres *Mehedinți, Olt, Hunedoara, Suceava, Galați*).

2.2.2. Exercising the right to telephone calls

a) **the number and duration of calls made by inmates varied from one centre to another.**

In **Detention and Remand Centres Tulcea and Constanța**, access to phone calls was allowed, on a schedule, one hour/day. In **Detention and Remand Centre Brașov** persons deprived of liberty had the right to **one phone call/week with relatives and unlimited with lawyers**. In **Detention and Remand Centre Dâmbovița**, the time allowed for phone calls was only 10 minutes weekly. In **Detention and Remand Centre Ialomița**, people in custody could speak whenever they wanted to lawyers or family. In **Detention and Remand Centre No. 6 Bucharest**, the phone could be used on request from Monday to Friday, and on Saturdays and Sundays only in urgent cases.

Telephone calls were made on the basis of prepaid cards, purchased in some centres from SC BVfon (*Dolj*), in others from Telecom (*Gorj, Mehedinți, Olt, Brăila, Hunedoara, Mureș, Harghita, Bistrița-Năsăud, Maramureș, Sălaj*). The prices of telephone conversations were those practiced by the telephony operator Romtelecom and depending on the *prepay cards* purchased.

b) as regards the conditions for exercising the right to phone calls, in **Detention and Remand Centre No. 7 Bucharest**, detainees could make phone calls on request, from a Telecom line located in the office of the head of the centre. In **Dolj Detention and Remand Centre**, on the hall were installed four telephones with dividers between them.

c) as for the right to correspondence, in **Detention and Remand Centre Dâmbovița**, it was not exercised personally, since **there was no mailbox** in the centre. The detainees **gave their letters to an employee of the centre, who put them in a mailbox located outside the centre**. For correspondence received, there was a record in which was written the first and last name of the person to whom the correspondence was addressed.

Chapter VII.

Events involving persons deprived of their liberty in the period 2014-2015 (deaths and suicides, physical assaults, protests in the form of food refusal, any sexual relations between inmates or between inmates and the staff of places of detention)

1. PENITENTIARIES

1.1. General considerations and regulations in the matter

The prisons, as specialized services in the custody of inmates, have the obligation to ensure their health and safety.

Space can generate **behavioural crises**, manifested in the form of protests, consisting of refusals of food, self-harm, sexual assault or suicidal acts.

The staff of the places of detention must pay particular attention to persons in custody, in terms of ensuring their physical integrity so that appropriate supervision of the detention facility is one of the obligations.

According to the CPT norms, the promotion of constructive relations as opposed to confrontational relations between prisoners and staff will serve to lower the tension inherent in any prison environment and, at the same time, significantly reduce the likelihood of violent incidents and associated ill-treatment.

The prison administration shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends. (Art. 46 of the Standard Minimum Rules for the Treatment of Prisoners and the recommendations on these).

The qualified personnel (doctors, psychologists, social workers, psychiatrists) should monitor the behaviour of inmates, to identify their needs and build intervention strategies for each person.

► **The death of persons deprived of their liberty** is worrisome, given that ensuring the health of individuals in custody is the responsibility of the administration of

the place of detention. Death inside prisons, whatever the cause, is investigated by the prosecution bodies. According to Art. 52 para. (1) of Law No. 254/2013, in case of death of a convicted person, the prison administration shall **immediately notify the surveillance judge for the deprivation of liberty, the prosecutor's office, the National Administration of Penitentiaries, the family of the deceased, a person close him, his legal representative.**

The above mentioned obligations are incumbent upon any doctor in the prison system, whether he is a doctor in a prison unit or in a prison hospital and regardless of the cause of death.

In the case of Rahova and Jilava Penitentiary Hospitals, during investigations by the People's Advocate representatives, the management of these units said that it was not necessary to notify the prosecution bodies because the deaths were due to natural causes. These situations remain to the attention of the Ombudsman in order to take further steps, given the *sui generis* interpretation of the legal provisions.

In this regard, the National Administration of Penitentiaries must take measures to ensure that the legal provisions are being observed, given that prison hospitals are subject to the same rules as other penitentiaries.

Regarding the **deaths of detainees in detention and remand centres**, under Art. 130 of the Order of the Minister of Internal Affairs No. 988/2005, *the head of the police unit or subunit where the detention centre functions shall notify the competent prosecutor.* In this context, we consider that **these provisions are insufficient and outdated in relation to Art. 52 of Law No. 254/2013, which implies the need for aligning them to the current legislation, which contains additional safeguards for the exercise of rights of convicted persons and their legal representatives.** According to Art. 52 of Law No. 254/2013, in case of death of a convicted person, the prison administration shall immediately notify the surveillance judge for the deprivation of liberty, the prosecutor's office, the National Administration of Penitentiaries, the family of the deceased, a person close him, his legal representative. Forensic autopsy and the medical certificate of cause of death are mandatory.

► *Suicide, self-harm and physical assaults*, as common issues encountered in prison environment demand the supervision of vulnerable categories of persons, a special role being played by the adequate medical assistance and psychological counselling, such as to know the typology of prisoners, with a view to prevent any suicidal acts and to treat the disorders with which they have been diagnosed.

According to CPT Norms, the obligation of the prison staff to be responsible for the prisoners, encompasses the responsibility to protect them from other inmates who might harm them.

Prison staff must be alert to signs of trouble and be both resolved and formed in a manner appropriate to intervene when necessary. The existence of positive relations between staff and prisoners, based on the notions of detention security and responsibility for prisoners constitutes a crucial factor in this context.

Suicide prevention is another matter falling within the competence of prison health care services. Medical screening on arrival and the reception process as a whole, has an important role in this context. Performed properly, it could identify at least some of those at risk and relieve some of the anxiety of new inmates. Later on, prison staff should be made aware of the signs of suicide risk. A person identified with suicide risk should be placed under observation, however much necessary. Then such persons should not have easy access to items that allow them to commit suicide.

Prison health care services can contribute to the prevention of violence against detained persons, through the systematic recording of injuries and, where appropriate, by informing the authorities concerned.

Immediately after reception, inmates will be evaluated to determine whether they pose a safety risk to other prisoners, prison staff, visitors or even for themselves. Measures shall be taken to ensure the safety of prisoners, prison staff and all visitors and to minimize the risk of violence and other events that could pose a threat to safety. Health care in the prison environment will provide psychiatric treatment to all prisoners who require such therapy, with special attention to suicide prevention [Art. 52 pts. 1 and 2, Art. 47 pt. 2 of Rec(2006)2].

The European Prison Rules establish **that prisons shall be managed in an ethical context which recognizes the obligation to treat all prisoners with humanity and respect every human being. Staff will have a very clear idea of the purpose of the prison system, namely the rehabilitation of inmates. Special attention will be given to the relationship between prison staff who are in direct contact with prisoners and detainees in custody.**

► **Food refusal** is a form of protest by which inmates seek to solve their problems. Listening to sentenced persons and examining the measures that can be taken to address the causes which constitute reasons for food refusals are the main means of intervention, in the responsibility of the section chief in charge of the detention, the director of the penitentiary, the doctor and the surveillance judge for the deprivation of liberty. If inmates maintain their determination to refuse food, their condition is monitored by a physician, and it can be decided even their transfer to a medical facility of the Ministry of Health, according to art. 54 of Law No. 254/2013.

The Order of the Minister of Justice No. 429/C/2012 establishes that the medical staff of the detention facility is obliged to explain to the person concerned the consequences of his decision on his health. From the day of entry into food refusal, the doctor examines the detained person daily or whenever necessary, noting developments of his state of health in the medical record and in a register specifically designed. All medical manoeuvres to restore the health of the inmates in food refusal are carried out with their consent while they are conscious and have discernment.

If health is getting worse because of the food refusal or of certain pre-existing conditions, the detained person shall be transferred or, where appropriate, hospitalized in a hospital.

Regarding the *food refusal form of protest*, we consider that in the current legislation must be regulated, as detailed as possible, measures to be taken by the responsible public authorities, given that an extended food refusal can result in the death of a person deprived of liberty, person in state custody. This requires provisions for the establishment of a critical threshold, according to which to

intervene a qualified professional body with concrete tasks, as well as provisions regarding the verification of discernment of the person deprived of liberty.

In light of the above, we mention the Recommendations issued by the People's Advocate, in which it requested the penitentiaries and, where appropriate, the National Administration of Penitentiaries to order the legal measures for: the transfer of a prisoner in food refusal to a medical institution in the medical network of the Ministry of Health, in the case of Dej Prison Hospital; examining the issues regarding discrepancies in records related to food refusal declared by a prisoner and missing documents from his file, in the case of Galați Penitentiary; measures to prevent, detect and stop drug use, informing the families of prisoners whose health condition is serious, fulfilling the legal obligation to notify the prosecutor's office in case of death of a prisoner in a civilian hospital, Giurgiu Penitentiary.

