

# **REPORT**

## **ON ESTABLISHMENT OF LOCAL COMMISSIONS FOR MONITORING THE PLACES OF DETENTION**

**(excerpt)**

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## ESTABLISHMENT OF LOCAL MONITORING COMMISSIONS

The monitoring of observance of human rights within the institutions which ensure the detention of persons is performed by the representatives of civil society. In compliance with the Law No. 235-XVI, *the monitoring of the conditions of detention of the detainees and the treatment of these persons shall be performed by the monitoring commissions, which act as standing commissions, without the capacity of legal entities, set up within every territorial administrative unit of the second level, where places of detention exist.*

*The monitoring commission has the task to check and supervise the detention conditions and the treatment the detainees receive in the detention institution, within the administrative-territorial jurisdiction of the commission and its conclusions are included into a report on the stated facts.*

To date, the wording „*treatment the detainees receive*” is interpreted differently by various institutions and authorities, including by the members of the local monitoring commissions of the places of detention. **The Body of Minimal Rules for the treatment of the detainees and the relevant recommendations to these**<sup>1</sup> makes reference to a number of aspects, including the registration, separation of categories and transfer of detainees, detention facilities, personal hygiene, clothing and bedding, food; medical assistance; labour, education and leisure, sports, library; religion, deposit of the detainees’ personal items; prison personnel, discipline and punishments, constraint methods, recompense, information and the right to complain of the detainees, inspection, connection with the outside world, social relationships, post-detention assistance etc.

Generally, the creation of this commission at the local level is welcomed, since the practice of the Committee for Complaints has proved dysfunctional mainly due to its national jurisdiction, without having the necessary financial resources, which would empower it to fulfil its functions.

*The local Council of the territorial-administrative unit of the second level*<sup>2</sup> writes and *sends out registered letters to all the public associations* from the relevant territorial-administrative unit on designating the representatives of the civil society for evaluation of the possibility to include the latter into the Monitoring Commission.

The legislation seems to be fairly clear on the authority accountable for requesting the public associations to designate representatives for these commissions. However, it is necessary to mention that the local public authorities did not make such requests, due to various reasons, some due to the lack of knowledge of the provisions of the 235 from 13.11.2008 on the civil society control on the observance of human rights in the places of detention, or did not regard this responsibility as an obligation.

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<sup>1</sup> Body of Minimal Rules for the treatment of the detainees and recommendations regarding these, adopted at the First United Nations Congress on the prevention of crime and the treatment of delinquents, which had its working sessions at Geneva, Switzerland, between 22 August — 3 September 1955, completed on 13 July 1977;

<sup>2</sup> In compliance with the Law No. 436 from 28.12.2006 on the local public authorities (published on 09.03.2007 in the Official Monitor No. 32-35, art. No. 116), *the local council* is the representative and deliberative authority of the first or the second level territorial-administrative unit, elected for solving of local problems. The local council has the right to the initiative to decide, in compliance with the law, on all local problems (except for those pertaining to the jurisdiction of other public authorities), including: to decide, in compliance with the law, the transfer of management, concession, renting of the public premises of the rayon and to render public services of rayonal interest; to approve strategies, forecastings, plans and programmes for the social-economic development of the rayon; to decide, or upon the situation, propose creation, under legal conditions, of public institutions and enterprises of local interest, to decide, in compliance with the law, to get associated with other local public authorities, including the transborder cooperation, for rendering of some public interest services and works, promoting and protection of the local public authorities interests, and the cooperation with the local and foreign enterprises and public associations, with the objective to accomplish some joint interest works and activities; other legal competencies.

Local monitoring commissions have been set up in most territorial administrative units. The councils of Edinet, Calarasi, Taraclia and Cahul rayons requested consultation with the Centre for Human Rights on the nominal membership of the commissions. We could mention rayons Orhei, Singerei and Cantemir where local monitoring commissions were not established. In rayons Criuleni and Ialoveni the rayonal councils did not set up such commissions due to the opinion of the leaders of these rayons that there are no detention institutions on their territories, where persons could be subjected to imprisonment.

