

# REPORT

REPORT ON MONITORING THE RIGHTS OF REFUGEES IN THE  
REPUBLIC OF MOLDOVA IN THE CONTEXT OF THE ARMED  
CONFLICT IN UKRAINE JANUARY - JUNE 2023

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Chisinau, July 2023



This report has been prepared by the People's Advocate Office with inputs from the members of the Consultative Council for Preventing Violation of the Rights of Refugees in the context of the armed conflict in Ukraine set up in March 2022 to support the People's Advocate Office.

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# INTRODUCTION

Protection of the rights of foreigners, asylum seekers or beneficiaries of temporary protection or international protection is inherent to the rule of law. Asylum seekers often find themselves in extreme situations, forced to leave their countries of origin because of an armed conflict, violence or persecution.

In addition to the difficulties in finding a safe place, they also face difficulties in accessing basic services such as education, health care and employment. As part of its international obligations, the host State has an obligation to ensure access to legal and procedural safeguards for all beneficiaries of temporary protection, asylum seekers and beneficiaries of international protection. This means that everyone has the right to a fair and transparent procedure for the assessment of their status and the possibility to seek redress in case of violation of their rights.

Finally, any restriction of the rights of foreigners must be necessary and proportionate. The host State must make sure that any such restriction is justified under law and is in line with the principles of the international law. This means that restrictions must not be excessive and must not affect the fundamental rights of beneficiaries of protection.

Assessing the alignment of the national legislation with the international standards helps to identify potential deficiencies or inconsistencies and to improve protection and assistance provided to the beneficiaries of temporary protection, asylum seekers and beneficiaries of international protection. The analysis of the legal framework aims to identify potential shortcomings and formulate recommendations to align the national legislation to the relevant international and regional standards.

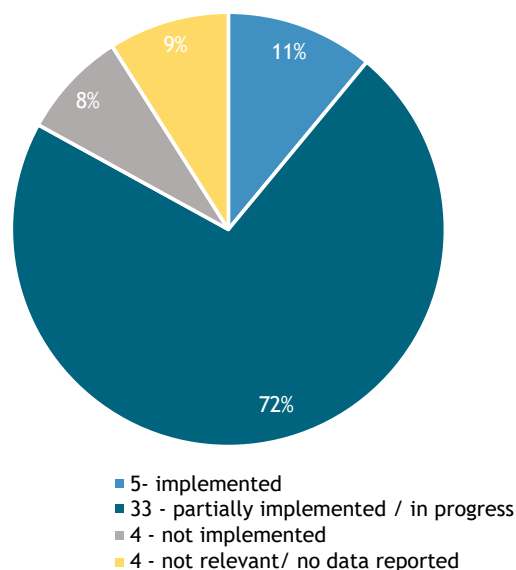
Given the exceptional situation caused by the war in Ukraine, monitoring the rights of refugees transiting the Republic of Moldova or for whom the Republic of Moldova has become a host country has been a priority in PAO's work since February 2022. To strengthen the monitoring efforts, the Ombudsman has set up temporarily the Consultative

## Council for Preventing Violation of the Rights of Refugees in the context of the armed conflict in Ukraine.<sup>1</sup>

Overall, in 2022 the People's Advocate Office and the members of the Consultative Council undertook 121 monitoring and fact-finding visits to the temporary placement centers for refugees, the temporary placement center for foreigners, to border crossing points (BCP), including the border crossing point Chisinau International Airport, which resulted in 3 thematic reports and 1 summary report on the situation of refugees.<sup>2</sup>

A total of 46 recommendations were made for the public authorities responsible for ensuring the rights of the refugees from Ukraine, which were discussed during several meetings with the representatives of the State Chancellery, relevant ministries, the Single Crisis Management Centre and other institutions in charge of managing the influx of refugees to Moldova, as well as during the Human Rights and Equality Forum held on December 6 - 7, 2022.<sup>3</sup>

Thus, out of the total number of recommendations made for the national authorities in 2022, 5 recommendations (11%) were implemented, 33 recommendations (72%) were partially implemented or are in progress, 4 recommendations (8%) were not implemented, and 4 recommendations (9%) are no longer relevant or no data about their implementation have been reported.



**Figure 1: Status of Implementation of Recommendations**

<sup>1</sup> Institutionalized through PA's decision no.01-1/56 of 01.11.2022

<sup>2</sup> <http://ombudsman.md/alaturi-de-ucraina/initiativele-oficiului-avocatului-poporului/raport-privind-monitorizarea-respectarii-drepturilor-strainilor-din-ucraina/>

<sup>3</sup> <http://ombudsman.md/news/a-doua-zi-a-forumului-drepturilor-omului-integrarea-abordarii-bazate-pe-drepturile-omului-si-egalitatii-in-agenda-de-aderare-a-republicii-moldova-la-ue/>

# METHODOLOGY

The monitoring methodology is based on the analysis of the legal framework and documentation of relevant cases, field data collection, interaction with beneficiaries of protection (women, men, children) during the monitoring visits, as well as with decision-makers at local and central levels. The 27 field visits and the 3 regional workshops<sup>4</sup> held with the representatives of local public authorities directly involved in the management of the humanitarian crisis in the districts of Donduseni, Drochia, Floresti, Riscani, Glodeni, Balti, Edinet, Cimisia, Cahul, Comrat, Basarabeasca, Stefan Voda, Anenii Noi, Causeni, Criuleni, Orhei, Ialoveni, Straseni, Ungheni, Calarasi, Nisporeni and Telenesti, the participation in UNHCR Protection and Advisory Groups as co-lead upheld the perception of the obstacles and challenges faced by refugees and by authorities in relation to the management of the humanitarian crisis.



4 <http://ombudsman.md/news/impedimentele-in-gestionarea-situatiei-persoanelor-refugiate-au-fost-discutate-astazi-la-nivel-local-cu-reprezentantii-autoritatilor-publice-locale/>; <http://ombudsman.md/news/provocarile-in-gestionarea-situatiei-persoanelor-refugiate-au-fost-discutate-astazi-la-nivel-local-cu-reprezentantii-autoritatilor-publice-locale/>; <http://ombudsman.md/news/dificultatile-in-gestionarea-situatiei-refugiatilor-in-regiunea-de-centru-a-republicii-moldova-dialog-crucial-cu-reprezentantii-autoritatilor-publice-locale/>

# STRUCTURE OF THE REPORT

This Report contains observations, findings and 13 recommendations for the Government and the authorities involved in the management of the humanitarian crisis. The report has 5 chapters dedicated to the application procedure for asylum; the non-refoulement principle; foreign nationals who threaten public order and state security; public custody of foreign nationals and accommodation of asylum seekers. A separate chapter is dedicated to the implementation of the temporary protection - a first for the Republic of Moldova. Each component of the Report reveals the weaknesses of the national legal framework, which require addressing and aligning to the international standards.



# 1. THE PROCEDURE TO APPLY FOR ASYLUM

The application procedure for asylum in the Republic of Moldova is largely in line with the international standards in the field of international humanitarian law. The fundamental principle is that any individual who has reasonable grounds to believe that he/she is being persecuted in his/her country of origin or fears persecution has the right to apply for asylum and temporary protection in the Republic of Moldova.