1.2. Deaths and suicides

1.2.1. The facts and findings of the investigations conducted by the representatives of the People's Advocate institution

The investigations conducted by the representatives of the People's Advocate institution revealed that one of the causes of death was *suicide, usually by hanging, for example: 3 cases registered at Galați Penitentiary; one case in Craiova, Codlea, Aiud, Bacău, Tulcea Penitentiaries.*

Regarding the medical conditions, in prisons was a predominance of deaths from cardiorespiratory insufficiency, heart attack, while other deaths were caused by hepatitis, infectious diseases, pneumonia, tuberculosis, haemorrhagic stroke, leukaemia, malignant tumours, HIV/AIDS, decompensated cirrhosis, bronchopneumonia. E.g.:

► ***Bacău Penitentiary for Minors and Youth:*** in 2014, **3 deaths**: one death at TB Hospital Bacău, with diagnostic cardiac arrest; another **death by hanging in the bathroom** of the detention room; a death in Bacău County Hospital with diagnostic cardiac arrest. In all cases, the Prosecutor's Office attached to Bacău Court was notified

and the National Administration of Penitentiaries was informed, but no case has yet received resolutions from the prosecution bodies.

► ***Craiova Penitentiary: 7 deaths***, 6 of these occurring from natural causes **and one suicide by hanging, suicide which was the subject of an ex officio referral of the People's Advocate institution. By the time of the investigation, the Prosecutor's Office had not issued the resolution.**

► ***Tulcea Penitentiary: 4 deaths, 3 deaths from natural causes and one by violent death (hanging)***; the Prosecutor's Office attached to Tulcea Court was notified. In the case of the inmate who died by hanging, the Prosecutor's Office attached to Tulcea Court has conducted an investigation and, by ordinance, ordered to close the case concerning the offenses of manslaughter and causing or aiding suicide, provided by Art. 192 para. (1) and Art. 191 para. (1) of the Criminal Code.

► ***Iași Penitentiary: 8 deaths***, 6 due to cardiorespiratory insufficiency, one death - coma and one death - non traumatic intracerebral hemorrhage.

1.2.2. Important aspects resulting from the settlement of petitions and ex-officio referrals registered at the People's Advocate Institution, in the years 2014 and 2015

■ **Based on the information from the media relating to a prisoner who died in Galați Penitentiary, the People's Advocate institution was an ex officio and ordered an investigation into the circumstances of the death of the person deprived of liberty.** The investigation carried out has revealed that the prisoner was presented to the medical office, with stomach pain and vomiting blood and was diagnosed with gastroduodenitis and was given a vial of No-spa. According to the death certificate, the causes of death were severe cardiorespiratory insufficiency, acute myocardial infarction, coronary atherosclerosis.

Following the death that occurred, Galați Penitentiary notified the Prosecutor's Office attached to Galați Court, and, concerning the stage of settlement of the file, the **People's Advocate institution requested information. The Prosecutor's Office said that they ordered the initiation of criminal proceedings *in rem* under the accusation**

of manslaughter, following that after the completion of the investigation to communicate the decision. (File No. 4251/2015, pending).

1.3. Food refusal

1.3.1. The facts and findings of the investigations conducted by the representatives of the People's Advocate institution

In the reference period, 2014 to the date of the investigations (February-March 2015), at the level of the prison system there were a number of cases of food refusal, for example: **223 in Galați Penitentiary** (176 in 2014 and 47 in 2015); **125 in Iași Penitentiary**; **69 in Focșani Penitentiary**; **63 in Craiova Penitentiary**; **62 in Aiud Penitentiary** and **Brăila Penitentiary**; **58 in Botoșani Penitentiary**; **56 in Poarta Albă Penitentiary**; **54 in Slobozia Penitentiary**, **52 in Vaslui Penitentiary**.

Among the reasons invoked by persons convicted for resorting to food refusal are: *rejection of transfer requests by the National Administration of Penitentiaries; legal and medical reasons*; complaints regarding the lack of legal actions taken by the prison for *assessing their degree of disability; detention regime change*; complaints regarding *incident reports*; dissatisfaction with the *accommodation conditions*; *problems with other cell mates*; *accommodation in other sections of detention*; personal reasons.

From examining the complaints raised by inmates in food refusal, it appears that some of them are focused on issues related strictly to the prison system (*transfers, establishment of the detention regime, accommodation conditions, medical treatment*), issues whose solution depends exclusively on the management of the prisons, which must to proceed to analyse them concretely and solve them as far as possible.

According to the letter of 11.09.2015, the number of cases of people who have resorted to form of protest of food refusal in 2015 was: **1,103 cases**, most occurring at: **317 Poarta Albă Penitentiary**, **131 Galați Penitentiary**, **98 Rahova Penitentiary** and **76 Iași Penitentiary**.

Conclusions of investigations carried out by representatives of the People's Advocate institution in the penitentiary system

The number of prisoners who resorted to the form of protest of food refusal:

► **Galați Penitentiary:** in 2014, **176** (some several times), the main reasons being legal reasons and related to transfer, and in 2015, **47**.

► **Iași Penitentiary:** during the reference period, **125** for legal reasons, medical reasons etc.

► **Brăila Penitentiary:** in 2014, **62**, the main reason being moving to another room, the legal status and disciplinary problems.

► **Craiova Penitentiary:** during the reference period, **63** for personal reasons and because the National Administration of Penitentiaries has rejected their requests for transfer to other prisons.

► **Focșani Penitentiary:** in 2014, **66** and from the beginning of 2015, **3**, either due to the settlement of legal issues related to conviction or detention conditions or provision of medical treatment. At the time of the investigation, there were **2 inmates** in food refusal.

► **Giurgiu Penitentiary:** in 2014, **26**.

► **Botoșani Penitentiary:** there were **58** cases where inmates have resorted to food refusal, for legal, personal and medical reasons.

► **Poarta Albă Penitentiary:** **56** (dissatisfaction with disciplinary sanctions or accommodation conditions, refusal of transfer requests to another prison etc.).

► **Slobozia Penitentiary:** during the reference period, **54** (moving to another room, transfer, detention regime change etc.)

► **Târgu Jiu Penitentiary:** **44** for personal reasons or because the National Administration of Penitentiaries has rejected their requests for transfer to other prisons.

► **Miercurea Ciuc Penitentiary:** **36** (moving to another room, change of regime of detention, transfer request, medical or legal issues etc.).

1.3.2. Important aspects resulting from the settlement of petitions and ex-officio referrals registered at the People's Advocate Institution, in the years 2014 and 2015

■ During an investigation conducted by representatives of Cluj Territorial Office of the People's Advocate institution to *Dej Penitentiary - Hospital*, they acknowledged the situation of a detainee transferred from Gherla Penitentiary, who was in food refusal for 23 days, hospitalized to the Intensive care unit of Dej Penitentiary Hospital. During the talks with the representatives of the People's Advocate institution, the prisoner said that he was in food refusal to protest against his legal situation.

Under Art. 54 para. (12) of Law No. 254/2013 on the execution of sentences and custodial measures ordered by the court during the criminal trial *"the prison administration has the obligation to transfer temporarily a person refusing food in a medical institution in the medical network of the Ministry of Health and to notify the convicted person's family or a person close him, if the health or physical integrity of the convicted person is seriously affected because of his refusal to eat."*

Given the state of health of the prisoner, the Ombudsman issued a *Recommendation* to Dej Prison Hospital, asking them to take measures to temporarily transfer the person refusing food, to a medical facility of the medical network of the Ministry of Health and to notify his family thereof.

Dej Prison Hospital ordered the transfer of the sentenced person to Dej Municipal Hospital from 13 June 2014 and notified his family, but the prisoner still refused to eat, so that his health condition deteriorated and he also refused any medical treatment. Later on, the patient was discharged from Dej Municipal Hospital and hospitalized in Gherla Municipal Hospital, then he was hospitalized again in Dej Penitentiary Hospital, continuing his form of protest. On 23 July 2014 the inmate was admitted to the Penitentiary - Hospital Bucharest Rahova, still refusing food.

Given that the life of the prisoner was in danger, the People's Advocate institution notified the Minister of Justice about this issue, considering it necessary to be conducted an urgent forensic psychiatric extrajudicial examination, to determine whether the prisoner had discernment and also notified the Penitentiary - Hospital Bucharest Rahova and the National Administration of Penitentiaries to be informed about the prisoner's health status and the measures taken.

The leadership of Rahova Bucharest Penitentiary Hospital, informed us that the convict has accepted psychiatric examination, establishing the diagnosis of "mixed personality disorder", but declined psychological counselling. On 28 July 2014, the prisoner re-entered in food refusal, being balanced hemodynamic and respiratory; he refused to give a sample of blood for testing, but accepted infusion treatment with glucose and electrolytes solution. On 1 August 2014, the prisoner requested and received his ration of bread, being balanced hydroelectrolytic and hemodynamic, and later he was transferred to *Bistrița Penitentiary*, in good health. *Bistrița Penitentiary* told us that the prisoner was no longer in the procedure food refusal, his health was adequate and accepted food. (File No. 5524/2014).