The participants to the roundtables mentioned also the risk of inviting only certain organisations, loyal to the local public authorities, which could discredit the credibility of the local commissions. One of the potential solutions would be ensuring the transparency of the selection process of the members of the local monitoring commissions. In order to accomplish this, the amendment of the legislation referring to the organising of the public contest for the selection of the members to the local monitoring commissions is necessary.

***The requests of the relevant local council shall be examined by the public associations at their general assembly*** (with including into the minutes of the meeting of the adopted decisions) ***within 30 days*** from receiving these requests. Thus, some public associations could hesitate to propose persons as members for the local monitoring commissions of the places of detention due to the impossibility to gather the general assembly only for such a reason.

***As members of the monitoring commission*** may be appointed persons which:

- are 25 years old,
- have a dignified behaviour in society,
- have no criminal record,
- were proposed for this position by a public association having at least 5 years of activity, with one of its statutory goals being the protection of human rights.

In the context of a consolidation process of the local association sector, it may seem difficult to identify a sufficient number of public associations which exist for at least 5 years.

***The letters with the reasoned proposals of the public associations***, in compliance with the requirements envisaged by the par. (3) art. 3 of the Law No. 235-XVI from 13 November 2008, ***shall also contain:***

- the written agreement of the candidates regarding the acceptance of the membership of the monitoring commission,
- their curriculum vitae (CV),
- other relevant information.

***In case the public associations do not propose candidates*** to be included as members of the monitoring commission, ***these shall be proposed by the relevant local council, after a written consultation of the Centre for Human Rights***. As a rule, in such an instance, as members to the Monitoring commission are proposed persons experienced in legal, medical or psychological profession. Other persons could also be listed as members of the monitoring commissions.

## **THE STRUCTURE OF LOCAL MONITORING COMMISSIONS**

***Every monitoring commission is composed of 7 members***, representatives of civil society. The following persons ***may not be members of the monitoring commissions:***

- the ones holding positions of public dignity,
- civil servants,
- judges,
- prosecutors,

- employees of the national security bodies, of the national or public law enforcement institutions,
- lawyers, notaries and mediators.

Due to the fact that rayonal public associations did not propose candidates to the local monitoring commissions of the places of detention, in most cases the local councils proposed as members to the local monitoring commissions retired persons which worked previously as policemen, teachers or within the health assistance sector of the respective rayon. Based on the opinion of the parliamentary advocates office, in the process of creation of the nominal structure of the local monitoring commissions were not registered any shortcomings.

***The local council approves the nominal structure*** of the Monitoring commission within maximum 15 days from the moment the public associations made the proposals or the coordination of the list of candidates with the Center for Human Rights took place, with the issuing of the identity cards which confirm the membership to the Monitoring commission. These authorisations shall be issued by the Chairman of the council of the territorial administrative unit of the second level (to see art. 9 of the Law No.235-XVI from 13 November 2008).

From the total number of local monitoring commissions, only the members of two commissions hold identity cards, these being the members of the commissions from Cahul and Calarasi rayons. These identity cards are signed by the Chairman of the rayon.

The term of service as members of the local monitoring commission is limited to 2 years. This term could be extended for another mandate, in case the members meet the conditions.

The majority of the local monitoring commissions of the places of detention were created in 2009, with an expired membership mandate. Due to this reason, the commissions changed their composition, as examples could serve commissions from Soroca, Leova, Telenesti, Rezina rayons. We should mention that presently the majority of the local monitoring commissions have difficulties to function due to lack of finances.

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Within this project, 6 local level visits have been performed, with the goal to inform the local public authorities and raise their awareness on the importance of the existence of the local monitoring commissions of the places of detention and on the legal procedures for their creation. Such visits were made to Criuleni, Orhei, Sangerei, Anenii Noi, Straseni rayons and Balti municipality.

On 6 July 2011 it was organized the first roundtable entitled „Creation and activity of the local monitoring commissions for the protection of the human rights in the places of detention”. This roundtable was organised at the venue of Orhei District Council and lasted 2 hours. There were present 22 participants, including the project team, representatives of the local public authorities, 9 members of Orhei District Council, 6 representatives of NGOs, 2 lawyers and journalists.

The participants agreed unanimously that there is need to organise activities for raising the awareness of the local NGOs and local authorities, in order to encourage the creation of the monitoring commissions.