The scholarly literature and the practice of the European Court of Human Rights has been using lately the term '*pushback*', which entails 'various measures taken by States which result in migrants, including asylum-seekers, being summarily forced back without access to international protection or asylum procedures or denied of any individual assessment on their protection needs which may lead to a violation of the principle of non-refoulement'. Pushbacks can violate other fundamental rights as well, such as the right to life, the prohibition of torture and inhuman or degrading treatment, the right to property and respect for private and family life.<sup>5</sup>

By submitting an application for international protection, in any way and to any authority, the person expresses his/her wish to obtain this form of protection. Moreover, anyone who has merely expressed his/her intention to apply for asylum is considered to be an applicant, with all the rights and obligations attached to this status. The task of the 'first-contact' authority, which is the Border Police in the Republic of Moldova, is to identify the persons who might wish to apply for international protection, provide them relevant information, help them fill out the asylum application and refer them to the relevant authority. The Border Police cannot deny anyone access to the asylum procedure. It is not the responsibility of the Border Police to assess whether the person has protection-related needs and whether he/she can be granted international protection or not. Yet, the monitoring revealed that the practices used by border guards are contrary to these requirements.


The State must make sure that every person has equal access to the temporary protection and application procedures for asylum, without discrimination or inappropriate restrictions.

<sup>5</sup> [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/738191/EPRS\\_BRI\(2022\)738191\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/738191/EPRS_BRI(2022)738191_EN.pdf);



Prompt and efficient referral to the competent authorities is key to ensuring that the right to asylum is guaranteed in practice. *De facto* and *de jure*, as soon as the person has expressed verbally or in writing his/her intention to apply for a form of protection, he/she obtains *de jure* the status of asylum seeker with all the rights and safeguards provided by law. A filled-out asylum application and protocol should only confirm this status, **rather than being a requirement** for obtaining it.

Another *pushback*-related issue is the collective expulsion, which is prohibited by article 4 of the European Convention on Human Rights. The Court found a violation of Article 4 of Protocol No. 4, among other things, when the procedure for expulsion did not afford sufficient guarantees demonstrating that the personal circumstances of each individual had been genuinely and individually taken into account (*Čonka v. Belgium*); when applicants have been effectively prevented from applying for asylum or from having access to any other national procedure that meets the requirements of an effective remedy (*Sharifi and others v. Italy and Greece*).



*The monitoring revealed cases where foreigners were obstructed access to the asylum procedure in the Republic of Moldova. At the time of writing this report, those cases were being reviewed by the People's Advocate.*

*One of the cases with a positive outcome is that of a female foreigner who upon entering the country together with her husband and minor child through the Border Crossing Point Chisinau International Airport (CIA) asked to apply for asylum in the Republic of Moldova. Her request was ignored by the Moldovan authorities and she was detained at CIA and placed in the detention facility on the grounds that she was on the international wanted list. She was later transferred to one of the Moldovan prisons. All this time all her attempts to obtain asylum failed, while her ex-officio lawyer, according to her husband, did nothing to make sure she had access to the asylum procedure. Following the People's Advocate intervention, her asylum application was accepted.*



*Between January and June 2023, the People's Advocate Office received phone calls and messages from foreigners claiming that border guards had intentionally ignored their asylum applications submitted to BCP Chisinau International Airport, including in writing. Thus, the General Inspectorate for Migration was not notified immediately that there were foreign citizens that had to be dealt with. Finally, most of the allegations received through PAO's hotline revealed unethical and xenophobic behavior of some employees of the BCP CIA towards foreign national.*

Thus, it is important to make substantial efforts to facilitate the access to the asylum procedures through the following measures:

Ensuring access to information about the possibility to apply for a protection status, including by installing billboards in the area of the border crossing points at the entry to the country. Such billboard should be also installed in the sterile area of the Chisinau International Airport. The information should be provided in a friendly language, and translated in the languages of international communication, and should contain the contacts for requesting state-guaranteed legal aid;

Revising the *Instructions on the procedure for receiving asylum applications at the state border* approved through the decision of the Ministry of Internal Affairs no.782 of December 29, 2016 so as to provide additional safeguards and immediate access to the asylum procedure. A safeguard in this respect should be provided to the persons in the sterile area of the Chisinau International Airport, with their subsequent referral to the General Inspectorate for Migration.



## 1.1. DECISION TO ACCEPT OR REJECT AN ASYLUM APPLICATION

Issuing a decision in written form is essential and imperative in an asylum procedure.

Each asylum application is examined individually and impartially. The international standards suggest that the national authorities should take into account the specific circumstances and reasons mentioned by applicants when assessing the risk of persecution or inhuman treatment in their countries of origin.

Moreover, at a minimum, the decision to reject an asylum application must be supported by factual and legal grounds.

Since a decision that is not supported by reasons or a formal and superficial decision can undermine the effectiveness and fairness of the appeal process, this requirement is intended to guarantee **the applicant's right to an effective remedy**.

The national law, more specifically art.50 of the Law no.270/2008 on asylum, requires that the decision is supported by grounds, indicating the facts and the legal provisions that have led to such a decision. To avoid formulaic decisions, in particular refusals, we recommend drafting some argumentation standards to be used as tools to save time and ensure consistency and comparability of decisions. These tools, however, cannot replace the individual assessment of the cases. They must be always used in close connection with the circumstances of the case.

Finally, the decision must be written in a language that the applicant understands and clearly inform the latter how he/she can use the right to appeal.

Another important aspect is the prompt communication of the decision. The general recommendation is to be very specific in terms of deadlines for communication of the decision by authorities and in terms of the form of communication. Art.50 and 60 of the above-mentioned law clearly regulate that the decision must be communicated in written form. However, only art.60 stipulates that the decision must be communicated promptly by using the word “immediately”. Though this word suggests that the decision must be communicated promptly, it is recommended that legislation be more specific by indicating the number of days for communication of such decision. Prompt communication of the refusal of an asylum application is part of the safeguard related to the right to an effective remedy.

## 1.2. INTERVIEWING ASYLUM SEEKERS

Art.55 of the Law no.270/2008 on asylum regulates all key conditions to ensure the asylum seeker's access to the right to be interviewed, including confidentiality and the language of communication.

The importance of the interview for the broad and multilateral assessment of each case is undeniable, while the grounds for skipping it must be as limited as possible. In addition to the fact that the interview is a right of the asylum seeker, it is also a very useful tool that the authorities can use to assess and make a better reasoned decision.




The UNHCR recommendations and the good practices of other European countries suggest that refusal of an interview on the grounds that an application is unfounded or unlawful as regulated in art. 55, para 15 item (c) is not proportionate to the safeguards related to the right to apply for asylum.

One of the key recommendations in this sense is to revise the current format of the interview, more specifically instead of one interviewer (decision maker) to have a committee made of 3 members, in order to prevent any doubts of subjectivity and ensure the impartiality of the decision. Whatever format is chosen, the interviewer must have the appropriate professional skills to conduct such interviews, especially when dealing with vulnerable categories, such as children.

### 1.3. EXPLICIT AND IMPLICIT WITHDRAWAL OF ASYLUM CLAIMS

Explicit and implicit withdrawal of asylum claims is regulated in art. 59 and 591 and results in the termination of the asylum procedure.