1.4. Physical assaults and self-harm

1.4.1. The facts and findings of the investigations conducted by the representatives of the People's Advocate institution

According to the letter of 11.09.2015, from the National Administration of Penitentiaries, in 2015 were registered 2 cases at Craiova Detention Centre. Regarding the oldest case, the Prosecutor's Office attached to Craiova Court already ordered the solution of closing the file. The second case is pending at the Bureau of criminal investigations, without ruling any solution.

a) physical assaults by prison staff:

► ***Colibași Penitentiary***, in 2014, **2 cases** were the object of disciplinary investigations and the prosecutor's Office attached to Pitesti Court was notified.

► ***Poarta Albă Penitentiary***: **1 case** in which a detainee alleged that he was physically assaulted by a member of the guard, in the ambulance. The material on the investigation of the incident reported by the prisoner was submitted by the prison administration to the Prosecutor's Office attached to Constanța Court, for taking the legal measures.

► ***București Jilava Penitentiary***: **1 case** of assault by a staff supervisor; the file was pending before the Prosecutor's Office attached to Ilfov Court.

► ***Craiova Penitentiary for Minors and Youth***: 2 cases, the Prosecutor's Office and the disciplinary commission of the prison were notified.

► ***Bistrița Penitentiary***: 2 cases of alleged physical assaults by prison staff; the Prosecutor's Office was notified. The cases were pending.

b) physical assaults between inmates and self-harm:

► ***Jilava Penitentiary Hospital***: violent behaviour towards other inmates - 18 cases; violent behaviour towards goods / objects (with injuries caused to other inmates) - 5 cases; suicide risk - 8 cases; violent behaviour towards staff - 4 cases;

► ***Brăila Penitentiary***: 8 self-harm, 13 mild altercations between inmates without injuries that required days of medical care;

► ***Galați Penitentiary***: 141 self-harm and ingestion of drugs or other substances, 36 altercations between inmates, 53 cases where means of restraining inmates were applied;

► ***Bacău Penitentiary for Minors and Youth***: 52 physical assaults between inmates;

► ***Jilava Penitentiary***: 9 self-harm;

► ***Bucharest Rahova Penitentiary***: violent behaviour towards other inmates: 74 cases in 2014 and 4 cases in 2015; 33 cases of self-harm (2014) and 6 (2015).

1.4.2. Important aspects resulting from the settlement of petitions and ex-officio referrals registered at the People's Advocate Institution, in the years 2014 and 2015

■ The People's Advocate institution was notified ex officio, following the information presented by the media, regarding a minor aged 16, remanded in ***Tichilești Penitentiary for Minors and Youth***, who died after an altercation with a roommate. The perpetrator was investigated for the crime of bodily injury causing death.

The investigation conducted by the People's Advocate representatives at the ***Tichilești Penitentiary for Minors and Youth*** showed that, in 07.09.2015, around 18.30, the supervisor of Section E5 was alerted by knocking coming from room E5.2 where 6 minors were staying in remand custody. He found that **the prisoner Andrei (fictive**

name) taken in custody for the crime of rape, was unconscious on the bed, due to a physical conflict with a roommate. He informed by telephone the shift chief, and the minor was taken immediately to the sick ward and diagnosed (by the nurse) with "faintness, uncooperative, not responding to stimuli", and was urgently transported to the Braila County Hospital.

Also on 07.09.2015, 22:30, the minor was transferred from Brăila County Hospital to Galați County Hospital, anaesthesia and intensive care ward for conducting a brain surgeries. According to information given by the agent who was guarding the minor at Galați County Hospital, on 13.09.2015, at 7:20, he died, having the following diagnoses: acute cardio-respiratory failure, bronchopneumonia, meningo-cerebral haemorrhage and concussion. The family of the minor was informed, as well as the surveillance judge for the deprivation of liberty and the case prosecutor.

The investigations in the case had established that, amid a verbal dispute related to a travel case, the prisoner who died was hit and punched in the head, by surprise, by one of his roommates (in custody for the offense of complicity to first-degree murder), situation which has caused his unconsciousness.

Prior to the incident, the two minors had no conflicts or misunderstandings with each other. Only the minor who died had been previously involved in incidents (which have been investigated; were drawn incident reports), but with other roommates who were moved to different sections of Tichilești Penitentiary for Minors and Youth .

The assailant was moved to another detention room and it was drawn up a disciplinary incident report (the perpetrator admitted what he had done); the surveillance judge for the deprivation of liberty was informed and the Prosecutor's Office attached to Brăila Court was notified. All the other prisoners in the room E5.2. were presented to the medical office, where it was found that they have not suffered any injury.

Regarding the incident of 07.09.2015, the prison staff have drawn up primary documents for investigating the case. The assailant was presented to the Forensic Medicine Service, following that the result of this verification to be put on the criminal investigation file. The case is pending before the Prosecutor's Office attached to Brăila Court (File no. 12327/2015).

The Ombudsman formulated a *Recommendation* to the National Administration of Penitentiaries requesting that, in order to prevent further violent incidents in Tichilești Penitentiary for Minors and Youth, to analyse and to order legal measures to ensure the adequate supervision and protection of minors, to offer psychological counselling with a view to decrease the level of violence in the detention unit, as well as to assess the vulnerability of the persons in custody prior to assigning them to detention rooms.

1.5. Sexual assaults

1.5.1. The facts and findings of the investigations conducted by the representatives of the People's Advocate institution

According to the letter of 11.09.2015, from the National Administration of Penitentiaries, in 2015 were registered 18 cases at the following penitentiaries: Giurgiu (7), Iași (2), Rahova (2), Turnu Severin (1), Deva (1), Tichilești (3), Arad (1), Focșani (1).

► ***Vaslui Penitentiary: 1 case presented in the media***, which had been notified to the Prosecutor's Office, under the accusation of abuse of power for sexual purposes, offense provided by Art. 299 of the Criminal Code; it was conducted an internal investigation and the case was brought before the Disciplinary Commission of the National Administration of Penitentiaries; the investigation was ongoing;

► ***Aiud Penitentiary: 1 case of sexual abuse among inmates***, pending before the Prosecutor's Office attached to Aiud Court;

► ***Baia Mare Penitentiary: 1 case of alleged sexual abuse***, brought before the Prosecutor's Office attached to Baia Mare Court;

► ***Târgu Mureș Penitentiary: 3 cases of sexual abuse among inmates*** in 2014, which were brought before the Prosecutor's Office attached to Târgu Mureș Court;

► ***Târgu Mureș Re-education Centre***: in March 2015, the Prosecutor's Office attached to Onești Court was notified in connection with a sexual assault **committed by three minors on other two minors**.

► **Târgu Jiu Penitentiary:** a case of sexual relations between inmates, presented in the media. Following the ex-officio referral and the investigation, the Ombudsman notified the Prosecutor's Office attached to Târgu Jiu Court.

1.5.2. Important aspects resulting from the settlement of petitions and ex-officio referrals registered at the People's Advocate Institution, in the years 2014 and 2015

The People's Advocate institution was notified *ex-officio* on the basis of newspaper articles in which were presented the conditions of detention and the things that were happening in Târgu Jiu Penitentiary: overcrowding (30 inmates in a room, sleeping three in two beds), so that often occurred "sex orgies", and conducted an *investigation*, which showed that in Târgu Jiu Penitentiary were accommodated 567 persons at a legal capacity of 526 places. According to the representatives of the penitentiary, in early 2014, in Târgu Jiu Penitentiary were accommodated 692 persons. From January 2014 until the time of the investigation, 23.10.2014, were received by transfer from other penitentiaries and detention and remand centres, **other 949 inmates.**

Regarding sexual relations between inmates, there were two investigations underway with this subject, one conducted by the National Administration of Penitentiaries and one by an internal commission. Were identified the persons who appeared in the photographs published in newspapers and the author of these photos. One of the protagonists was incarcerated in Craiova Penitentiary (who claimed in his declaration that what happened took place without constraints), the other being incarcerated in Târgu Jiu Penitentiary. The author of the photographs published in newspapers was released on parole from Târgu Jiu Penitentiary in July 2014, at the moment of the release of those photographs in the press.

Were heard by the prison staff and gave statements seven prisoners (staying in room identified as the scene of the photographs published in the press) who said that they had never seen happen such deeds in prison and that the **photos were staged in the bathroom of one of the rooms in exchange for material advantages (cigarettes, coffee, money).** The two people who appeared in the photos gave conflicting

testimonies, a person stating that what happened "was willingly", the other person involved claiming that "nothing happened, and it was all staged by a fellow inmate who forced them to go into the bathroom and fake a sexual act just to be photographed".

The representatives of the prison said that they were facing difficulties in managing the introduction and detection of prohibited items, since the unit is not equipped with appropriate equipment (baggage scanner). Because the prison is located in the centre of Târgu Jiu city, surrounded by blocks of flats, there were frequently found, in the courtyard of the prison, prohibited items thrown over the fence from the outside.