Thus, similar round tables have been organized in Anenii Noi, Criuleni, Sîngerei, Strășeni and Bălți districts. 70 participants (49 representatives of local public administration, 14 members of NGOs, 7 doctors and prosecutors), as well as representatives of mass-media and the project team have attended these round tables.

At the summing up of the results of the roundtable, the participants declared that monitoring by the civil society should be certainly considered as part of the democratic process, in which the institutions with high risk for infringement of human rights shall be subjected to a transparent and

accountable regime. The existence of the civil society control is a requirement of the rule of law state.

At the moment of elaborating the present report, the procedure for creation of the monitoring commission has been initiated only in Strasenii rayon. In compliance with the draft decision, the commission comprises 7 members: 2 teachers, 1 psychologist, 3 lawyers and 1 medical assistant. Due to information received within the project, at the creation of the commission all procedures were attained to and in its nominal structure are not included civil servants.

Regretfully, no monitoring commissions were created in other rayons, where training took place. In compliance with the Law on the access to information No. 982-XIV of 11.05.2000, the Moldovan Institute for Human Rights requested the information regarding the reason for the delay of creation of the commissions.

At the II-nd stage of the project, study visits have been planned with the members of the monitoring commissions of the places of detention (Provisional detention centers of police, penitentiary institutions, and psychiatric institutions). At the moment of elaborating the present report, 11 visits were made to Făleşti, Rîşcani, Căuşeni, Rezina, Edinet, Teleneşti, Leova, Nisporeni, Soroca (2), Cahul rayons. The visits were organised by the specifics of various institutions, depending on their geographical situation. Thus, 4 visits were made to the prisons (Rezina, Leova, Cahul and Soroca), one visit – to the psychiatric institutions (Soroca, Bădiceni village), and 6 visits – to the provisional detention centers (Făleşti, Rîşcani, Căuşeni, Edinet, Teleneşti, Nisporeni).

At the visits participated 49 members of the local monitoring commissions, of which 11 were civil servants, 21 – representatives of the local public authorities, 3 – representatives of public medical services, 6 teachers and 8 representatives of other categories, for example, mass-media, psychologists, etc.

The commissions with which we cooperated may be divided into 2 categories: those created in 2008-2009 (Căuşeni, Edineţ, Făleşti, Rîşcani, Nisporeni) and those with a new mandate formed in 2010-2011 (Rezina, Leova, Soroca, Cahul, Teleneşti).

When summarising the results on the nominal structure of these commissions, we conclude that those established in 2008-2009 have predominantly – civil servants (14), civil society representatives (13) teachers (7) and doctors (1).

Certain progress has been noticed regarding the nominal structure of the commissions created in 2010-2011, where members are mainly civil society representatives (24 members), 4 teachers, 4 doctors, 1 rayonal counsellor and 2 other representatives.

As a result of the performed visits, the members of the commissions elaborated monitoring reports, which had to be presented to the experts of the Moldovan Institute for Human Rights. Only one report has been received from the monitoring commission of Nisporeni district. After making the necessary amendments in it, the report was resent to the Nisporeni commission for presentation to the rayon police authority.

We would like to mention that the representatives of 2 territorial administrative units with which we collaborated requested at their setting up the consultation of the Center for Human Rights regarding the nominal structure of the commissions (Edineţ, Cahul).

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**With reference to the composition of the commissions, to the rate of participation of the civil society and the date of their creation, we have to mention the following:**

**Făleşti commission** has in its composition 6 NGO members. The commission was created by the decision of the District Council of 29 May 2009. The mandate of the commission's members has expired.

**Rîşcani commission** has one NGO member. The commission was created on 20 August 2009. The mandate of the commission's members has expired.

**Căuşeni commission** has in its composition one NGO member. The commission was created on 22 December 2009.

**Rezina commission** has a new composition of the commission, including 7 NGO members. The commission was created recently, in 2011.

**Edineţ commission** has 4 NGO members, 3 teachers. The commission was created on 22 October 2009. The mandate of the commission's members has expired.

**Telenestî commission** has in its composition 5 NGO members. The commission was reestablished on 23 August 2011.

**Leova commission** has 6 NGO members. The composition of the commission was restructured in August 2011.

**Nisporeni commission** has one member of NGO, 2 civil servants. The commission was created in 2009.

**Cahul commission** has 3 NGO members, no civil servants. The new composition of the commission was established in December 2010.