Explicit withdrawal takes place when the applicant expresses his/her intention to drop the asylum claims. The competent authority must inform the applicant about the effects of the withdrawal



*The People's Advocate received allegations from male Ukrainian nationals who, together with their families, applied for asylum in the Republic of Moldova. Although at some point they explicitly withdrew their claims in order to be able to leave the Republic of Moldova for one of the EU countries, when leaving the country, they were stopped by border guards and had their passports seized because they were on the list of persons (nominal record) that were not allowed to leave or enter the country. They were informed that they had the status of injured parties in criminal proceedings on organization of illegal migration. While those persons did not recognize themselves as injured parties in the criminal procedural context as they had applied for asylum, they were nevertheless subjected to the hearing procedure. Moreover, they also mentioned that the criminal prosecution officials threatened them that any refusal to answer questions may result in their status in the criminal proceedings being changed.*

**Implicit withdrawal** takes place in three cases, clearly regulated in art. 59<sup>1</sup>, which are related to the action and lack of action on the part of the asylum applicant and result in termination of the asylum procedure.

There may be various reasons why an applicant for protection does not comply with the requirements of a competent authority, which however do not necessarily indicate that the applicant does not need protection. A negative decision on an application for protection should be made only after all relevant facts are appropriately considered and it is determined that the applicant does not qualify for the asylum status or other form of protection.

A key issue related to the effects of the implicit withdrawal is that the State should make sure that the applicant who comes to the competent authority after a termination decision has been made has the right to have his/her case reopened. Art. 801 of the Law on asylum guarantees this right and provides a shortcut for the reconsideration of the asylum application, without requiring that a new application be submitted under art. 78 of the above-mentioned Law.

#### 1.4. FAST-TRACK PROCEDURE

According to art. 62, asylum applications can be considered in a fast-track procedure in three cases only:

- a. when the application is unlawful;*
- b. when the application is clearly unfounded;*
- c. when the application is submitted by individuals whose actions or membership of a particular group threaten national security or public order.*

Art. 63, para (3) stipulates that *“The reasons specified in paragraphs (1) and (2) may not prevail over well-founded fears of persecution regulated in Article 48.”*

Assessment of the *well-founded fear of persecution* stipulated in art. 48 is a complex process, and one of the key tools in this process is the interview. On the other hand, one of the grounds for not conducting the interview under art.55, para (15), item c) is *“...the assessment finds the application unfounded or unlawful”*.

The regulations on the fast-track procedure suggest that the interview in such cases is not or rarely conducted. All the asylum applicants should enjoy the same procedural safeguards and rights, regardless of whether the applications are considered in a prioritized, fast-track or regular procedure.

The international standards and the comparative analysis of the good practices in different countries suggest that there is a general concern that an accelerated asylum procedure might make it extremely challenging for asylum applicants to use their rights.

In other words, the very short timeframe, as a rule, does not allow for an appropriate and complete consideration of the application.

Generally speaking, the fast-track procedure could be mainly used for consideration of manifestly well-founded applications or applications involving persons with special needs and not vice-versa

## 1.5. EFFECTIVE REMEDIES

The access to an effective remedy is the subject of much research and is high on the list of the fundamental rights of a person involved in the asylum procedure or other protection measures.

Applicants may face various obstacles and challenges affecting their ability to use their rights to challenge the decisions of authorities, for instance on rejection of their asylum applications. These include lack of action by authorities to appropriately inform applicants about the appeal procedures and competent courts, the short deadlines for submission of appeals, lack of interpretation assistance to understand and formulate accurately the appeals, as well as the access to free of charge legal aid. There may also be difficulties to obtain access to their files within a reasonable timeframe. Sometimes distance or limited financial resources can create additional obstacles.

These challenges undermine the ability of the applicant to effectively use his/her rights and require appropriate measures to ensure fair and efficient access to remedies.



While Article 28, item (k) of Law 270/2008 stipulates that the asylum seeker has the right *"to be informed of the possibility and timeframe for appealing against the decision rejecting his/her application"*, the Law does not expressly stipulate the timeframe for appealing against a decision on an asylum application. There is only a reference to the administrative litigation procedure, which can be confusing.

Moreover, the decision to refuse asylum should clearly explain in a language that is understood by the applicant how to challenge such decision, what is the competent court and the applicable timeframe and the consequences of not complying with the decision.

To ensure the access to an effective remedy in practice, it is critical that free legal aid is available for applicants at all stages, including the assistance for formulating the grounds for the appeal and the preparations prior to the examination of the appeal in court.

To ensure the quality of the legal services and adequate representation in court proceedings, the state-guaranteed legal aid system should be efficient and lawyers should receive ongoing training, including specialized training. The access to legal aid in the Republic of Moldova is regulated by the Law no.198/2007 on state-guaranteed legal aid, including the right of asylum seekers and other vulnerable categories to receive free legal aid.

Free legal aid should be available at all stages of the migration process, from the moment individuals enter the country to the irrevocable decision on the removal or expulsion of the person from the Republic of Moldova.

Upon entry to the Republic of Moldova, the first contact authority is the Border Police, which under Art.24 of the Law 215/2011 on state border must ensure the right to legal aid by providing the contact details of the Bar Association which, in turn, can provide information about its representatives qualified to act in the interests of the individual.

This legal provision is ambiguous at least because state-guaranteed legal aid and how it can be accessed is regulated exclusively by Law 198/2017. The Bar Association is a self-administration body of lawyers and does not have direct duties related to the state-guaranteed legal aid.

As a first contact authority, the Border Police has the obligation to inform the foreign individual about all the rights and safeguards he/she can use, including the right to legal aid.



It is recommended to revise art.24, para (3) of the Law 215/2011 and to clearly regulate the institution directly responsible for the organization and ensuring of state-guaranteed legal aid.

Additionally, the Border Policy must ensure the access of foreigners to the information about their rights, including the right to receive state-guaranteed legal aid.

Ensuring the access to state-guaranteed legal aid is a prerogative of the state that facilitates the use of the right to asylum and the access to an effective remedy. Engaging partners in this process - representatives of the civil society - is extremely important and crucial, but cannot replace the obligations of the state in this sense.

## 2. THE PRINCIPLE OF NON-REFOULEMENT

The principle of non-refoulement is reflected in the legislation of the Republic of Moldova through the protection of the right to asylum and other safeguards in line with the international and constitutional regulations. This principle requires that states do not return a person to a country where this person is at risk of being persecuted, tortured, subjected to inhuman or degrading treatment. The Republic of Moldova has adhered to international conventions and treaties which protect the rights of refugees, such as the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. These international tools serve as a legal framework for guaranteeing the principle of non-refoulement.

According to these regulations, a person applying for asylum in the Republic of Moldova has the right to be heard and to provide the reasons for applying for protection. Authorities should consider thoroughly every asylum application and take into account the risks the applicant might face in his/her country of origin. If they find that there are reasonable grounds, the applicant may be granted the refugee status and receive protection in the Republic of Moldova.

Moreover, the Republic of Moldova cooperates with relevant international organizations and institutions, such as the Office of the United Nations High Commissioner for Refugees (UNHCR) to make sure the principle of non-refoulement and protection of refugees are ensured.