Monthly were performed searches in all detention rooms of the prison for the detection of prohibited items, and based on operational information, whenever needed. The prevention and blocking of mobile phone use, prison representatives stated that **measures were taken by the National Administration of Penitentiaries for the implementation of a GSM signal jamming system.**

Following the steps taken by the People's Advocate institution, the National Administration of Penitentiaries said that at the level of Târgu Jiu Penitentiary has been prepared an *Action Plan on preventing the introduction of prohibited items into the prison*, plan approved by the National Administration of Penitentiaries.

Referring to the information published in the press, about the sexual relations between inmates, given the investigations conducted by the National Administration of Penitentiaries and the internal commission of Târgu Jiu Penitentiary, were ordered the following measures: conducting an investigation to establish the circumstances of the event; establishing guilt and notifying the Prosecutor's Office attached to Târgu Jiu Court concerning the acts committed by the former inmate who directed the scene of mimicking sexual acts; issuing a written notification to the director of the prison and deputy director for detention security of Târgu Jiu Penitentiary regarding the deficiencies found during the investigations carried out in the period 22-24.10.2014; notifying the Disciplinary Commission concerning eight prisoners etc.

From the internal investigation conducted at the level of Târgu Jiu Penitentiary, it was found that this incident was not a phenomenon.

During the investigations conducted by the representatives of the National Administration of Penitentiaries, there were prisoners who gave written statements which indicated that the two prisoners were determined by another prisoner, who was dissatisfied with the postponement of his request by the parole commission, to mimic sexual acts and be photographed with a mobile phone and then sent the pictures to the media.

Regarding the sexual relations between inmates, pursuant to Art. 18 of Law No. 35/1997, the People's Advocate notified the *Prosecutor's Office attached to Târgu Jiu Court*, motivated by the fact that statements of the prisoners raised suspicions, the more so since they were contradictory. In this context, the people who could provide information about the alleged sexual acts from prison declared that the photos "were staged". The Prosecutor's Office attached to Târgu Jiu Court informed us that they found no criminal nature in the aspects notified (File No. 11164/2014 *).

2. DETENTION AND REMAND CENTRES

2.1. General considerations and regulations in the matter

As for those ***detained or remanded***, under Art. 123, Art. 126 and Art. 127 of the order of the Minister of Internal Affairs No. 988/2005, when the person subject to custodial measures refuses to accept food, the head of the police unit or subunit where the detention centre functions is required to ask him to present the reasons for his decision. If the person subject to custodial measures remains determined to refuse food, he shall immediately give a written statement, in which he explains the reasons underlying his decision, statement which shall be submitted to the competent prosecutor.

After 48 hours from the refusal of food, the person subject to custodial measures is presented to the prosecutor, and the standard ration of food provided by the regulations is prepared and given to him, with his consent. If the detainee refuses calories to be administered to him, he shall give a new written statement to the head of the detention centre or new minutes are drawn up. At the recommendation of the physician, the head of

the police unit or subunit where the detention centre functions, orders that the person subject to custodial measures refusing food to be sent for hospitalization to a medical unit within the medical network of the Ministry of Justice or the Ministry of Health. If the detainee stops his refusal of food, he shall give a statement or minutes are drawn up by the head of the detention centre and the physician, showing the reasons and the date of ending the food refusal.

2.2. Deaths and suicides of persons deprived of liberty

2.2.1. The facts and findings of the investigations conducted by the representatives of the People's Advocate institution

One death was registered in Galați Detention and Remand Centre, in 2014. The medical history of the person incarcerated was known, and the cause of death was aortic aneurysm.

2. 3. Food refusal by persons deprived of liberty

2.3.1. The facts and findings of the investigations conducted by the representatives of the People's Advocate institution

The form of protest of food refusal was also encountered in the case of remanded persons (for example, Detention and Remand Centres Galați, Constanța, Bacău, Brăila, Caraș-Severin, Călărași, Ialomița, Hunedoara, Harghita, Iași, Neamț, Olt, Prahova, Vaslui, Botoșani, Cluj, Suceava).

Food refusals, for the most part, were generated by the *legal situations* of the persons deprived of liberty (*prolonging the period of detention, complaints regarding the investigation, dissatisfaction with the legal classification of the offense, decisions delivered by the courts, medical reasons*). Other reasons were: the transfer from prison for the hearing, transfer to another detention centre, lack of family visits.

2.4. Physical assaults and self-harm

2.4.1. Facts and conclusions of the investigations conducted by the representatives of the People's Advocate institution

There were no cases of assaults of the staff against inmates nor assaults between inmates, but there were cases of **self-harm**: in *Neamț Detention and Remand Centre* two persons remanded swallowed pieces of a metal spoon; in *Prahova Detention and Remand Centre* an incarcerated person has made several cuts on his body; in *Constanța Detention and Remand Centre* a person deprived of liberty threw himself into the interior bars of the detention room injuring his head; a 17 years old minor was assaulted by his juveniles roommates; in *Dâmbovița Detention and Remand Centre* - a prisoner has made several cuts on his body; in *Suceava Detention and Remand Centre* - 4 cases of self-harm as a form of protest against the judicial authorities.

2.5. Sexual assaults

2.5.1. The facts and findings of the investigations conducted by the representatives of the People's Advocate institution

In the detention and remand centres **were not registered cases of sexual assaults.**

Chapter VIII. The working conditions of staff who carry out their activities in places of detention

1. PENITENTIARIES

1.1. General considerations and regulations in the matter

A particularly important element for observing the rights of persons deprived of liberty is **the adequate funding of places of detention**, with direct implications both on ensuring decent accommodation and working conditions for the staff of the places of detention.

The allocation of budgetary resources has a huge impact on the work of the staff in places of detention, especially given the "inflation" of inmates, therefore **difficulties are being faced in observing their rights**, in ensuring **the security, surveillance and escort of inmates**, in **organizing and conducting various activities**.

Detention conditions that violate human rights cannot be justified by lack of resources - Rec(2006)2 pt. 4.

According to Art. 46 para. (1) and Art. 48 of the Standard Minimum Rules for the Treatment of Prisoners, the prison administration shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends. All staff should behave on all occasions and to perform their tasks in such a way that their example has a good influence on inmates and imposes respect.

The remuneration should be sufficient to attract and maintain proficient staff [Art. 79 Rec (2006) 2].

Law No. 293/2004 on the status of civil servants with special status in the National Administration of Penitentiaries determines that the penitentiary system staff is composed of civil servants with special status and contracted personnel. The staff receive monthly salaries composed of base salary, allowances, bonuses, awards and grants, whose amounts are established by law. The basic salary includes the salary corresponding to the

function performed, professional degree held, graduations, bonuses for permanent missions and, where appropriate, management allowance and merit pay. The staff can also benefit from financial aid and other money rights, whose amounts are set by law, pension, under the conditions established by special law, grading the activity as performed in particular or special conditions, or other working conditions, as established by law.

Following the 2014 visit, the CPT has recommended to significantly increase the number of personnel in the detention sections of penitentiaries Arad, Oradea and Târgșor. Furthermore, the CPT has recommended that both in penitentiaries and police units to abandon the system of working in 24 hours shifts.

It also reiterated its recommendation that the personnel of the intervention groups to systematically wear visible identification numbers when operating, and all their operations to be registered in the special registers.

At the same time, it is necessary to review the legal provisions on training the personnel of penitentiaries, in educational institutions with legal specialty (e.g. National Institute of Magistracy).

1.2 The facts and findings of the investigations conducted by the representatives of the People's Advocate institution

According to the 2014 Report of the National Administration of Penitentiaries, of the total number of posts provided (15,076), 12,575 were occupied and 2,501 were vacant positions. For example, for: security of detention and prison regime, of 8,872 posts provided, 7,916 were occupied and **956 vacancies**; economic administrative of 2,794 posts provided, 2,312 were occupied and **482 vacancies**; medical, of 1,147 posts provided, 730 were occupied and **417 vacancies**; social reintegration of 1,042 posts provided, 667 were occupied and **375 vacancies**.

According to information provided, **the staffing situation in penitentiaries at 31.07.2015 was as follows: posts provided – 15,044; occupied posts – 12,546; vacant posts - 2498.**

In the case of physicians and healthcare professionals (pharmacists, biochemists, nurses, orderlies, dental technicians etc.) the situation was as follows:

i. The total number of posts provided - 1141 of which 334 positions for physicians and 807 positions for other medical staff;

ii. Number of positions occupied - 772 of which 123 positions for physicians and 649 positions for other medical staff;

Staff shortages and underfunding in the prison system. For example, in *Iași Penitentiary* there was a degree of occupancy of 81% of the total posts provided for the Security of Detention and Prison Regime department. The medical staff was insufficient. Also, the working conditions of the staff in Building A were inadequate. *Brăila Penitentiary* was facing understaffing, both at operational level and at the administrative level (only 78% of the requirements), the underfunding of the unit (of the budget requested for current repairs were approved only 18%), lack of capital repairs to the detention building which has not undergone major repair works since 1983.