**Soroca commission** has 7 NGO members. The new composition of the commission was established in August 2011.

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#### **Regarding the monitoring visits in the places of detention:**

**Făleşti commission** – as a result of the visit made on 27 October 2011, within the project implemented by the OSCE Mission and IDOM, from the statements of the commissary it was established that the members of the commission made no monitoring visits.

**Rîşcani commission** – as a result of the visit made within the project, from the statements of the members of the commission, the majority of which are local public authorities' members, 6 in total, it was determined that a fruitful cooperation exists between the district police commissariat and the members of the local public authorities.

**Căuşeni commission** – at the time when it was formed, in 2009, only one monitoring visit was effected. The second visit was made within the project implemented by the OSCE Mission and IDOM.

**Rezina commission** – one visit was made to the Prison 17. This was the first visit of the commission in its new composition. The previous composition of the commission has made some visits in the Prison 17, according to the information received from the members of the commission and the administration of the penitentiary institution.

**Edineţ commission** – from the statements of the members of the commission, 2 monitoring visits

were performed during their mandate.

**Telenești commission** has made more visits to the district police commissariat. A fruitful cooperation exists between the administration of the district police commissariat and the members of the commission.

**Leova commission** has a new composition of its members and it was not possible to provide the information on the number of visits performed by the previous commission.

**Nisporeni commission** – from the statements of the commission members, one visit was made.

**Cahul commission** – the members visit regularly the Prison No. 5 and the police commissariat.

**Soroca commission** – the commission in its old composition made 1 or 2 visits. The new composition of the commission performed 2 visits within the project implemented by the OSCE Mission and IDOM, on 11 July to the prison and on 27 September – to the psychiatric institution.

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#### **Observations regarding the performed visits and the elaboration of reports by the existing commissions:**

**Făleşti commission**, no reports were elaborated.

**Rîșcani commission**, no reports were elaborated.

**Căușeni commission**, no reports written or presented.

**Rezina commission**, the new composition of the commission follows to present a report on the visit effected on 21 October. The commission in its current componency has written one report. The Head of Prison No. 17 confirmed that the commission cooperates efficiently and he even requested the assistance of the commission for measuring the level of air pollution on the territory for prisoners' daily walks. After the intervention of the commission, the detainees received their answers and did not file other complaints later.

**Edineț commission**, no reports were written.

**Telenești commission**, no reports were written.

**Leova commission**, the new members of the commission do not hold any data on the reports written by the commission in previous composition.

**Nisporeni commission**, no reports were written.

**Cahul commission**, reports were written and presented to the Department of Penitentiary Institutions, Prison No. 5, police commissariat, Center for Human Rights (1 report)

**Soroca commission**, the old composition of the commission presented one report to the Center for Human Rights.

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#### **Requests by the commission members of some information, support from the Institute for Human Rights for strengthening their capacities:**

Information has been requested from the Moldovan Institute for Human Rights by the commission members of **Căușeni, Rezina and Edineț**. Model-reports and legislation excerpts from the national and international legislation regarding detention conditions have been requested.

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**Do the commissions have a plan of activities and is this plan coordinated with the places of detention?**

Only the Cahul Commission, from all with which we cooperated, has an action plan, approved by the Department of Penitentiary Institutions and Ministry of Internal Affairs. At each visit they signed mandates.

Only the Cahul commission has its own identity cards of member of the commission, issued by the rayonal council and signed by the chairperson of the rayon.

## **CONCLUSIONS AND RECOMMENDATIONS**

- 1. Further monitoring of the implementation of the legislation regarding the civil society control on the observance of human rights standards in the places of detention is required.**
- 2. Local public authorities require further technical support regarding the proper creation of local commissions.**
- 3. Measures should be taken to increase the transparency of the contests for the selection of the members to the local monitoring commissions of places of detention.**
- 4. It is recommended that further activities be undertaken to strengthen the capacities of the local commissions already created through training, joint monitoring visits with experts, analysis and evaluation of the commissions' reports.**
- 5. It is recommended that central authorities be informed and take action about the continuing lack of compliance with legislation in the rayons where local commissions have not yet been created.**