In accordance with Art. 11 of the Law on asylum:

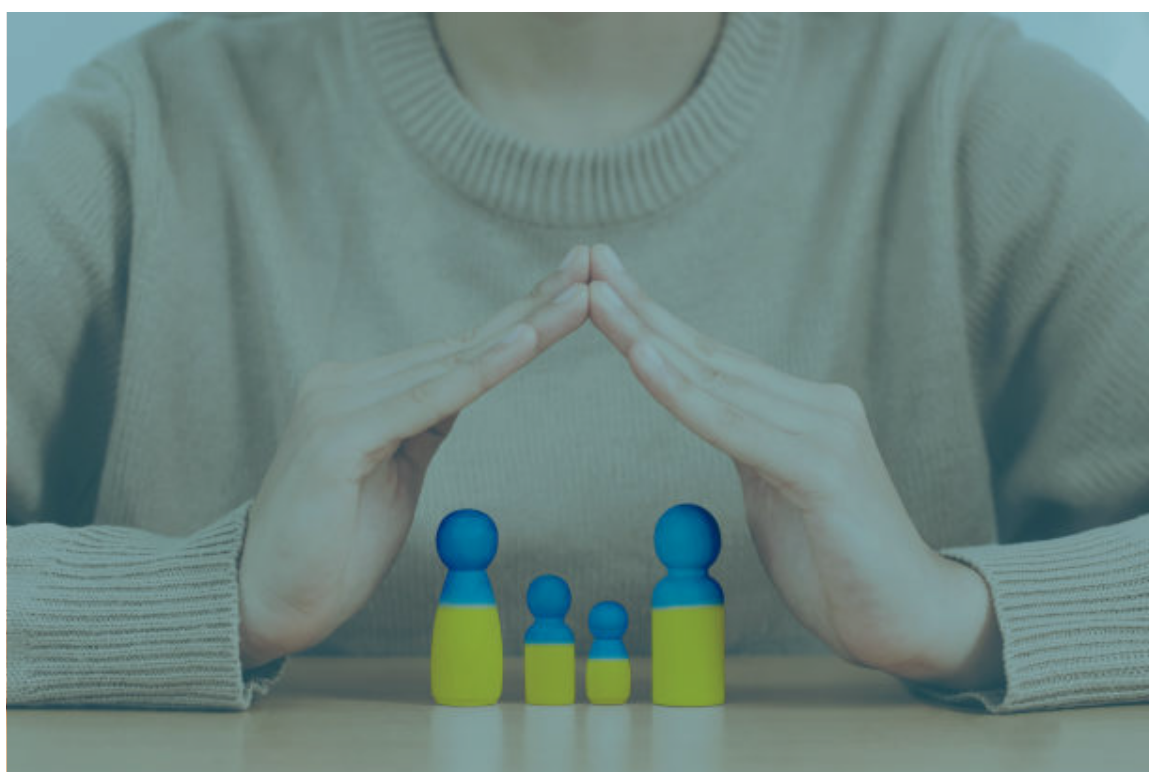
*(3) Without prejudice to the provisions of para. (2) and without affecting automatically the form of protection he/she enjoys, a person who has been recognized as a refugee or granted humanitarian protection may be expelled or returned from the territory of the Republic of Moldova if:*

*a) there are reasonable grounds to believe that the person poses a threat to the security of the Republic of Moldova;*

*b) having been convicted by a final court judgment for a serious, particularly serious or exceptionally serious offence under the Criminal Code of the Republic of Moldova, the person poses a threat to the public order in the Republic of Moldova.*

While most of the states recognize “*threat to the security of the state*” as a ground for the expulsion or return of individuals with refugee status or beneficiaries of humanitarian protection, the key element is how it is interpreted and how the authorities determine that there are “*reasonable grounds to consider that the person is a threat to the national security*”.

However, by ensuring access to an effective remedy, i.e. the right to challenge the expulsion decisions driven by “*threat to the security of the state*”, the State offers the possibility to check the legality and reasoning of such decisions



### 3. FOREIGNERS WHO POSE A THREAT TO PUBLIC ORDER AND NATIONAL SECURITY

The individual's personal behavior must pose a real, immediate and sufficiently serious threat affecting one of the fundamental interests of the society. **Reasons that are not related to the specifics of the case or are based on general considerations referring to prevention cannot be accepted.** It is essential that decisions are based on a thorough analysis of the specific circumstances of the case and focus on the immediate and significant risks for the society.

Certainly, there is no explicit definition of national security and public order. Both terms lack precision and leave room for interpretation. Clearly the threat that a foreigner poses to the national security or public order should be real, not imaginary, which is why a thorough investigation into the case details is required.

One of the risks of an unlawful return or expulsion decision is that it may lead to the violation of article 3 of ECHR, which would mean that the state *accepts or tolerates* the threat of torture or inhuman or degrading treatment faced by the person in the state to which he/she is to be expelled.

Finally, such a decision might lead to the violation of Article 8 of ECHR, following specific actions of the state which do not allow for protecting the private or family life on its territory.



There is an unambiguous interpretation whereby Article 3 of the Convention prohibits in absolute terms torture or inhuman or degrading treatment, regardless of the behavior of the victim, however undesirable or dangerous he/she may be. If the person has provided reasonable grounds to believe that he/she would face a real risk of being subjected to such treatment as stipulated in Article 3 in the receiving country, the expulsion of that person may raise questions.

In other words, the interests of public order or national security are not relevant when it comes to absolute rights. If this is the case, there can be no balancing between protection of national security and public order, on one hand, and protection of human rights, on the other hand, when it comes to article 3 of ECHR.

The national security and public order concerns, which could be a reason for the return of an individual, could be disproportionate and severely limit other procedural safeguards, such as the right to be heard during the proceedings, to access the case file, or the right to an effective remedy and prohibition of collective expulsion.

The Republic of Moldova addressed this issue through the Decision of the Constitutional Court no. 27 of November 13, 2020, which declared unconstitutional the provisions of the law on foreigners restricting access of specific categories of individuals to information underpinning the expulsion or refoulement decisions. The reasons for restricting access to such kind of information were related to “*state security*”.

**Thus, whenever the authority responsible for foreigners or a court refers to *public order or national security* in its decisions, it must provide factual and legal grounds to justify its assessment of the threat, and ensure the immediate access of the foreigner and of his/her defense counsel to all the materials of the casefile**

# 4. PUBLIC CUSTODY OF FOREIGNERS AND ACCOMMODATION OF ASYLUM SEEKERS

## 4.1. ARBITRARY DETENTION

Legality of deprivation of liberty of a person is another fundamental principle which requires that any arrest or detention has a legal ground. This principle is recognized and protected by the European Convention on Human Rights (ECHR), in particular article 5, which clearly stipulates all grounds on which a person can be deprived of liberty. Therefore, arrest or detention of a person is considered unlawful in the absence of any of these grounds. Accurate interpretation of this list is essential to guarantee that no one is arbitrarily deprived of liberty.

‘Arbitrary detention’ is broader than ‘unlawful detention’ and requires that deprivation of liberty be both carried out in accordance with the applicable law and procedures and proportionate to the aim sought, reasonable and necessary. ‘Arbitrariness’ should not be confused with ‘unlawfulness’ and should be interpreted in a broader sense, which includes elements of disproportionality, lack of predictability and respect for fundamental human rights in a legal process.