1.3. Important aspects resulting from the settlement of petitions and ex-officio referrals registered at the People's Advocate Institution, in the years 2014 and 2015

The People's Advocate institution was notified *ex officio* regarding the case of a guard at Jilava Prison Hospital, assaulted by a prisoner infected with AIDS who hit him with fists and feet. The investigation conducted by the representatives of the People's Advocate institution in the case mentioned above had the following objectives: checking the number of guards in relation to the number of inmates; existence of sufficient walking space for inmates; measures ordered after the incident.

Following the investigation carried out, it was found that, on 31 May 2015, the number of guards at Jilava Prison Hospital was 113 guards. This proved to be insufficient compared to the number of prisoners in custody, and was below the staffing scheme which provided for the guard service a number of 144 posts, of which 110 were filled and 34 posts were vacant (the 110 guards had to be distributed as

follows: a platoon per section; ensuring the security at the entrance gate to the prison hospital; escort - to a prison population of 457 inmates on 10 June 2015).

The situation was identical in terms of health professionals, at a number of 143 positions provided in the staffing scheme, were occupied only 69, and a total of 74 posts were vacant.

According to the statements of those involved, the incident occurred on the morning of 5 June 2015, when, due to the refusal to allow access to the phone located in the hallway of the section, prisoner Andrei (fictive name) hit the principal guard, causing him a fracture of the right temporal zygomatic arch, according to a medical certificate and the letter of Bagdasar Arseni Hospital.

The prison management has taken the following measures: immobilize the aggressor; take statements from the persons involved; inform the surveillance judge; include the assailant in the category of persons presenting a risk to prison security; inform the National Administration of Penitentiaries; notify the Prosecutor's Office attached to Cornetu Court on the offense of assault on a law enforcement officer.

The People's Advocate *recommended* the Ministry of Justice and the Director of the National Administration of Penitentiaries, as for the prevention of violent incidents in the Prison Hospital Bucharest-Jilava, to analyse and order legal measures for increasing the number of guards in order to cover the needs of specific activities (guard, escort etc.) either by temporary secondment from Jilava Penitentiary or other prisons, or by starting employment procedures in the system.

2. DETENTION AND REMAND CENTRES

2.1. General considerations and regulations in the matter

According to Law No. 360/2002 on the rules and regulations of police officers, the police officer is a civilian public servant with special status, armed, usually wearing uniform and exercises the powers set by law for the Romanian Police, as a specialized institution of the state.

The police officer is entitled to monthly salary composed of base salary, allowances, bonuses, awards and grants whose amounts are established by law (the base salary includes the salary corresponding to the function performed, professional degree held, graduations, bonuses for permanent missions and, where appropriate, management allowance and merit pay); other financial aid and money rights, whose amounts are established by law; grading the activity as performed in particular or special conditions, or other work conditions, as established by law.

According to Art. 134 para. (1) and Art. 136 of the Order No. 988/2005 of the Minister of Administration and Interior, approving the Regulation on the organization and functioning of the places of detention and remand in police units of the Ministry of Administration and Interior, police officers working in shifts **are entitled to increments as provided in the regulations in force.** The heads of police units and subunits where detention centres function, or their deputies, and the heads of the criminal investigations bodies, are responsible for organizing and ensuring the proper conduct of activities, and for the strict compliance with the legal provisions relating to the rights of persons deprived of liberty. The abovementioned police officers shall take the necessary measures to ensure the safety of persons subject to custodial measures and **thorough training for the security guards in detention centres** and for those making the transfer.

According to the European Code of Police Ethics, police personnel shall benefit from social and economic rights, appropriate remuneration and social security and health insurance, given the specific nature of their work.

2.2. Facts and conclusions of the investigations conducted by the representatives of the People's Advocate institution

a) **the lack of funds needed for the construction / modernization of detention and remand centres** is visible from the fact that investments remained either in project phase or were halted in 2009 due to the lack funding. E.g:

► In *Vaslui Detention and Remand Centre*, given that in case of heavy rainfall, water from the sewerage could penetrate into the detention spaces, at the level of Vaslui County Police Inspectorate was started an investment project for the rehabilitation and

upgrading of the plumbing as well as the interior and exterior and sewage, at the headquarters of Vaslui City Police, approved in 2006 by the Ministry of Interior, **but it remained only in the design phase and has not been refinanced.**

b) undersized staff in the detention and remand centres and working conditions of the staff (*Detention and Remand Centres Vaslui, Suceava, Iași, Botoșani și Argeș*).

c) posts unattractive financially. There were differences in the level of salaries and bonuses compared to the employees performing similar functions in prisons, although their work was carried out in improper conditions, with a raised level of risk and danger, sometimes even higher than to those to which are subject the staff of the penitentiary system;

d) the multitude of activities carried out by the same personnel (supervisory activities - guard in detention sections, ensuring the rights of detainees, carrying out external escorts and transfers) etc.

e) inadequate work conditions for the staff: the location of the detention and remand centres in the basements of uninsulated buildings, with inadequate ventilation, permanent emanations of unpleasant smells, with high humidity and water seepage which led to the phenomenon dampness and mould;

f) dangerous working conditions due to the activities they carry out and the risks they are subject to (inadequate equipment, risk of being attacked, the risk of being contaminated, the multitude of activities carried out by the same staff) **justifies the uniformity of salaries for this category of staff and granting all bonuses and increments.**

Chapter IX. CONCLUSIONS AND PROPOSALS

LEGISLATIVE, JUDICIAL-ADMINISTRATIVE AND FINANCIAL MEASURES

1. The conclusions of the Special Report

In the previous chapters of this Special Report were shown gaps in legislation, as well as a number of deficiencies in the organization and functioning of prisons and detention and remand centres. In this context, we underline the following brief conclusions arising from the existent situation at the time of the investigations, the information provided by the notified authorities as well as public information available on their official websites:

a) national legal framework: the absence of significant secondary regulations expressly provided for by Law No. 254/2013, such as Government Decisions and Orders of the Minister of Justice and Minister of Internal Affairs on the organization and functioning of the prison system and the detention and remand centres.

b) degree of occupancy: there was a high or very high degree of occupancy in some detention facilities, that did not provide the minimum area required by domestic and international legal norms. In addition, comparing the legal accommodation capacity of prisons to the number of prisoners did not reflect the reality existent in detention rooms.

Some sections of prisons were facing overcrowding because of detainees in transit or in preventive detention.

We stress that the promotion of legislative proposals to reduce the number of prisoners would be likely to help avoid inadequate conditions of detention, to significantly decrease the amounts of money to be allocated from the state budget or from European funds for this purpose and avoid the conviction of Romania by the ECHR, including the issuing of a pilot judgment.

c) **the accommodation conditions** (in prisons): the existence of inadequate accommodation conditions caused by old buildings, seepage, moisture, mould on walls; poor ventilation; bedding with a high degree of wear; deteriorated sanitary installations; insufficient quantity and poor quality of personal care products distributed to inmates; limited number of showers and toilets compared to the number of people staying in the room, and in some cases, lack of privacy for physiological needs; the existence of insects and pests; reduction, in some penitentiaries, of the supply schedule of electricity and water, motivated by budgetary restrictions; inappropriate size, arrangements, and sometimes location of courtyards for walking; washing and drying personal effects in rooms; lack of furniture for keeping goods and personal items.

Regarding the **old buildings** in which operate some of the prisons, we mention: Aiud Penitentiary - 1892; Tichilești Detention Centre, a building (E1) opened in 1958; Mărgineni Penitentiary, a building from 1952; Poarta Albă Penitentiary - 1949; Satu Mare Penitentiary - 1896; Jilava Penitentiary Hospital, the buildings B and C built in 1952 and 1956; Târgu Ocna Prison Hospital, sector A-1851 and C-1937; Târgu Mureș Penitentiary - 1890.

In **detention and remand centres**: improper location of detention rooms in the semi-basement of the buildings of the County Police Inspectorates, so that their ventilation was deficient, natural lighting was inadequate and artificial lightning insufficient; lack of toilets in some rooms; insufficient bathrooms; sanitary installations presenting a high degree of wear and improper arrangement of toilets; the use of Turkish style WC (squat toilet) as shower tray; the high degree of wear of bedding components; uneven distribution of hygienico-sanitary materials; shortage of spaces for storing personal goods; the existence of undersized spaces/courtyards for walking, the need for sanitization of detention areas (disinfection, pest control and deratization). Note that there have been complaints of inmates regarding the **lack of confidentiality of discussions during the visits.**

d) **quality of water and food**: dissatisfaction of inmates in terms of variety of food and in some cases quantity of food. To ensure the diversity of food, some prisons have resorted to attracting sponsorships.

Dining conditions proved to be inadequate in many prisons, the food was served in the room, the inmates were eating on the edge of the bed, plus the impossibility of serving all prisoners at the same time.

In detention and remand centres it was found a lack of dining areas and appropriate facilities in some rooms to ensure conditions for eating the meal. Also, we mention the situation of Suceava Detention and Remand Centre, which didn't provide hot food to inmates on Saturdays and Sundays.