Bearing in mind the requirement of necessity and proportionality, detention of asylum applicants, refugees and migrants should be used as a measure of last resort, and necessity and proportionality should be assessed on a case-by-case basis. The restriction of the freedom of movement, even for short periods, by its very nature constitutes deprivation of liberty, and the person, therefore, has the rights and safeguards that are provided by art. 5 and 3 of ECHR (*cases Shamsa v. Poland, Nolan v. Russia, Dougoz v. Greece, Riad and Idiab v. Belgium, Saki v. Greece*).<sup>6</sup>

<sup>6</sup> Factsheet - Migrants in detention, [https://www.echr.coe.int/documents/d/echr/FS\\_Migrants\\_detention\\_eng](https://www.echr.coe.int/documents/d/echr/FS_Migrants_detention_eng)

In the case of deprivation of liberty, under art. 5 the state has the positive obligation to put in place sufficient and effective safeguards to protect the individual from arbitrary deprivation of liberty. Deprivation of liberty of foreigners also entails respecting the safeguards laid down in art. 3 of ECHR by making sure they are detained in appropriate conditions.

Finally, in case of deprivation of liberty of the above-mentioned persons, the places of deprivation of liberty must be considered places of detention in the meaning of art.4, paragraph 2 of the Optional Protocol to the UN Convention against Torture (OP CAT)<sup>7</sup> and must comply with the standards of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishments (CPT).

In the Republic of Moldova cases were reported of foreigners forced to wait in the hallway or in the offices of the representatives of the competent authority in charge of foreigners without being documented or waiting to be heard in court. While there was no decision on their deprivation of liberty, during all this time they were not allowed to leave the premises.<sup>8</sup> This legislative gap must be addressed so as to provide safeguards against illegal and arbitrary detention.

Another important aspect is the lack of clear provisions regarding the moment when the public custody starts running. In this respect, a clear regulation of the moment when the public custody starts running in order to avoid uneven calculation of the public custody period and arbitrary detention is also a priority.

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7 Law no.66 of 30.03.2006 on the ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, published in Monitorul Oficial of the Republic of Moldova no. 66-69 of 28.04.2006 <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=315880>

8 Thematic Study - Upholding the rights of the foreign citizens in the state custody: <https://cda.md/wp-content/uploads/2023/03/Upholding-the-rights-of-the-foreign-citizens-in-the-state-custody.-Tematic-Study.pdf>, pg.51

## 4.2. 'AUTOMATIC CONTROL'

According to the international standards, placement in public custody, which by its very nature is a measure that undermines one of the most important human values - freedom, must be decided by an 'authorized' person or institution. A comparative study of the legislation of other states shows that decisions to place foreigners in public custody are issued either by the court, the prosecutor or an official of the authority responsible for foreigners.

Under national law, public custody can only be ordered by the court, thus allowing for a higher level of control.

Another safeguard that foreigners must benefit from is the control of the legality of the placement in public custody either through access to legal remedies to challenge the court decision ordering the placement or through 'automatic control'.

Automatic control involves limiting the initial period of placement in public custody, recommended up to 30 days, as well as extending it for a limited, clearly regulated period. In this way, the foreigner receives a guarantee that the legality of the placement and extension of public custody will be automatically verified by the court.





Extension of the detention period requires particular attention in terms of human rights. To extend the detention period the authorities dealing with foreigners must be able to substantiate why the reasons for initial placement in public custody are still valid. When public custody is extended for more than 30 days, they must also provide grounds for the existence of a real prospect of returning the foreigner, so as to maintain the legality of the public custody.

The period during which a foreigner may be held in public custody must not exceed a reasonable period, depending on the complexity of the case and subject to the obligation to conduct the removal procedures quickly and diligently. Art.64 of the Law 200/2010 stipulates that *“In the case of a foreigner against whom a return order has been issued or who has been declared an undesirable person, the court shall order the foreigner to be taken into public custody for a period of up to 6 months at the reasoned request of the competent authority dealing with foreigners”*.

Although having this margin of discretion “up to 6 months” in the law does not constitute a violation of the ECHR standards, it may nevertheless lead to the detention of foreigners for long periods of time, even when not absolutely necessary or reasonable.

#### **4.3. ALTERNATIVES TO PUBLIC CUSTODY**

There is a broad consensus that detention is permissible only if it is applied in full compliance with the law, and only after a multi-faceted and individual assessment of the necessity of deprivation of liberty on a case-by-case basis has led to the conclusion that less coercive measures will not be effective. Before making any decision on detention, one should always consider the possibility of applying a viable alternative in each individual case and make such a decision only if none of the alternatives is workable.

Alternatives to detention of migrants are measures that can and are applied by other states in relation to foreigners, where some form of control is deemed necessary: they range from non-custodial measures, such as community-based models focused on social services and individual cases, to more restrictive options, such as accommodation in semi-closed centers.

The only alternative to public custody in the Republic of Moldova is to tolerate the foreigner's stay in the Republic of Moldova ('tolerance' / 'indulgence'). This institution is regulated by art. 67 - 69 of the Law 200 on foreigners in the Republic of Moldova.



## 5. TEMPORARY PROTECTION

The activation of the Temporary Protection Directive, more than two decades after its entry into force, as a response by the European Union member states to the Ukrainian refugee crisis, has marked a paradigm shift. This resolute step to address the migration issues is the result of a coordinated response and solidarity of the member states to the critical humanitarian situation caused by the conflict in Ukraine.

Temporary protection “was activated” for the first time in the Republic of Moldova through the Government Decision no.21 of 18.01.2023 on granting protection to displaced persons from Ukraine. The adoption of this Decision demonstrates a strong willingness to offer protection and support to the affected persons, as well as the country’s commitment to promoting humanitarian values and protecting fundamental rights.

The humanitarian crisis caused by a mass influx of displaced persons from Ukraine has generated significant challenges for the Republic of Moldova in terms of protecting and supporting these vulnerable persons. In this situation the Republic of Moldova acted in accordance with the provisions of the Directive 2001/55/EC to ensure the application of minimum standards in granting temporary protection.

The implementation of temporary protection required adopting an appropriate legal and institutional framework to allow for the recognition and granting of a temporary status to the displaced persons. These measures included assessing the needs and situation of each person on a case-by-case basis, ensuring the access of those affected by the conflict in Ukraine to rights, benefits and assistance.

In accordance with the requirements for granting temporary protection to the displaced persons from Ukraine, the persons granted temporary protection enjoy all the benefits related to the right to health, education, stay in the country, shelter, access to the labor market, social assistance, interpretation and other similar services (P 20.25), thus covering the major obligations of the host countries mentioned earlier.

According to paragraph 23, the persons granted temporary protection have the right to work in the Republic of Moldova, without being required to obtain the right of temporary stay, meaning that no special requirements have been put in place in relation to the access of refugees to the labor market and a facilitated access to the employment opportunities has been regulated.

Despite this, the national legislation does not provide for facilitated access to vocational training for the beneficiaries of temporary protection.

On the other hand, the close cooperation with UNHCR and other relevant international organizations and the joint efforts demonstrate a coordinated approach and the country's commitment to promoting welfare and social inclusion of the persons affected by the conflict in Ukraine.

## 5.1. ACCESS TO TEMPORARY PROTECTION

*According to the Temporary Protection Directive, persons enjoying temporary protection must be able to lodge an application for asylum at any time. The examination of any asylum application not processed before the end of the period of temporary protection shall be completed after the end of that period (Article 17). The Member States may provide that temporary protection may not be enjoyed concurrently with the status of asylum seeker while applications are under consideration (Article 19).*

In this sense, the national legislation provides safeguards related to the access to the application procedures for asylum in paragraphs 15 and 16 of the Government Decision (GD) no. 21 and art. 23 of the Law on asylum in the Republic of Moldova.

A **key element** in this respect is the guarantee of the continuation of temporary protection after an asylum application is rejected, which is regulated in art. 23 of the Law on asylum in the Republic of Moldova.

While the efforts of the national authorities to regulate and manage the temporary protection institution are huge and commendable, there are some deficiencies that still require addressing.

From the perspective of the EU Directives, the accessibility of protection measures is of paramount importance. Given the high vulnerability of the beneficiaries of protection, the host countries have committed to **facilitate** the access of foreigners to protection measures.

According to the Government Decision no.21/2023, “temporary protection shall take effect in respect of a person from the date on which he/she expresses his/her wish to receive this type of protection by registering the application for obtaining an identity document”, while paragraph 7 of the same decision stipulates that *“the competent authority shall issue, on the day the application is submitted by the beneficiary of protection, an identity document to the beneficiary, free of charge, on the basis of the submitted documents”*.

Expression of wish is sufficient for the person to receive immediate protection, including access to the full range of services: healthcare, accommodation, social services, etc.

Forcing people to pre-register on the online platform creates additional obstacles and delays the process of accessing temporary protection, consequently affecting the ability of the person to enjoy the related rights, such as the right to healthcare..

The categories of beneficiaries eligible for temporary protection referred to in paragraph 1 of the GD are limited compared to other European countries. The exclusion of nationals from third countries, other than Ukraine, and stateless persons who can prove legal stay in Ukraine on the basis of a permanent stay permit issued under Ukrainian law from the list of eligible persons undermines the rights of Ukrainian children.

Ukrainian children arriving to Moldova with only one parent belonging to the above-mentioned categories are deprived of the possibility to legalize their status and benefit from the rights offered by temporary protection, while the same child, if accompanied by the second parent who is a Ukrainian national, or not accompanied by any of the parents would benefit from temporary protection. Some countries like Romania, Bulgaria, Germany grant temporary protection to non-Ukrainians or stateless persons who can prove that they have the right of permanent stay in Ukraine based on a permanent stay permit issued under the Ukrainian law and who cannot go back to Ukraine or to their country of origin because of safety reasons and lack of stability

Supplementing the application process for temporary protection with intermediate steps such as filling in an online form through the platform launched by the General Inspectorate for Migration, followed by an interview, cannot condition the legal effects in para. 5 and 7 of the Government Decision. Any limitation of the rights resulting from these intermediate steps is illegal and arbitrary

*It is recommended to revise paragraph 1 of the GD and extend the category of persons eligible for temporary protection to include "non-Ukrainian third persons and stateless persons who can prove legal residence in Ukraine on the basis of a permanent stay permit issued under Ukrainian law and who cannot return to their country or region of origin because of safety reasons and lack of stability".*

Paragraph 12 of the GD, which makes obtaining the document confirming the status of beneficiary of temporary protection conditional on confirmation of the residence address or temporary stay in the Republic of Moldova, also raises questions regarding the accessibility of temporary protection. Thus, certain procedures put in place by the national legislation create disproportionate obstacles significantly undermining the accessibility of temporary protection.

For the refugees from vulnerable groups, in particular Roma, asking them to provide documents that confirm their residence in order to obtain the temporary protection status is a burden caused independently of their will. While finding dwelling or the persons who would agree to rent out dwellings to Roma people is already a burden, the high degree of intolerance and prejudice towards them is one of the reasons why homeowners are reluctant to formalize the rental of housing to those people based on an agreement or a notarized statement.

An example of good practice of facilitating access to temporary protection is that of Romania, which does not require providing proof of address where the person lives in Romania if this is not possible. Another positive practice is that of Poland, where in order to receive temporary protection, the person is asked to indicate the address where he/she lives and is notified of liability for false statements.



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Article 26 of the Law on asylum in the Republic of Moldova clearly stipulates the reasons for cessation of temporary protection, while sub-paragraph 3 of paragraph 29 in annex no.1 to the Government Decision no.21 of January 18, 2023 on granting temporary protection to displaced persons from Ukraine introduces an additional ground for cessation of temporary protection *"if the person has left the Republic of Moldova and has been outside the Republic of Moldova for more than 45 days cumulatively"*. This new limitation is contrary to the aim pursued by art.26 of the Law no.270/2008 and has no objective and reasonable grounds. It puts the beneficiaries of temporary protection at a disadvantage. Moreover, the regulations approved by the Government under law and for the implementation of legislation must not be contrary to or go beyond the scope of the provisions of the latter.

Therefore, it is recommended to revise paragraph 12 of the Government Decision and facilitate the access to temporary protection by confining to the person's statement indicating the place of residence

Therefore, the Government, together with the measures aimed to support the implementation of the Law no. 270/2008 on asylum in the Republic of Moldova has introduced a limiting condition which is contrary to the aim pursued without providing any objective and reasonable grounds and which is missing in art.96 of the above-mentioned Law. With reference to the opinion paper sent to the Government on May 23, 2023, we reiterate that the Government Decision no.21/2023 should be revised to remove the phrase "if the person has left the Republic of Moldova and has been outside the country for more than 45 days cumulatively" in subparagraph 3) of paragraph 29 of Annex no.1

In its caselaw, the Constitutional Court reiterated that a regulatory act subordinate to the law cannot contain primary norms, and its content must be in full compliance with the norms and purpose of the law and that it cannot introduce new regulations, other than those stipulated by law (see the Decision of the Constitutional Court (DCC) no.29 of October 28, 2016, §71; DCC no.121 of November 21, 2019, §22).

By introducing the phrase "*if the person has left the Republic of Moldova and has been outside the country for more than 45 days cumulatively*" in sub-paragraph 3 of paragraph 29 in annex no.1 to the Government Decision no.21 of January 18, 2023 on granting temporary protection to displaced persons from Ukraine the Government apparently acted *ultra vires*, putting in place a limitation that makes the norm become primary in its nature. Therefore, we consider that this limitation violates the provisions of articles 19 and 102, para 2 of the Constitution. This regulation may have serious implications on the fundamental rights, including the right to non-refoulement, the right to life and physical and mental integrity, the right to health, the right to work, the right to freedom of movement, the right to education etc.

According to the Law no.136/2017 on the Government, the Government ensures the implementation of domestic and foreign policy of the state and carries out the general management of the public administration. By virtue of this role, the Government carries out exclusively **executive activities**, and its main duty is to organize and ensure implementation of laws. To this end, the Government issues normative acts (decisions and regulations). The normative acts approved by the Government under and for the implementation of laws must not contradict or go beyond the scope of the provisions of the latter. Thus, *the Government, when exercising its prerogatives, has the obligation to fully comply with the constitutional and legal provisions.*<sup>9</sup>

<sup>9</sup> DCC no. 23 of 06.09.2013



## 5.2. ACCOMMODATION OF BENEFICIARIES OF TEMPORARY PROTECTION

According to art. 13 of the Directive 2001/55/EC, the Member States shall ensure that persons enjoying temporary protection have access to suitable accommodation or, if necessary, receive the means to obtain housing.