Furthermore, **we consider improper the means of food transportation from some penitentiaries to the detention and remand centres in aluminium cans, isothermal trucks, vans.**

e) **healthcare**: the biggest problem the penitentiaries are facing in this regard is the shortage of medical staff, especially given the high demand of detainees. Equally were found deficiencies in *providing medication*, due to difficulties encountered in the procurement of medicines as a result of the budget allocated.

Another situation which should be regulated is that of *holding people with mental disorders with other categories of convicts*, given their vulnerability.

We appreciate that special attention should be paid to *training staff to monitor detainees who are being treated with methadone*.

Other problems noted were the inaccuracies in *recording food refusals*, difficulties in obtaining the certificate of assessment of the degree of disability, **difficult collaboration of penitentiaries with some civil hospitals.**

We also believe that a special concern is represented by **HIV-positive prisoners**, who are **not enrolled** in the National HIV/AIDS Programme, and are treated only for associated diseases. In addition, we mention that this category of persons require close supervision after release from prison, to continue their treatment.

In detention and remand centres, as in penitentiaries, were found **shortages of health personnel**, particularly physicians, for which the medical examination at the

moment of admission, wasn't conducted in all cases; moreover, healthcare was provided by medical staff from the County Medical Centres of the Ministry of Internal Affairs, in the case of places of detention which did not have a medical sector of their own.

There were also invoked difficulties in providing medical treatment, due to the introduction of health cards.

f) regarding the prices of products sold by the economic operators inside prisons and the prices of telephone calls: the prices charged by some economic operators for some of the products were much higher than those in the shops from the area of the penitentiaries.

The committees established at the level of the penitentiaries requested price reductions, but in some cases it was found that these measures did not have a long-term effect.

Also we mention that *no controls were being conducted* in the prison shops by representatives of the National Authority for Consumer Protection or of any other authority (for example: the Department of Public Health).

In some prisons were found *expired products*, lack of price or product specification, lack of sanitary permits for some of the prison shops, improper storage of food.

Inside **the detention and remand centres** there were no shops, therefore products could only be purchased, based on requests made by persons in custody, from the commercial network of the cities. Purchase frequency varied, in some centres it could be made once a week and in others twice a week or whenever needed.

Regarding *telephone calls in penitentiaries*, there were found problems regarding the tariffs charged by the companies BVfon SC and SC Paytel SRL.

The **duration of telephone calls in penitentiaries and detention and remand centres** varied, depending on the Internal Regulations.

g) relating to events involving inmates in the period 2014-2015 (deaths, physical assaults, protests in the form of food refusal, sexual relations between inmates or between inmates and the staff of the places of detention) until 25 august

2015, there were registered **1,103 cases of food refusals**, of which **387 for judicial reasons** and **716 for prison related reasons**.

If in **penitentiaries**, the most frequently invoked reasons for food refusal were focused on problems whose solving fell within the competence of the prison management, namely transfers, accommodation conditions or imprisonment regime, in **detention and remand centres** the most frequent reason for of this form of protest was the dissatisfaction with the legal situation.

As for the **causes of death**, in addition to **suicide**, in prisons, chronic medical conditions represent another common cause of death.

Regarding **bodily injuries suffered by detainees**, there were found cases of physical assaults to which they were subjected by prison staff or other inmates. At the same time, we note that some resorted to **self-harm** as a form of protest.

In relation to the above, we consider that a series of **legislative, judicial, administrative and financial measures** are needed, with impact on the inmates and the prison system and the detention and remand centres, measures that we formulate as proposals that we hope the relevant authorities will choose to implement as many as possible of them (along with others that may be considered), with a view to ensure better prison conditions, as determining factors in respecting human dignity and the rights of persons deprived of liberty.

2. The proposals of this Special Report

2.1. Penitentiaries

2.1.1. Legislative measures

2.1.1.1. Adoption of legislation subsequent to Law No. 254/2013 on the execution of sentences and custodial measures ordered by the court during the criminal trial (expressly provided by this normative legal act)

► adoption by Government Decision of the Implementing Regulations for Law No. 254/2013;

- ▶ adoption by the Government of the Decision on the organization, functioning and powers of the National Penitentiary Administration;
- ▶ issuance by the Minister of Justice of the Order which establishes the measures necessary for prison safety;
- ▶ issuance of the Order of the Minister of Justice on the designation of the prisons in whose jurisdiction function detention and remand centres and their rules of organization and functioning;
- ▶ issuance by the Minister of Justice of the Order laying down the minimum mandatory food norms;
- ▶ adoption of the Common Order of the Minister of Interior and Minister of Justice which establishes the prisons, detention centres, remand centres, and re-education centres in whose circumscription operate detention and remand centres.

2.1.1.2. Adoption of normative legal acts to ensure compliance with Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms and the execution of judgments of the European Court of Human Rights and national courts

- ▶ adoption of a **Government Decision on the establishment of an interministerial commission, composed of representatives of the Ministry of Foreign Affairs, Ministry of Finance and Ministry of Justice**, to ensure real monitoring and enforcement of ECHR judgments regarding the infringement of Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms or the creation of a national body to have such powers.

Similarly, the proposed normative legal act should provide that the members of the interministerial committee, in particular the representatives of the Ministry of Finance and the Ministry of Justice, should work together for the enforcement of the judgments of national courts concerning the failure to comply with the same Article.

2.1.1.3. Adoption of legislation to help reduce prison population

We specify that the proposals presented below exclude the punishments for offenses of corruption and violence.

To reduce overcrowding in prisons and detention and remand centres, in our opinion, the legislature could consider adopting, inter alia, some of the following measures:

a) preventive measures: reducing as much as possible the application of the measure of remand detention and reducing the duration of the remand custody by applying the preventive measure of house arrest, judicial control and judicial control on bail, thus respecting the principle according to which pre-trial detention should be an exceptional measure and not a rule;

b) measures to amend the criminal law:

► criminal policy measures aimed at applying non-custodial sanctions / alternative (fine, community service, suspended sentence under supervision) instead of imprisonment as a reference sanction for certain offenses, particularly in the case of offenses committed by first offenders;

► involvement of volunteers (including representatives of non-governmental organizations) in the execution of alternative measures, aiming at reducing the risk of recidivism, developing community relations, as it results from the Tokyo Rules;

► re-evaluation of punitive assignments, depending on the gradual alternative measures to imprisonment;

► adoption of a regulation, at least a temporary one, regarding the granting of conditional release, so that liberty can be granted to persons deprived of liberty in the last 3 years of imprisonment and / or reducing by half the sentence imposed, compared to two thirds as it is now, if the sentence of imprisonment does not exceed 10 years, as provided by the current legislation and two thirds compared to three quarters, when the prison sentence is more than 10 years, as provided by the current legislation, subject to payment by persons convicted of debts to the state and the civil party;

► **reviewing the legal provisions on the duration of the imprisonment which is considered by law as executed on the basis of work performed and / or education and professional training.**

Thus, according to Art. 96 para. (1) a), b) and c) of Law No. 254/2013, for paid work, 4 days of work performed are considered 5 days of sentence executed; for unpaid work 3 days of work performed are considered 4 days of sentence executed; and for work overnight, 2 nights of work performed are considered 3 days of sentence executed.

In contrast with Art. 96 of Law No. 254/2013, Art. 52 para. (2) of Law No. 253/2013, establishes, **in respect of the execution of community service work, that 2 hours of activity performed is equivalent to a day's work.**

Also, we consider that it is necessary to be amended accordingly Art. 96 para. (1) d) of Law No. 254/2013, according to which for the participation in general education courses, for compulsory general education, are considered executed 30 days of the punishment for the completion of a school year.

► **reconsidering the legislation on granting conditional release, to enable ensuring fair treatment for detainees who cannot perform work, for reasons not imputable to them.**

We consider that it is necessary to provide in the management plan of the place of detention the duty of each director to identify jobs for inmates, such as to contribute to ensuring fair treatment to them and to allow them to benefit from the fraction of the term of punishment deemed as served based on the work performed, **obligation that must be provided in the Government Decision on the organization, functioning and powers of the National Administration of Penitentiaries, to be adopted;**

► **reconsidering the legal provisions relating to the parole commission** (composed currently of the surveillance judge for the deprivation of liberty, who is also chairman of the commission, the director of the penitentiary, the deputy director for the safety of detention and penitentiary regime, the deputy director for education and psychosocial support, and a probation counsellor from the competent Probation Service

in whose jurisdiction is located the penitentiary), competence which can create a presumption of partiality in resolving parole requests made by inmates.