The Government Decision no.21/2023 stipulates that the beneficiaries of temporary protection in the Republic of Moldova, upon request, can be accommodated in the Temporary Placement Center for Persons in Difficulty under law.

Yet, since March 1, 2023, when the above-mentioned Decision entered into effect, and until the time of writing this report, the temporary placement centers for the persons in difficulty have not been created, while the accommodation of the displaced persons from Ukraine is regulated in the Regulation approved through the decision of the Ministry of Labor and Social Protection no.63 of April 25, 2023. The Regulation aims to improve the management and operation of the accommodation centers regulated in Regulation no. 21 of February 26, 2022.

It is commendable that the national authorities have drafted the Government Decision on the approval of the framework regulation on the organization and operation of the Social Service Temporary Placement Center for Displaced Persons from other states and the Minimum Quality Standards<sup>10</sup> - a recommendation made earlier for the national authorities.<sup>11</sup>

10 The draft decision is made available for public consultation, through which the Framework Regulation for the organization and operation of the Social Service Temporary Placement Center for people displaced from other countries' territories and the Minimum Quality Standards are approved | Particip.gov.md

11 <http://ombudsman.md/wp-content/uploads/2022/06/Report-No-1-on-the-monitoring-the-observance-of-the-rights-of-foreigners-from-Ukraine-in-the-context-of-the-state-of-emergency-for-the-period-from-February-25-to-April-30-2022.pdf>

### 5.2.1. Temporary placement management

It is recommended that the practice of segregation of refugees belonging to ethnical groups is eliminated and an integrated and inclusive approach is adopted, so that refugees belonging to Roma or other ethnic groups can live and interact with other communities, thus preventing discrimination, intolerance and facilitating social integration

According to the data collected by the National Social Assistance Agency, 53 placement centers for refugees have been created and are operating in the Republic of Moldova at the time of writing this report. They accommodate about 2 200 persons, including 70 children up to 2 years old, 790 children between 2 and 18 years old and 90 persons with disabilities. The 27 monitoring visits carried out between January and June 2023 to the placement centers revealed the same issues raised in the previous reports.

Previous reports<sup>12</sup> highlighted the existing deficiencies related to the accommodation of refugees. As long as the premises of the centers have mostly remained the same, the approval of a new Regulation has not improved significantly the general situation. Their reasonable adaptation for the persons with special needs remains a challenge. Despite some renovation works carried out at some facilities accommodating refugees, they were mostly cosmetic.

According to the Moldova Rapid Gender-Based Violence Risk Assessment Report<sup>13</sup>, women, mothers with children, the persons with special needs or the LGBTQ+ individuals temporarily displaced from Ukraine are at greater risk of becoming victims of various forms of gender-based violence in the Republic of Moldova.

*During the visit of the monitoring team to the Placement Center in the town of Anenii Noi in March 2023, the management of the facility mentioned they were having troubles with a male refugee living there together with his family since 2022. According to them, the person was aggressive and dictated his rules, control and regime in the center, and became aggressive towards and threatened those who did not obey. It should be noted that at the time of the visit 90% of the persons accommodated in the Center were women and children. According to the Anenii Noi Police Inspectorate, the man used to insult refugee women accommodated in the center and would be punished by police under art. 69 of the Contraventional Code for insults. Despite this, the management of the center did not dare to warn or punish the offender for his intimidating behavior because he threatened them. The case was reported to the authorities. We nevertheless consider that the staff of the Centers need to have the minimum skills to manage such cases so as the other beneficiaries of the centers feel safe.*

<sup>12</sup> <http://ombudsman.md/rapoarte/tematice/>

<sup>13</sup> Moldova Rapid GBV risk assessment in CVA, an. 2022, <https://gbvaor.net/node/1727>

Safe accommodation of displaced persons remains a relevant issue, in particular because most of those persons are women and children. The Council has found that the Centers lack clear procedures to protect the accommodated persons from acts of sexual harassment or other forms of gender-based violence. The monitoring visits carried out to the centers revealed that the staff of the Centers had not received any training on prevention of gender-based violence and on the specialized intervention mechanism in such cases

The beneficiaries of the centers do not have effective protection mechanisms against discrimination and differential treatment. A vulnerable category are the Roma beneficiaries, who often become victims of discrimination, being deprived of the possibility to claim their rights because of prejudice and intolerance existing in the justice system. The dysfunctional management of the accommodation centers, lack of an accountability mechanism for abuse and discrimination against refugees and lack of action from authorities to investigate and punish the disciplinary violations encourage unfair practices, resulting in violations of the beneficiaries' rights. Such practices have been detected in the accommodation center in Costesti village, Ialoveni district and the accommodation center set up in the N. Testimiteanu study premises of the State University of Moldova in Chisinau.



*In the monitoring period, the People's Advocate Office started an ex-officio investigation into the illegal and abusive actions of a mayor - manager of the placement center for refugees in the Costesti village, Ialoveni district. Both in 2022 and 2023 concerns were expressed over the abusive management practices in this center, which led to unlawful and abusive expulsion of beneficiaries from the placement center, most of them women with children and Roma people. Although the national authorities, both at central and local level (level II LPA), were repeatedly requested to hold the manager of the center liable, the interventions were rather for show, suggesting some sort of solidarity with the Costesti mayor. Moreover, the interventions of the local police lacked objectivity and impartiality and, in most cases, it was the beneficiaries that were punished. By the time of writing this report, the Costesti mayor had not been held accountable for discriminatory attitude and violation of professional ethics, indicating tolerance by authorities.*

It is recommended to further strengthen the coordinated response to ensure the security of the target group, including those accommodated in a placement center approved by the authorities. In this sense, the positive obligation of the state to monitor, manage and ensure the security of persons at risk is also regulated by the European Convention for the Protection of Human Rights, and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

Despite the fact that the Regulation no.63/2023 on the operation of accommodation centers requires that safety of the persons and assets of the Center must be ensured by taking relevant measures, the centers do not have security and surveillance systems and lack relevant professionals.

The centers do not comply with the requirement of the Regulation no. 63/2023 to have clear complaint management procedures in place, in particular for allegations of neglect and exploitation, including sexual. In most cases, conflicts are reported to 112 or the managers and social assistants try to handle them on their own. Thus, the staff of the centers themselves are at risk, lacking protection against aggressive and intimidating behaviors.

Moreover, there is no mechanism for identification and referral of refugees with mental health issues. The Regulation no. 63/2023 stipulates that social-healthcare services are provided to the accommodated beneficiaries only upon request. In practice, there have been cases when because such services were not requested and therefore not provided, failure to identify and refer the refugees with mental disorder had a negative impact on the interpersonal communication between the accommodated beneficiaries, leading to misunderstandings, conflicts or even violent behaviors..

### 5.3. HEALTH CARE SERVICES

Health care services are available for the beneficiaries of temporary protection under para 26 and 27 of the GD no. 21. The applicants for asylum have the right to all basic health care services provided to the nationals of the Republic of Moldova, more specifically emergency and primary medical assistance, as well as to free of charge medical examination.