In this context, we consider that to bring more transparency and impartiality in the proceedings of conditional release, it would be important the participation of a representative of an NGO, given that, at present, there are cooperation agreements concluded between NGOs and penitentiaries;

► it could be considered the judgement in first instance of complaints against the rejection of parole by the surveillance judge for the deprivation of liberty and the judgement of the appeal against this decision delivered in first instance, by the court in whose jurisdiction is located the penitentiary. Of course, in this situation, the surveillance judge for the deprivation of liberty would no longer be part of the parole commission, judging at first instance the complaints against the decisions of the commission and the court would become the decisional body for complaint settlement;

► **pardon of convicted persons with incurable medical conditions, in terminal stages (cancer, HIV etc.)** and possibly those who cannot heal in the prison system and represent a danger of contagious outbreaks for the other inmates (TB, Hepatitis C) ;

► **implementation of Rec22(99) concerning prison overcrowding and prison population inflation, according to which, to avoid excessive overcrowding it should be established the maximum capacity the penal institutions. Thus, we consider it necessary to be adopted a normative legal act that sets a limit on the number of inmates who can be accommodated in each prison;**

► **increasing number of semi-open and open regime penitentiaries,** given that at 31.12.2014, as shown in the 2014 Annual Report of the National Administration of Penitentiaries, **the prisons were divided equally between semi-open and open regime prisons (16) and closed regime and maximum security prisons (16);**

► **establishing the legal framework aimed, on the one hand, to ensure a fair balance between the necessity of the measure of transfer and the discretionary power of the authorities involved** and, on the other hand, to stop the "prison tourism" as well as **establishing the means of appeal against this measure by making a complaint to the surveillance judge for the deprivation of liberty,** recalling, in this respect, that

one of the reasons invoked by the persons deprived of liberty for the food refusal was precisely that of rejected transfer requests to other penitentiaries;

► establishing a critical threshold according to which the detained person must be subjected to a psychiatric examination and certain provisions relating to the verification of discernment of prisoners in the case of prolonged food refusal and the measures to be taken by the responsible public authorities, keeping in mind that it may result in death of the prisoner, who is a person in state custody;

► creating an appropriate legislative framework by establishing criteria to ensure the development of public-private partnership in the management of the prison system;

► re-establishing the National Institute of Criminology, with responsibilities in the development of statistics on crime rates, the nature of the crimes, the number of repeat offenders, proposals to reduce the risk of recidivism, crime prevention and control.

2.1.2 Judicial and administrative measures

Pre detention measures

► intensifying the measures to prevent crime / offenses, through programmes of social cohesion;

► increasing the role of direct intervention programmes to improve the behaviour of violent people, drug addicts and alcoholics.

Measures during detention

► in their activity, the parole commissions and the courts to approve a higher number of parole requests, if the legal conditions are met.

► benefit from the potential of inmates by using them for work. It is important to prioritize the objectives the National Administration of Penitentiaries, with a view to introduce a significant amount of work, in order to involve a large number of prisoners in various activities, thus also bringing greater contributions to the public budget.

► **separation of mentally ill prisoners in psychiatric prison hospitals**, so that they undergo a distinct penitentiary treatment, focused on providing appropriate medical treatment;

► **ensuring appropriate quality of medical services, to allow the identification and treatment of certain medical conditions, so that the worsening of these conditions does not lead to the death of the persons deprived of liberty.**

► **increasing the role of the social assistance and psychological counselling services**, to contribute to identifying and treating the causes which determine the persons deprived of liberty to resort to forms of protest which put their lives in danger;

► **observing the obligation to notify the Prosecutor's Office, by all physicians in the prison system, regardless if the decease occurred in a penitentiary or a prison hospital and regardless of the cause of death, with a view to observing the provisions of Art. 52 para. (1) of Law No. 254/2013;**

► **strengthening the collaboration between penitentiaries and civil hospitals;**

► **re-evaluating the conditions for the issuance of the certificate of assessment of the degree of disability for persons deprived of liberty**, by establishing competent commissions for assessing and establishing the degree of disability.

► **following the evolution of cases of food refusal**, in order to ensure concordance with the existing records at the level of the places of detention;

► **continuous professional training of the medical staff, in order to preserve the health of detainees, including the health of former drug users / opioid users;**

► **weekly verification, by the special committees established at the level of the penitentiaries, of the prices of products sold in the prison shops and establishing maximum tariffs, uniform in all penitentiaries, for telephony services offered by mobile operators;**

► **inclusion in the componse of the commissions for checking prices of products practiced by prison shops, of civil society representatives**, to ensure transparency;

► **collaboration between the National Administration of Penitentiaries / the penitentiary units and the National Authority for Consumer Protection, in order to**

ensure appropriate prices, both for products sold in the prison shops and for telephone calls;

► **attract the media, civil society, state institutions**, organizing visits and events like "Open Day" events in penitentiaries, with a view to raise the public awareness regarding possible contributions to preventing antisocial behaviour, forming and developing responsible civic behaviour, preventing antisocial acts, consumption of prohibited substances, trafficking in human beings etc.

Post detention measures

► **reduce the risk of recidivism through a social and criminal policy, after committing the offense and the punishment of imprisonment.** It is therefore necessary to speed up the implementation of the Government Decision No. 389/2015, approving the National Strategy for social reintegration of persons deprived of liberty 2015-2019;

► **promoting an investment policy regarding the necessary and rational investments for the places of detention, so that the insufficient funds to be oriented towards the most imperative needs, related to ensuring decent living conditions in prisons;**

► **collaboration with the competent local authorities in respect of former prisoners infected with HIV/AIDS, which, after release, are not interested in continuing the treatment, and which can become a danger to public health;**

2.1.3. Financial measures

► **increase the budget allocated to the prison system and review the provisions of the Government Decision No. 1849/2004, which provide, under Art. 1 para. (2), that "the funding of the National Administration of Penitentiaries and the subordinated units is provided from own revenues and subsidies from the state budget, according to law". Funding from own revenues, in the current context of economic difficulties and given the lack of places where inmates can work under legal conditions, cannot constitute the main source of income. In this regard, in the reassessment of the budget allocated to the prison system, should be considered the ECHR convictions and the overcrowding in detention facilities;**

► the allocation of budgetary resources must allow:

- taking over buildings in good condition from the public domain, in order to stop using the buildings of penitentiaries which present an advanced degree of wear, those which don't provide decent conditions to satisfy the physiological needs in the rooms of detention, or don't have proper ventilation in rooms;
- construction of new places of detention, by using the amounts allocated from the state budget and accessing European funds;
- construction of new courtyards in penitentiaries appropriately sized for walking;
- replace worn mattresses, provide furniture in the detention rooms, purchase washing machines;
- allocation of hygienico-sanitary products according to the needs of the detainees, and not according to the maximum amounts which cannot be exceeded, set by the rules. That implies amending the provisions the Order of the Minister of Justice No. 2056/2007 and the provisions set in the Order of the Minister of Justice No. 2714/2008 on the goods that the prisoners can introduce or receive in prison;
- periodical sanitization of detention rooms, plumbing repairs; ensuring permanent supply of water and energy; banning the budget savings through the reduction of the drinking water and electricity supply schedule in penitentiaries.
- ensuring proper food according to dietary necessities and religion;
- ensuring diversity of food for inmates, equipping the kitchens with the necessary equipment and ensuring decent dining conditions, given that in 22 units there were no dining halls.
- ensuring the necessary vehicles;
- ensuring the necessary equipment for washing prisoners' personal effects, as well as proper spaces for drying them;
- hiring the necessary personnel in penitentiaries (medical staff, security personnel, social reintegration personnel).

► re-evaluate the necessary number of administrative and operational staff, by reference to the number of inmates in each prison and their specific tasks;

► allocate sufficient budgetary resources for: purchasing medicines and preventing delays in their acquisition; staff training, maintaining the health of former drug users / opioid users, including the inmates diagnosed with HIV in the national HIV programme.

► review of the budget allocated to the penitentiary system, in order to ensure proper working conditions for the prison staff as well as adequate remuneration.

2.2. Detention and remand centres

2.2.1. Legislative measures

2.2.1.1. Adoption of a normative legal act on the subordination of the detention and remand centres to the Ministry of Justice

► moving the detention and remand centres under the subordination of the Ministry of Justice, measure designed to exclude any possibility of arbitrary interventions by the criminal investigation bodies;

► identifying new locations for the detention and remand centres currently located in the semi-basement of the county police inspectorates. Until the adoption and implementation of the legislative solution, shall apply the legislation subsequent to Law No. 254/2013.

The provisions of Art. 30 of the Order of the Minister of Internal Affairs No. 988/2005 create the potential framework for unlawful action by the criminal investigation bodies, and for the violation of human dignity, because, according to these provisions, inmates are not allowed to exit the room from bedtime until wake-up time.

Moreover, the exception provided for the removal from the detention rooms of the detainees, between bedtime until wake-up time, in special cases, for activities of criminal investigation, may give rise to potential abuses of the criminal investigation bodies, given that the places of detention are located in police stations.

2.2.1.2. Adoption of legislation subsequent Law No. 254/2013 on the execution of sentences and custodial measures ordered by the court during the criminal trial relating to detention and remand centres¹.

- ▶ establishment of remand centres, by Government Decision;
- ▶ adoption of the Order of the Minister of Internal Affairs on the organization and functioning of the detention and remand centres under the subordination Ministry of Internal Affairs;
- ▶ issuing the Order of the Minister of Internal Affairs approving the Regulation of organization and functioning of detention and remand centres, and the measures necessary for their safety;
- ▶ adoption of the Common Order of the Minister of Interior and Minister of Justice which establishes the prisons, detention centres, remand centres, and re-education centres in whose circumscription operate detention and remand centres.
- ▶ adoption of the Order of the Minister of Internal Affairs for the organization and functioning of detention and remand centres, and publishing it in the Official Gazette of Romania, such as to fulfil the requirements set by Law No. 24/2000 on legislative technique norms for drafting normative legal acts, republished with subsequent amendments and supplements, and ensure its availability to the persons concerned and the institutions involved in defending the rights and freedoms of persons deprived of their liberty.

Moreover, the Order of the Minister of Internal Affairs No. 988/2005 has become obsolete, given that in its preamble states that it has considered the provisions of the Code of Criminal Procedure, of **Law 23/1969 on the execution of sentences, republished, as amended and supplemented (repealed), of the Government Emergency Ordinance No. 56/2003 on certain rights of persons in execution of custodial sentences**, approved by Law No. 403/2003 (repealed), of Law No. 218/2002 on the organization and functioning of the Romanian Police, as amended and supplemented, the Order of the

¹ The proposals and solutions in this section should be analysed subject to the adoption (or not) of the normative legal act regarding moving the detention and remand centres in the subordination of the Ministry of Justice. Thus, insofar as the proposed solution is accepted, it should be reconsidered the situation of the subsequent legislation, from the perspective of the authorities responsible with its issuance and their specific tasks.

Minister of Justice No. 3131/C of 29.10.2003 on the duration and frequency of visits, number and weight of food packages and goods that can be received, stored and used by persons in execution of custodial sentences, and of the Order of the Minister of Justice No. 3352/C of 13.11.2003 on the obligations and prohibitions of persons in execution of custodial sentences and the disciplinary measures imposed for committing disciplinary offenses.

2. 2. 2. Measures prosecution, judicial and administrative

► **reducing de duration of remand executed in and detention and remand centres by:**

► **implementation of Rec22(99) on the use, to the greatest extent possible, of alternatives to detention** such as: the condition that the suspected offender resides at a specified address, the restriction to leave a place, or to enter a particular place without authorization, provision of bail or supervision and assistance by an agency specified by the judicial authority. In connection with the above, special attention should be given to the means of verifying if the condition to remain in a specified place is fulfilled, through electronic surveillance devices;

► **application on a wider scale of the measures of judicial control, judicial control on bail, house arrest;**

► **limiting the period of detention in detention and remand centres, after being brought before the court, and transferring the detainee, the as fast as possible, in detention facilities distinct from the police, to reduce the risk of possible intimidation and pressures;**

► **identifying the role of the surveillance judge for the deprivation of liberty, in the case of remanded persons resorting to food refusal as a form of protest.**

► **increasing the role of psychological counselling of persons remanded;**

► **re-evaluating the necessary number of administrative and operational staff, by reference to the number of detainees in each centre and their specific tasks;**

► **considering the solution of establishing, in the detention and remand centres, medical sectors of their own, to ensure constant medical assistance to the**

persons deprived of their liberty and specialised medical assistance for the specific problems of the period of detention or remand.

- ▶ mandatory medical examination on admission to the detention and remand centres, as well as periodically throughout the period of detention, not only on request or in case of emergency;

- ▶ measures designed to simplify the distribution of medicines through the card health care for incarcerated persons;

- ▶ shopping at least twice a week;

- ▶ establish a reasonable amount of time for exercising the right to phone calls, corresponding to the status of detained or remanded person, and not convicted person, under total confidentiality;

- ▶ observing the right to correspondence and ensuring that detainees can exercise it personally, by putting the correspondence themselves in the mailboxes placed inside the centres;

- ▶ increasing the number of rooms equipped with bathrooms and showers, and, in the case of shared bathrooms, ensure an adequate number of toilets compared to the number of persons to the custody;

- ▶ washing clothing items belonging to detainees and providing special spaces for drying them;

- ▶ appropriate sizing of the courtyards for walking;

- ▶ provision of storage spaces for the personal effects of the detainees;

- ▶ measures to ensure decent conditions of dining in detention rooms, given the lack of dining halls;

- ▶ considering the possibility of setting up dining halls for the persons deprived of their liberty in detention and remand centres, such as to ensure equal treatment with the convicted persons to whom, as far as possible, specially arranged dining halls are ensured, according the Order of the Minister of Justice No. 433/C/2010. Art. 34 of the Order of the Minister of Internal Affairs No. 988/2005 establishes that hot food shall be distributed directly in the detention rooms.

- ▶ measures to ensure hot food to the detainees on Saturdays and Sundays in the centres where food is provided by catering;
- ▶ ensuring decent means of transporting food from prisons to detention and remand centres, given that, currently, food is being transported in steel containers, or in isothermal vans;
- ▶ ensuring proper food in concordance with the religion and dietary requirements for the medical conditions of the inmates, which must be an obligation of the place of detention; food obtained as a result of the right to packages or shopping should be only a supplement, conditioned by the financial possibilities of the detainee or of his family.

2.2.3. Financial measures

The allocation of budgetary funds to enable:

- ▶ identifying locations that could be taken by the administration of some detention and remand centres, and, not least, the construction of new centres to replace the current "cellars" so that they correspond to the European standards in terms of area, volume, ventilation and appropriate setting for satisfying the physiological needs in conditions of intimacy;
- ▶ allocating appropriate funding to equip the medical offices and the emergency kits with medicines;
- ▶ acquisition of bedding; replacing bedding components showing a high degree of wear; the permanent provision of water, electricity and heating; washing and drying of the clothes of remanded persons; arranging the courtyards for walking; equipping the detention rooms with furniture for the storage of detainees' personal effects; repairing the bathrooms; installation of showers; ensuring the provision of hot water, heat and electricity; distribution of hygienico-sanitary materials required by inmates and the amendment of the Order of the Minister of Internal Affairs No. 503/2008; ensuring courtyards for walking; acquisition of furniture for the storage of goods; setting up special rooms for visits to ensure the confidentiality of the discussions between the detainees and their lawyers;

► supplementing the medical staff, especially physicians for the detention and remand canters;

► adequate remuneration and allowances for the staff of the detention and remand canters, given the inadequate conditions of their work and the high level of risks and dangers.

BIBLIOGRAPHY:

Bîrsan Corneliu, *Convenția europeană a drepturilor omului, Comentariu pe articole, Vol. I, Drepturi și libertăți, (European Convention on Human Rights, Comment on Articles, Vol. I, Rights and Liberties)*, All Beck Publishing House, Bucharest 2005;

Călin Dragoș (coordinator) and others, *Hotărârile C.E.D.O. în cauzele împotriva României 2013, Analiză, consecințe, autorități potențial responsabile, Volumul IX, (ECHR Decisions in cases against Romania in 2013, Analysis, consequences, potentially responsible authorities, Volume IX)*, Universitară Publishing House, Bucharest, 2013;

Călin Dragoș (coordinator) and others, *Hotărârile C.E.D.O. în cauzele împotriva României 2014, Analiză, consecințe, autorități potențial responsabile, Volumul X, (ECHR Decisions in cases against Romania in 2014, Analysis, consequences, potentially responsible authorities, Volume X)*, Universitară Publishing House, Bucharest, 2015;

Chiriță Radu (coordinator) and others, *Arestarea și detenția în jurisprudența C.E.D.O., (Detention and Remand in the ECHR case law, Hamangiu Publishing House)*, Bucharest, 2012;

Chiș Ioan, *Umanismul dreptului execuțional românesc-acordarea drepturilor în Mediul penitenciar, (The Humanism of the Romanian Executional Law, granting rights in the prison environment)*, Hamangiu Publishing House, Bucharest, 2007;

Chiș Ioan, *Instrumente internaționale de drept execuțional penal, (International Instruments of Executional Criminal Law)*, A.N.I. Publishing, Bucharest, 2005;

United Nations and Penal Reform International, *Putting rules into action, Penal Reform International*, The Hague, March 1995;

Making standards work, *An international handbook on good prison practice, Penal Reform International*, 1 March 2001;

Stănișor Emilian, Bălan Ana and Pripp Cristina, *Universul carceral, Culegere de studii de criminologie și penologie, (Prison Universe, Collection of studies of criminology and penology)*, Oscar Print Publishing House, Bucharest, 2004

Udroiu Mihai, Noul Cod penal, *Noul Cod de procedură penală*, Editura C.H. Beck, București, 2014 - **The new Penal Code, (*The New Code of Criminal Procedure*), C.H. Beck Publishing House, 2014**

Zlătescu Moroianu Irina, Marinache Emil, Șerbănescu Rodica, *Documente Internaționale privind combaterea torturii și a tratamentelor inumane sau degradante*, Institutul Român pentru Drepturile Omului, București, 1998 (*International documents on combating torture and inhuman or degrading treatment*), the Romanian Institute for Human Rights, Bucharest, 1998