According to the list approved by the Ministry of Health, health care and sanitary institutions submit to the National Health Insurance Company separate reports and electronic tax invoices for the medical services listed in paragraph 26 provided to the beneficiaries of temporary protection, according to the mechanism put in place by the Ministry of Health and the National Health Insurance Company. The expenses borne by medical and sanitary institutions included in the compulsory healthcare insurance system are covered from the financial resources of the compulsory healthcare insurance funds, and compensated from the

state budget. The purpose of these measures is to ensure non-discriminatory access to healthcare services for the beneficiaries of temporary protection in the Republic of Moldova.

Ensuring the access of all beneficiaries of protection, including those of temporary protection, to the full range of medical services is a priority. This approach ensures that all foreigners, regardless of their protection status, receive adequate health care and their access to the healthcare system is not limited. The international and European standards, to which the Republic of Moldova has adhered, clearly recommend this, promoting the principles of equality and non-discrimination in the provision of health services for all beneficiaries of protection, thereby protecting the fundamental right to health for all vulnerable persons. Moreover, any restriction of this right for persons belonging to particular groups is unacceptable and unconstitutional.

The introduction of temporary protection on March 1, 2023 made the national public authorities condition the access to the primary health care services for refugees. Thus, the beneficiaries of temporary protection have the right to free of charge primary health care services, while those refugees who do not have a legal status have the right only to emergency healthcare services.

Given that it takes time to obtain the status of beneficiary of temporary protection because of the arbitrary procedures in place, applicants for temporary protection cannot receive primary healthcare services until they are granted this status. According to the applicants for temporary protection, it takes up to 2 weeks or even one month to obtain the document confirming the status of beneficiary of temporary protection. On the other hand, there are refugees who have not decided whether to apply for a form of protection in the Republic of Moldova or not but need primary healthcare services.

A beneficiary of temporary protection who is not employed in the Republic of Moldova is in a disadvantageous position compared to beneficiaries of international protection as defined in Law 270/2008, having no right to self-insurance by paying an insurance premium in a fixed amount under law in order to receive, when necessary, a comprehensive range of services.



It is recommended to extend the list of the categories of persons who have the right to self-insurance by paying an insurance premium in a fixed amount to include beneficiaries of temporary protection and displaced persons from Ukraine who are temporarily staying in the Republic of Moldova, but work remotely or physically from time to time in other countries. This measure is aimed primarily at protecting the right to health for the children of this category of persons.

#### 5.4. EDUCATION


The EU Temporary Protection Directive requires that the Member States grant to persons under 18 years of age enjoying temporary protection access to the education system under the same conditions as nationals of the host Member State.

Access to education for the beneficiaries of temporary protection is ensured by the Ministry of Education and Research according to para 17 of GD no.21 on temporary protection regulating the access of the minor beneficiaries of temporary protection to the education system in the public general education institutions **subject to the possibilities of the education system** and under the same conditions applicable to the minor nationals of the Republic of Moldova.

In the spirit of the international standards the Republic of Moldova has adhered to, children are the most vulnerable group and should have access to all the services and protection measures under the same conditions as the

children nationals of the Republic of Moldova. Thus, the Education Code of the Republic of Moldova does not contain regulations that would restrict or condition in a discriminatory manner the access of a particular group of children to education

The EU Directive stipulates that offering temporary protection may rule that such access must be confined to the state education system, but such limitation must be supported by clear and proportional grounds. In this regard, the phrase “*subject to the possibilities*” can be interpreted in different ways, which may leave room for violation of the right to education..



*During the monitoring visits, some refugee parents mentioned they did not agree to the enrollment of their children in the education system of the Republic of Moldova because they were obliged by Ukraine to continue education online and they would not obtain their education documents if they did not attend the online classes, and that having to be engaged in two education systems is tiring and too much of a burden for the children. While they would agree to enroll their children in the national education system, which provides the opportunity for real interaction, parents chose the online education offered by Ukraine.*

It should be noted that an obvious issue related to the online education is lack of interpersonal interaction opportunities for children. There are positive practices as well, such as organization of classes with a teacher who monitors the learning process, so that children can leave the placement centers and interact. ‘*Catch Up classes*’ is another concept, which could work with partners’ support and even for the children likely to drop out school from the Republic of Moldova.

It is important that all the children granted protection in the Republic of Moldova have access to the national education services without having to face linguistic barriers and to facilitate their access to the Romanian language courses, providing them the opportunity for learning and personal development in line with the national and international standards in the education sector..

# RECOMMENDATIONS

## Recommendation 1.

To revise paragraph 1 of the GD no.21/2023 to extend the category of persons eligible for temporary protection to include "non-Ukrainian third persons and stateless persons who can prove legal residence in Ukraine on the basis of a permanent stay permit issued under Ukrainian law and who cannot return to their country or region of origin because of safety reasons and lack of stability";

## Recommendation 2.

To revise paragraph 12 of the Government Decision no.21/2023 so as to facilitate the access to temporary protection by confining to the person's statement indicating the place of residence;

## Recommendation 3.

To revise sub-paragraph 3 of paragraph 29 in annex 1 to the Government Decision no. 21/2023 by deleting the phrase "*if the person has left the Republic of Moldova and has been outside the Republic of Moldova for more than 45 days cumulatively*";

## Recommendation 4.

To allow the beneficiaries of temporary protection and displaced persons from Ukraine that are not employed in the Republic of Moldova to pay the medical insurance premium in a fixed amount for self-insurance;

## Recommendation 5.

To eliminate the segregation practice when accommodating refugees in placement centers by taking specific actions based on an integrated and inclusive approach;



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## FOR THE MINISTRY OF INTERNAL AFFAIRS

### **Recommendation 6.**

To ensure access to information in the areas of the border crossing points, in particular in the sterile area of the border crossing point at the Chisinau International Airport for the foreigners who intend to enter the country. This information should be provided in a friendly language and translated into the languages of international communication and contain the contacts where the persons can ask for state-guaranteed legal aid;

### **Recommendation 7.**

To revise the *Instructions on the procedure for receiving asylum applications at the state border* approved through the decision of the Ministry of Internal Affairs no.782 of December 29, 2016 so as to provide additional safeguards and immediate access to the asylum procedure;

### **Recommendation 8.**

To regulate a specific timeframe - *number of days* - for communication of the decision on the results of the examination of the asylum application;

### **Recommendation 9.**

To replace the current format of conducting the interview with asylum applicants with a commission made of 3 members to avoid any doubts of subjectivity and ensure impartiality of decisions;

### **Recommendation 10.**

To revise art. 24 paragraph 3 of the Law 2015/2011 and to clearly regulate the institution in charge of organizing and providing state-guaranteed legal aid;

### **Recommendation 11.**

To regulate and provide safeguards against illegal and arbitrary detention for the foreigners staying in the Republic of Moldova;

### **Recommendation 12.**

To clearly regulate the moment when the public custody starts running to avoid any uneven calculation of the public custody period and arbitrary detention;

### **Recommendation 13.**

Ensure compliance with paragraph 7 of the Government Decision no. 21/2003, so as the document confirming the status of beneficiary of temporary protection is issued on the day of submission of the application.

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